

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1011 Vacation Rentals

**SPONSOR(S):** Commerce Committee, Government Operations & Technology Appropriations Subcommittee, Fischer and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	10 Y, 5 N	Willson	Barry
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 5 N, As CS	Helping	Topp
3) Commerce Committee	14 Y, 9 N, As CS	Willson	Hamon

### SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state.

A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. The rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.

Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Preempts to the state the regulation of advertising platforms for vacation rentals.
- Defines the term “advertising platform”.
- Requires that users of advertising platforms include certain licensure and tax identification information in a vacation rental listing and provide certain information to the Division on a regular basis.
- Authorizes certain enforcement mechanisms relating to unlicensed activities.
- Clarifies the scope of the state preemption of vacation rentals.
- Specifies that local regulations which apply uniformly to all residential properties, without regard to whether the property is offered for rent, are not subject to preemption.
- Specifies that the bill does not supersede the statutory authority of condominiums, cooperatives, or homeowners’ associations to govern the use of their properties.
- Requires vacation rental operators to display licensing and tax information under certain circumstances.
- Authorizes the Department of Revenue to adopt emergency rules for the purpose of implementing the changes made by the bill relating to the collection of the transient rental tax.
- Requires advertising platforms to adopt an antidiscrimination policy and inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092, F.S.
- Requires sexual offenders and sexual predators who stay in a vacation rental to register with the local sheriff’s office under certain circumstances.

There may be an indeterminate positive impact for state revenue generated from additional license fees, tourism, sales taxes, and fines. There will be a negative fiscal impact for local governments that collect fees or fines related to the regulation of vacation rentals. See *Fiscal Analysis and Economic Impact Statement*.

Except as otherwise provided, the bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### **Vacation Rentals**

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.<sup>1</sup>

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.<sup>2</sup>

The term “public lodging establishments” includes transient and nontransient public lodging establishments.<sup>3</sup> The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

The term “transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.<sup>4</sup>

The term “vacation rental” means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.<sup>5</sup>

Section 509.013(4)(b)9., F.S., exempts living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment. Currently, the classification for “vacation rental” only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.<sup>6</sup>

##### **Licensure**

The Division is authorized to issue vacation rental licenses as follows:

- **Single license**: issued to an individual person or entity, but not a licensed agent, and may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.
- **Group license**: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.

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<sup>1</sup> S. 509.241, F.S.

<sup>2</sup> S. 509.242(1), F.S.

<sup>3</sup> S. 509.013(4)(a), F.S.

<sup>4</sup> S. 509.013(4)(a)1., F.S.

<sup>5</sup> S. 509.242(1)(c), F.S.

<sup>6</sup> DBPR, Agency Analysis of 2020 Senate Bill 1128, p.2 (Jan. 7, 2020). *See also* 18-06 Fla. Op.Att’y Gen. (2018).

- **Collective license:** issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.<sup>7</sup>

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.<sup>8</sup> If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.<sup>9</sup>

As of July 1, 2019, there were 47,337 public lodging establishments licensed by the Division. These licenses are distributed as follows:

- Hotels: 2,056 licenses;
- Motels: 2,513 licenses;
- Non-transient apartments: 18,363 licenses;
- Transient apartments: 913 licenses;
- Bed and Breakfast Inns: 260 licenses;
- Vacation rental condominiums: 7,563 licenses;
- Vacation rental dwellings: 15,650 licenses; and
- Vacation rental timeshare projects: 19 licenses.<sup>10</sup>

### License Fees

The Division provides the following fee schedule relating to vacation rentals:<sup>11</sup>

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE <sup>12</sup>	TOTAL FEE
\$150	\$10	\$10	VARIES

- Vacation rentals/group and single license.

NUMBER OF UNITS	BASIC FEE	INCREMENTAL UNIT FEE	HEP FEE	TOTAL FEE
SINGLE UNIT	\$150	\$10	\$10	\$170
2-25	\$150	\$20	\$10	\$180
26-50	\$150	\$35	\$10	\$195
51-100	\$150	\$50	\$10	\$210
101-200	\$150	\$75	\$10	\$235
201-300	\$150	\$105	\$10	\$265
301-400	\$150	\$135	\$10	\$295
401-500	\$150	\$160	\$10	\$320
OVER 500	\$150	\$190	\$10	\$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period.

