


# Insurance & Banking Subcommittee

**Wednesday, March 17, 2021**
**9:30 AM – 11:30 AM**
**Morris Hall (212 Knott)**

# Meeting Packet

**Chris Sprowls**
**Speaker**

**Nick DiCeglie**
**Chair**

# The Florida House of Representatives

**Commerce Committee**

**Insurance & Banking Subcommittee**

**Chris Sprowls**
**Speaker**

**Nick DiCeglie**
**Chair**

## Meeting Agenda

Wednesday, March 17, 2021
9:30 AM – 11:30 AM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 305 Property Insurance Claims and Reimbursement by Rommel
- HB 415 Fire Department Communications by Botana
- HB 1209 Department of Financial Services by Fetterhoff
- HB 1351 Money Services Businesses by Aloupis

I. Closing Remarks

II. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 305 Property Insurance Claims and Reimbursement
**SPONSOR(S):** Rommel and others
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Fortenberry | Luczynski |
| 2) Civil Justice & Property Rights Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

The bill makes several changes to statutes related to property insurance.

**Attorney Fees Awarded in Litigation –** Florida courts calculate reasonable attorney fees under the "lodestar approach." This approach requires the court to determine the number of hours reasonably expended on the case and multiply that number by the reasonable hourly rate, which produces the "lodestar amount." In certain cases, courts further increase the lodestar amount by applying a "contingency risk multiplier" ("contingency fee multiplier") a concept that arose from judicial interpretations of fee-shifting statutes. In Florida courts, the size of the contingency risk multiplier varies from 1.0 to 2.5 based on the likelihood of success at the outset of the case. The bill creates a strong presumption that the lodestar amount awarded by a court in a property insurance policy dispute is sufficient and reasonable. This presumption can only be overcome in rare and exceptional circumstances, with evidence that the plaintiff could not have reasonably retained competent counsel to take his or her case.

**Property Insurance Coverage for Roof Damage –** Property insurance claims are adjusted on the basis of replacement cost or actual cash value (ACV), depending on which type of coverage a policyholder purchased. When claims are adjusted on an ACV basis, the insurer pays the policyholder the depreciated value of the property damage or loss that is being replaced or repaired. The bill allows insurers to provide limited roof coverage in personal lines residential property insurance policies by including a roof surface reimbursement schedule (schedule) that provides reimbursement for repair, replacement, and installation based on the annual age of a roof surface type. This schedule must provide full replacement coverage for any roof surface type less than ten years old and at least a specified percentage of coverage for roofs older than ten years based on age and roof type. It must include a notice to policyholders regarding the limited coverage they are receiving and must be approved by the Office of Insurance Regulation. Additionally, if there is a total loss to a primary structure that is caused by a covered peril, cash value coverage may not apply.

**Notice of Property Insurance Claims –** Currently, notice of hurricane or windstorm loss must be provided to a property insurer within three years of the date of loss. Notice for all other types of property insurance claims must be provided within five years of the date of loss, which is the statute of limitations for bringing breach of contract suits, because the Florida Insurance Code does not specify a time limit for these claims. The bill changes the notice of claim deadlines in the Code so that notice of any property insurance claim must be provided to a property insurer within two years of the date of loss.

The bill has no impact on state or local government revenues or expenditures. It may have positive and negative direct economic impacts on the private sector.

The bill has an effective date of July 1, 2021.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Attorney Fees Awarded in Property Insurance Litigation**

**Background**

In certain situations, a court may require one party to pay the opposing party's attorney fees. The traditional English Rule entitled a prevailing party to attorney fees as a matter of right. Florida, however, with a majority of other U.S. jurisdictions, adopted the American Rule, under which each party is responsible for its own attorney fees unless a statute provides an entitlement to fees.

A contingency fee is an attorney fee that is charged only if the lawsuit is successful or favorably settled out of court.[1] An attorney and a client may enter into a contingency fee contract, agreeing that the client will pay the attorney a fee only if the attorney successfully recovers for the client.

The Florida Supreme Court, through its Rules Regulating the Florida Bar, allows contingency fee contracts but restricts their use.[2] Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.[3] The rule also requires a contingency fee agreement to:

- Be in writing;
- State the method by which the fee is to be determined;
- State whether expenses are to be deducted before or after the contingency fee is calculated; and
- In certain types of cases, include other provisions ensuring the client is aware of the agreement's terms.[4]

Upon conclusion of a contingency fee case, the attorney must provide the client with a written statement stating the outcome of the case, the amount remitted to the client, and how the attorney calculated the amount.[5]

Statutorily Provided Attorney Fees

Several state and federal statutes known as “fee-shifting statutes” state that a prevailing party in court proceedings is entitled to reasonable attorney fees as a matter of right.[6] When a fee-shifting statute applies, the court must determine and calculate what constitutes reasonable attorney fees.

*Lodestar Approach*

In *Fla. Patient’s Comp. Fund v. Rowe,* a 1985 case, the Florida Supreme Court held that courts should calculate the amount of statutorily-authorized attorney fees using the "lodestar approach."[7] Applying this approach requires the court to determine the number of hours reasonably expended on the case and to determine a reasonable hourly rate for the attorney to have charged. Then the number of hours reasonably expended, multiplied by the reasonable hourly rate, produces the "lodestar amount," which is considered an objective basis for what the attorney fee amount should be.

[1] *See* Black's Law Dictionary 338 (8th ed. 2004).
[2] R. Regulating Fla. Bar 4-1.5(f).
[3] R. Regulating Fla. Bar 4-1.5(f)(3).
[4] R. Regulating Fla. Bar 4-1.5(f)(1) and (4).
[5] R. Regulating Fla. Bar 4-1.5(f)(1).
[6] *See, e.g.*, s. 627.428, F.S., which is often referred to as the “one-way attorney fees statute” (providing that an insured who prevails against an insurer is entitled to "a reasonable sum" of attorney fees); s. 501.2105, F.S. (providing that the prevailing party in an action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is entitled to "a reasonable legal fee"); 42 U.S.C. s. 1988(b) (providing that a prevailing party seeking to enforce specified civil rights statutes may recover "a reasonable attorney's fee").
[7] *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

*Contingency Risk Multiplier*

In certain cases, the court increases the attorney fees awarded by applying a contingency risk multiplier (CRM) to the lodestar amount.[8] The concept of the CRM arose from judicial interpretations of statutory authorization of attorney fees in particular cases,[9] but the Legislature also expressly provides for the use of a CRM in certain cases.[10] In 1990, the Florida Supreme Court discussed three different types of cases and whether a CRM should be applied in each case, as follows:

- *Public policy enforcement cases.* These cases may involve discrimination, environmental issues, and consumer protection issues. In these cases, a CRM is usually inappropriate.
- *Family law, eminent domain, estate, and trust cases*. In these cases, a CRM is usually inappropriate.
- *Tort and contract claims, including insurance cases*. In these cases, a CRM may be applied if the plaintiff can demonstrate the following factors show a need for the multiplier:
    - Whether the relevant market requires a CRM to obtain counsel;
    - Whether the attorney can mitigate the risk of nonpayment; and
    - Whether any other factors established in *Rowe*[11] support the use of the multiplier.[12]

Further, in the same decision, the Court noted that the size of the CRM varies from 1.0 to 2.5 based on the likelihood of success at the outset of the case, as follows:

- 1.0 to 1.5, if the trial court determines that success was more likely than not at the outset
- 1.5 to 2.0, if the trial court determines that the likelihood of success was approximately even at the outset
- 2.0 to 2.5, if the trial court determines that success was unlikely at the outset.[13]

Therefore, under current law, an attorney is more likely to receive a higher CRM—and thus a higher attorney risk award—if he or she takes a case that at the outset seems unlikely to succeed.

*Federal Court Treatment of the Contingency Risk Multiplier*

Part of the Florida Supreme Court's rationale for adopting the CRM framework in 1985 was the application of CRMs in federal courts.[14] However, in *Burlington v. Dague,* the U.S. Supreme Court decided and rejected the use of a CRM under certain federal risk-shifting statutes. In that case the Supreme Court signaled that it was closing the door on the CRM's use in most, if not all, federal cases.[15]

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[8] The Court may also adjust the amount based on the results obtained by the attorney. *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830-31 (Fla. 1990). CRMs are also referred to as contingency fee multipliers.

[9] The rationale for using a CRM to increase an attorney fee award is that plaintiffs and plaintiffs' attorneys generally do not recover any money unless they prevail. The attorney fee multiplier induces attorneys to take a risk on cases they might not otherwise take, allowing would-be plaintiffs to find attorneys willing to represent them.

[10] *See* s. 790.33(3)(f)1, F.S. (explicitly authorizing a contingency fee multiplier in certain cases relating to the preemption of firearm and ammunition regulation).

[11] The *Rowe* factors were based upon Disciplinary Rule 2-106(b) of the Florida Bar (which is now Rule of Professional Conduct 4-1.5), and were as follows:

- Time and labor required, novelty and difficulty of the question involved, and the skill and requisite to perform the legal service properly.
- Likelihood, if apparent to the client, that the acceptance of employment would preclude other employment by the lawyer.
- Fee customarily charged in the locality for similar legal services.
- Amount involved and results obtained.
- Time limitations imposed by the client and circumstances.
- Nature and length of the professional relationship with the client.
- Experience, reputation, and ability of the lawyer(s) providing services.
- Whether the fee is a fixed or contingency fee.

*Rowe*, 472 So. 2d at 1150–1151.

[12] *Quanstrom*, 555 So. 2d at 833-35.

[13] *Id.* at 834.

[14] *See Rowe*, 472 So. 2d at 1146 ("[W]e . . . adopt the federal lodestar approach for computing reasonable attorney fees").

[15] *See City of Burlington v. Dague*, 112 S. Ct. 2638 (1992) ("Thus, enhancement for the contingency risk posed by each case would encourage meritorious claims to be brought, but only at the social cost of indiscriminately encouraging nonmeritorious claims to be brought as well . . . [W]e hold that enhancement for contingency is not permitted under the fee-shifting statutes at issue").

In *Perdue v. Kenny A. ex. rel. Winn,* a 2010 case involving a class action lawsuit filed on behalf of 3,000 children in the Georgia foster care system, the U.S. Supreme Court again addressed the CRM issue.[16] The plaintiffs argued in the underlying case that the foster care system in two counties was constitutionally deficient. The case was mediated and the parties entered a consent decree resolving all issues. Subsequently, the plaintiffs' attorneys sought attorney fees under 42 U.S.C. s. 1988.[17]

The federal district court calculated the fees using the lodestar approach, arriving at a $6 million figure, and then applied a 1.75 CRM, for a total attorney fee of $10.5 million. The district court justified the CRM by finding that the attorneys had:

- Advanced $1.7 million with no ongoing reimbursement.
- Worked on a contingency basis, and therefore were not guaranteed payment.
- Displayed a high degree of skill, commitment, dedication, and professionalism.
- Achieved extraordinary results.[18]

On review, the U.S. Supreme Court reversed the district court's calculation of attorney fees, remanding the case because the district court did not provide adequate justification for the 75 percent increase. The Court reiterated that "there is a strong presumption that the lodestar figure is reasonable," but that such presumption "may be overcome in those *rare circumstances* in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee."[19] The Court also determined that a CRM may be applicable in "exceptional" circumstances.[20]

The Court determined that the application of CRMs may sometimes be appropriate, while also issuing several warnings about CRMs, as follows:

- When a trial court fails to give detailed explanations for why it applies a CRM, "widely disparate awards may be made, and awards may be influenced . . . by a judge's subjective opinion regarding particular attorneys or the importance of the case."[21]
- "[U]njustified enhancements that serve only to enrich attorneys are not consistent" with the aims of a statute that seek to compensate plaintiffs.[22]
- In many cases, attorney fees "are not paid by the individuals responsible for the constitutional or statutory violations on which the judgment is based . . . . Instead, the fees are paid . . . by state and local taxpayers," resulting in a diversion of funds from other government programs.[23]

*Recent Florida Supreme Court Treatment of the Contingency Risk Multiplier*

In 2017, in the case of *Joyce v. Federated Nat'l Ins. Co.,* the Florida Supreme Court rejected the U.S. Supreme Court's *Dague* decision, instead holding that the CRM in Florida courts is not subject to the "rare and exceptional circumstances" requirement.[24] The Court acknowledged that, based upon its decision to maintain the applicability of the CRM without the restrictions implemented by the *Dague* decision, Florida "separat[ed] from federal precedent in this area."[25]

In *Joyce*, an elderly couple who sustained water damage to their home, filed a claim with their insurer, who subsequently denied coverage on the basis of alleged material misrepresentations on the part of the Joyces during their application for insurance.[26] The Joyces hired an attorney on a contingency fee basis and sued their insurer, but eventually settled the case.[27] The parties agreed that the Joyces were entitled to attorney fees and a fee hearing occurred in which the trial court applied a 2.0 CRM to the

[16] *Perdue v. Kenny A. ex rel. Winn*, 130 S. Ct. 1662 (2010).
[17] 42 U.S.C. s. 1988(b) allows the court to award attorney fees to the prevailing party in certain civil rights actions.
[18] *Perdue*, 130 S. Ct. at 1670.
[19] *Id.* at 1673 (emphasis added).
[20] *Id.*
[21] *See id.* at 1676.
[22] *See id.*
[23] *See id.* at 1677.
[24] *See Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017) ("[W]ith all due deference to the United States Supreme Court, we do not accept the *Dague* majority's rationale for rejecting contingency fee multipliers").
[25] *Id. at* 1132.
[26] *Id.* at 1123.
[27] *Id.*

lodestar attorney fee amount previously calculated.[28] The insurer appealed the case to the district court of appeal, which affirmed the lodestar amount, but reversed the application of the CRM.[29] The Joyces then appealed to the Florida Supreme Court, which accepted review and ruled in the Joyces' favor.[30] In his dissent to the *Joyce* opinion, however, Justice Canady stated that the case "illustrates the arbitrary results that can flow from application of the contingency risk multiplier….[which] have previously been exposed."[31]

*Attorney Fees Applicable to Property Insurance Litigation ("One-way Attorney Fees")*

Current Florida law provides that when a court issues a judgment against an insurer, and in favor of an insured who is represented by an attorney, the court shall order that the insurer pay a reasonable amount of attorney fees to an insured's attorney.[32] This provision regarding attorney fees is applicable to various insurance claim disputes, including property insurance claim disputes.[33]

### Effect of the Bill

For property insurance litigation, the bill applies a standard for awarding a CRM that is similar to the standard applied in federal courts, in that it allows for the CRM only in "rare and exceptional" circumstances.[34] The bill provides that the award of attorney fees creates a strong presumption that the lodestar amount awarded by a court in a property insurance policy case is sufficient and reasonable, and thus that the court should not ordinarily apply a CRM. The plaintiff can overcome this presumption only in a rare and exceptional circumstance, and only if he or she can demonstrate that he or she could not have otherwise reasonably retained competent counsel.

## Property Insurance Coverage for Roof Damage

### Background

Property insurance claims are adjusted on the basis of replacement cost or actual cash value (ACV), depending on which type of coverage a policyholder purchased. When claims are adjusted on a replacement cost basis, the insurer will pay for the entire cost of repair or replacement without a reduction for depreciation.[35] However, when claims are adjusted on an ACV basis, the insurer pays the policyholder the depreciated value of the property damage or loss that is being replaced or repaired.[36] Property insurers must offer policyholders the option to purchase replacement cost coverage for all portions of their property, including roofs.[37]

Currently, insurers may offer roof surface endorsement forms approved by the Office of Insurance Regulation (OIR). A roof surface endorsement operates as ACV coverage for roofs by using a depreciation schedule to determine coverage for roofs over a certain age.[38] By accepting a roof surface endorsement, policyholders are giving up replacement cost coverage for their roofs in

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 1132.
[32] S. 627.428, F.S.
[33] Of note, the Florida legislature has expressly prohibited the use of contingency risk multipliers for personal injury protection cases. *See* s. 627.736(8)(c), F.S.
[34] The bill reverses the standard set in the *Joyce* case.
[35] For example, if a roof is destroyed beyond repair, and a policyholder has replacement cost coverage, the insurer will pay to replace the entire roof, minute the deductible, regardless of the age or condition of the roof at the time of the loss.
[36] If a roof damage claim is adjusted on the basis of ACV rather than replacement cost, this would mean that the cost of replacing an entire roof when the roof has been damaged beyond repair may not be covered. There is a concern that policies that contain ACV coverage for roofs will not comply with the requirements of Fannie Mae and Freddie Mac, which require insurance to be placed at 100 percent replacement cost of the dwelling for homes that are in catastrophe areas. *See Multifamily Selling and Servicing Guide*, (effective Feb. 4, 2019), at 272-273, https://multifamily.fanniemae.com/sites/g/files/koqyhd161/files/migrated-files/content/guide/multifamily-selling-servicing-guide.pdf (last visited Mar. 13, 2021).
[37] S. 627.7011, F.S.
[38] Florida Office of Insurance Regulation, Agency Analysis of 2021 House Bill 305, p.3 (Feb. 18, 2021).

exchange for a discount that accounts for the increased risk that they are assuming by accepting ACV coverage on their roofs.

### Effect of the Bill

The bill clarifies that insurers are authorized to provide limited roof coverage in personal lines residential property insurance policies by including a roof surface reimbursement schedule (schedule) that does the following:

- Provides reimbursement for repair, replacement, and installation based on the annual age of a roof surface type;
- Provides full replacement coverage for any roof surface type less than ten years old;
- Provides for reimbursement of at least 70 percent for a metal roof type, 40 percent for concrete tile or clay tile roof types, 40 percent for wood shake and wood shingle roof types,[39] and 25 percent for all other roof types, unless the insurer can provide actuarial justification to OIR that that percentages should be less than these;
- Provides the following statement at the top of the schedule:

  "PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SERVICE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."
- Allows for the application of actuarial rating methods pursuant to s. 627.062, F.S.;
- Is approved by OIR; and
- Is provided to the policyholder at issuance and at renewal of a policy.

Additionally, if there is a total loss to a primary structure that is caused by a covered peril,[40] cash value coverage may not apply.

## Notice of Property Insurance Claims

### Background

Until 2011, the Florida Insurance Code (Code)[41] did not contain a time limit for giving notice of any type of property insurance claim. Section 95.11, F.S., requires that actions on contracts be brought within five years. Because an insurance policy is a contract, the five year statute of limitations for contract actions generally applied to claims under insurance policies. Since a claim must have been made before a policyholder could sue for breach of contract, and a policyholder had five years to sue for breach of contract, the claim must have been made within five years of the date of loss.

Section 627.70132, F.S., enacted in 2011, established that notice of any hurricane or windstorm claim, supplemental claim, or reopened claim[42] under a property insurance policy must be provided to an insurer within three years after the hurricane made landfall or the windstorm caused the covered damage. Any claim for which notice is not given within the three-year timeframe is barred.[43] The three-year time limit for providing notice of a hurricane or windstorm claim does not affect the five-year

[39] Wood shakes and wood shingles are very similar but differ slightly in shape and thickness.
[40] A peril is a cause of loss, e.g. fire, windstorm, collision. IRMI, https://www.irmi.com/term/insurance-definitions/peril (last visited Mar. 13, 2021).
[41] The Florida Insurance Code is comprised of chapters 624-632, 634-636, 641, 642, 648, and 651, F.S.
[42] S. 627.70132, F.S., defines both "supplemental claim" and "reopened claim" as "any additional claim for recovery from the insurer for losses from the same hurricane or windstorm which the insurer has previously adjusted pursuant to the initial claim." Because these terms have the same definition, it is unclear why the statute uses both of them.
[43] S. 627.70132, F.S.

statute of limitations for bringing suit under s. 95.11.[44] This means that while notice of a windstorm or hurricane claim must be provided to an insurer within three years of the date of loss, suit may still be brought for an additional two years past the notice deadline.[45] The time limit for notice of all other property insurance claims besides hurricane and windstorm claims has remained equal to the five-year statute of limitations because statutes do not specify otherwise.

