

1 A bill to be entitled
2 An act relating to mobile and manufactured homes;
3 amending s. 212.05, F.S.; providing a tax for the sale
4 of pre-owned mobile homes and pre-owned manufactured
5 homes; amending s. 723.003, F.S.; revising
6 definitions; amending s. 723.005, F.S.; authorizing
7 the Office of the Attorney General, rather than the
8 Division of Florida Condominiums, Timeshares, and
9 Mobile Homes, to enforce certain compliance; amending
10 s. 723.022, F.S.; revising mobile home park owners'
11 obligations; amending s. 723.037, F.S.; authorizing
12 mobile home park owners and mobile home owners to
13 initiate presuit mediation without petitioning the
14 division; making technical changes; amending s.
15 723.038, F.S.; revising the dispute resolution
16 process; removing the requirement that parties
17 petition the division to initiate mediation;
18 authorizing parties to submit certain disputes to
19 presuit mediation; providing that some disputes are
20 not eligible for presuit mediation; removing
21 provisions to conform to changes made by the act;
22 amending s. 723.0381, F.S.; authorizing parties to
23 file actions in circuit court under certain
24 conditions; amending s. 723.059, F.S.; providing
25 requirements for screening prospective purchasers;

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26 | amending s. 723.068, F.S.; authorizing courts to award
 27 | treble damages in certain proceedings; requiring
 28 | courts to state basis for treble damages award in
 29 | their judgments; amending s. 723.079, F.S.;
 30 | authorizing homeowners' associations to institute,
 31 | maintain, settle, and appeal certain actions and
 32 | hearings; providing an effective date.

33 |

34 | Be It Enacted by the Legislature of the State of Florida:

35 |

36 | Section 1. Paragraph (o) is added to subsection (1) of
 37 | section 212.05, Florida Statutes, to read:

38 | 212.05 Sales, storage, use tax.—It is hereby declared to
 39 | be the legislative intent that every person is exercising a
 40 | taxable privilege who engages in the business of selling
 41 | tangible personal property at retail in this state, including
 42 | the business of making or facilitating remote sales; who rents
 43 | or furnishes any of the things or services taxable under this
 44 | chapter; or who stores for use or consumption in this state any
 45 | item or article of tangible personal property as defined herein
 46 | and who leases or rents such property within the state.

47 | (1) For the exercise of such privilege, a tax is levied on
 48 | each taxable transaction or incident, which tax is due and
 49 | payable as follows:

50 | (o) At the rate of 0 percent of the sales price on the

51 sale of a pre-owned mobile home, as defined in s. 723.003, or a
52 pre-owned manufactured home, as defined in s. 320.01(2)(b).

53 Section 2. Subsection (7) and subsections (8) through (17)
54 of section 723.003, Florida Statutes, are renumbered as
55 subsection (17) and subsections (7) through (16), respectively,
56 and present subsection (7) and subsection (18) of that section
57 are amended to read:

58 723.003 Definitions.—As used in this chapter, the term:

59 (17)~~(7)~~ (a) "Presuit mediation" means a process whereby a
60 mediator ~~appointed by the Division of Florida Condominiums,~~
61 ~~Timeshares, and Mobile Homes, or~~ mutually selected by the
62 parties~~,~~ acts to encourage and facilitate the resolution of a
63 dispute. It is an informal and nonadversarial process with the
64 objective of helping the disputing parties reach a mutually
65 acceptable agreement.

66 (b) For purposes of presuit mediation under ss. 723.037
67 and 723.038, the term "parties" means a park owner as defined in
68 subsection (12)~~(13)~~ and a homeowners' committee selected
69 pursuant to s. 723.037.

70 (18) "Proportionate share" as used in subsection (16)~~(17)~~
71 means an amount calculated by dividing equally among the
72 affected developed lots in the park the total costs for the
73 necessary and actual direct costs and impact or hookup fees
74 incurred for governmentally mandated capital improvements
75 serving the recreational and common areas and all affected

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76 developed lots in the park.