A \$50 application fee is required when making the initial application or an application for change of ownership.

<sup>7</sup> S. 509.241, F.S.

<sup>8</sup> S. 509.241(3), F.S.

<sup>9</sup> R. 61C-1.002(1), F.A.C.

<sup>10</sup> DBPR, *Division of Hotels and Restaurants Annual Report for FY 2018-2019*,

[http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018\\_19.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018_19.pdf) (last visited Jan. 13, 2020).

<sup>11</sup> R. 61C-1.008, F.A.C.

<sup>12</sup> S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than \$10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is most recent.

A \$50 delinquency fee is required to renew a delinquent license filed with the Division after the expiration date.

### **Sanitation and Safety**

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.<sup>13</sup> These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

### **Ventilation and Fire Safety**

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.<sup>14</sup> Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.<sup>15</sup>

In addition, smoke alarms must be installed in every living unit<sup>16</sup> and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.<sup>17</sup> All local fire authority requirements must be met. Electrical wiring must be in good repair.

### **Conduct on Premises**

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.<sup>18</sup> Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;
- Fail to check out on time;
- Are generally detrimental to the establishment.<sup>19</sup>

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<sup>13</sup> See generally s. 509.221, F.S., and R. 61C-1&3, F.A.C.

<sup>14</sup> S. 509.221(3), F.S.

<sup>15</sup> R. 61C-1.004, F.A.C.

<sup>16</sup> S. 509.215(1)(b), F.S.

<sup>17</sup> S. 509.215(1), F.S.

<sup>18</sup> S. 509.142, F.S.

<sup>19</sup> S. 509.141(1), F.S.

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.<sup>20</sup>

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.<sup>21</sup>

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.<sup>22</sup>

## Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. Each licensed public lodging establishment must be inspected at least biannually (twice per year), except for transient and non-transient apartments, which must be inspected at least annually.<sup>23</sup>

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.<sup>24</sup>

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways from a person competent to conduct such inspections.<sup>25</sup>

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2018-2019, the Division received 228 consumer complaints related to vacation rentals, of which 14 were confirmed as a violation by the Division.<sup>26</sup>

## Registry

The licensee or operator must notify the Division of all houses or units represented in a license application. Any time a change in the address or number of houses or units occurs, the licensee or operator must notify the Division at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.<sup>27</sup>

Each operator of a transient public lodging establishment must maintain a register showing the dates each rental unit was occupied by a guest as well as the rates charged to the occupants. This register must be maintained in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.<sup>28</sup>

## Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

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<sup>20</sup> S. 509.141(1), F.S.

<sup>21</sup> S. 509.141(3), F.S.

<sup>22</sup> S. 509.143(1), F.S.

<sup>23</sup> See generally s. 509.032, F.S., Rule 61C-1.002, F.A.C.

<sup>24</sup> *Id.*

<sup>25</sup> See ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at:

[https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT\\_DEFN\\_ID=7694](https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT_DEFN_ID=7694) (last visited Jan. 13, 2020).

<sup>26</sup> *DBPR, Division of Hotels and Restaurants Annual Report for FY 2018-2019*, at 21.

<sup>27</sup> *Id.*

<sup>28</sup> S. 509.101(2), F.S.

- Fines not to exceed \$1,000 per offense; and
- Suspension, revocation, or refusal of a license.<sup>29</sup>

Licensees with a single license are responsible for all violations of ch. 509, F.S., or rules adopted by the Division.<sup>30</sup> The authorized agent of the licensee is responsible for a violation for licensees holding a collective or group license if the dwelling or unit was listed under the agent or as otherwise reflected in records filed with the Division.<sup>31</sup>

## Preemption Authority

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local ordinances). Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.<sup>32</sup> The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- restricted the use of vacation rentals;
- prohibited vacation rentals; or
- regulated vacation rentals based solely on their classification, use, or occupancy.

The 2011 preemption did not apply to local regulations enacted on or before June 1, 2011.

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.<sup>33</sup> As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.<sup>34</sup> Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.<sup>35</sup>

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations which prohibit vacation rentals or regulate the duration or frequency of vacation rentals.<sup>36</sup>

Current law also specifies that the preemption of local regulations which prohibit vacation rentals or regulate the duration or frequency of vacation rentals does not apply to local regulations exclusively relating to property valuation as a criterion for vacation rental if the local regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

## Recent Activity

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.<sup>37</sup> The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the

<sup>29</sup> S. 509.261(1), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.