**Effect of the Bill**

The bill changes the notice of claim deadlines in the Code so that notice of any property insurance claim must be provided to a property insurer within two years of the date of loss. It also makes technical changes to the statute regarding alternative dispute resolution of property insurance claims so that the changes to the notice of claim statute do not conflict with that statute.[46]

B. SECTION DIRECTORY:

**Section 1.** Amends s. 627.428, F.S., relating to attorney fees.

**Section 2.** Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

**Section 3.** Amends s. 627.70132, F.S., relating to notice of windstorm or hurricane claim.

**Section 4.** Amends s. 627.7015, relating to alternative procedure for resolution of disputed property insurance claims.

**Section 5.** Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive and negative direct economic impacts on the private sector. The bill's creation of a strong presumption in favor of a "lodestar" fee, only to be overcome in a "rare and exceptional circumstance" may reduce the amount of fees some attorneys recover if contingency risk multipliers are applied in fewer cases. Property insurance rates are based upon multiple factors, including litigation costs. To the extent the bill reduces litigation costs for property insurance cases, it may cause property insurance rates to decrease.

[44] *Id.*
[45] Often, the type of suit that an insured brings against an insurer is a breach of contract suit based upon a denial of a claim.
[46] S. 627.7015, F.S.

The bill may also result in a reduced incentive for attorneys to litigate property insurance cases. This may cause fewer property insurance cases to be litigated, which might further reduce property insurance rates. However, this could have the unintended consequence of making it more difficult to obtain an attorney for a property insurance case, resulting in the applicability of the contingency risk multiplier when a case is litigated.

While purchasing a property insurance policy with ACV roof coverage rather than replacement costs will reduce a policyholders' insurance premiums, the limited roof coverage will likely increase out-of-pocket expenses for policyholders who have roof damage claims because they will need to cover a portion of the roof replacement repair cost themselves in addition to their deductible.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 92-93–The removal of the language that places parameters on the date of loss for a hurricane or windstorm claim could make it difficult to determine the exact deadline for giving notice of these type of claims. Consideration should be given to replacing this language or including similar language so that passage of the bill does not result in additional litigation regarding the date of loss.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property insurance claims and reimbursement; amending s. 627.428, F.S.; providing that for certain attorney fees awarded for claims arising under property insurance policies, a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; amending s. 627.7011, F.S.; providing that certain provisions relating to homeowners' policies, offers of replacement cost coverage, and offers of law and ordinance coverage do not prohibit insurers from providing specified property insurance policies by including roof surface reimbursement schedules; providing requirements for roof surface reimbursement schedules; prohibiting cash value coverages for roofs under certain circumstances; amending s. 627.70132, F.S.; providing that claims, supplemental claims, and reopened claims under certain property insurance policies for loss or damage caused by perils are barred unless notice is given within a specified timeframe; revising the timeframe for notices for loss or damage caused by windstorm or hurricane; revising the definition of the term "supplemental claim" or "reopened claim" to include



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

all perils; amending s. 627.7015, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (4) is added to section 627.428, Florida Statutes, to read:

627.428 Attorney fees.—

(4) In an award of attorney fees under this section for a claim arising under a property insurance policy, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

Section 2. Paragraph (f) is added to subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f) Prohibit an insurer from providing limited coverage on a personal lines residential property insurance policy by including a roof surface reimbursement schedule. A roof surface reimbursement schedule must:

1. Provide reimbursement for repair, replacement, and

installation based on the annual age of a roof surface type.

2. Provide full replacement coverage for any roof surface type less than 10 year old.

3. Unless otherwise demonstrated to the office to be actuarially justified, provide for reimbursement amounts of no less than:

a. Seventy percent for a metal roof type.

b. Forty percent for a concrete tile and clay tile roof type.

c. Forty percent for a wood shake and wood shingle roof type.

d. Twenty-five percent for all other roof types.

4. Include at the top of the schedule, in bold type no smaller than 12 points, the following statement:

"PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SERVICE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

5. Allow for all actuarially sound methods of s. 627.062 to apply.

6. Be approved by the office.

7. Be provided with the policy documents at issuance and renewal.

Cash value coverage may not apply to a roof if there is a total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

Section 3. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.—A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, for loss or damage caused by any ~~the~~ peril ~~of windstorm or hurricane~~ is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within 2 ~~3~~ years after the date of loss ~~hurricane first made landfall or the windstorm caused the covered damage~~. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same peril ~~hurricane or windstorm~~ which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 4. Paragraph (e) of subsection (9) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 5. This act shall take effect July 1, 2021.

## INSURANCE & BANKING SUBCOMMITTEE

## HB 305 by Rep. Rommel
## Property Insurance Claims and Reimbursement

## AMENDMENT SUMMARY
## March 17, 2021

**Amendment 1 by Rep. Rommel (strike-all):** The strike-all amendment:

Makes the following modifications to the current bill:

Examination of managing general agents (MGAs) by the Office of Insurance Regulation (OIR)

- Clarifies that OIR has the same authority to examine MGAs, which are affiliates of insurers, as it has to examine insurers. This authority applies even if the MGA solely represents a single domestic insurer.
- Establishes that each insurer paying an affiliate shall produce information regarding that fee to OIR upon request. OIR may determine whether the fee an insurer pays to an affiliate is fair and reasonable and, in doing so, may consider the actual cost of the service being provided in exchange for the fee.
- Establishes that all MGAs must execute contracts with the insurers that they do business with even if they are MGAs that control or are controlled by an insurer.

Insurer reporting of property insurance claims litigation data to OIR

- Establishes that each insurer or insurer group doing business in Florida shall file specific pieces of data regarding litigation of personal and residential property insurance claims on a quarterly basis.

Citizens Property Insurance Corporation (Citizens)
Establishes the following:

- Residential property owners are not eligible for coverage from Citizens if they can obtain coverage from private insurers that is less than 20 percent greater than the premium for comparable coverage from Citizens.
- If catastrophe reinsurance to cover Citizens projected 100-year probable maximum loss is not available at reasonable rates, Citizens need not purchase it, but must include the cost of such reinsurance in its rate calculations even if it does not purchase it.
- No employees of Citizens may receive salaries in excess of 150 percent of the salary received by the head of OIR with certain exceptions.
- On or after January 1, 2022, Citizens shall implement a rate increase of no more than 11 percent for any single policy. Each year thereafter, Citizen shall add an additional 1 percent to its rate increase each year until it reaches a rate increase of 15 percent in 2026.
- Citizens may not request approval from OIR for a rate reduction.

Suits arising under a property insurance policy
Creates a new statutory section which applies to all residential or commercial property suits not brought by an assignee and requires the following:

- A claimant or claimant's attorney must give presuit notice at least 10 business days before a claimant or claimant's attorney brings a suit against an insurer, but may not be served before the insurer has made a determination of coverage.
- An insurer served with a presuit notice to respond in writing within 10 days by making a settlement offer or requiring the claimant to participate in alternative dispute resolution.
- A court must dismiss without prejudice any suit filed in violation of the presuit notice requirements. If such suit is dismissed, the court shall not award any attorney fees to a claimant's attorney incurred prior to the dismissal of the suit.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Rommel offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (2)of section 624.316, Florida Statutes, is amended to read:

Section 624.316 Examination of insurers.—

(2)(a) Except as provided in paragraph (f), the office may examine each insurer, including affiliates, as often as may be warranted for the protection of the policyholders and in the public interest, and shall examine each domestic insurer not less frequently than once every 5 years. The examination shall cover the preceding 5 fiscal years of the insurer and shall be

commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer.

Section 2. Subsection (2) section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

(2) Every person being examined or investigated, <u>including affiliates</u>, and its officers, attorneys, employees, agents, and representatives, shall make freely available to the department or office or its examiners or investigators the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination or investigation. An agent who provides other products or services or maintains customer information not related to insurance must maintain records relating to insurance products and transactions separately if necessary to give the department or office access to such records. If records relating to the insurance transactions are maintained by an agent on premises owned or operated by a third party, the agent and the

third party must provide access to the records by the department or office.

Section 3. Subsection (11) of section 624.424, Florida Statutes, is renumbered as subsection (12), and new subsections (11) and (13) are added to that section, to read:

624.424 Annual statement and other information.—

(11) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with the following information for each claim closed, excluding liability only claims, within the reporting period on personal lines and commercial lines residential property insurance policies in this state:

(a) Unique claim identification number;

(b) Type of policy;

(c) Zip code of the property where the claim occurred;

(d) County where the claim occurred;

(e) Date of loss;

(f) Peril or type of loss;

(g) Date reported to insurer;

(h) Initial date closed;

(i) Date claim most recently re-opened (if applicable);

(j) Most recent date closed;

(k) Public adjuster on the claim;

(l) Attorney for the claimant;

(m) Water mitigation firm utilized;

(n) Total indemnity paid by the insurer;

(o) Total loss adjustment expenses paid by the insurer;

(p) Amount paid for insured's attorney fees;

(q) Contingency fee multiplier requested to be applied to the calculation of the insured's attorney fees payment; if so, what contingency risk multiplier was requested;

(r) Contingency risk multiplier applied to calculation of the insured's attorney fees payment; if so, what contingency fee multiplier was applied; and

(s) Other information deemed necessary by the Commission to provide the Office with the ability to track litigation and claims trends occurring in the property market.

~~(11)~~(12) Each insurer doing business in this state which reinsures through a captive insurance company as defined in s. 628.901, but without regard to domiciliary status, shall, in conjunction with the annual financial statement required under paragraph (1)(a), file a report with the office containing financial information specific to reinsurance assumed by each captive.

(a) The report shall be filed as a separate schedule designed to avoid duplication of disclosures required by the NAIC's annual statement and instructions.

(b) Insurers must:

1. Identify the products ceded to the captive and whether the products are subject to rule 69O-164.020, Florida Administrative Code, the NAIC Valuation of Life Insurance Policies Regulation (Model #830), or the NAIC Actuarial Guideline XXXVIII (AG 38).

2. Disclose the assets of the captive in the format prescribed in the NAIC annual statement schedules.

3. Include a stand-alone actuarial opinion or certification identifying the differences between the assets the ceding company would be required to hold and the assets held by the captive.

(13) Each insurer doing business in this state which pays a fee, commission, or other financial consideration or payment to any affiliate directly or indirectly is required upon request to provide to the office any information the office deems necessary. The fee, commission or other financial consideration or payment to any affiliate must be fair and reasonable. In determining whether the fee, commission or other financial consideration or payment is fair and reasonable, the office shall consider, among other things, the actual cost of the service being provided.

Section 4. Subsection (6) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing

general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(6) The contract shall specify appropriate underwriting guidelines, including:

(a) The maximum annual premium volume.

(b) The basis of the rates to be charged.

(c) The types of risks which may be written.

(d) Maximum limits of liability.

(e) Applicable exclusions.

(f) Territorial limitations.

(g) Policy cancellation provisions.

(h) The maximum policy period.

~~This subsection shall not apply when the managing general agent is a controlled or controlling person~~.

Section 5. Section 626.7452 is amended to read:

Section 626.7452 Managing general agents; examination authority.—The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.~~ except in the case where the managing general agent solely represents a single domestic insurer.~~

Section 6. Paragraphs (e) through (ii) of subsection (6) of section 627.351, Florida Statutes, are redesignated as paragraphs (f) through (jj), respectively, paragraph (c) and present paragraph (n) of that subsection are amended, and a new paragraph (e) is added to that subsection, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than ~~15~~ 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the

corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase it.

(e) An employee of the corporation may not receive an annual salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the

annual salary paid to the head of the office, subject to the following:

1. Anyone employed by the corporation as July 1, 2021, shall be permitted to retain his or her current salary, but shall not be entitled to receive a raise if his or her salary exceeds the salary limits in this paragraph.

2. Anyone employed by the corporation as July 1, 2021, whose salary does not exceed the salary limits of this paragraph shall not receive a raise such that his or her salary exceeds the salary limits.

3. Anyone hired, with a start date, by the corporation on or after July 1, 2021, shall be subject to the salary limits in this paragraph.

(o)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant

to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

~~4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate~~

~~filing recommended by the corporation and established by the office, subject to this paragraph.~~

4. ~~Beginning on July 15, 2009, and annually thereafter, t~~ The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.~~, to be effective no earlier than January 1, 2010.~~

5. ~~Beginning on or after January 1, 2010, and~~ Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following ~~10 percent~~ for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. At no time may the corporation file for approval of a rate reduction by the office.

Section 7. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.— A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as

defined in s. 624.604, including property insurance policy issued by an eligible surplus lines insurer, for loss or damage caused by any ~~the~~ peril ~~of windstorm or hurricane~~ is barred unless notice of the claim, supplemental claim, or reopened claim was given to the insurer in accordance with the terms of the policy within 2 ~~3~~ years after the date of loss ~~hurricane first made landfall or the windstorm caused the covered damage~~. For claims resulting from hurricanes, tornadoes, windstorms, severe rain or other weather-related events that are tracked by weather services and media, the date of loss is the date that the hurricane made landfall, or the windstorm, tornado, or severe rain event is verified by NOAA or another disinterested verifiable third party to have occurred, in the location of the property which is the subject of the claim. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses from the same peril ~~hurricane or windstorm~~ which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 8. Paragraph (e) of subsection (9) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(e) With respect to a ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 9. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) APPLICATION.—This section applies to all residential or commercial property suits not brought by an assignee.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Claimant" means an insured who is filing suit under a residential or commercial property insurance policy.

(b) "Demand" means the specific amount alleged to be owed by the insurer to the claimant under the residential or commercial property insurance policy.

(c) "Notice" means claimant presuit notice.

(3) NOTICE.—

(a) As a condition precedent to filing a suit under a property insurance policy, a claimant or the claimant's attorney must provide the insurer with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requests, or electronic delivery at least 10 business days

before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify:

1. That the notice is being provided pursuant to this section;

2. The alleged acts or omissions of the insurer giving rise to the action;

3. The damages in dispute;

4. The demand;

5. The amount of reasonable and necessary attorney fees and costs incurred by the claimant, to be calculated by multiplying the number of hours actually worked on the claim as of the date of the notice by the claimant's attorney by a reasonable hourly rate; and

6. If provided by an attorney or other representative, that a copy of the notice was provided to the claimant.

(b) A notice of intent to initiate litigation must be served within the time limits provided in s. 95.11 and is not required if the action is a counterclaim. Service of a notice tolls the time limits provided in s. 95.11 for 10 days if such time limits will expire before the end of the 10-day notice period.

(c) An insurer must respond in writing to the notice within 10 business days after receiving the notice specified in paragraph (a) by making a settlement offer or requiring the

claimant to participate in appraisal or another method of alternative dispute resolution under the policy. The time limits provided in s. 95.11 are tolled as long as appraisal or other alternative dispute resolution are ongoing. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.

(d) A court must dismiss without prejudice any action relating to a claim for which a notice of intent to initiate litigation is given as required by this subsection if such action is commenced before the expiration of the 10-day notice period, is brought by an insurer to whom notice was given, and is against the claimant giving notice.

(4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice provided pursuant to subsection (3) and the submissions provided pursuant to subparagraph (3)(a):

(a) is admissible as evidence in a civil action or an alternative dispute resolution proceeding relating to the claim for which the notice is given;

(b) Does not limit the evidence of attorney fees or costs, damages, or loss which may be offered at trial; and

(c) Does not relieve any obligation that an insured or assignee has to give notice under any other provision of law.

(5) ATTORNEY FEES.—If a court dismisses a claimant's suit pursuant to paragraph (3)(d) of this section, the court shall not award to the claimant any incurred attorney fees for services rendered prior to the dismissal of the suit.

Section 10. This act shall take effect July 1, 2021.

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**T I T L E A M E N D M E N T**

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to property insurance; amending s. 624.316, F.S.; authorizing the Office of Insurance regulation to examine insurer affiliates; amending s. 624.318, F.S.; requiring insurer affiliates to provide certain items and information to the Office of Insurance Regulation upon request during examination; amending s. 624.424, F.S.; requiring insurers to include certain data regarding litigated property insurance claims in their quarterly reports to the Office of Insurance Regulation; requiring insurers to provide information regarding payments to affiliates upon request by the Office of Insurance regulation; allow the Office of Insurance regulation to determine whether payments made by an insurer to an affiliate are fair and reasonable; amending s. 626.7451, F.S; requiring that managing general agents enter into specified contracts with insurers even when the managing general agent controls, or is controlled by,

an insurer; amending s. 626.7452, F.S.; establishing that a managing general agent may be examined by the Office of Insurance regulation as if it were the insurer even if the managing general agent solely represents a single domestic insurer; amending s. 627.351, F.S.; requires Citizens Property Insurance Corporation to include the costs of reinsurance to its projected 100-year probable maximum loss in its rate calculations even if the corporation does not purchase such reinsurance; placing salary caps on new employees of the corporation; allowing current employees of the corporation to keep their salaries until they vacate their current positions even if the salaries exceed the caps; removing obsolete language regarding the corporation's rate filings with Office of Insurance Regulation; requiring the corporation to implement increase that does not exceed a certain percent beginning on a certain date; allowing the corporation to add an additional percent to its rate increase each year until it reaches a certain percent; prohibiting the corporation from seeking approval by the Office of Insurance regulation of a rate reduction; amending s. 627.70132, F.S.; providing that claims, supplemental claims, and reopened claims under certain property insurance policies for loss or damage caused by perils are barred unless notice is given within a specified timeframe; revising the timeframe for notice for loss or damage caused by windstorm or hurricane; revising the definition of the term

"supplemental claim" or "reopened claim" to include all perils; amending s. 627.7015, F.S.; conforming a provision to changes made by the act; creating s. 627.70152, F.S.; defining certain terms; requiring that written notice be provided to an insurer before suit is filed under an insurance policy; specifying certain information be included in that notice; requiring that notice be served within a specified timeframe; requiring that an insurer provide a response to that notice within a specified timeframe; providing for tolling of time where appropriate; requiring an insurer to investigate, review, and evaluate a dispute stated in that notice; requiring an insurer to investigation each claim in that notice in accordance with the Florida Insurance Code; requiring a court to dismiss, with prejudice, any action that fails to comply with the requirements for that notice; providing for evidentiary requirements regarding that notice; prohibiting a court from awarding attorney fees to a claimant under certain circumstances; providing an effective date.

HB 415

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 415 Fire Department Communications
**SPONSOR(S):** Botana
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 360

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Rowley | Luczynski |
| 2) State Administration & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Department of Financial Service's Division of State Fire Marshal, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.

The Florida Fire Prevention Code (FFPC) is the minimum fire prevention code, and is adopted by the State Fire Marshal and enforced by the local fire official within each county, municipality, and special fire district. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC requires that all new and existing buildings maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities). In addition, s. 633.202(18), F.S., provides that local fire authorities shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings.

The bill removes the words "high-rise" from s. 633.202(18), F.S., expanding the scope of the statute to require that local fire authorities determine minimum radio signal strength for all buildings, regardless of height. The bill also extends the deadline for existing buildings' compliance with a local authority's minimum radio signal strength requirements by five years to January 1, 2027. The deadline for existing, non-compliant buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2024. For apartment buildings, the deadline for compliance with a local authority's minimum radio signal strength requirements is extended by five years to January 1, 2030. The deadline for existing, non-compliant apartment buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2027.

By removing the references to "high-rise" buildings, the bill extends the scope of the statute to all buildings regardless of height. Thus, non-high-rise buildings, not in compliance with existing law, are also given a grace period to comply.