77 Section 3. Section 723.005, Florida Statutes, is amended
78 to read:

79 723.005 Regulation by division and Office of the Attorney
80 General.—The division has the power and duty to ~~enforce and~~
81 ensure compliance with ~~the provisions of~~ this chapter and rules
82 adopted promulgated pursuant hereto ~~relating to the rental,~~
83 ~~development, and sale of mobile home parks. However,~~ The Office
84 of the Attorney General has division does not have the power and
85 ~~ex~~ duty to enforce compliance with this chapter and the rules
86 adopted pursuant hereto, including mobile home park rules and
87 ~~regulations or to enforce the provisions of~~ ss. 723.022,
88 723.023, and 723.033.

89 Section 4. Subsections (3), (4), and (5) of section
90 723.022, Florida Statutes, are renumbered as subsections (4),
91 (5), and (6), respectively, present subsection (3) is amended,
92 and a new subsection (3) and subsections (7) and (8) are added
93 to that section, to read:

94 723.022 Mobile home park owner's general obligations.—A
95 mobile home park owner shall at all times:

96 (3) Maintain improvements located on a mobile home lot for
97 which the park owner is responsible in a good state of repair
98 and maintenance and maintain such improvements in a good state
99 of appearance, safety, and cleanliness.

100 (4)-(3) Provide mobile home owners and their guests,

101 homeowners' associations organized under this chapter, and other
 102 groups or entities organized by mobile home owners use and
 103 access to the common areas, including buildings and improvements
 104 thereto, at all reasonable times without charging additional
 105 fees or requiring additional insurance coverage, if the use and
 106 access is already covered by an existing insurance policy held
 107 by the park owner ~~for the benefit of the park residents and~~
 108 ~~their guests.~~

109 (7) Refrain from enforcing any park rule or regulation
 110 that is not adopted in accordance with ss. 723.035 and 723.037.

111 (8) Refrain from collecting any lot rental increases that
 112 are subject to pending mediation or litigation.

113 Section 5. Subsections (4) through (7) of section 723.037,
 114 Florida Statutes, are amended to read:

115 723.037 Lot rental increases; reduction in services or
 116 utilities; change in rules and regulations; presuit mediation.-

117 (4)(a) A committee, not to exceed five in number,
 118 designated by a majority of the affected mobile home owners or
 119 by the board of directors of the homeowners' association, if
 120 applicable, and the park owner shall meet, at a mutually
 121 convenient time and place no later than 60 days before the
 122 effective date of the change to discuss the reasons for the
 123 increase in lot rental amount, reduction in services or
 124 utilities, or change in rules and regulations. The negotiating
 125 committee shall make a written request for a meeting with the

126 | park owner or subdivision developer to discuss those matters
 127 | addressed in the 90-day notice, and may include in the request a
 128 | listing of any other issue, with supporting documentation, that
 129 | the committee intends to raise and discuss at the meeting. The
 130 | committee shall address all lot rental amount increases that are
 131 | specified in the notice of lot rental amount increase,
 132 | regardless of the effective date of the increase.

133 | (b)1. At the meeting, the park owner or subdivision
 134 | developer shall in good faith disclose and explain all material
 135 | factors resulting in the decision to increase the lot rental
 136 | amount, reduce services or utilities, or change rules and
 137 | regulations, including how those factors justify the specific
 138 | change proposed. The park owner or subdivision developer may not
 139 | limit the discussion of the reasons for the change to
 140 | generalities only, such as, but not limited to, increases in
 141 | operational costs, changes in economic conditions, or rents
 142 | charged by comparable mobile home parks. For example, if the
 143 | reason for an increase in lot rental amount is an increase in
 144 | operational costs, the park owner must disclose the item or
 145 | items which have increased, the amount of the increase, any
 146 | similar item or items which have decreased, and the amount of
 147 | the decrease. If an increase is based upon the lot rental amount
 148 | charged by comparable mobile home parks, the park owner shall
 149 | disclose, and provide in writing to the committee at or before
 150 | the meeting, the name, address, lot rental amount, and any other

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151 relevant factors relied upon by the park owner, such as
152 facilities, services, and amenities, concerning the comparable
153 mobile home parks. The information concerning comparable mobile
154 home parks to be exchanged by the parties is to encourage a
155 dialogue concerning the reasons used by the park owner for the
156 increase in lot rental amount and to encourage the home owners
157 to evaluate and discuss the reasons for those changes with the
158 park owner. The park owner shall prepare a written summary of
159 the material factors and retain a copy for 3 years. The park
160 owner shall provide the committee a copy of the summary at or
161 before the meeting.