<sup>33</sup> See City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. See also Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.

<sup>34</sup> City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. See also *City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).

<sup>35</sup> See Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, THE PEW CHARITABLE TRUST (June, 6, 2013), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue>.

<sup>36</sup> Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.

<sup>37</sup> Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, THE ISLANDER (Feb. 20, 2018), <https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/>.

level of a “taking” under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.<sup>38</sup>

In November 2015, the City of Anna Maria passed and adopted Ordinance No. 15-807. This ordinance provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city’s website, since April 2016, approximately 113 Bert Harris Act claims citing Ordinance No. 15-807 amounting to approximately \$38 million in damages have been filed.<sup>39</sup>

In March 2016, Miami Beach passed an ordinance making the fine for a first violation for a resident caught renting short-term \$20,000. Each subsequent fine increases by \$20,000 and can be as high as \$100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.<sup>40</sup>

In June 2018, it was reported that Miami Beach had issued \$12.1 million in fines, only \$174,000 of which had been paid. Some owners were reported to have accumulated up to \$60,000 in fines.<sup>41</sup>

### **Condominiums, Cooperatives, and Homeowners’ Associations**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.<sup>42</sup> A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.<sup>43</sup> A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.” The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.<sup>44</sup> The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using “cooperative documents” which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners’ association (HOA) is an association of residential property owners where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.<sup>45</sup> Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws,

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<sup>38</sup> S. 70.001, F.S.

<sup>39</sup> CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, [http://www.cityofannamaria.com/residents/bert\\_harris\\_claim.php](http://www.cityofannamaria.com/residents/bert_harris_claim.php) (last visited Mar. 16, 2019).

<sup>40</sup> See Miami Beach City Code, Sec. 142-1111 and 142-905(b).

<sup>41</sup> Chabeli Herrera, *Miami Beach has the country’s highest short-term rental fines. It just got sued*, MIAMI HERALD (June 28, 2018), <https://www.miamiherald.com/news/business/article213954174.html>.

<sup>42</sup> S. 718.103(11), F.S.

<sup>43</sup> S. 718.104(2), F.S.

<sup>44</sup> S. 719.103(2)(26), F.S.

<sup>45</sup> S. 720.301(9), F.S.

articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations have enacted provisions that govern the ability of the property owners to rent their properties. Certain condominium, cooperative, and homeowners' associations have taken actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

### **Florida Sexual Predators Act**

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.<sup>46</sup>

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility;<sup>47</sup>
  - If the sexual predator is under DOC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;<sup>48</sup>
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;<sup>49</sup>
- In person at the sheriff's office in the county where:
  - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;<sup>50</sup> or
  - The sexual predator was designated a sexual predator within 48 hours after such finding is made.<sup>51</sup>

### *Residence*

Residence, for the purposes of registration for both sexual offenders and sexual predators, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.<sup>52</sup>

### *Continuing Reporting Requirements*

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<sup>46</sup> S. 943.0435(2)(a)1., F.S.

<sup>47</sup> S. 775.21(6)(b), F.S.

<sup>48</sup> Id.

<sup>49</sup> S. 775.21(6)(c), F.S.

<sup>50</sup> S. 775.21(6)(e)a., F.S.

<sup>51</sup> S. 775.21(6)(2)b., F.S.

<sup>52</sup> S. 775.21, F.S.



A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender’s permanent, temporary, or transient residence;
- Change in the offender’s name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.<sup>53</sup>

## **Effect of the Bill**

### **Preemption**

The bill amends s. 509.032(7), F.S., relating to the preemption of vacation rentals by the state.

The bill clarifies that the regulation of public lodging establishments, including vacation rentals, is expressly preempted to the state. The bill specifies that local regulations may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. The bill also preempts the regulation of advertising platforms to the state.

The bill does not preempt local regulations affecting vacation rentals if the regulation applies uniformly to all residential properties, regardless of whether:

- the property is used as a vacation rental,
- the property is used as a long-term rental subject to ch. 83, F.S., or
- the property owner chooses not to rent the property.