The bill also provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements. The bill specifies that installation of a two-way radio communication enhancement system to comply with s. 633.202(18), F.S., is not an unlawful act under s. 843.16, F.S.

The bill does not appear to have a fiscal impact on state or local government. It may have positive fiscal impacts on the private sector.

The bill has an effective date of July 1, 2021.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

*State Fire Prevention – State Fire Marshal*

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.[2] The 7th edition of the FFPC took effect on December 31, 2020.[3] The FFPC is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code*, along with the current edition of the *NFPA's Life Safety Code, NFPA 101*.[4]

The FFPC is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[5] Municipalities, counties, and special districts with firesafety responsibilities may supplement the FFPC with more stringent standards adopted in accordance with s. 633.208, F.S.[6] Local fire authorities set standards for radio signal strength throughout buildings within their jurisdiction in order to ensure consistent fire and rescue communication capabilities.

*Radio Signal Strength for Fire Department Communications*

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments.[7] All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users.[8] The radio is the lifeline that connects the firefighters to command and outside assistance when in the most desperate of situations.[9]

Modern focus on radio signal strength stems from difficulties experienced by firefighters attempting rescue operations on September 11, 2001, in the World Trade Towers, who found that in certain areas of the building their radio signal degraded, making live communication difficult or impossible.[10]

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[1] S. 633.104, F.S.
[2] S. 633.202, F.S.
[3] Florida Fire Prevention Code (7th ed. 2020), https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).
[4] S. 633.202(2), F.S.
[5] S. 633.208, F.S., and 69A-60.002(1), F.A.C.
[6] S. 633.208(3), F.S., and 69A-60.002(2), F.A.C.
[7] U.S. Fire Administration, *Voice Radio Communications Guide for the Fire Service* (June 2016), https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited Mar. 11, 2021).
[8] *Id*.
[9] *Id*.
[10] *See* National Fire Protection Association, *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review,* https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Executive-

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept and then amplify radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[11]

*Florida Fire Code Minimum Radio Signal Strength*

Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities).[12] Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation and upkeep.[13] Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[14]

*Minimum Radio Signal Strength for High-rise Buildings*

Section 633.202(18), F.S., enacted in 2016,[15] provides that local fire authorities shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. A high-rise building is defined in the FFPC as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access.[16] Existing high-rise buildings are not required to comply with a local authority's minimum radio strength requirements until January 1, 2022. However, an existing high-rise building must have applied for the appropriate permit for installation of equipment meeting the local authority's standards by December 31, 2019. Existing high-rise apartment buildings are not required to comply until January 1, 2025, and must apply for permits to reach compliance by December 31, 2022.

A 2018 declaratory statement from the Department of Financial Services clarified that the compliance timeframes provided in s. 633.202(18), F.S., apply only to high-rise buildings and do not apply to buildings less than 75 feet in height.[17] Thus, compliance with minimum radio signal strength requirements for non-high-rise buildings is controlled by s. 11.10 of the FFPC, which provides no grace periods or acceptable timeframes for compliance.

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[11] *See* City of Treasure Island, Florida, *Two-Way Radio Communication Enhancement System Requirements* (Apr. 20, 2019), https://www.mytreasureisland.org/residents/departments/fire_dept/local_high-rise_public_safety_system_integrators.php, (last visited Mar. 12, 2021); *see also* East Lake Tarpon Special Fire Control District, *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements,* https://www.elfr.org/files/e2eae3cb2/Bulletin+East+Lake+Two+Way+Communications.pdf (last visited Mar. 12, 2021).

[12] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.1, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[13] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.2, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[14] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.3, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[15] Ch. 2016-129, s. 27, Laws of Fla.

[16] Florida Fire Prevention Code (7th ed. 2020) s. 3.3.29.6, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 11, 2021).

[17] Department of Financial Services Declaratory Statement, *In the Matter of Charles B. Parks, Chief Florida Fire Code Official of Broward County* (Apr. 18, 2018), https://www.doah.state.fl.us/FLAID/DFS/2018/DFS_217787-17-DS_12042019_013047.pdf (last visited Mar. 12, 2021).

*Radio Equipment Receiving Law Enforcement Frequencies*

Section 843.16, F.S. makes it unlawful to install or transport any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to law enforcement or fire rescue personnel.

*Effect of the Bill*

The bill removes the words "high-rise" from s. 633.202(18), F.S., which expands the scope of the statute to require that local fire authorities determine minimum radio signal strength for all buildings, regardless of height. The bill also extends the deadline for existing buildings' compliance with a local authority's minimum radio signal strength requirements by five years to January 1, 2027. The deadline for existing, non-compliant buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2024. For apartment buildings, the deadline for compliance with a local authority's minimum radio signal strength requirements is extended by five years to January 1, 2030. The deadline for existing, non-compliant apartment buildings to apply for permits to install required devices to meet the standards is extended by five years to December 31, 2027.

By removing the references to "high-rise" buildings, the bill extends the scope of the statute to all buildings regardless of height. Thus, non-high-rise buildings, not in compliance with existing law, are also given a grace period to comply.

The bill also provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements. The bill specifies that installation of a two-way radio communication enhancement system to comply with s. 633.202(18), F.S., is not an unlawful act under s. 843.16, F.S.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 633.202, F.S., relating to Florida Fire Prevention Code.

**Section 2.** Amends s. 843.16, F.S., relating to unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.

**Section 3.** Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may positively impact building owners by extending the deadlines for compliance.

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 spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating fire department communications; amending s. 633.202, F.S.; requiring the authority having jurisdiction to determine certain minimum radio signal strength requirements for all new and existing buildings; authorizing the use of radio communication enhancement systems to comply with minimum radio signal strength requirements; revising the transitory period for compliance; revising the date by which existing apartment buildings that are not in compliance must initiate an application for an appropriate permit; amending s. 843.16, F.S.; providing an exception to the prohibition against installing or transporting certain radio equipment using law enforcement or fire rescue frequencies; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new ~~high-rise~~ and existing ~~high-rise~~ buildings. Two-way



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

radio communication enhancement systems may be used to comply with minimum radio signal strength requirements. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2027 ~~2022~~. However, by December 31, 2024 ~~2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2027 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2030 ~~2025~~. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2027 ~~2022~~.

Section 2. Paragraph (f) is added to subsection (3) of section 843.16, Florida Statutes, to read:

843.16 Unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—

(3) This section does not apply to the following:

(f) The installation of a two-way radio communication enhancement system to comply with the requirements of s. 633.202(18).

Section 3. This act shall take effect July 1, 2021.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**INSURANCE & BANKING SUBCOMMITTEE**

**HB 415 by Rep. Botana**
**Relating to Fire Department Communications**

**AMENDMENT SUMMARY**
**March 17, 2021**

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**Amendment 1 by Rep. Botana:** The amendment restores the term “high-rise” in s. 633.202(18), F.S., maintaining the requirement that local fire authorities determine minimum radio signal strength for fire department communications for all new and existing high-rise buildings. The amendment also provides that two-way radio communication enhancement systems and similar systems shall not be required in buildings that are four stories or less in height.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | __ | (Y/N) |
| ADOPTED AS AMENDED | __ | (Y/N) |
| ADOPTED W/O OBJECTION | __ | (Y/N) |
| FAILED TO ADOPT | __ | (Y/N) |
| WITHDRAWN | __ | (Y/N) |
| OTHER | _____ | |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Botana offered the following:

**Amendment (with title amendment)**

Remove lines 25-27 and insert:

in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems may be used to comply with minimum radio signal strength requirements. However, two-way radio communication enhancement systems and similar systems shall not be required in apartments or buildings that are four stories or less in height. Existing

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**T I T L E A M E N D M E N T**

Remove lines 2-8 and insert:

An act relating to fire department communications; amending s. 633.202, F.S.; authorizing the use of radio communication enhancement systems to comply with minimum radio signal strength requirements; prohibiting the authority having jurisdiction from requiring certain radio communication enhancement systems in apartments or buildings of a certain height; revising the transitory

# HB 1209

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1209 Department of Financial Services
**SPONSOR(S):** Fetterhoff
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1408

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Haas | Luczynski |
| 2) State Administration & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS


The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- **Division of Public Assistance Fraud (DPAF)**: establishes DPAF as a criminal justice agency.
- **Firefighter Cancer Benefits under the State Risk Management Trust Fund (SRMTF)**: benefits payable from a state firefighter's cancer diagnosis to be paid from the SRMTF. Requires the Department of Management Services to validate and approve benefits before they may be disbursed.
- **Sexual Harassment Victims under State Risk Management**: prohibits employees covered by the SRMTF from engaging in retaliatory conduct against a sexual harassment victim and provides penalties for related violations.
- **Funeral, Cemetery, and Consumer Services (FCCS)**: modifies composition of and procedures for filling Board vacancies. Allows virtual meetings. Reduces the number of Board members needed for a quorum. Extends the crimes an applicant for licensure must report. Creates permanent and temporary bars to licensure based upon certain crimes in an applicant's criminal history. Creates a third-degree felony for unlicensed funeral activity.
- **Explosives**: changes the definition of a two-component explosive.
- **Fire Alarm Permit:** The bill allows a contractor to begin work repairing existing fire alarm systems before approval but after filing of a Uniform Fire Alarm Permit Application.
- **Insurance Field Representatives and Operations:** modifies the continuing education requirements of insurance licensees except title insurance agents. Modifies requirements related to renewal appointments. Increases the maximum length of suspension of title insurance agents from one year to two years.
- **Protecting Proprietary Business Information:** prohibits an insurance agent or broker from providing the insurer's replacement cost estimator or other proprietary underwriting information as a condition precedent or condition subsequent to lending money or extending credit.
- **Surplus Lines:** Removes a notice requirement for insurance coverages to be exported. Adds that an agent may export a contract providing flood coverage to an eligible surplus insurer without seeking coverage from three or more authorized insurers.
- **Fire Sprinkler Systems**: modifies requirements related to design and alteration of fire sprinkler systems.
- **The Fire and Emergency Incident Information Reporting Program:** changes references to the term "protection agencies" to "service providers". Reconciles membership of the Fire and Emergency Incident Information Technical Advisory Panel and the Firefighters Employment, Standards, and Training Council.
- **Florida Fire Prevention Code:** extends deadlines to comply with minimum radio strength for fire department communications and requires radio strength assessments for existing high-rise buildings and apartments.
- **Influencing a Firesafety Inspector:** prohibits anyone from influencing a firesafety inspector and prohibits firesafety inspectors from knowingly and willfully accepting any attempt of influence.
- **Volunteer Firefighter Service**: removes a prohibition for a volunteer firefighter to function as a volunteer firefighter while transitioning to a career firefighter.
- **Bail Bond Agents:** makes it a crime for an agent to aid or abet unlicensed activity.
- **False Personation**: makes falsely impersonating any personnel or representative of the Division of Investigative and Forensic Services a crime.

The bill has no fiscal impact on state government revenue. The bill may increase state government expenditures by an indeterminable amount. The bill has no fiscal impact local government revenue or expenditures. The bill may have a positive, but indeterminable, fiscal impact on the private sector.
Except as otherwise expressly provided, the bill has an effective date of July 1, 2021.


## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Department of Financial Services Organization**

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida[1] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance merged into DFS. DFS consists of many divisions and several specialized offices.[2]

DFS is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[3]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the

Office of Insurance Consumer Advocate.

**Division of Public Assistance Fraud**

The Division of Public Assistance Fraud (DPAF) was not established as a criminal justice agency when it was transferred from FDLE to the Department of Financial Services in 2010.[4] A "criminal justice agency" is defined as: a court[5], the Department of Law Enforcement[6], the Department of Juvenile Justice[7], the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect[8], and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.[9] DPAF currently operates by protecting Floridian taxpayers against public assistance fraud and the impact of those crimes by enforcing state laws regarding program eligibility and proper use of public assistance benefits.[10]

Effect of the Bill

The bill establishes DPAF as a criminal justice agency. The designation allows DPAF to have access to criminal justice information contained in Florida Crime Information Center and National Crime

[1] Art. IV, s. 4, Fla. Const.
[2] S. 20.121, F.S.
[3] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[4] Ch. 2010-144, Laws of Fla.
[5] S. 943.045 (11)(a), F.S.
[6] S. 943.045 (11)(b), F.S.
[7] S. 943.045 (11)(c), F.S.
[8] S. 943.045 (11)(d), F.S.
[9] S. 943.045 (11)(e), F.S.
[10] Public Assistance Fraud, https://www.myfloridacfo.com/division/paf/ (last visited Mar. 10, 2021).

Information Center. This will improve the department's investigation and enforcement capabilities. The bill includes DPAF in the definition of "criminal justice agency".

**Firefighter Cancer Benefits Under the State Risk Management Trust Fund**

The State Risk Management Trust Fund (SRMTF) is a self-insurance fund, created and administered by DFS.[11] The SRMTF covers, unless specifically excluded, all departments of the State of Florida and their employees, agents, and volunteers.[12] The SRMTF provides insurance for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission.[13]

The SRMTF also requires that separate accounts must be kept for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission.[14]

Effective July 1, 2019,[15] a firefighter who has been diagnosed with cancer and have been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer is entitled to the following benefits:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.[16]
- A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.[17]

The benefits remain available to the firefighter for 10 years following the date on which the firefighter terminates employment if the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund.[18] Currently, the employing agency is responsible for providing these benefits.[19]

Effect of the Bill

The bill provides that these firefighter cancer benefits be placed within the responsibility of the SRMTF. The bill also requires a separate account in the SRMTF for benefits payable to firefighters diagnosed with cancer. The bill requires the Department of Management Services (DMS) to validate and approve the firefighter cancer benefits before the benefits may be disbursed from the SRMTF.

**Sexual Harassment Victims under the State Risk Management Trust Fund**

The personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from the public records requirements specified in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[20]

Effect of the Bill

[11] S. 284.30, F.S.
[12] S. 284.31, F.S.
[13] S. 284.30, F.S.
[14] S. 284.31, F.S.
[15] Ch. 2019-21, Laws of Fla.
[16] S. 112.1816(2)(a), F.S.
[17] S. 112.1816(2)(b), F.S.
[18] *Id.*
[19] S. 112.1816, F.S.
[20] S. 119.071(2)(n), F.S.

The bill provides that any individual working for an entity covered by the SRMTF[21] may not engage in any retaliatory conduct against a sexual harassment victim. The bill defines a "sexual harassment victim" as individual employed, or being considered for employment, with an entity participating in the State Risk Management Trust Fund who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

The bill creates a first-degree misdemeanor, punishable, as provided, by s. 775.082 for willfully and knowingly disseminating personal identifying information of a sexual harassment victim to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order. The bill defines "personal identifying information as the name of a sexual harassment victim and his or her:

- Home address
- Home phone number
- Cellular phone number
- E-mail address,
- Social media account username or URL
- Any other information that could be reasonably used to identify an alleged sexual harassment victim.

**Funeral, Cemetery, and Consumer Services (FCCS)**

*The Board of Funeral, Cemetery, and Consumer Services*

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (Board) within the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services.

The Board currently consists of 10 members pursuant to the following structure:

- The State Health Officer or his or her designee[22]
- Two funeral directors who are:
  - Licensed under part III of ch. 497, F.S., as funeral directors, and
  - Associated with a funeral establishment[23]
- One funeral director who is:
  - Licensed under part III of ch. 497, F.S., as a funeral director
  - Associated with a funeral establishment licensed under part III of ch. 497, F.S., that has a valid preneed license issued pursuant to ch. 497, F.S., and
  - Owns or operates a cinerator facility that is approved under ch. 403, F.S., and licensed under part IV of ch. 497, F.S.[24]
- Two persons whose:
  - Primary occupation is associated with a cemetery company licensed under ch. 497, F.S.[25]
- Three consumers who:
  - Are Florida residents
  - Have never been licensed as funeral directors or embalmers
  - Are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, F.S.
  - Are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition
  - At least one of which is at least 60 years old

[21] The SRMTF covers, unless specifically excluded, all departments of the State of Florida and their employees, agents, and volunteers. S. 284.31, F.S.
[22] S. 497.101(1), F.S.
[23] S. 497.101(2), F.S
[24] *Id.*
[25] *Id.*

    - At least one of which is a licensed certified public accountant[26]
- One member who shall be:
    - A principal of a monument establishment licensed under ch. 497, F.S., as a monument builder.[27]

There shall not be two or more Board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.[28]

Nine of the 10 Board members, save only the State Health Officer, are appointed by the Governor from nominations made by the CFO and confirmed by the Senate.[29] Currently the CFO must nominate three persons for each vacancy.[30] If the Governor objects to each of the three nominations for a vacancy, the CFO must submit an additional three nominations until the vacancy is filled.[31] The DFS reports that they often to not receive three or more applications for qualified applicants to the Board.[32] In fact, the DFS reports that the CPA position has remained vacant since September 2017 for this reason.[33]

Board members, other than the State Health Officer,[34] are appointed for 4 year terms.[35] The CFO was directed to stagger the terms of members after the terms of the initial members expired[36] and this has already occurred at the initiation of the Board.[37]

The Board acts as the licensing and rulemaking authority under ch. 497, F.S. for a vast array of matters within the death care industry.[38] A quorum is necessary to conduct the business of the Board.[39] A quorum consists of six members of the Board.[40] The DFS indicates that it can be difficult to obtain this number due to Board vacancies, absenteeism, and necessary recusal.[41]

Effect of the Bill

The bill reduces the number of nominations that the CFO must make per Board vacancy from three to one. This should alleviate some of the issues DFS is facing with not being able to fill their Board vacancies due to a lack of applications while still maintaining the provision that allows the Governor to reject the nomination(s).

The bill also adjusts the Board composition by:

- Reducing from three to two the number of positions on the Board that must be held by consumers who are Florida residents, have never been licensed funeral directors or embalmers, are not connected with a cemetery or licensed cemetery company, and are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition; and
- Clarifying the requirement of the CPA consumer member by stating that he or she must: be a Florida resident, be licensed as a certified public accountant under chapter 473, have never been licensed as a funeral director or an embalmer, and must not be a principal or an employee of any licensee licensed under this chapter; and must not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter.

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[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] S. 497.101(1), F.S.
[30] *Id.*
[31] *Id.*
[32] Department of Financial Services, *Agency Analysis of 2021 HB 1209* (Mar. 9, 2021).
[33] *Id.*
[34] The State Health Officer serves as long as he or she holds that office. S. 497.101(3), F.S.
[35] S. 497.101(3), F.S.
[36] *Id.*
[37] Department of Financial Services, *supra* note 32.
[38] S. 497.103(1)(a)-(cc), F.S.
[39] S. 497.101(6), F.S.
[40] *Id.*
[41] Department of Financial Services, *supra* note 32.

The bill removes the outdated provision involving the staggering of the Board from its initial Board members. Because the Board has been in place since 2003, provisions dealing with its initial Board members are irrelevant.

The bill changes the quorum requirements of the Board by allowing participation in meetings through communications media technology. The bill defines "communications media technology" as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

The bill also reduces the number of Board members needed for a quorum to conduct business from six out of the 10 members, regardless of vacancies, to a simple majority of Board members present and eligible to vote. While this may help the Board conduct business when vacancies occur, it may also lead to the satisfaction of a quorum with only one member present and eligible to vote.