162 2. The park owner may ~~shall~~ not limit the comparable
163 mobile home park disclosure to those mobile home parks that are
164 owned or operated by the same owner or operator as the subject
165 park, except in certain circumstances, which include, but are
166 not limited to:

167 a. That the market area for comparable mobile home parks
168 includes mobile home parks owned or operated by the same entity
169 that have similar facilities, services, and amenities;

170 b. That the subject mobile home park has unique attributes
171 that are shared with similar mobile home parks;

172 c. That the mobile home park is located in a geographic or
173 market area that contains few comparable mobile home parks; or

174 d. That there are similar considerations or factors that
175 would be considered in such a market analysis by a competent

176 professional and would be considered in determining the
177 valuation of the market rent.

178 (c) If the committee disagrees with a park owner's lot
179 rental amount increase based upon comparable mobile home parks,
180 the committee shall disclose to the park owner the name,
181 address, lot rental amount, and any other relevant factors
182 relied upon by the committee, such as facilities, services, and
183 amenities, concerning the comparable mobile home parks. The
184 committee shall provide to the park owner the disclosure, in
185 writing, within 15 days after the meeting with the park owner,
186 together with a request for a second meeting. The park owner
187 shall meet with the committee at a mutually convenient time and
188 place within 30 days after receipt by the park owner of the
189 request from the committee to discuss the disclosure provided by
190 the committee. At the second meeting, the park owner may take
191 into account the information on comparable parks provided by the
192 committee, may supplement the information provided to the
193 committee at the first meeting, and may modify his or her
194 position, but the park owner may not change the information
195 provided to the committee at the first meeting.

196 (d) The committee and the park owner may mutually agree,
197 in writing, to extend or continue any meetings required by this
198 section.

199 (e) Either party may prepare and use additional
200 information to support its position during or subsequent to the

201 meetings required by this section.

202

203 This subsection is not intended to be enforced by civil or
 204 administrative action. Rather, the meetings and discussions are
 205 intended to be in the nature of settlement discussions prior to
 206 the parties proceeding to presuit mediation of any dispute.

207 (5)(a) Within 30 days after the date of the last scheduled
 208 meeting described in subsection (4), the homeowners may ~~petition~~
 209 ~~the division to~~ initiate presuit mediation of the dispute
 210 pursuant to s. 723.038 if a majority of the affected homeowners
 211 have designated, in writing, that:

212 1. The rental increase is unreasonable;

213 2. The rental increase has made the lot rental amount
 214 unreasonable;

215 3. The decrease in services or utilities is not
 216 accompanied by a corresponding decrease in rent or is otherwise
 217 unreasonable; or

218 4. The change in the rules and regulations is
 219 unreasonable.

220 (b) A park owner, within the same time period, may also
 221 ~~petition the division to~~ initiate presuit mediation of the
 222 dispute pursuant to s. 723.038.

223 (c) When a dispute involves a rental increase for
 224 different home owners and there are different rates or different
 225 rental terms for those home owners, all such rent increases in a

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226 | calendar year for one mobile home park may be considered in one
227 | mediation proceeding.

228 | (d) At presuit mediation, the park owner and the
229 | homeowners committee may supplement the information provided to
230 | each other at the meetings described in subsection (4) and may
231 | modify their position, but they may not change the information
232 | provided to each other at the first and second meetings.

233 |

234 | The purpose of this subsection is to encourage discussion and
235 | evaluation by the parties of the comparable mobile home parks in
236 | the competitive market area. The requirements of this subsection
237 | are not intended to be enforced by civil or administrative
238 | action. Rather, the meetings and discussions are intended to be
239 | in the nature of settlement discussions before ~~prior to~~ the
240 | parties proceeding to litigation of any dispute.

241 | (6) If a party requests presuit mediation and the opposing
242 | party refuses to agree to mediate upon proper request, the party
243 | refusing to mediate is ~~shall~~ not ~~be~~ entitled to attorney
244 | ~~attorney's~~ fees in any action relating to a dispute described in
245 | this section.

246 | (7) The term "parties," for purposes of presuit mediation
247 | under this section and s. 723.038, means a park owner and a
248 | homeowners' committee selected pursuant to this section.