The bill specifies that local regulations may not prohibit rentals or regulate the duration or frequency of rentals. The bill maintains the “grandfathering” provision found in current law allowing local governments to continue enforcing regulations that “prohibit rentals or regulate the frequency or duration of rentals” for regulations that were adopted on or before June 1, 2011. Furthermore, the bill clarifies that such grandfathered local regulations may be amended to be less restrictive.

The bill specifies that the preemption provisions relating to the licensing of vacation rentals and the prohibition or regulation of the duration or frequency of rentals do not apply to local regulations adopted before June 1, 2011, within the areas of critical state concern designated by s. 380.0552, F.S. or ch. 28-36, F.A.C.<sup>54</sup> Furthermore, the bill clarifies that such grandfathered local regulations may be amended to so long as the amendment is not more restrictive.

### **Advertising Platforms**

#### *Definition*

The bill amends s. 509.013(1), F.S., defining the term “advertising platform” as a person who:

- Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy,

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<sup>53</sup> SS. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

<sup>54</sup> Section 380.0552, F.S. relates to the designation of the Florida Keys Area as an area of critical state concern, the boundaries of which are described in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984. Chapter 28-36, F.A.C. relates to the designation of the City of Key West Area of Critical State Concern.

- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental, and
- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

### *Platform Requirements*

Effective January 1, 2021, the bill creates s. 509.243, F.S., providing that an advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

- Include in the advertisement the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid before the advertisement may be listed, and
- Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.

The bill requires advertising platforms to display the vacation rental license number and applicable Florida sales tax registration and tourist development tax numbers. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

The bill requires DBPR to maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

The bill requires the advertising platform to provide DBPR, on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rentals located in this state that are advertised on its platform, along with the following information for each vacation rental:

- The uniform resource locator for the Internet address of the vacation rental advertisement.
- Unless otherwise stated in the vacation rental advertisement, the physical address of the vacation rental, including any unit designation, the vacation rental license number provided by the owner or operator, and the applicable Florida sales tax registration and tourist development tax account numbers under which taxes will be remitted for the rentals commenced through the advertisement.

The bill requires an advertising platform to remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by DBPR, in writing, that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

The bill specifies that, if a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes imposed under chs. 125 and 212, F.S., on the total rental amount charged by the owner or operator for the use of the vacation rental under ss. 125.0104 (tourist development tax) and 212.03, F.S. (transient rental tax). In order to facilitate the remittance of such taxes, the bill requires DOR and counties that have elected to self-administer the tourist development taxes to allow advertising platforms to register, collect, and remit such taxes.

### *Antidiscrimination Policy*

The bill requires advertising platforms to adopt an antidiscrimination policy to help prevent discrimination among its users and to inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092, F.S.

## Vacation Rental Operators

Effective January 1, 2021, the bill amends s. 509.241, F.S., to require the operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid for each rental of the property as a vacation rental.

## Enforcement

If DBPR has probable cause to believe that a person not licensed by DBPR has violated ch. 509, F.S., the bill authorizes DBPR to issue a notice to cease and desist and to enforce such a notice by injunction or a writ of mandamus. If DBPR is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, F.S.,<sup>55</sup> it is entitled to collect its attorney fees and costs, together with any cost of collection.

## Rulemaking

The bill authorizes DOR to adopt emergency rules for the purpose of implementing the changes made by the bill relating to the collection of the transient rental tax (s. 212.03, F.S.), including establishing procedures to facilitate the remittance of taxes. The emergency rules will be effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules. The section authorizing the emergency rules will expire January 1, 2023.

## Condominiums, Cooperatives, and Homeowners' Associations

The bill specifies that the application of the provisions in the bill shall not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration of covenants or declaration adopted pursuant to ch. 720, F.S.

## Sexual Offenders and Predators

The bill amends s. 775.21, F.S., to require sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more (currently set at stays of 3 days or more). The bill also requires a sexual predator staying in a vacation rental to make such registration within 24 hours (currently it is within 48 hours).

Except as otherwise provided, the bill takes effect upon becoming law.