*Disclosure of Records and Bars from Licensure*

An individual applying for licensure under ch. 497, F.S. must disclose certain criminal records.[42]

Currently, if the applicant, within 10 years of filing the application, has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any jurisdiction, the application will not be complete until the applicant provides certified true copies of the court records evidencing the conviction, finding, or plea.[43]

An individual applying for renewal of any license under ch. 497, F.S. must also disclose certain criminal records since the most recent renewal of his or her license or, if the license has not been renewed, since the licensee's initial application.[44] Criminal records shall be disclosed regardless of whether the criminal conduct occurred inside or outside the state and regardless of whether the criminal prosecution occurred in state court or in the court of another state, the United States, or a foreign country.[45]

The crimes that are currently required to be disclosed are:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation;[46]
- Any other felony that was committed within the 20 years immediately preceding the application under this chapter;[47] and
- Any other misdemeanor that was committed within the 5 years immediately preceding the application under this chapter.[48]

Effect of the Bill

The bill removes the 10 year qualifier for applicants to be required to provide certified true copies of the court records evidencing a conviction, guilty finding, or plea of nolo contendere. This removal will require applicants who have been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any jurisdiction at any time in their life to provide certified true copies of the court records.

The bill also amends the crimes to be disclosed to state:

- Any felony, no matter when committed;

[42] S. 497.142, F.S.
[43] S. 497.142(9), F.S.
[44] S. 497.142(10)(a), F.S.
[45] S. 497.142(10)(d), F.S.
[46] S. 497.142(10)(c)(1), F.S.
[47] S. 497.142(10)(c)(2), F.S.
[48] S. 497.142(10)(c)(3), F.S.

- Any misdemeanor, no matter when committed, which was directly or indirectly related to the financial services business;[49] and
- Any other misdemeanor that was committed within the 5 years immediately preceding the application under this chapter.

This removes the qualifier that the felony must be related to the death industry. It also modifies the extent of misdemeanors that must be disclosed from those relating to the death industry to those related to any financial services business.

The bill creates a new section of statute that provides permanent bars and disqualification periods for applicants and licensees that are the same for all license types.

The bill creates a permanent bar from licensure if the applicant has been found guilty of or has pleaded guilty or nolo contendere[50] to any of the following, regardless of adjudication:
- A felony of the first degree;
- A capital felony;
- A felony money laundering offense;
- A felony embezzlement.

The bill also creates disqualification periods for various felonies and misdemeanors:
- 10 year disqualifying period for all felonies involving moral turpitude[51] that do not fall under the permanent bar.
- 5 year disqualifying period for all felonies that do not fall under the permanent bar and that do not involve moral turpitude.
- 5 year disqualifying period for all misdemeanors directly related to the financial services business.

A disqualifying period begins upon an applicant's final release from criminal supervision or upon completion of a criminal sentence. A license may not be issued until all of the applicant's related fines, court costs & fees, and court-ordered restitution have been paid. Once a disqualifying period has elapsed, the applicant carries the burden of showing that they have been rehabilitated, they do not pose a risk to the public, they are fit and trustworthy to engage in business regulated by ch. 497, F.S., and they are otherwise qualified.

The bill requires the Board to adopt rules to administer these bars and disqualifications and for the rules to provide for additional disqualifying periods due to the commitment of multiple crimes and other factors related to the applicant's criminal history. The bill requires that the rules must provide for mitigating and aggravating factors but such factors cannot lessen the disqualification to any period less than 5 years.

An applicant is not barred from licensure if he or she has been found guilty of, or has pled guilty of nolo contendere to a felony or misdemeanor but has been subsequently granted of a pardon or the restoration of civil rights pursuant to ch. 940, F.S., and article IV, section 8 of the Florida Constitution, or a pardon or the restoration of civil rights under the laws of another jurisdiction with respect to a conviction in that jurisdiction.

The bill allows the Board to grant an exemption from disqualification for licensure if:
- The applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of the judgment and sentence for any disqualifying offense; and

[49] The bill defines "financial services business" as any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.
[50] A nolo contendere plea is a plea by which a defendant in a criminal prosecution accepts conviction but does not plead or admit guilt. *Lexico English Dictionary*, https://www.lexico.com/definition/nolo_contendere (last visited Mar. 11, 2021).
[51] "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a person owes to others and to society in general." 16 Fla. Jur. 2d Criminal Law – Substantive Principles/Offenses §6.

- At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court for a disqualifying offense.

For the Board to grant the exemption, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if licensed under ch. 497, F.S. The applicant is required, but not limited to, provide the following evidence:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant's history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

The Board holds discretion whether to grant or deny an exemption. The Board's decision is subject to ch. 120, F.S., the Administrative Procedure Act. A formal proceeding under s. 120.57(1), F.S., is available to an applicant only if the applicant disputes material facts that the Board relied upon in order to reach a decision.

All of the disqualification periods put forth in the bill do not apply to the renewal of a license or to a new application for licensure if the applicant has an active license as of July 1, 2021, and the applicable criminal history was considered by the Board on the prior approval of any active license held by the applicant.

*Violations by Unlicensed Persons*

Chapter 497, F.S., requires a license for specific death care industry practices and provides a penalty of a second-degree misdemeanor for individuals who engage in activity requiring licensure without possessing a license,[52] though it does not include specific examples of what is considered unlicensed practice.

Effect of the Bill

The bill specifies that a person may not be, act as, or advertise himself or herself to be a funeral director, embalmer, or direct disposer unless he or she is licensed by DFS. The bill also specifies that a person may not be, act as, or advertise himself or herself as a preneed sales agent[53] unless currently licensed by DFS and is appointed by a preneed main licensee, for whom they are executing preneed contracts.

The bill increases the penalty for unlicensed activity from a second-degree misdemeanor to a third-degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

**Explosives**

Chapter 552, F.S., addresses the manufacture, distribution, and use of explosives, which are regulated by the State Fire Marshal. The current definition of a two-component explosive requires detonation to be triggered by a No. 6 blasting cap.[54] DFS asserts that No. 6 blasting caps went out of production several years ago and current blasting caps no longer use the same rating system.[55]

Effect of the Bill

[52] S. 497.159(6), F.S.

[53] Preneed contract means "any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future." S. 497.005 (61), F.S.

[54] S. 552.081(13), F.S.

[55] Department of Financial Services, *supra* note 32.

The bill removes the No. 6 blasting cap specification and broadens the application to encompass any detonator. The amendment to this subsection brings the language in line with current practices.

**Fire Alarm Permit**

All fire alarm system equipment in Florida is installed in accordance with the applicable standards of the National Fire Protection Association and procedures approved by a nationally recognized testing laboratory.[56] All fire alarm systems required by the State Fire Marshal's rules shall be installed, serviced, tested, repaired, inspected, and improved in compliance with the provisions of the applicable standards of the National Fire Protection Association.[57]

Currently, contractors can only repair a fire alarm system that was previously permitted by the local enforcement agency after filing a Uniform Fire Alarm Permit application and receiving the permit.[58]

Effect of the Bill

The bill allows for contractors to begin repairing fire alarm systems that were previously permitted by the local enforcement agency after filing a Uniform Fire Alarm Permit application but *before* receiving the permit. The bill provides that a fire alarm repaired under this new subsection will not be considered compliant until the permit is issued and the local enforcement agency approves the repair.

**Insurance Field Representatives and Operations**

*Continuing Education Requirements*

Individuals licensed to engage in the sale of insurance or adjustment of insurance claims in this state are required to fulfill continuing education requirements, pursuant to s. 626.2815, F.S.

Some of the current continuing education requirements are as follows:

- Licensees, except title insurance agents, are required to complete a 5-hour update course every two years which is specific to the license held by the licensee;[59]
- All licensees must also complete 19 hours of elective continuing education every two years;[60]
- If a licensee has been licensed for six years or more, the above elective continuing education drops to 15 hours every two years;[61]
- A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 5 hours of elective continuing education courses every 2 years;[62]
- An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 5 hours of continuing education courses every 2 years;[63]
- An individual subject to chapter 648, F.S., relating to bail bond agents, is required to complete a 5-hour update course and a minimum of 9 hours of elective continuing education courses every two years.[64]

If an individual fails to certify their continuing education requirements, DFS may immediately terminate or refuse to renew the appointment of an agent or adjuster after notice.[65]

[56] S. 633.348(1)-(2), F.S.
[57] S. 633.348(5), F.S.
[58] S. 553.7921(1)(b), F.S.
[59] S. 626.2815(3), F.S.
[60] S. 626.2815(3)(a), F.S.
[61] S. 626.2815(3)(b), F.S.
[62] S. 626.2815(3)(c), F.S.
[63] S. 626.2815(3)(d), F.S.
[64] S. 626.2815(3)(e), F.S.
[65] S. 626.2815(9), F.S.

Effect of the Bill

The bill adjusts the continuing education requirements to state the following:

- Licensees, except title insurance agents, are required to complete a 4-hour update course every two years which is specific to the license held by the licensee;
- All licensees must also complete 20 hours of elective continuing education every two years
- If a licensee has been licensed for six years or more, the above elective continuing education drops to 16 hours every two years;
- A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 hours of elective continuing education courses every 2 years;
- An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 hours of continuing education courses every 2 years;
- An individual subject to chapter 648, F.S., relating to bail bond agents, is required to complete a 4-hour update course and a minimum of 10 hours of elective continuing education courses every two years.

Therefore, the bill lowers the hourly requirement for the update courses by 1 hour and increases the hourly requirement for elective continuing education by 1 hour. The total continuing education hourly requirement remains the same.

*Payment of Fees*

No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.[66]

Currently, all initial appointments shall be submitted to DFS on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.[67] If a DFS investigation into the application and qualification for an initial or renewal appointment of an individual uncovers that the individual is improperly appointed to represent an insurer or employer due to an inadvertent error by the insurer or employer represented, DFS may still issue the appointment subject to a condition that all fees and taxes pursuant to ch. 624.501, F.S.[68] have been paid.[69]

Effect of the Bill

The bill adds that all appointments, including renewal appointments, shall be submitted to DFS on a monthly basis no later than 45 days after the date of appointment. The bill specifies that if DFS determines that an individual was improperly appointed due to an inadvertent error, DFS will notify the insurer or employer of its finding and obligation to pay all fees and taxes within 21 days. If the insurer or employer does not pay the fees and taxes within 21 days after notice, DFS shall suspend the insurer's or employer's authority to appoint licensees until the fees have been paid.

After the individual is properly appointed and has paid all fees and taxes, DFS may no longer consider the inadvertent failure to appoint to be a violation of the Florida Insurance Code. The bill clarifies other language in this subsection.

*Suspension of Title Insurance Agents*

[66] S. 626.112(1)(a), F.S.
[67] S. 626.371(1), F.S.
[68] Appointment and renewal fees and taxes range from $60 for most agents to $150 for surplus lines agents.
[69] S. 626.371(2), F.S.

DFS may currently suspend a title insurance agent's or agency's license or appointment for a period not to exceed 1 year.[70] Under Florida's Insurance Code, DFS may suspend most other insurance agent licensees for a period not to exceed two years.[71]

Effect of the Bill

The bill extends the maximum length of suspension for title insurance agents to 2 years. This change matches the treatment of other insurance agents under Florida's Insurance Code. DFS asserts that the longer suspension period is important to protect consumers from bad actors.[72]

**Surplus Lines**

*Eligibility for Export to Surplus Lines Insurance*

Surplus lines insurance is an alternative type of insurance coverage for consumers who cannot get coverage in the standard/admitted market due to unusual or high risks.[73] Exporting an insurance policy means to place a policy with a surplus lines insurer who is not part of the standard/admitted insurance market.[74]

Currently, for personal residential property risks to be exported to the surplus lines marketplace, the retail or producing agent must advise the insured by notice in writing that they may obtain less expensive coverage from Citizens Property Insurance Corporation.[75] The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage.[76] If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.[77]

Effect of the Bill

The bill removes the provision requiring retail or producing agents to advise insureds by notice that they may obtain less expensive coverage from Citizens Property Insurance Corporation prior to exporting coverage to the surplus lines market. The bill also removes the notice requirements and the insured's informed presumption.

*Exporting Flood Insurance Coverage*

As a condition for exporting insurance coverage to the surplus lines marketplace, the full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.[78]

In 2014, the Legislature created s. 627.715, F.S., which provided a regulatory framework for admitted insurers to write personal lines residential flood coverage. The bill also allowed a surplus lines agent to export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without

[70] S. 626.8443(1), F.S.
[71] S. 626.641(1), F.S.
[72] Department of Financial Services, *supra* note 32.
[73] Department of Financial Services, Florida Surplus Lines Office, *Understanding Florida's Excess and Surplus Market*, https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/SurplusLinesConsumerBrochure.pdf (last visited Mar. 12, 2021).
[74] *Id.*; s. 626.914(3), F.S.
[75] S. 626.916(1)(e), F.S.
[76] *Id.*
[77] *Id.*
[78] S. 626.916(1)(a), F.S.

making a diligent effort to seek coverage from three or more authorized insurers.[79] The bill provided that the exemption to the diligent effort requirement expired on July 1, 2017. In 2017, the Legislature extended the exemption until July 1, 2019, or earlier if the Office of Insurance Regulation determined there was an adequate flood insurance market among admitted insurers.[80] The exemption expired on July 1, 2019.

Effect of the Bill

The bill reinstates the exemption to provide that a surplus lines agent is able to export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek coverage from three or more authorized insurers. The bill does not include an expiration date for the exemption.

**Protecting Proprietary Business Information**

DFS asserts that many lenders require the replacement cost estimator or other proprietary business information belonging to the insurer underwriting the insurance policy as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by the real property.[81] DFS also asserts that this has caused issues between the insurance, lending, and real estate industries where the proprietary business information of the insurers is used by lenders for reasons outside the scope of the insurance policy.[82]

Effect of the Bill

The bill adds a provision prohibiting an insurance agent or broker from providing the insurer's replacement cost estimator or other underwriting information that is proprietary as a condition precedent or condition subsequent to lending money or extending credit.

**Fire Prevention and Control**

*Fire Sprinkler Systems*

Chapter 633, F.S. defines five different classifications of contractors for purposes of fire prevention and control:

- "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.[83]
- "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.[84]
- "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.[85]
- "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire

[79] Ch. 2014-80, Laws of Fla.
[80] Ch. 2017-142, Laws of Fla.
[81] Department of Financial Services, *supra* note 32.
[82] *Id.*
[83] S. 633.102(3)(a), F.S.
[84] S. 633.102(3)(b), F.S.
[85] S. 633.102(3)(c), F.S.

sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.[86]

- "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.[87]

Currently, a person certified as a Contractor I, Contractor II, or Contractor IV may design fire protection systems of 49 or fewer sprinklers and may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of not more than 49 sprinklers, notwithstanding the size of the existing fire sprinkler system.[88]

Currently, a person certified as a Contractor I, Contractor II, or Contractor IV may only design a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.[89]

Effect of the Bill

The bill removes Contractor IV from being able to design fire protection systems of 49 or fewer sprinklers and from being able to design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of not more than 49 sprinklers, notwithstanding the size of the existing fire sprinkler system.

The bill adds that a person certified as a Contractor I, Contractor II may also design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if:

- there is no change of occupancy, as defined in the Florida Building Code and the Florida Fire Prevention Code, of the affected areas,
- there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and
- the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration.

The bill provides that any conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved by agreement between the Florida Building Commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.[90] If the commission and State Fire Marshal are unable to agree on a resolution, the question shall be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.[91]

The bill also adds that a person certified as a Contractor I, Contractor II, or Contractor IV may not only design but adds that they may alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.

[86] S. 633.102(3)(d), F.S.
[87] S. 633.102(3)(e), F.S.
[88] S. 633.102, F.S.
[89] *Id.*
[90] S. 553.73(1)(d), F.S.
[91] *Id.*

*The Fire and Emergency Incident Information Reporting Program*

In 2005, the Florida Legislature created s. 633.115, F.S.[92] to establish the Fire and Emergency Incident Information Reporting Program (FEIIRP).[93] The new statutory language also created the Fire and Emergency Incident Information Technical Advisory Panel (Panel).[94] This section also included codifying language for the Florida Fire Incident Reporting System (FFIRS) which is and has been the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS).[95] FFIRS is a means for fire departments to report and maintain computerized records of fires and other fire department incidents in a uniform manner.[96]

The Panel is tasked with advising, reviewing, and making recommendations to the State Fire Marshal with respect to the requirements of s. 633.136.[97] The Panel currently consists of 15 members:[98]

- The thirteen members of Firefighters Employment, Standards, and Training Council (Council);
- One member from the Florida Forest Service of the Department of Agriculture and Consumer Services; and
- One member from the Department of Health, appointed by the State Surgeon General.

The Firefighters Employment, Standards, and Training Council is currently composed of the following 14 members:[99]

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;
- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.

The Panel and the Council have nearly the same membership and they meet at the same time and place.[100]

Effect of the Bill

The bill replaces the term “fire protection agencies” with “fire service providers” to match the definition in s. 633.102, F.S. “Fire service provider” is defined as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the

[92] S. 633.115, F.S., was transferred and renumbered as s. 633.136, F.S., in 2013. Ch. 2013-183, Laws of Fla.
[93] Ch. 2005-117, Laws of Fla.; *see also* Department of Financial Services, Division of State Fire Marshal, Florida Fire and Incident Reporting System, https://www.myfloridacfo.com/Division/SFM/FFIRS/ (last visited Mar. 12, 2021).
[94] *Id.*; S. 633.136(2), F.S.
[95] *Id.*
[96] *Id.*
[97] S. 633.136(2), F.S.
[98] *Id.*
[99] S. 633.402(1)(a), F.S.
[100] Department of Financial Services, *supra* note 32.

protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

The bill adds one member to the Council, an individual from the Department of Health, appointed by the Surgeon General. The bill also reduces the composition of the Panel from two members from the Florida Fire Service to one member, thus making the membership of the Panel and the Council identical.

The Panel references to one member from the Florida Forest Service and one member from the Department of Health are deleted, leaving the Panel membership to include only the newly revised 15 member Council.

*Florida Fire Prevention Code*

The Florida Fire Prevention Code (FFPC) is administered by the State Fire Marshal under DFS.[101] FFPC is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities.[102] State law requires each municipality, county, and special district with firesafety responsibilities to adopt the FFPC.[103]

The authority having jurisdiction (local fire authorities) shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings.[104]

Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2022.[105] By December 31, 2019, an existing high-rise building that was not in compliance with the requirements for minimum radio strength for fire department communications must have applied for an appropriate permit for the required installation with the local government agency having jurisdiction and must have demonstrated that the building will have become compliant by January 1, 2022.[106] Existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2022.[107]

Effect of the Bill

The bill extends the deadline by which existing high-rise buildings are required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2023.

The bill also reinstates the expired provision and modifies it so that by January 1, 2022, an existing high-rise building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2023.

The bill also modifies the provision for existing apartment buildings in the same way so that rather than being required to simply apply for the appropriate permit by December 31, 2022, they must have completed a minimum radio strength assessment.

*Influencing a Firesafety Inspector*

[101] Chapter 69A, F.A.C.
[102] Chapter 69A-60.002(1), F.A.C.
[103] S. 633.208, F.S.
[104] S. 633.202(18), F.S.
[105] *Id.*
[106] *Id.*
[107] *Id.*

Each county, municipality, and special district that has firesafety enforcement responsibilities is required to employ or contract with a firesafety inspector.[108] However, the State Fire Marshal (SFM) shall assume the duties of a firesafety inspector in any county, municipality, or special district that does not employ or appoint a firesafety inspector.[109] Subject to certain exceptions, the firesafety inspector is responsible for conducting all firesafety inspections required by law.[110] Some of the responsibilities of the firesafety inspector include conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.[111]

Current law provides that a person who violates any provision of ch. 633, F.S., any order or rule of the SFM, or any order to cease and desist or to correct conditions issued under this chapter commits a misdemeanor of the second degree.[112] However, ch. 633, F.S., does not have any provision prohibiting a person from influencing a firesafety inspector to violate any provision of the Florida Fire Prevention Code nor from a firesafety inspector accepting such influence.