249 | Section 6. Section 723.038, Florida Statutes, is amended
250 | to read:

251 723.038 Presuit Dispute settlement; mediation.—A party may
252 submit a dispute arising under this chapter to presuit mediation
253 in accordance with s. 720.311. However, election and recall
254 disputes or disputes regarding the inspection and photocopying
255 of official records are not eligible for presuit mediation and
256 must be arbitrated by the division or filed in a court of
257 competent jurisdiction. Disputes relating to evictions under s.
258 723.061 are not eligible for presuit mediation under this
259 section.

260 ~~(1) Either party may petition the division to appoint a~~
261 ~~mediator and initiate mediation proceedings.~~

262 ~~(2) The division upon petition shall appoint a qualified~~
263 ~~mediator to conduct mediation proceedings unless the parties~~
264 ~~timely notify the division in writing that they have selected a~~
265 ~~mediator. A person appointed by the division shall be a~~
266 ~~qualified mediator from a list of circuit court mediators in~~
267 ~~each judicial circuit who has met training and educational~~
268 ~~requirements established by the Supreme Court. If such mediators~~
269 ~~are not available, the division may select a mediator from the~~
270 ~~list maintained by the Florida Growth Management Conflict~~
271 ~~Resolution Consortium. The division shall promulgate rules of~~
272 ~~procedure to govern such proceedings in accordance with the~~
273 ~~rules of practice and procedure adopted by the Supreme Court.~~
274 ~~The division shall also establish, by rule, the fee to be~~
275 ~~charged by a mediator which shall not exceed the fee authorized~~

276 ~~by the circuit court.~~

277 ~~(3) A mediator appointed by the division or selected by~~
278 ~~the parties shall comply with the rules adopted by the division.~~
279 ~~The mediator shall also notify the division in writing within 10~~
280 ~~days after the conclusion of the mediation, that the mediation~~
281 ~~has been concluded.~~

282 ~~(4) Upon receiving a petition to mediate a dispute, the~~
283 ~~division shall, within 20 days, notify the parties that a~~
284 ~~mediator has been appointed by the division. The parties may~~
285 ~~accept the mediator appointed by the division or, within 30~~
286 ~~days, select a mediator to mediate the dispute. The parties~~
287 ~~shall each pay a \$250 filing fee to the mediator appointed by~~
288 ~~the division or selected by the parties, within 30 days after~~
289 ~~the division notifies the parties of the appointment of the~~
290 ~~mediator. The \$250 filing fee shall be used by the mediator to~~
291 ~~defray the hourly rate charged for mediation of the dispute. Any~~
292 ~~portion of the filing fee not used shall be refunded to the~~
293 ~~parties.~~

294 ~~(5) The parties may agree to select their own mediator,~~
295 ~~and such mediation shall be governed by the rules of procedure~~
296 ~~established by the division. The parties, by agreement, may~~
297 ~~waive mediation, or the petitioning party may withdraw the~~
298 ~~petition prior to mediation. Upon the conclusion of the~~
299 ~~mediation, the mediator shall notify the division that the~~
300 ~~mediation has been concluded.~~

301 ~~(6) No resolution arising from a mediation proceeding as~~
302 ~~provided for in s. 723.037 or this section shall be deemed final~~
303 ~~agency action. Any party, however, may initiate an action in the~~
304 ~~circuit court to enforce a resolution or agreement arising from~~
305 ~~a mediation proceeding which has been reduced to writing. The~~
306 ~~court shall consider such resolution or agreement to be a~~
307 ~~contract for the purpose of providing a remedy to the~~
308 ~~complaining party.~~

309 ~~(7) Mediation pursuant to this section is an informal and~~
310 ~~nonadversarial process. Either party may submit to the opposing~~
311 ~~party at least 10 days prior to mediation a written request for~~
312 ~~information.~~