### B. SECTION DIRECTORY:

- Section 1:** Amends s. 212.03, F.S., requiring advertising platforms to collect and remit specified taxes for certain transactions.
- Section 2:** Amends s. 509.013, F.S., defining the term "advertising platform".
- Section 3:** Amends s. 509.032, F.S., conforming a cross-reference; preempting the regulation of vacation rentals and advertising platforms to the state; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of public lodging establishments, including vacation rentals, or public food service establishments; authorizing a local law, ordinance, or regulation to regulate certain activities under certain circumstances; expanding an exemption to allow a local law, ordinance, or regulation adopted on or before a specified date to be amended to be less restrictive.

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<sup>55</sup> Section 120.569, F.S., provides the administrative procedures for resolution of agency decisions which affect substantial interests before the Division of Administrative Hearings.

- Section 4:** Amends s. 509.241, F.S., requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to display the vacation rental license number and specified tax account numbers.
- Section 5:** Creates s. 509.243, F.S., requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements; requiring advertising platforms to display and verify specified information; requiring the division to maintain specified information in a certain format; requiring advertising platforms to quarterly provide the division with certain information; requiring advertising platforms to remove an advertisement under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit specified taxes for certain transactions; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which a certain hearing may be sought; authorizing the division to file certain proceedings; authorizing the collection of attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of specified information.
- Section 6:** Amends s. 775.21, F.S., revising definitions; requiring sexual predators to register with the local sheriff's office within a specified timeframe under certain circumstances.
- Section 7-17:** Amends ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming provisions to changes made by the act.
- Section 18:** Provides for applicability.
- Section 19:** Authorizes DOR to adopt emergency rules; provides requirements and an expiration for such rules
- Section 20:** Provides for effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There may be an indeterminate increase in revenues due to additional license fees, tourism and sales taxes, and fines.

#### 2. Expenditures:

DBPR estimates a cost of \$448,429 (\$190,075 recurring, \$258,355 nonrecurring) for 3 FTE and 6 OPS with indeterminate possible additional costs.<sup>56</sup> However, as of February 28, 2020, there are 21 vacant positions within DBPR that could be repurposed and utilized for workload associated with this bill.<sup>57</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

<sup>56</sup> DBPR, Agency Analysis of 2020 House Bill 1011, p. 6-8 (Feb. 28, 2020).

<sup>57</sup> Vacancy Report of DBPR as of February 28, 2020, on file with the Commerce Committee.

Preempting local governments from regulating vacation rentals will prevent a local government from imposing and collecting fees and fines relating to regulation and enforcement, which will have an indeterminate negative fiscal impact on local revenues, depending on each local government's current practice of vacation rental regulation and enforcement.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide a more predictable and uniform regulatory framework for vacation rentals in Florida.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority for DOR to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute provides 19.00 positions and an appropriation of \$1.4 million to DBPR to implement the bill.

On February 20, 2020, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the reference to "print advertisement" from the definition of "advertising platform," and clarifies that a person must meet all three criteria to be an advertising platform.
- Prohibits local laws that require inspections or licenses for vacation rentals.
- Relating to preemption, the amendment deletes "legislative intent" language and maintains the current "grandfathering" provision, including local laws in a jurisdiction within an Area of Critical State Concern
- Allows local governments to amend "grandfathered" local laws to be less restrictive.
- Requires the advertising platform to verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement and at the end of each calendar quarter.
- Requires DBPR to maintain license information in an accessible electronic format to facilitate prompt compliance.

- Requires an advertising platform to quarterly provide DBPR with a list of all vacation rentals located in the state, including the physical address and unit number for the vacation rental.
- Requires advertising platforms to collect and remit sales tax and tourist development taxes if the guest pays for the rental on or through the advertising platform.
- Clarifies that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Amends s. 212.03, F.S., to incorporate the requirement that an advertising platform may collect and remit certain taxes.
- Requires DOR, and counties that have elected to self-administer tourist development taxes, to allow advertising platforms to register, collect, and remit such taxes.
- Requires advertising platforms to adopt an anti-discrimination policy and to inform the users of its services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin, pursuant to s. 509.092, F.S.
- Clarifies that the bill does not supersede any current or future declaration of a community association, cooperative or HOA.
- Authorizes DOR to adopt emergency rules, which are effective for 6 months and may be renewed to adopt permanent rules.
- Revises the Florida Sexual Predators Act (s. 775.21, F.S.) to provide additional safeguards relating to vacation rentals under certain circumstances.
- Removes the provision appropriating funds to DBPR for additional positions.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.