Effect of the Bill

The bill creates a new section of law that prohibits any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick a firesafety inspector into violating the Florida Fire Prevention Code, rules adopted by the SFM, or any provision of ch. 633, F.S. It also prohibits any person from offering compensation to a firesafety inspector related to committing such violations.

Additionally, the bill prohibits a firesafety inspector from knowingly and willfully accepting an attempt to improperly influence the performance of his or her duties.

A violation by a firesafety inspector of this new provision allows the SFM to deny, refuse to renew, suspend, or revoke a firesafety inspector's certificate.[113] Moreover, any person who violates the bill's new provisions commits a misdemeanor of the second degree.[114]

*Volunteer Firefighter Service*

The National Fire Prevention Association estimates that there were 1,115,000 career and volunteer firefighters in the United States in 2018.[115] Of the total number of firefighters, 370,000 (33 percent) were career firefighters and 745,000 (67 percent) were volunteer firefighters.[116]

Florida has 465 registered fire departments.[117] Approximately 46 percent of Florida firefighters are identified as volunteer or mostly volunteer while the remainder are identified as career or mostly career.[118]

Volunteer firefighters are required to obtain a Firefighter Certificate of Completion through training.[119] With this certificate, they may enter into immediately dangerous to life and health (IDLH) environments along with career firefighters. Volunteer firefighters may become career firefighters if they complete a

[108] S. 633.216(1), F.S.
[109] S. 633.104(7), F.S.
[110] *Id.*
[111] S. 633.102(12), F.S.
[112] S. 633.124(1), F.S
[113] S. 633.216(6)(b), F.S.
[114] S. 633.124(1), F.S.
[115] National Fire Prevention Association, *US Fire Department Profile 2018*, https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osfdprofile.pdf (last visited Mar. 12, 2021).
[116] *Id.*
[117] U.S. Fire Administration, *National Fire Department Registry Quick Facts*, https://apps.usfa.fema.gov/registry/summary (last visited Mar. 12, 2021).
[118] *Id.*
[119] S. 633.408, F.S.

Certificate of Compliance.[120] Currently, if a volunteer firefighter chooses to become a career firefighter, he or she is no longer able to enter an IDLH environment while completing the Certificate of Compliance.

Effect of the Bill

The bill allows volunteer firefighters who are in transition to become career firefighters to function in the same capacity in which they acted as volunteer firefighters. The period for which they remain volunteers cannot extend beyond one year, collectively or consecutively.

A volunteer firefighter in transition must hold a Certificate of Completion with a fire service provider and subsequently be employed as a regular or permanent firefighter. The volunteer firefighter in transition must be under the direct supervision of an individual holding a valid firefighter Certificate of Compliance.

DFS asserts that this change would improve rural and small agency recruitment of firefighters by allowing them to focus on hiring from local candidates who are more inclined to remain in the area instead of hiring candidates from elsewhere in the state who are inclined to return to their home communities once gaining some experience.[121]

**Bail Bond Agents**

Currently, a person may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed.[122] A person may also not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title, and a person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond unless qualified, licensed, and appointed.[123]

Any person who acts as a bail bond agent or as otherwise described above, commits a felony of the third degree.[124]

The law, however, does not currently provide a penalty for a licensee aiding or abetting an unlicensed person who acts as a bail bond agent or as otherwise described above.

Effect of the Bill

The bill creates a provision which provides that any licensee who knowingly aids or abets an unlicensed person in acting as a bail bond agent or otherwise violating s. 648.30, F.S., commits a third-degree felony.

**False Personation**

Section 843.08, F.S., provides that a person who falsely assumes or pretends to be any officer identified in a specific list commits a felony of the third degree. A person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, and if the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree.[125]

Current law prohibits impersonation of a fire or arson investigator of DFS and any officer of DFS but does not prohibit impersonation of other investigators or personnel of DFS.

[120] S. 633.102(9), F.S.
[121] Department of Financial Services, *supra* note 32.
[122] S. 648.30(1), F.S.
[123] S. 648.30(2) and (3), F.S.
[124] S. 648.30(4), F.S.
[125] S. 843.08, F.S.

Effect of the Bill

The bill removes the provision related to personating a fire or arson investigator of DFS and adds the criminalization of falsely assuming or pretending to be any personnel or representative of the Division of Investigative and Forensic Services (DIFS). This change creates a felony to impersonate any DIFS personnel or representative.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S., relating to The Department of Financial Services.

Section 2: Amends s. 284.30, F.S., relating to State Risk Management Trust Fund; coverages to be provided.

Section 3: Amends s. 284.31, F.S., relating to scope and types of coverage; separate accounts.

Section 4: Amends s. 284.385, F.S., relating to reporting and handling of claims.

Section 5: Creates s. 284.45, F.S., relating to sexual harassment victims.

Section 6: Amends s. 497.101, F.S., relating to Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.

Section 7: Creates s. 497.1411, F.S., relating to disqualification of applicants and licensees; penalties against licensees; rulemaking.

Section 8: Amends s. 497.142, F.S., relating to licensing; fingerprinting and criminal background checks.

Section 9: Amends s. 497.157, F.S., relating to unlicensed practice; remedies concerning violations by unlicensed persons.

Section 10: Amends s. 497.159, F.S., relating to crimes.

Section 11: Amends s. 552.081, F.S., relating to definitions.

Section 12: Amends s. 553.7921, F.S., relating to fire alarm permit application to local enforcement agency.

Section 13: Amends s. 626.2815, F.S., relating to continuing education requirements.

Section 14: Amends s. 626.371, F.S., relating to payment of fees, taxes for appointment period without appointment.

Section 15: Amends s. 626.8443, F.S., relating to duration of suspension or revocation.

Section 16: Amends s. 626.916, F.S., relating to eligibility for export.

Section 17: Amends s. 626.9551, F.S., relating to favored agent or insurer; coercion of debtors.

Section 18: Amends s. 627.715, F.S., relating to flood insurance.

Section 19: Amends s. 633.102, F.S., relating to definitions.

Section 20: Amends s. 633.136, F.S., relating to the fire and emergency incident information reporting program; duties; fire reports.

Section 21: Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code..

Section 22: Creates 633.217, F.S., relating to influencing a firesafety inspector; prohibited acts.

Section 23: Amends s. 633.402, F.S., relating to the Firefighters Employment, Standards, and Training Council; organization; meetings; quorum; compensation; seal; special powers; firefighter training.

Section 24: Amends s. 633.416, F.S., relating to firefighter employment and volunteer firefighter service; saving clause.

Section 25: Amends s. 648.30, F.S., relating to licensure and appointment required.

Section 26: Amends s. 843.08, F.S., relating to false personation.

Section 27: Amends s. 943.045, F.S., relating to definitions, ss. 943.045-943.08.

Section 28: Reenacts s. 497.141(5)(a), F.S., relating to licensing; general application procedures.

Section 29: Provides an effective date of July 1, 2021, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may increase state government expenditures by an indeterminable amount.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive, but indeterminable, fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Board of Funeral, Cemetery, and Consumer Services is directed to adopt rules to:

- Administer s. 497.1411, F.S.;
- Provide for additional disqualifying periods due to commitment of multiple crimes, which may include other factors reasonably related to the applicant's criminal history; and
- Provide for mitigating and aggravation factors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends provisions related to the effect of criminal history on license applications and renewals. However, the restrictions that the bill implements are not specific to or directly related to the duties and responsibilities of the various license types. The sponsor has indicated an intent to address this issue.

The bill attempts to reduce quorum requirements for the Board of Funeral, Cemetery, and Consumer Services. However, as amended, the new minimum requirement needed for quorum could be insufficient for fair and adequate Board representation. The sponsor has indicated an intent to address this issue.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; specifying powers and duties of the Division of Public Assistance Fraud; amending s. 284.30, F.S.; requiring the State Risk Management Trust Fund to provide insurance for certain firefighter cancer-related benefits; making technical changes; amending s. 284.31, F.S.; requiring the Insurance Risk Management Trust Fund to provide a separate account for certain firefighter cancer-related benefits; making technical changes; amending s. 284.385, F.S.; specifying a condition that must be met before certain firefighter cancer-related benefits may be paid from the State Risk Management Trust Fund; making technical changes; creating s. 284.45, F.S.; prohibiting individuals working for entities covered by the State Risk Management Trust Fund from engaging in retaliatory conduct against sexual harassment victims; defining the term "sexual harassment victim"; specifying a criminal penalty for the willful and knowing dissemination of a sexual harassment victim's personal identifying information, except under certain circumstances; specifying protected personal identifying information; amending s. 497.101, F.S.; revising provisions relating to membership of the

Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services; authorizing use of communications media technology for board member participation and determination of a quorum of the board; defining the term "communications media technology"; deleting a requirement for the department to adopt certain rules; making technical changes; creating s. 497.1411, F.S.; defining terms; providing for permanent disqualification of applicants for licensure under ch. 497, F.S., for certain offenses; providing for disqualifying periods for applicants for certain offenses; requiring the board to adopt rules; providing for calculation of disqualifying periods; providing conditions for licensure after completion of a disqualifying period; specifying the effect of a pardon or restoration of civil rights; providing for exemptions from disqualification if certain conditions are met; requiring an applicant for an exemption to provide certain evidence that he or she will not present a danger if licensed; granting the board the discretion to approve or deny an exemption; providing applicability; providing construction; amending s. 497.142, F.S.; revising criminal history disclosure requirements for applicants seeking licensure under

ch. 497, F.S.; amending s. 497.157, F.S.; prohibiting persons from acting as or advertising themselves as being funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; prohibiting persons from engaging in certain activities requiring licensure without holding required licenses; revising the criminal penalty for unlicensed activity; making technical changes; amending s. 497.159, F.S.; conforming a provision to changes made by the act; amending s. 552.081, F.S.; revising the definition of the term "two-component explosives" for the purpose of regulation by the Division of State Fire Marshal; amending s. 553.7921, F.S.; authorizing a contractor repairing certain existing fire alarm systems to begin work after filing an application for a required permit but before receiving the permit; providing construction; amending s. 626.2815, F.S.; revising continuing education requirements for certain persons licensed to solicit, sell, or adjust insurance; amending s. 626.371, F.S.; requiring submission of renewal appointments of certain insurance representatives within a certain timeframe; requiring the department to notify certain insurers or employers regarding inadvertent failures to appoint; requiring insurers and employers to pay

certain fees and taxes within a certain timeframe; authorizing the department to issue appointments under certain circumstances; prohibiting the department from considering inadvertent failures to appoint to be violations under certain circumstances; requiring the department to suspend an insurer's or employer's authority to appoint licensees under certain circumstances; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; making technical changes; amending s. 626.916, F.S.; deleting a requirement for agents to advise insureds that certain coverage may be available for personal residential property risks to be eligible for export under the Surplus Lines Law; amending s. 626.9551, F.S.; prohibiting requirements for the provision of replacement cost estimators or certain other proprietary business information under certain circumstances; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for surplus lines agents exporting contracts or endorsements providing flood coverage; amending s. 633.102, F.S.; revising the authority of certain fire protection system contractors to design or alter certain fire protection systems; providing for resolution of conflicts between the Florida

Building Code and the Florida Fire Prevention Code; amending s. 633.136, F.S.; replacing fire protection agencies in the Fire and Emergency Incident Information Reporting Program with fire service providers; revising the composition of the Fire and Emergency Incident Information System Technical Advisory Panel; defining the term "fire service provider"; amending s. 633.202, F.S.; extending a deadline for certain buildings to comply with a minimum radio signal strength requirement under the Florida Fire Prevention Code; requiring such buildings to meet certain conditions by a specified date; revising a condition that existing apartment buildings must meet by a specified date; making technical changes; creating s. 633.217, F.S.; prohibiting certain acts to influence a firesafety inspector to violate certain laws; prohibiting a firesafety inspector from knowingly and willfully accepting an attempt to influence him or her to violate certain laws; amending s. 633.402, F.S.; revising the composition of the Firefighters Employment, Standards, and Training Council; amending s. 633.416, F.S.; providing that certain persons serving as volunteer firefighters may serve as a regular or permanent firefighter for a limited period, subject to certain

restrictions; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; providing criminal penalties; amending s. 843.08, F.S.; prohibiting false personation of personnel or representatives of the Division of Investigative and Forensic Services; amending s. 943.045, F.S.; revising the definition of the term "criminal justice agency" to include the investigations component of the department which investigates certain crimes; reenacting s. 497.141(5)(a), F.S., relating to licensing and general application procedures, to incorporate the amendment made to s. 497.142, F.S., in a reference thereto; providing effective dates.

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

Section 1. Paragraph (f) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss.

943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records supporting such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 2. Section 284.30, Florida Statutes, is amended to read:

284.30 State Risk Management Trust Fund; coverages to be provided.—A state self-insurance fund, designated as the "State Risk Management Trust Fund," is created to be set up by the Department of Financial Services and administered with a program of risk management, which fund is to provide insurance, as authorized by s. 284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney ~~attorney's~~ fees paid by the state or any of its agencies, must serve a copy of the pleading claiming

the fees on the Department of Financial Services; and thereafter the department shall be entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

Section 3. Section 284.31, Florida Statutes, is amended to read:

284.31 Scope and types of coverages; separate accounts.—The Insurance Risk Management Trust Fund must ~~shall~~, unless specifically excluded by the Department of Financial Services, cover all departments of the State of Florida and their employees, agents, and volunteers and must ~~shall~~ provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. Unless specifically excluded by the Department of Financial Services, the Insurance Risk Management Trust Fund must ~~shall~~ provide fleet automotive liability coverage to motor vehicles titled to the state, or to any department of the state, when such motor vehicles are used by community transportation coordinators performing, under contract to the appropriate department of the state, services for the transportation disadvantaged under part I of chapter

427. Such fleet automotive liability coverage is ~~shall be~~ primary and is ~~shall be~~ subject to ~~the provisions of~~ s. 768.28 and parts II and III of chapter 284, and applicable rules adopted thereunder, and the terms and conditions of the certificate of coverage issued by the Department of Financial Services.

Section 4. Section 284.385, Florida Statutes, is amended to read:

284.385 Reporting and handling of claims.—

(1) All departments covered by the State Risk Management Trust Fund under this part shall immediately report all known or potential claims to the Department of Financial Services for handling, except employment complaints that ~~which~~ have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or any similar agency. When deemed necessary, the Department of Financial Services shall assign or reassign the claim to counsel. The assigned counsel shall report regularly to the Department of Financial Services or to the covered department on the status of any such claims or litigation as required by the Department of Financial Services. ~~No~~ Such claims may not ~~claim shall~~ be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services and prior notification to the covered department. All departments shall cooperate with the Department of Financial Services in its handling of claims. The

Department of Financial Services and the Department of Management Services, with the cooperation of the state attorneys and the clerks of the courts, shall develop a system to coordinate the exchange of information concerning claims for and against the state, its agencies, and its subdivisions, to assist in collection of amounts due to them. The covered department is responsible ~~shall have the responsibility~~ for the settlement of any claim for injunctive or affirmative relief under 42 U.S.C. s. 1983 or similar federal or state statutes. The payment of a settlement or judgment for any claim covered and reported under this part may ~~shall~~ be made only from the State Risk Management Trust Fund.

(2) Benefits provided under s. 112.1816(2) may not be paid from the fund until each request for any out-of-pocket deductible, copayment, or coinsurance costs and one-time cash payout has been validated and approved by the Department of Management Services.

Section 5. Section 284.45, Florida Statutes, is created to read:

284.45 Sexual harassment victims.—

(1) An individual working for an entity covered by the State Risk Management Trust Fund may not engage in retaliatory conduct of any kind against a sexual harassment victim. As used in this section, the term "sexual harassment victim" means an individual employed, or being considered for employment, with an

entity participating in the State Risk Management Trust Fund who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

(2) The willful and knowing dissemination of personal identifying information of a sexual harassment victim, which is confidential and exempt pursuant to s. 119.071(2)(n), to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order is a misdemeanor of the first degree, punishable as provided in s. 775.082. For purposes of this subsection, the term "personal identifying information" includes the name of the sexual harassment victim and his or her:

(a) Home address;

(b) Home phone number;

(c) Cellular phone number;

(d) E-mail address;

(e) Social media account username or uniform resource locator (URL); or

(f) Any other information that could reasonably be used to identify an alleged sexual harassment victim.

Section 6. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board must ~~shall~~ be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must ~~shall~~ be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter which ~~that~~ has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board must ~~shall~~ be persons whose primary occupation is associated with a

cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board must ~~shall~~ be consumers who are residents of this ~~the~~ state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members must ~~shall~~ be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board must be a consumer who is a resident of this state; is licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or an embalmer; is not a principal or an employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board must ~~shall~~ be a principal of a monument establishment licensed under this chapter as a monument builder. One member must ~~shall~~ be the State Health Officer or her or his designee. There may ~~shall~~ not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer

shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The board shall maintain its headquarters and records ~~of the board shall be~~ in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. The participation by a board member in a meeting conducted through communications media technology constitutes that individual's presence at such meeting. Board members appearing at a board meeting in person as well as board members appearing through the use of communications media technology shall be counted for the determination of a quorum. As used in this subsection,

"communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available. Unless otherwise provided by law, a majority of the board members eligible to vote constitutes a quorum for the purpose of conducting its business ~~six board members shall constitute a quorum for the conduct of the board's business~~.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 7. Section 497.1411, Florida Statutes, is created to read:

497.1411 Disqualification of applicants and licensees; penalties against licensees; rulemaking.—

(1) For purposes of this section, the term:

(a) "Applicant" means an individual applying for licensure or relicensure under this chapter, or an officer, a director, a

majority owner, a partner, a manager, or another person who manages or controls an entity applying for licensure or relicensure under this chapter.

(b) "Felony of the first degree" or "capital felony" includes all felonies designated as such in this state at the time of the commission of the offense, as well as any offense in another jurisdiction which is substantially similar to an offense so designated in this state.

(c) "Financial services business" means any financial activity regulated by the department, the Office of Insurance Regulation, or the Office of Financial Regulation.

(2) An applicant who has been found guilty of, or has pleaded guilty or nolo contendere to any of the following crimes, regardless of adjudication, is permanently barred from licensure under this chapter:

(a) A felony of the first degree.

(b) A capital felony.

(c) A felony money laundering offense.

(d) A felony embezzlement.

(3) An applicant who has been found guilty of, or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(a) A 10-year disqualifying period for all felonies involving moral turpitude which are not specifically included in the permanent bar from licensure contained in subsection (2).

(b) A 5-year disqualifying period for all felonies to which neither the permanent bar from licensure in subsection (2) nor the 10-year disqualifying period in paragraph (a) applies.

(c) A 5-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The board shall adopt rules to administer this section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules must provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 5 years and may not mitigate the disqualifying periods in paragraphs (3)(b) and (c).

(5) For purposes of this section, a disqualifying period begins upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence. The department may not issue a license to an applicant unless all related fines, court costs and fees, and court-ordered restitution have been paid.

(6) After the disqualifying period has expired, the burden is on the applicant to demonstrate that he or she has been rehabilitated, does not pose a risk to the public, is fit and trustworthy to engage in business regulated by this chapter, and is otherwise qualified for licensure.

(7) Notwithstanding subsections (2) and (3), an applicant

who has been found guilty of, or has pleaded guilty or nolo contendere to, a crime in subsection (2) or subsection (3) and who has subsequently been granted a pardon or the restoration of civil rights pursuant to chapter 940 and s. 8, Art. IV of the State Constitution, or a pardon or the restoration of civil rights under the laws of another jurisdiction with respect to a conviction in that jurisdiction, is not barred or disqualified from licensure under this chapter. However, such a pardon or restoration of civil rights does not require the department to award such license.