313 ~~(8) Each party involved in the mediation proceeding has a~~
314 ~~privilege to refuse to disclose, and to prevent any person~~
315 ~~present at the proceeding from disclosing, communications made~~
316 ~~during such proceeding, whether or not the dispute was~~
317 ~~successfully resolved. This subsection shall not be construed to~~
318 ~~prevent or inhibit the discovery or admissibility of any~~
319 ~~information which is otherwise subject to discovery or admission~~
320 ~~under applicable law or rules of court. There is no privilege as~~
321 ~~to communications made in furtherance of the commission of a~~
322 ~~crime or fraud or as part of a plan to commit a crime or a~~
323 ~~fraud. Nothing in this subsection shall be construed so as to~~
324 ~~permit an individual to obtain immunity from prosecution for~~
325 ~~criminal conduct.~~

326 ~~(9) A mediator appointed pursuant to this section shall~~
 327 ~~have judicial immunity in the same manner and to the same extent~~
 328 ~~as a judge.~~

329 Section 7. Subsection (1) of section 723.0381, Florida
 330 Statutes, is amended to read:

331 723.0381 Civil actions; arbitration.—

332 (1) If an aggrieved party serves a demand for presuit
 333 mediation and the responding party refuses or fails to
 334 participate in presuit mediation, or if presuit after mediation
 335 fails of a dispute pursuant to s. 723.038 has failed to provide
 336 a resolution of the dispute, either party may file an action in
 337 the circuit court.

338 Section 8. Subsection (2) of section 723.059, Florida
 339 Statutes, is amended to read:

340 723.059 Purchaser of a mobile home within a mobile home
 341 park.—

342 (2) Properly adopted ~~promulgated~~ rules may provide for the
 343 screening of any prospective purchaser to determine whether ~~or~~
 344 ~~not~~ such purchaser is qualified to become a tenant of the park.
 345 Rules adopted regarding the screening of a prospective purchaser
 346 must include all of the following requirements:

347 (a) The screening of a prospective purchaser must be
 348 completed within 15 business days after the submission of an
 349 application to the park owner or park manager. The park owner or
 350 park manager must notify, in writing, the prospective purchaser

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351 within 15 days after the submission of the application whether
352 the application is approved or denied. If the park owner or park
353 manager does not provide written notification to the prospective
354 purchaser as required in this paragraph, the prospective
355 purchaser's application is considered approved.

356 (b) If a park owner or park manager denies an application
357 of a prospective purchaser, the reason for the denial must be
358 disclosed in writing to the prospective purchaser. A park owner
359 or park manager may not deny an application of a prospective
360 purchaser based on discriminatory or retaliatory reasons or for
361 any other reason that is a violation of state or federal law.

362 (c)1. If a park owner or park manager charges a fee for
363 purposes of screening a prospective purchaser, such fee may not
364 exceed the actual costs of the screening or \$100 per applicant,
365 whichever is less.

366 2. The park owner or park manager may adjust the \$100
367 maximum screening fee every 5 years in an amount equal to the
368 total of the annual increases occurring in the Consumer Price
369 Index for All Urban Consumers, U.S. City Average, All Items
370 compiled by the United States Department of Labor during that 5-
371 year period.

372 3. For the purpose of calculating the screening fee,
373 spouses, parents, and dependent children are considered one
374 applicant.

375 Section 9. Section 723.068, Florida Statutes, is amended

376 to read:

377 723.068 Attorney ~~Attorney's~~ fees and damages.—Except as
 378 provided in s. 723.037, in any proceeding between private
 379 parties to enforce the rights and protections ~~provisions~~ of this
 380 chapter or for damages arising out of the failure of a party to
 381 comply with this chapter, the prevailing party is entitled to a
 382 reasonable attorney ~~attorney's~~ fee. A court may award treble
 383 damages to a prevailing mobile home owner or homeowners'
 384 association and must state the basis for the treble damages
 385 award in its judgment.

386 Section 10. Subsection (1) of section 723.079, Florida
 387 Statutes, is amended to read:

388 723.079 Powers and duties of homeowners' association.—

389 (1) An association may contract, sue, or be sued with
 390 respect to the exercise or nonexercise of its powers. For these
 391 purposes, the powers of the association include, but are not
 392 limited to, the maintenance, management, and operation of the
 393 park property and the power to institute, maintain, settle, or
 394 appeal actions or hearings in its name on behalf of all mobile
 395 home owners concerning matters of common interest to most or all
 396 mobile home owners involving disputes arising under this
 397 chapter.

398 Section 11. This act shall take effect July 1, 2023.