(8)(a) The board may grant an exemption from disqualification to any person disqualified from licensure under subsection (3) if:

1. The applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of the judgment and sentence for any disqualifying offense; and

2. At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court for a disqualifying offense.

(b) For the board to grant an exemption under this subsection, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if licensed under this chapter, evidence of which must

include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

(c) The board has discretion whether to grant or deny an exemption under this subsection. The board's decision is subject to chapter 120.

(9) The disqualification periods provided in this section do not apply to the renewal of a license or to a new application for licensure if the applicant has an active license as of July 1, 2021, and the applicable criminal history was considered by the board on the prior approval of any active license held by the applicant. This subsection does not affect any criminal history disclosure requirements of this chapter.

Section 8. Subsection (9) and paragraph (c) of subsection (10) of section 497.142, Florida Statutes, are amended to read:

497.142 Licensing; fingerprinting and criminal background checks.—

(9) If any applicant under this chapter has been~~, within the 10 years preceding the application under this chapter,~~ convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any

jurisdiction, the application shall not be deemed complete until such time as the applicant provides such certified true copies of the court records evidencing the conviction, finding, or plea as required by this section or~~,~~ as the licensing authority may by rule require.

(10)

(c) Crimes to be disclosed are:

1. Any felony ~~or misdemeanor~~, no matter when committed~~,~~ ~~that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation~~.

2. Any misdemeanor, no matter when committed, which was directly or indirectly related to the financial services business as defined in s. 497.1411 ~~Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter~~.

3. Any other misdemeanor not already disclosed under subparagraph 2. which ~~subparagraph 1. that~~ was committed within the 5 years immediately preceding the application under this chapter.

Section 9. Subsections (2) through (5) of section 497.157, Florida Statutes, are redesignated as subsections (4) through

(7), respectively, new subsections (2) and (3) and subsection (8) are added to that section, and present subsection (3) of that section is amended, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, an embalmer, or a direct disposer unless he or she is currently licensed by the department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which he or she is executing preneed contracts.

(5) ~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and is ~~shall be~~ effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the

immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4) ~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph must ~~shall~~ be, at the election of the department, in the courts of Leon County~~,~~ or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order will ~~shall~~ be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Subsection (6) of section 497.159, Florida Statutes, is amended to read:

497.159 Crimes.—

~~(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter,~~

~~commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 11. Subsection (13) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(13) "Two-component explosives" means any two inert components that ~~which~~, when mixed, become capable of detonation by a detonator ~~a No. 6 blasting cap~~, and shall be classified as a Class "A" explosive when so mixed.

Section 12. Subsection (2) of section 553.7921, Florida Statutes, is redesignated as subsection (3), a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (3) ~~(2)~~ with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm, if the local enforcement agency requires a plan review for the installation or replacement~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

(2) If the local enforcement agency requires a fire alarm permit to repair an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin work after filing a Uniform Fire Alarm Permit Application as provided in subsection (3). A fire alarm repaired pursuant to this subsection may not be considered compliant until the required permit is issued and the local enforcement agency approves the repair.

Section 13. Effective January 1, 2022, subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour ~~5-hour~~ update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at

least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(a) Except as provided in paragraphs (b), (c), (d), (e), (i), and (j), each licensee must also complete 20 ~~19~~ hours of elective continuing education courses every 2 years.

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 16 ~~15~~ hours of elective continuing education every 2 years.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 ~~5~~ hours of elective continuing education courses every 2 years.

(d) An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 ~~5~~ hours of continuing education courses every 2 years.

(e) An individual subject to chapter 648 must complete the 4-hour ~~5-hour~~ update course and a minimum of 10 ~~9~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public adjusters must be specifically designed for public adjusters and

approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or in another position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

(i) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which must ~~shall~~ include at least 3 hours of

continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

(j) For a licensee who is an active participant in an association, 2 hours of elective continuing education credit per calendar year may be approved by the department, if properly reported by the association.

Section 14. Subsections (1) and (2) of section 626.371, Florida Statutes, are amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—

(1) All initial and renewal appointments shall be submitted to the department on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.

(2)(a) If, upon application and qualification for an initial or renewal appointment and such investigation as the department may make, ~~it appears to~~ the department determines that an individual has not been properly appointed to represent an insurer or employer, that such individual ~~who~~ was formerly licensed or is currently licensed, ~~but not properly appointed to represent an insurer or employer~~ and that such individual ~~who~~ has been actively engaged or is currently actively engaged as such an appointee, ~~but without being appointed as required,~~ the department shall ~~may~~, if it finds that such failure to be

appointed was an inadvertent error on the part of the insurer or employer so represented, notify the insurer or employer of its finding and of the requirement to pay all fees and taxes due pursuant to paragraph (b) within 21 days.

(b) The department may ~~nevertheless~~ issue or authorize the issuance of the appointment upon the insurer's or employer's timely payment to the department of ~~as applied for but subject to the condition that, before the appointment is issued,~~ all fees and taxes that ~~which~~ would have been due had the applicant been properly ~~so~~ appointed during such current and prior periods, including ~~with applicable~~ fees that would have been due pursuant to s. 624.501 for such current and prior periods of appointment~~, shall be paid to the department~~.

(c) Upon proper appointment of the individual and payment of all fees and taxes due pursuant to paragraph (b), paragraph (3)(a), and s. 624.501 by the insurer or employer, the department may no longer consider the inadvertent failure to appoint to be a violation of this code.

(d) If the insurer or employer does not pay the fees and taxes due pursuant to paragraph (b) within 21 days after notice by the department, the department shall suspend the insurer's or employer's authority to appoint licensees until all outstanding fees have been paid.

Section 15. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period may ~~shall~~ not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility will ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department may ~~shall~~ not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 16. Paragraph (e) of subsection (1) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

~~(e) For personal residential property risks, the retail or producing agent must advise the insured in writing that coverage may be available and may be less expensive from Citizens~~

~~Property Insurance Corporation. The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage. If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.~~

Section 17. Paragraph (e) is added to subsection (1) of section 626.9551, Florida Statutes, to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(1) No person may:

(e) Require, directly or indirectly, the provision of, and an insurance agent or a broker may not provide, directly or indirectly, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, the replacement cost estimator or other underwriting information that is proprietary business information, as defined in s. 624.4212(1), to the insurer underwriting the insurance policy covering such property.

Section 18. Subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 19. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

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

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service

water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to

fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified as a Contractor I or~~,~~ Contractor II~~, or Contractor IV under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers;~~, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy, as defined in the Florida

Building Code and the Florida Fire Prevention Code, of the affected areas and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design or alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 20. Section 633.136, Florida Statutes, is amended to read:

633.136 Fire and Emergency Incident Information Reporting Program; duties; fire reports.—

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the division. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident

information to and between fire service providers ~~protection agencies~~.

2. Initiate a Fire and Emergency Incident Information Reporting System that is ~~shall be~~ responsible for:

a. Receiving fire and emergency incident information from fire service providers ~~protection agencies~~.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire service providers ~~protection agencies~~, and, upon request, the public. Each report must ~~shall~~ include, but not be limited to, the information listed in the National Fire Incident Reporting System.

c. Upon request, providing other states and federal agencies with fire and emergency incident data of this state.

3. Adopt rules to effectively and efficiently implement, administer, manage, maintain, and use the Fire and Emergency Incident Information Reporting Program. The rules shall be considered minimum requirements and may ~~shall~~ not preclude a fire service provider ~~protection agency~~ from implementing its own requirements that ~~which~~ may not conflict with the rules of the division.

4. By rule, establish procedures and a format for each fire service provider ~~protection agency~~ to voluntarily monitor its records and submit reports to the program.

5. Maintain ~~Establish~~ an electronic information database

that is accessible and searchable by fire service providers ~~protection agencies~~.

(b) The division shall consult with the Florida Forest Service of the Department of Agriculture and Consumer Services and the State Surgeon General of the Department of Health to coordinate data, ensure accuracy of the data, and limit duplication of efforts in data collection, analysis, and reporting.

(2) The Fire and Emergency Incident Information System Technical Advisory Panel is created within the division. The panel shall advise, review, and recommend to the State Fire Marshal with respect to the requirements of this section. The membership of the panel consists ~~shall consist~~ of the ~~following~~ 15 members~~:~~

~~(a) The current 13 members~~ of the Firefighters Employment, Standards, and Training Council as established in s. 633.402.

~~(b) One member from the Florida Forest Service of the Department of Agriculture and Consumer Services, appointed by the director of the Florida Forest Service.~~

~~(c) One member from the Department of Health, appointed by the State Surgeon General.~~

(3) As used in ~~For the purpose of~~ this section, the term "fire service provider" has the same meaning as in s. 633.102 ~~"fire protection agency" shall be defined by rule by the division~~.

Section 21. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2023 ~~2022~~. However, by January 1, 2022 ~~December 31, 2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment ~~apply for an appropriate permit~~ for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2023 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings must have completed a minimum radio strength assessment ~~are required to apply for the appropriate permit~~ for the required communications installation by December 31, 2022.

Section 22. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited

acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and willfully accept an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

Section 23. Subsection (1) of section 633.402, Florida Statutes, is amended to read:

633.402 Firefighters Employment, Standards, and Training Council; organization; meetings; quorum; compensation; seal; special powers; firefighter training.—

(1) There is created within the department a Firefighters Employment, Standards, and Training Council of 15 ~~14~~ members.

(a) The members shall be appointed as follows:

1. Two fire chiefs appointed by the Florida Fire Chiefs

Association.

2. Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association.

3. Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal.

4. One individual appointed by the Florida League of Cities.

5. One individual appointed by the Florida Association of Counties.

6. One individual appointed by the Florida Association of Special Districts.

7. One individual appointed by the Florida Fire Marshals' and Inspectors' Association.

8. One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service.

9. One individual appointed by the State Fire Marshal.

10. One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal.

11. One individual ~~The remaining member~~, ~~who shall be~~ appointed by the State Fire Marshal, who may not be a member or representative of the firefighting profession or of any local government.

12. One individual from the Department of Health,

appointed by the Surgeon General.

(b) To be eligible for appointment as a member under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., subparagraph (a)8., or subparagraph (a)10., a person must have had at least 4 years' experience in the firefighting profession. Members shall serve only as long as they continue to meet the criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.

Section 24. Subsection (1) of section 633.416, Florida Statutes, is amended to read:

633.416 Firefighter employment and volunteer firefighter service; saving clause.—

(1) A fire service provider may not employ an individual to:

(a) Extinguish fires for the protection of life or property or to supervise individuals who perform such services unless the individual holds a current and valid Firefighter Certificate of Compliance. However, a person who is currently serving as a volunteer firefighter and holds a volunteer firefighter certificate of completion with a fire service provider, who is then employed as a regular or permanent firefighter by such fire service provider, may function, for a period of 1 year under the direct supervision of an individual holding a valid Firefighter Certificate of Compliance, in the

same capacity in which he or she acted as a volunteer firefighter, provided that he or she has completed all training required by the volunteer organization. Under no circumstance can this period extend beyond 1 year either collectively or consecutively from the start of employment to obtain a Firefighter Certificate of Compliance; or

(b) Serve as the administrative and command head of a fire service provider for a period in excess of 1 year unless the individual holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

Section 25. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a

bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, ~~a fire or arson investigator of the Department of Financial Services,~~ an officer of the Department of Financial Services, any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police

officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 27. Paragraph (f) is added to subsection (11) of section 943.045, Florida Statutes, to read:

943.045 Definitions; ss. 943.045-943.08.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(11) "Criminal justice agency" means:

(f) The investigations component of the Department of Financial Services which investigates the crimes of fraud and official misconduct in all public assistance given to residents of this state or provided to others by the state.

Section 28. For the purpose of incorporating the amendment made by this act to section 497.142, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section 497.141, Florida Statutes, is reenacted to read:

497.141 Licensing; general application procedures.—

(5)(a) The licensing authority may not issue, and effective July 1, 2011, may not renew, a license under this chapter to an applicant that has a criminal record required to be disclosed under s. 497.142(10) unless the applicant demonstrates that issuance of the license, according to rules adopted by the licensing authority, does not create a danger to the public. A licensee who previously disclosed her or his criminal record upon initial application or renewal of her or his license must disclose only a criminal offense for which the licensee was convicted or entered a plea of guilty or nolo contendere since the most recent renewal of her or his license or, if the license has not been renewed, since the licensee's initial application.

Section 29. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1,

2021.

## INSURANCE & BANKING SUBCOMMITTEE

## HB 1209 by Rep. Fetterhoff
## Department of Financial Services

## AMENDMENT SUMMARY
## March 17, 2021

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**Amendment 1 by Rep. Fetterhoff (line 169):** The amendment:

- Clarifies that the change to have the State Risk Management Trust Fund responsible for benefits payable to a firefighter with a cancer diagnosis under s. 112.1816(2), F.S., applies to fire fighters who are employees of state agencies.
- Removes the definition of "personal identifying information" to avoid potential conflict with the public records laws in ch. 119, F.S.
- Removes language decreasing the number of members required for the Board of Funeral, Cemetery, and Consumer Services (FCCS) to satisfy quorum for conducting business. Restores current law requiring six of the ten members to satisfy quorum.
- Removes section 7 of the bill involving permanent and temporary bars to FCCS licensure based upon an applicant's criminal history.
- Removes section 8 of the bill expanding the criminal history disclosure requirements for an applicant for FCCS licensure.
- Adds a section to the bill allowing licensed funeral director interns meeting specified requirements to continue performing as an intern pending licensure approval.
- Adds a section to the bill allowing licensed combination funeral director and embalmer interns meeting specified requirements to continue performing as an intern pending licensure approval.
- Clarifies that if a preneed contract has been fulfilled, then certain deposit requirements related the proceeds received on contracts do not apply.

**Amendment 2 by Rep. Fetterhoff (line 686):** The amendment:

- Makes technical changes to add the word "taxes" for consistent use in provisions related to an insurer's or employer's payment of all "fees and taxes" for insurance representative appointments.
- Clarifies language involving the protection of insurer proprietary business information related to the replacement cost estimator or other underwriting information of an insurer underwriting an insurance policy covering real property.
- Clarifies language of a new provision prohibiting the influencing of a firesafety inspector.

**Amendment to Amendment 2 by Rep. Fabricio (line 261):** The amendment adds the designation of "Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC" to the list of designations that will qualify a person for licensure as an insurance agent's customer representative.

**Amendment 3 by Rep. Fabricio (line 941):** The amendment changes a qualification for a license or permit to install and maintain fire suppression equipment by requiring applicants to complete a training course that includes written and practical training and is specifically applicable to the class of license or permit sought. Additionally, the amendment allows training courses that are approved by the State Fire Marshal, regardless of whether such training courses are offered by the State Fire College.

COMMITTEE/SUBCOMMITTEE ACTION

| | |
|---|---|
| ADOPTED | ___ (Y/N) |
| ADOPTED AS AMENDED | ___ (Y/N) |
| ADOPTED W/O OBJECTION | ___ (Y/N) |
| FAILED TO ADOPT | ___ (Y/N) |
| WITHDRAWN | ___ (Y/N) |
| OTHER | _____ |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fetterhoff offered the following:

**Amendment (with title amendment)**

Remove lines 169-552 and insert:

benefits payable to an employee of a state agency under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney ~~attorney's~~ fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services; and thereafter the department shall be entitled to

participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

Section 3. Section 284.31, Florida Statutes, is amended to read:

284.31 Scope and types of coverages; separate accounts.—The Insurance Risk Management Trust Fund must ~~shall~~, unless specifically excluded by the Department of Financial Services, cover all departments of the State of Florida and their employees, agents, and volunteers and must ~~shall~~ provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. Unless specifically excluded by the Department of Financial Services, the Insurance Risk Management Trust Fund must ~~shall~~ provide fleet automotive liability coverage to motor vehicles titled to the state, or to any department of the state, when such motor vehicles are used by community transportation coordinators performing, under contract to the appropriate department of the state, services for the transportation disadvantaged under part I of chapter 427. Such fleet automotive liability coverage is ~~shall be~~ primary and is ~~shall be~~ subject to ~~the provisions of~~ s. 768.28

and parts II and III of chapter 284, and applicable rules adopted thereunder, and the terms and conditions of the certificate of coverage issued by the Department of Financial Services.

Section 4. Section 284.385, Florida Statutes, is amended to read:

284.385 Reporting and handling of claims.—

(1) All departments covered by the State Risk Management Trust Fund under this part shall immediately report all known or potential claims to the Department of Financial Services for handling, except employment complaints that ~~which~~ have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or any similar agency. When deemed necessary, the Department of Financial Services shall assign or reassign the claim to counsel. The assigned counsel shall report regularly to the Department of Financial Services or to the covered department on the status of any such claims or litigation as required by the Department of Financial Services. ~~No~~ Such claims may not ~~claim shall~~ be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services and prior notification to the covered department. All departments shall cooperate with the Department of Financial Services in its handling of claims. The Department of Financial Services and the Department of Management Services, with the cooperation of the state attorneys

and the clerks of the courts, shall develop a system to coordinate the exchange of information concerning claims for and against the state, its agencies, and its subdivisions, to assist in collection of amounts due to them. The covered department is responsible ~~shall have the responsibility~~ for the settlement of any claim for injunctive or affirmative relief under 42 U.S.C. s. 1983 or similar federal or state statutes. The payment of a settlement or judgment for any claim covered and reported under this part may ~~shall~~ be made only from the State Risk Management Trust Fund.

(2) Benefits provided under s. 112.1816(2) may not be paid from the fund until each request for any out-of-pocket deductible, copayment, or coinsurance costs and one-time cash payout has been validated and approved by the Department of Management Services.

Section 5. Section 284.45, Florida Statutes, is created to read:

284.45 Sexual harassment victims.—

(1) An individual working for an entity covered by the State Risk Management Trust Fund may not engage in retaliatory conduct of any kind against a sexual harassment victim. As used in this section, the term "sexual harassment victim" means an individual employed, or being considered for employment, with an entity participating in the State Risk Management Trust Fund who becomes a victim of workplace sexual harassment through the

course of employment, or while being considered for employment, with the entity.

(2) The willful and knowing dissemination of personal identifying information of a sexual harassment victim, which is confidential and exempt pursuant to s. 119.071(2)(n), to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order is a misdemeanor of the first degree, punishable as provided in s. 775.082.

Section 6. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that

vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board must ~~shall~~ be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must ~~shall~~ be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter which ~~that~~ has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board must ~~shall~~ be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board must ~~shall~~ be consumers who are residents of this ~~the~~ state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members must ~~shall~~ be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board must be a consumer who is a resident of this state; is licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or an embalmer; is not a principal or an

employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board must ~~shall~~ be a principal of a monument establishment licensed under this chapter as a monument builder. One member must ~~shall~~ be the State Health Officer or her or his designee. There may ~~shall~~ not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The board shall maintain its headquarters and records ~~of the board shall be~~ in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The

Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. The participation by a board member in a meeting conducted through communications media technology constitutes that individual's presence at such meeting. Board members appearing at a board meeting in person as well as board members appearing through the use of communications media technology shall be counted for the determination of a quorum. As used in this subsection, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available. Unless otherwise provided by law, six board members shall constitute a quorum for the conduct of the board's business.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former~~

~~Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 7. Subsections (2) through (5) of section 497.157, Florida Statutes, are redesignated as subsections (4) through (7), respectively, new subsections (2) and (3) and subsection (8) are added to that section, and present subsection (3) of that section is amended, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, an embalmer, or a direct disposer unless he or she is currently licensed by the department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which he or she is executing preneed contracts.

(5)~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order

may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and is ~~shall be~~ effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4) ~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph must ~~shall~~ be, at the election of the department, in the courts of Leon County, or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order will ~~shall~~ be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Subsection (6) of section 497.159, Florida Statutes, is amended to read:

497.159 Crimes.—

~~(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 9. Subsection (4) of section 497.375, Florida Statutes, is amended to read:

497.375 Funeral directing; licensure of a funeral director intern.-

(4)(a) A funeral director intern license expires 1 year after issuance and, except as provided in paragraph (b), paragraph (c) or paragraph (~~e~~e), may not be renewed.

(b) A funeral director intern who is eligible for licensure under subparagraph (1)(b)2. may renew her or his funeral director intern license for an additional 1-year period if the funeral director in charge of the funeral director intern training agency certifies to the licensing authority that the intern has completed at least one-half of the course of study in mortuary science or funeral service arts.

(c) The licensing authority may adopt rules that allow a funeral director intern to renew her or his funeral director

intern license for an additional 1-year period if the funeral director intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a funeral director but is awaiting the results of a licensure examination. However, a funeral director intern who renews her or his license under paragraph (b) is not eligible to renew the license under this paragraph.

(d) The licensing authority may require payment of a nonrefundable fee for the renewal of any funeral director intern license. The fee shall be set by rule of the licensing authority but may not exceed the fee set pursuant to paragraph (1)(a) for an initial funeral director intern license.

(e) Upon expiration of a funeral director intern license, any intern that has completed the educational credentials required for a license as a funeral director and has applied for licensure may continue to perform the tasks, functions, and duties related to funeral directing in the manner provided in subsection 1(d) until a license is issued or denied, or for a period 90 days, whichever occurs sooner.

Section 10. Subsection (2) of section 497.377, Florida Statutes, is amended to read:

497.377 Combination funeral directors and embalmers; internships.

(2)(a) An applicant who has not completed the educational credentials required for a combination license as both funeral director and embalmer is eligible for licensure as a combination funeral director and embalmer intern if the applicant:

1. Is currently enrolled in and attending a college accredited by the American Board of Funeral Service Education (ABFSE) in a course of study in mortuary science accredited by ABFSE.

2. Has completed at least 75 percent of the course of study in mortuary science as certified by the college in which the applicant is currently enrolled.

3. Has taken and received a passing grade in a college credit course in mortuary law or funeral service law and has taken and received a passing grade in a college credit course in ethics.

(b) An application for a combination funeral director and embalmer intern license must include the name and address of the funeral director licensed under s. 497.373 or s. 497.374(1) and the embalmer licensed under s. 497.368 or s. 497.369 under whose supervision the intern will receive training and the name of the licensed funeral establishment at which the training will be conducted.

(c) A combination funeral director and embalmer intern may perform only the tasks, functions, and duties relating to funeral directing and embalming which are performed under the direct supervision of a licensed funeral director who has an active, valid license under s. 497.373 or s. 497.374(1) and an embalmer who has an active, valid license under s. 497.368 or s. 497.369. However, a combination funeral director and embalmer intern may perform such tasks, functions, and duties under the general supervision of a licensed funeral director and embalmer upon graduation from a college accredited by ABFSE with a degree as specified in s. 497.373(1)(d) and upon passage of the examination required under s. 497.373(2)(b) if the funeral director in charge of the internship training establishment, after 6 months of direct supervision, certifies to the licensing authority that the intern is competent to complete the internship under general supervision.

(d)1. A combination funeral director and embalmer intern license expires 1 year after issuance and, except as provided in subparagraph 2., may not be renewed~~.~~ ,however, upon expiration of a combination funeral director and embalmer intern license, any intern that has completed the educational credentials required for a combination license as both funeral director and embalmer and has applied for licensure may continue to perform the tasks, functions, and duties related to funeral directing and embalming in the manner provided in subsection 2(c) until a

license is issued or denied, or for a period 90 days, whichever occurs sooner.

2. The licensing authority may adopt rules that allow a combination funeral director and embalmer intern to renew her or his combination funeral director and embalmer intern license for an additional 1 year if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.

Section 11. Subsection (1) of section 497.458, Florida Statutes, is amended to read:

497.458 Disposition of proceeds received on contracts.

(1)(c) Unless the preneed contract has been fulfilled, such deposits shall be made within 30 days after the end of the calendar month in which payment is received under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers.

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**T I T L E A M E N D M E N T**

Remove lines 23-60 and insert:

circumstances; amending s. 497.101, F.S.; revising provisions relating to membership of the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services; authorizing use of communications media technology for board member participation; defining the term "communications media technology"; deleting a requirement for the department to adopt certain rules; making technical changes; amending s. 497.157, F.S.; prohibiting persons from acting as or advertising themselves as being funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; prohibiting persons from engaging in certain activities requiring licensure without holding required licenses; revising the criminal penalty for unlicensed activity; making technical changes; amending s. 497.159, F.S.; conforming a provision to changes made by the act; amending s. 497.375, F.S.; allowing licensed funeral director interns to continue performing tasks while transitioning to a career license; amending s. 497.377, F.S.; allowing licensed combination funeral director and embalmer interns to continue performing tasks while transitioning to a career license;

388 amending s. 497.458, F.S., adding that deposits shall
389 be made unless the preneed contract has been
390 fulfilled; amending s. 552.081, F.S.;
391

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | __ | (Y/N) |
| ADOPTED AS AMENDED | __ | (Y/N) |
| ADOPTED W/O OBJECTION | __ | (Y/N) |
| FAILED TO ADOPT | __ | (Y/N) |
| WITHDRAWN | __ | (Y/N) |
| OTHER | _____ | |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee
Representative Fetterhoff offered the following:

**Amendment (with title amendment)**

Remove lines 686-941 and insert:

periods, including ~~with applicable~~ fees and taxes that would have been due pursuant to s. 624.501 for such current and prior periods of appointment~~, shall be paid to the department~~.

(c) Upon proper appointment of the individual and payment of all fees and taxes due pursuant to paragraph (b), paragraph (3)(a), and s. 624.501 by the insurer or employer, the department may no longer consider the inadvertent failure to appoint to be a violation of this code.

(d) If the insurer or employer does not pay the fees and taxes due pursuant to paragraph (b) within 21 days after notice

by the department, the department shall suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 15. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period may ~~shall~~ not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility will ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department may ~~shall~~ not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 16. Paragraph (e) of subsection (1) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

~~(e) For personal residential property risks, the retail or producing agent must advise the insured in writing that coverage may be available and may be less expensive from Citizens Property Insurance Corporation. The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage. If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.~~

Section 17. Paragraph (e) is added to subsection (1) of section 626.9551, Florida Statutes, to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(1) No person may:

(e) Require an insurance agent or agency to directly or indirectly provide the replacement cost estimator or other underwriting information of an insurer underwriting an insurance policy covering real property, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, when such information is the proprietary business information of an insurer, as defined

in s. 624.4212(1), nor may an agent or agency provide this information.

Section 18. Subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 19. Subsection (3) of section 633.102, Florida Statutes, is amended to read:

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

(3)(a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay

out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family

homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does ~~do~~ not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified as a Contractor I or~~,~~ Contractor II~~, or Contractor IV under this chapter~~ may design new fire protection systems of 49 or fewer sprinklers;~~, and~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of ~~not more than~~ 49 or fewer

sprinklers, notwithstanding the size of the existing fire sprinkler system; or may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy, as defined in the Florida Building Code and the Florida Fire Prevention Code, of the affected areas and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design or alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 20. Section 633.136, Florida Statutes, is amended to read:

633.136 Fire and Emergency Incident Information Reporting Program; duties; fire reports.—

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the division. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire service providers ~~protection agencies~~.

2. Initiate a Fire and Emergency Incident Information Reporting System that is ~~shall be~~ responsible for:

a. Receiving fire and emergency incident information from fire service providers ~~protection agencies~~.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire service providers ~~protection agencies~~, and, upon request, the public. Each report must ~~shall~~ include, but not be limited to, the information listed in the National Fire Incident Reporting System.

c. Upon request, providing other states and federal agencies with fire and emergency incident data of this state.

3. Adopt rules to effectively and efficiently implement, administer, manage, maintain, and use the Fire and Emergency Incident Information Reporting Program. The rules shall be considered minimum requirements and may ~~shall~~ not preclude a

fire service provider ~~protection agency~~ from implementing its own requirements that ~~which~~ may not conflict with the rules of the division.

4. By rule, establish procedures and a format for each fire service provider ~~protection agency~~ to voluntarily monitor its records and submit reports to the program.

5. Maintain ~~Establish~~ an electronic information database that is accessible and searchable by fire service providers ~~protection agencies~~.

(b) The division shall consult with the Florida Forest Service of the Department of Agriculture and Consumer Services and the State Surgeon General of the Department of Health to coordinate data, ensure accuracy of the data, and limit duplication of efforts in data collection, analysis, and reporting.

(2) The Fire and Emergency Incident Information System Technical Advisory Panel is created within the division. The panel shall advise, review, and recommend to the State Fire Marshal with respect to the requirements of this section. The membership of the panel consists ~~shall consist~~ of the ~~following~~ 15 members~~:~~

~~(a) The current 13 members~~ of the Firefighters Employment, Standards, and Training Council as established in s. 633.402.

~~(b) One member from the Florida Forest Service of the Department of Agriculture and Consumer Services, appointed by the director of the Florida Forest Service.~~

~~(c) One member from the Department of Health, appointed by the State Surgeon General.~~

(3) As used in ~~For the purpose of~~ this section, the term "fire service provider" has the same meaning as in s. 633.102 ~~"fire protection agency" shall be defined by rule by the division~~.

Section 21. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2023 ~~2022~~. However, by January 1, 2022 ~~December 31, 2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment ~~apply for an appropriate permit~~ for the required installation with the local government agency having jurisdiction and must demonstrate that the building will

become compliant by January 1, 2023 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings must have completed a minimum radio strength assessment ~~are required to apply for the appropriate permit~~ for the required communications installation by December 31, 2022.

Section 22. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and intentionally request, solicit, accept, or agree to accept compensation offered as described in paragraph (1)(b).

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**T I T L E A M E N D M E N T**

Remove lines 118-120 and insert:
inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept compensation offered to induce a violation of certain laws; amending s. 633.402, F.S.; revising the

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | __ | (Y/N) |
| ADOPTED AS AMENDED | __ | (Y/N) |
| ADOPTED W/O OBJECTION | __ | (Y/N) |
| FAILED TO ADOPT | __ | (Y/N) |
| WITHDRAWN | __ | (Y/N) |
| OTHER | _____ | |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fabricio offered the following:

**Amendment to Amendment (747305) by Representative Fetterhoff (with title amendment)**

Between lines 261 and 262 of the amendment, insert:

Section 23. Subsection (3) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 years preceding the date that the application for license was filed with the department, the applicant has

earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum.

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**T I T L E  A M E N D M E N T**

Remove line 269 of the amendment and insert:
laws; amending s. 626.7351, F.S.; revising the qualifications for customer representative licenses; amending s. 633.402, F.S.; revising the

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | ____ | (Y/N) |
| ADOPTED AS AMENDED | ____ | (Y/N) |
| ADOPTED W/O OBJECTION | ____ | (Y/N) |
| FAILED TO ADOPT | ____ | (Y/N) |
| WITHDRAWN | ____ | (Y/N) |
| OTHER | | |

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Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fabricio offered the following:

**Amendment (with title amendment)**

Between lines 941 and 942, insert:

Section 23. Paragraphs (d), (g), and (h) of subsection (4) of section 633.304, Florida Statutes, are amended to read:

633.304 Fire suppression equipment; license to install or maintain.—

(4)

(d) A license of any class may not be issued or renewed by the division and a license of any class does not remain operative unless:

1. The applicant has submitted to the State Fire Marshal evidence of registration as a Florida corporation or evidence of compliance with s. 865.09.

2. The State Fire Marshal or his or her designee has by inspection determined that the applicant possesses the equipment required for the class of license sought. The State Fire Marshal shall give an applicant a reasonable opportunity to correct any deficiencies discovered by inspection. To obtain such inspection, an applicant with facilities located outside this state must:

a. Provide a notarized statement from a professional engineer licensed by the applicant's state of domicile certifying that the applicant possesses the equipment required for the class of license sought and that all such equipment is operable; or

b. Allow the State Fire Marshal or her or his designee to inspect the facility. All costs associated with the State Fire Marshal's inspection must be paid by the applicant. The State Fire Marshal, in accordance with s. 120.54, may adopt rules to establish standards for the calculation and establishment of the amount of costs associated with any inspection conducted by the State Fire Marshal under this section. Such rules must include procedures for invoicing and receiving funds in advance of the inspection.

3. The applicant has submitted to the State Fire Marshal proof of insurance providing coverage for comprehensive general liability for bodily injury and property damage, products liability, completed operations, and contractual liability. The State Fire Marshal shall adopt rules providing for the amounts of such coverage, but such amounts may not be less than $300,000 for Class A or Class D licenses, $200,000 for Class B licenses, and $100,000 for Class C licenses; and the total coverage for any class of license held in conjunction with a Class D license may not be less than $300,000. The State Fire Marshal may, at any time after the issuance of a license or its renewal, require upon demand, and in no event more than 30 days after notice of such demand, the licensee to provide proof of insurance, on the insurer's form, containing confirmation of insurance coverage as required by this chapter. Failure, for any length of time, to provide proof of insurance coverage as required must result in the immediate suspension of the license until proof of proper insurance is provided to the State Fire Marshal. An insurer that provides such coverage shall notify the State Fire Marshal of any change in coverage or of any termination, cancellation, or nonrenewal of any coverage.

4. The applicant applies to the State Fire Marshal, provides proof of experience, and successfully completes a prescribed training course that includes both written and practical training ~~offered by the State Fire College or an~~

~~equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought. This subparagraph does not apply to any holder of or applicant for a permit under paragraph (g) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

5. The applicant has a current retestor identification number that is appropriate for the license for which the applicant is applying and that is listed with the United States Department of Transportation.

6. The applicant has passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes governing the activities authorized by the license and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination must be developed and administered by the State Fire Marshal, or his or her designee in accordance with policies and procedures of the State Fire Marshal. An applicant shall pay a nonrefundable examination fee of $50 for each examination or reexamination scheduled. A reexamination may not be scheduled sooner than 30 days after any administration of an examination to an applicant. An applicant may not be permitted to take an

examination for any level of license more than a total of four times during 1 year, regardless of the number of applications submitted. As a prerequisite to licensure of the applicant, he or she:

a. Must be at least 18 years of age.

b. Must have 4 years of proven experience as a fire equipment permittee at a level equal to or greater than the level of license applied for or have a combination of education and experience determined to be equivalent thereto by the State Fire Marshal. Having held a permit at the appropriate level for the required period constitutes the required experience.

c. Must not have been convicted of a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country. "Convicted" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case. If an applicant has been convicted of any such felony, the applicant is excluded from licensure for a period of 4 years after expiration of sentence or final release by the Florida Commission on Offender Review unless the applicant, before the expiration of the 4-year period, has received a full pardon or has had her or his civil rights restored.

This subparagraph does not apply to any holder of or applicant for a permit under paragraph (g) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, hydrotesting, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

(g) A permit of any class may not be issued or renewed to a person by the division, and a permit of any class does not remain operative, unless the person has:

1. Submitted a nonrefundable examination fee in the amount of $50.

2. Successfully completed a training course that includes both written and practical training ~~offered by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought.

3. Passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes governing the activities authorized by the permit and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination must be developed and administered by the State Fire Marshal in accordance with the policies and procedures of the State Fire Marshal. An examination fee must be paid for each examination

scheduled. A reexamination may not be scheduled sooner than 30 days after any administration of an examination to an applicant. An applicant may not be permitted to take an examination for any level of permit more than four times during 1 year, regardless of the number of applications submitted. As a prerequisite to taking the permit examination, the applicant must be at least 16 years of age.

(h) An applicant for a license or permit under this section who fails the examination may take it three more times during the 1-year period after he or she originally filed an application for the examination. If the applicant fails the examination within 1 year after the application date and he or she seeks to retake the examination, he or she must file a new application, pay the application and examination fees, and successfully complete a prescribed training course that includes both written and practical training ~~offered by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought. The applicant may not submit a new application within 6 months after the date of his or her fourth reexamination. An applicant who passes the examination but does not meet the remaining qualifications prescribed by law and rule within 1 year after the application date must file a new application, pay the application and examination fee, successfully complete a prescribed training course that includes both written and

practical training ~~approved by the State Fire College or an equivalent course~~ approved by the State Fire Marshal as applicable to the class of license being sought, and pass the written examination.

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**T I T L E A M E N D M E N T**

Remove line 120 and insert:
laws; amending s. 633.304, F.S.; revising the training requirements for licenses and permits to install or maintain fire suppression equipment; amending s. 633.402, F.S.; revising the

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1351 Money Services Businesses
**SPONSOR(S):** Aloupis
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1758

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Hinshelwood | Luczynski |
| 2) State Administration & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR's) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs. Currently, virtual currency is not expressly within ch. 560, F.S., though in the last six years OFR has received approximately 64 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like "fiat" currency (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction. Bitcoin is one example of a virtual currency.

In a recent case, the Third District Court of Appeal's holdings related to Bitcoin illustrate the need to expressly provide whether and how virtual currency falls within ch. 560, F.S., as well as the need to clarify certain definitions in that chapter. In particular, the court held that the definition of "money transmitter" does not require licensure only for third-party intermediaries but even for persons involved in a two-party transaction.

Within ch. 560, F.S., the bill adds a definition for "virtual currency" and amends the definitions of "electronic instrument", "monetary value", "money transmitter", "payment instrument", and "stored value". The amendments to these definitions provide clarity as to their meaning; make virtual currency expressly subject to money transmitter regulations but not regulations for other types of licenses under ch. 560, F.S.; and clarify that a money transmitter license is only required for a person acting an intermediary between two parties, meaning that neither person in a two-party transaction is required to be licensed. As a result of the addition of virtual currency to ch. 560, F.S., the bill makes conforming changes to the prohibition on unlicensed activity and amends the permissible investments statute. Without a change to the permissible investments statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other assets on the list of permissible investments. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission. Lastly, the bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on the private sector and the state.

The bill provides an effective date of January 1, 2022.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Regulation of Money Transmitters and Payment Instrument Sellers

*State Regulation*

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,[2] monetary value,[3] or payment instruments[4] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[5] A payment instrument seller sells, issues, provides, or delivers a payment instrument.[6] State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[7] Currently, virtual currency is not expressly within ch. 560, F.S., though in the last six years OFR has received approximately 64 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

An applicant for an MSB license under ch. 560, F.S., must file an application with OFR and pay an application fee of $375.[8] The license must be renewed every two years by paying a renewal fee of $750.[9] Money transmitters and payment instrument sellers may operate through authorized vendors by providing OFR with specified information about the authorized vendor and by paying a fee of $38 per authorized vendor location at the time of application and renewal.[10] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[11] and foreign currency exchangers[12] without paying additional licensing fees.[13]

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[1] S. 20.121(3)(a)2., F.S.
[2] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[3] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[4] The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[5] S. 560.103(23), F.S.
[6] S. 560.103(30) and (34), F.S.; definition of "payment instrument", *supra* note 4.
[7] S. 560.104, F.S.
[8] Ss. 560.141 and 560.143, F.S.
[9] *Id.*; s. 560.142, F.S.
[10] *Id.*; ss. 560.203, 560.205, and 560.208, F.S.
[11] The term "check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.
[12] The term "foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.
[13] S. 560.204(2), F.S.

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[14]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[15] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[16]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[17] OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[18]

While MSBs are generally subject to federal anti-money laundering laws,[19] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.[20]

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[21] An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[22] OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[23] OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[24]

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:[25]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

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[14] S. 560.209, F.S.
[15] *Id.*
[16] *Id.*
[17] S. 560.210, F.S.
[18] *Id.*
[19] 31 C.F.R. pt. 1022.
[20] S. 560.1401, F.S.
[21] S. 560.123, F.S.
[22] *Id.*
[23] S. 560.114, F.S.
[24] *Id.*
[25] Ss. 560.1105 and 560.211, F.S.

*Recent Case Law: State v. Espinoza*

Through an online directory of buyers and sellers of bitcoin, a detective with the Miami Beach Police Department arranged to meet a person with the username Michelhack, which turned out to be the defendant Michell Espinoza, in order to purchase bitcoin.[26] The detective arranged multiple transactions with the defendant as follows:

- During the course of the first transaction, the detective made clear his desire to remain anonymous and implied that he was involved in illicit activity.[27] The detective paid Mr. Espinoza $500 in cash and received a portion of a bitcoin valued at $416.12, thus earning Mr. Espinoza a profit of $83.67.[28]
- The detective arranged a second transaction with Mr. Espinoza during which he told Mr. Espinoza that he needed the bitcoins to pay for stolen credit card numbers, since he was in the business of buying and selling stolen credit card numbers from Russian sellers.[29] The detective paid Mr. Espinoza $1,000 in cash and received one bitcoin, thus earning Mr. Espinoza a profit of approximately $167.56.[30]
- The detective then arranged a third transaction with Mr. Espinoza.[31] The detective inquired how fast the transaction could be completed because his "Russian buddies" would not send him his "[stuff] until they get the coin."[32] The detective deposited $500 into Mr. Espinoza's bank account, and Mr. Espinoza transferred 0.54347826 bitcoins to the detective.[33]
- In the fourth and final transaction, the detective negotiated the transfer of bitcoins worth $30,000 and represented to Mr. Espinoza that it was to pay for a new batch of stolen credit card numbers acquired from a recent data breach.[34] Although Mr. Espinoza questioned the authenticity of the $30,000 roll of money that the detective gave him, he otherwise remained ready and willing to consummate the entire transaction.[35] Mr. Espinoza was then taken into custody.[36]

Mr. Espinoza was charged with: (1) one count of unlawfully engaging in the business of a money transmitter and acting as a payment instrument seller as a result of not being licensed to conduct such activity (Count one); and (2) two counts of money laundering (Counts two and three).[37] Mr. Espinoza filed a motion to dismiss as to all counts, which the trial court granted for the following reasons:

- As to Count one, the trial court found that neither Bitcoin nor Mr. Espinoza's conduct fell within the ambit of ch. 560, F.S., requiring registration as a money services business.[38] Regarding Mr. Espinoza's conduct, the trial court reasoned that a "money transmitter" would necessarily operate like a middleman in a financial transaction, much like how Western Union accepts money from person A, and at the direction of person A, transmits it to person or entity B.[39] Mr. Espinoza was not acting as a middleman; rather the transactions with the detective were two-party transactions in which Mr. Espinoza sold his own bitcoin to the detective and received U.S. Dollars in return.
- As to Counts two and three, the trial court found that the conduct at issue qualifies as a "financial transaction" under the money laundering statutes but that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.[40]

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[26] State v. Espinoza, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019).
[27] *Id.* at 1060.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id*. at 1060-61.
[35] *Id*. at 1061.
[36] *Id.*
[37] *Id*. at 1057 and 1061.
[38] *Id*. at 1057 and 1061.
[39] *Id.* at 1065.
[40] *Id.* at 1057 and 1061.

The state then appealed the trial court's dismissal of the information.[41] On appeal, the Third District Court of Appeal (court) held that:

- The trial court erred in dismissing Count one because Mr. Espinoza acted as both a money transmitter and a payment instrument seller and, as such, was required to be licensed as a money services business.[42]
- The trial court erred in dismissing Counts two and three on the basis that Espinoza lacked the requisite intent to be guilty of money laundering.[43]

Most importantly, in the reasoning as to count one, the court determined that Bitcoin is both "monetary value" and a "payment instrument" under ch. 560, F.S.[44] This interpretation illustrates the need to expressly provide whether and how virtual currency falls within ch. 560, F.S. The court's interpretation also illustrates the need to clarify the definition of "payment instrument". "Monetary value" is akin to "currency" within ch. 560, F.S. Conceptually, a payment instrument is an instrument *denominated in* currency (or monetary value), but currency and monetary value should not in and of themselves be a payment instrument.

Another important aspect of the Espinoza case is that in determining that Mr. Espinoza acted as a money transmitter, the court addressed whether the definition of "money transmitter" covers only third-party intermediaries, in which case Mr. Espinoza selling his own bitcoins to the detective would not have run afoul of the prohibition on unlicensed money transmission.[45] On this point, the court held that "[t]he statute's plain language clearly contains no third party transmission requirement in order for an individual's conduct to fall under the 'money transmitter' definition. As such, we decline to add any third party or 'middleman' requirement to the money transmitter definition found in section 560.103(23)."[46] The court's holding illustrates the need to clarify the definition of "money transmitter" such that a money transmitter license is only required for a person acting an intermediary between two parties, but neither person in a two-party transaction is required to be licensed.[47]

*Virtual Currency*

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.[48] In some environments, it operates like "real" currency[49] (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction.[50] Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency.[51] Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between

[41] *Id.* at 1061.
[42] *Id.* at 1057 and 1061-62.
[43] *Id*.
[44] *Id.* at 1064.
[45] *Id*. at 1065.
[46] *Id.* (citations omitted).
[47] This is consistent with the historical interpretation of the money transmitter definition by OFR and industry, and it avoids the untenable result of requiring persons in a two-party transaction to be licensed. Additionally, this is consistent with the substance of the money transmitter regulations.
[48] IRS, *Virtual Currencies: What is virtual currency?*, https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies (last visited Mar. 14, 2021).
[49] Also often referred to as "fiat" currency.
[50] IRS, *supra* note 48.
[51] *Id.*

users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.[52]

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).[53] To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.[54] Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.[55] Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric ''public keys''—not by the owner's name.[56]

Some persons use the services of a third-party to acquire or transact in virtual currency.[57] For example, certain third-parties provide custody services for their customers' virtual currency in so called ''hosted wallets.''[58] In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.[59] Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.[60] Such persons may store the private key in a software program or written record, often referred to as an ''unhosted wallet.''[61]

Virtual currency networks present opportunities as well as risks.[62] The G7 Finance Ministers and Central Bank Governors recently noted that ''[t]he widespread adoption of digital payments . . . has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs.''[63] At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.[64]

Determining the true amount of illicit activity that is conducted in virtual currency is challenging.[65] One industry estimate is that approximately 1 percent of overall market transaction volume, or $10 billion, in virtual currency activity conducted globally in 2019 was illicit.[66] This figure, however, may underestimate such illicit activity.[67] Despite significant underreporting due to compliance challenges in parts of the virtual currency sector, in 2019, FinCEN received approximately $119 billion in suspicious activity reporting associated with virtual currency activity taking place wholly or in substantial part in the

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[52] *Id.*
[53] FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf (last visited Mar. 14, 2021).
[54] *Id*.
[55] *Id*.
[56] *Id.*
[57] *Id.*.
[58] *Id.*
[59] *Id*.
[60] *Id*.
[61] *Id*.
[62] *Id.*
[63] *Id*. (citing the G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments on Oct. 13, 2020).
[64] FinCEN Notice of Proposed Rulemaking, *supra* note 53.
[65] *Id*.
[66] *Id*. (citing Chainalysis, *2020 Crypto Crime Report* (Jan. 2020), https://go.chainalysis.com/2020-CryptoCrime-Report.html).
[67] FinCEN Notice of Proposed Rulemaking, *supra* note 53.

United States.[68] By industry measures, this would equate to approximately 11.9 percent of total virtual currency market activity being relevant to a possible violation of law or regulation.[69]

*Virtual Currency in Florida Statutes*

Currently, Florida law includes virtual currency as a type of monetary instrument under the Florida Money Laundering Act.[70] Thus, Florida law criminalizes the use of virtual currency for illicit purposes in the same manner that the law criminalizes use of fiat currency for illicit purposes. Under that act, "'virtual currency' means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country."[71] This definition was added in 2017[72] and is the only instance of "virtual currency" in Florida Statutes.

*Federal Regulation of MSBs*

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[73] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[74] To that end, FinCEN administers the Bank Secrecy Act (BSA).[75] BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[76] BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[77]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing, or exchange.[78] However, an MSB must register with FinCEN if it provides money transfer services in any amount.[79]

BSA regulations define "money transmission services" as "the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means."[80] Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[81]

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[68] *Id*. FinCEN notes that a significant majority of this $119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. *Id.* FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious. *Id.*
[69] *Id*. Suspicious activity is not a clear indication of a crime but is activity that is potentially illicit. *Id*.
[70] S. 896.101, F.S.
[71] *Id*.
[72] Ch. 2017-155, Laws of Fla.
[73] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Mar. 14, 2021).
[74] *Id.*
[75] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.
[76] FinCEN, s*upra* note 73.
[77] *Id.*
[78] 31 C.F.R. §§ 1010.100 and 1022.380.
[79] *Id.*
[80] 31 C.F.R. § 1010.100 (emphasis added).
[81] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Mar. 14, 2021); FinCEN Notice of Proposed Rulemaking, *supra* note 53.

Federal law criminalizes money transmission if the money transmitting business:[82]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

**Effect of the Bill**

The bill makes the following changes to definitions in ch. 560, F.S.:

- Amends the definition of "electronic instrument" to replace the undefined term "money" with the defined term "currency". Leaving an undefined term such as "money" in statute may lead to confusion as to whether the term includes virtual currency. The definition of "electronic instrument" is also reworded for clarity.
- Excludes virtual currency from the definition of "monetary value" in order to narrow the regulation of virtual currency to only regulations for money transmitters but not other types of licenses under ch. 560, F.S.
- Amends the definition of "money transmitter" to expressly include virtual currency and to clarify that a money transmitter license is only required for a person acting an intermediary between two parties; neither person in a two-party transaction is required to be licensed.
- Amends the definition of "payment instrument" to replace the undefined term "money" with the defined term "currency". Leaving an undefined term such as "money" in statute may lead to confusion as to whether the term includes virtual currency. The definition of "payment instrument" is also amended to clarify that the term means an instrument that is *utilized for* the transmission, exchange, or payment of currency or monetary value, but a payment instrument is not the currency or monetary value itself.
- Amends the definition of "stored value" to replace the undefined term "funds" with the defined term "currency". Leaving an undefined term such as "funds" in statute may lead to confusion as to whether the term includes virtual currency.
- Adds the following definition of "virtual currency" – Virtual currency means a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is used:
    - Solely within online gaming platforms with no market or application outside such gaming platforms; or
    - Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

The bill amends the prohibition on unlicensed money transmitter activity and payment instrument selling in order to better align the wording with the definition of payment instrument seller. One element of the prohibition is that a person is doing such activity *for compensation*, and "compensation" includes profit or loss on the exchange of currency. The bill adds that "compensation" includes profit or loss on the exchange of monetary value or virtual currency.

The bill amends the permissible investments statute in relation to virtual currency. Under current law, a money transmitter must possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions. Without an amendment to this statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other assets on the list of permissible investments. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission.

[82] 31 U.S.C. § 1960.

The bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

The bill provides an effective date of January 1, 2022.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

**Section 2.** Amends s. 560.103, F.S., relating to definitions.

**Section 3.** Amends s. 560.204, F.S., relating to license required.

**Section 4.** Amends s. 560.210, F.S., relating to permissible investments.

**Section 5.** Provides an effective date of January 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   *See* Fiscal Comments.

2. Expenditures:

   *See* Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides regulatory clarity as to the way in which virtual currency is regulated under ch. 560, F.S. To the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure. Additionally, the bill may lead to greater protection for consumers transacting in virtual currency through third-party intermediaries. The bill's overall impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

The fiscal impact to the state is indeterminate. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. However, to the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure. The potential number of additional licensees and corresponding expenses for oversight is unknown. While OFR is not currently requesting additional staff, the agency has noted that it may need to seek additional staffing during future legislative sessions if the number of new licensees dealing in virtual currency significantly increases beyond its capacity to absorb the additional workload.[83]

[83] Office of Financial Regulation, Agency Analysis of 2021 House Bill 1351, p. 6-7 (Mar. 4, 2021)

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While the bill contains no directive for OFR to engage in rulemaking, the changes made by the bill may necessitate amendment to current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill should clarify that a money transmitter license is only required for an intermediary that has *control* over the currency, monetary value, payment instrument, or virtual currency in transmission. This clarification is important especially in the realm of virtual currency. Without this clarification, there may be confusion as to whether a node on a blockchain network or a computer program that matches buyers and sellers would count as an intermediary and thus be required to have a money transmitter license. Additionally, there are other areas of ch. 560, F.S., that should be conformed to the addition of virtual currency to the regulations. The sponsor has indicated an intent to address these issues.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to money services businesses; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; amending s. 560.103, F.S.; revising and providing definitions; amending s. 560.204, F.S.; prohibiting certain activities by a person without obtaining a license; revising the definition of the term "compensation"; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may

prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 2. Subsections (14), (21), (23), (29), and (35) of section 560.103, Florida Statutes, are amended, and subsection (36) is added to that section, to read:

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

(14) "Electronic instrument" means a card, tangible

object, or other form of electronic payment used for the transmission, ~~or~~ payment, ~~of money~~ or ~~the~~ exchange of currency or monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(21) "Monetary value" means a medium of exchange, other than virtual currency, regardless of whether it is ~~or not~~ redeemable in currency.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a ~~or~~ payment instrument, or virtual currency ~~instruments~~ for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person ~~transmitting the same~~ by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument utilized for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it

is ~~or not~~ negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(35) "Stored value" means currency ~~funds~~ or monetary value represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

(36) "Virtual currency" means a medium of exchange in electronic or digital format that is not currency as defined in subsection (11). The term does not include a medium of exchange in electronic or digital format that is used:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

Section 3. Subsection (1) of section 560.204, Florida Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any manner advertise that they engage in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument

seller or money transmitter, for compensation, without first obtaining a license under this part. For purposes of this subsection ~~section~~, the term "compensation" includes profit or loss on the exchange of currency, monetary value, or virtual currency.

Section 4. Subsections (2) and (3) of section 560.210, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency, either directly or through an authorized vendor, for the purpose of transmitting such virtual currency from one person to another location or person must at all times hold virtual currency of the same type and amount owed or obligated to the other location or person. Virtual currency received and held under this subsection is not included in the amount of outstanding money transmissions for purposes of calculating the permissible investments required by subsection (1).

Section 5. This act shall take effect January 1, 2022.

**INSURANCE & BANKING SUBCOMMITTEE**

**HB 1351 by Rep. Aloupis**
**Money Services Businesses**

**AMENDMENT SUMMARY**
**March 17, 2021**

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**Amendment 1 by Rep. Aloupis (Line 96):** The amendment:

- Clarifies that a money transmitter license is only required for an intermediary that has *control* over the currency, monetary value, payment instrument, or virtual currency in transmission. This clarification is important especially in the realm of virtual currency. Without this clarification, there may be confusion as to whether a node on a blockchain network or a computer program that matches buyers and sellers would count as an intermediary and thus be required to have a money transmitter license.
- Conforms other sections of ch. 560, F.S., to reflect the addition of virtual currency to the regulations.

COMMITTEE/SUBCOMMITTEE ACTION

| | |
|---|---|
| ADOPTED | ___ (Y/N) |
| ADOPTED AS AMENDED | ___ (Y/N) |
| ADOPTED W/O OBJECTION | ___ (Y/N) |
| FAILED TO ADOPT | ___ (Y/N) |
| WITHDRAWN | ___ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee
Representative Aloupis offered the following:

**Amendment (with title amendment)**

Remove lines 96-144 and insert:

to or from this country. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it is ~~or not~~ negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(35) "Stored value" means currency ~~funds~~ or monetary value represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

(36) "Virtual currency" means a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is used:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

Section 3. Subsections (2), (3), and (4) and paragraphs (b), (c), and (d) of subsection (8) of section 560.123, Florida Statutes, are amended to read:

560.123 Florida Control of Money Laundering in Money Services Business Act.—

(2) The purpose of this section is to require the maintenance of certain records of transactions involving currency, monetary value, ~~or~~ payment instruments, or virtual currency in order to deter the use of a money services business

to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.

(3) A money services business shall keep a record, as prescribed by the commission, of each financial transaction occurring in this state which it knows to involve currency, monetary value, a ~~or other~~ payment instrument, or virtual currency ~~as prescribed by the commission,~~ having a value greater than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section or chapter 896. The money services business must maintain appropriate procedures to ensure compliance with this section and chapter 896.

(a) Multiple financial transactions shall be treated as a single transaction if the money services business has knowledge that they are made by or on behalf of any one person and result in value ~~cash~~ in or value ~~cash~~ out totaling a value of more than $10,000 during any day.

(b) A money services business may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves the proceeds of unlawful activity.

(c) The money services business must file a report with the office of any records required by this subsection, at such time and containing such information as required by rule. The

timely filing of the report required by 31 U.S.C. s. 5313 with the appropriate federal agency shall be deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office.

(d) A money services business, or officer, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

(4) A money services business must comply with the money laundering, enforcement, and reporting provisions of s. 655.50 relating to reports of transactions involving currency transactions and payment instruments, as applicable, and of chapter 896 concerning offenses relating to financial transactions.

(8)

(b) A person who willfully violates any provision of this section, if the violation involves:

1. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere, regardless of adjudication, to having violated paragraph (b) may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent conviction for or plea of guilty or nolo contendere, regardless of adjudication, to a violation of paragraph (b), the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(d) A person who violates this section is also liable for a civil penalty of up to ~~not more than~~ the greater of the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000.

Section 4. Subsections (5), (6), and (7) of section 560.125, Florida Statutes, are amended to read:

560.125 Unlicensed activity; penalties.—

(5) A person who violates this section, if the violation involves:

(a) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere to, having violated this section may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent

violation of this section, the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(7) A person who violates this section is also liable for a civil penalty of up to the greater of ~~not more than~~ the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000~~, whichever is greater~~.

Section 5. Subsection (1) of section 560.204, Florida Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any manner advertise that they engage in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter, for compensation, without first obtaining a license under this part. For purposes of this subsection ~~section~~, the term "compensation" includes profit or loss on the exchange of currency, monetary value, or virtual currency.

Section 6. Subsections (5) and (6) of section 560.208, Florida Statutes, are amended to read:

560.208 Conduct of business.—In addition to the requirements specified in s. 560.1401, a licensee under this part:

(5) Shall, in the normal course of business, ensure that currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted is available to the designated recipient within 10 business days after receipt.

(6) Shall immediately upon receipt of currency, monetary value, a ~~or~~ payment instrument, or virtual currency provide a confirmation or sequence number to the customer verbally, by paper, or electronically.

Section 7. Paragraph (b) of subsection (2) of section 560.2085, Florida Statutes, is amended to read:

560.2085 Authorized vendors.—A licensee under this part shall:

(2) Enter into a written contract, signed by the licensee and the authorized vendor, which:

(b) Includes contract provisions that require the authorized vendor to:

1. Report to the licensee, immediately upon discovery, the theft or loss of currency, monetary value, a payment instrument, or virtual currency received for a transmission or for a payment instrument sold;

2. Display a notice to the public, in such form as prescribed by rule, that the vendor is the authorized vendor of the licensee;

3. Remit all amounts owed to the licensee for all transmissions accepted and all payment instruments sold in

accordance with the contract between the licensee and the authorized vendor;

4. Hold in trust all currency, monetary value, ~~or~~ payment instruments, or virtual currency received for transmissions or for the purchase of payment instruments from the time of receipt by the licensee or authorized vendor until the time the transmission obligation is completed;

5. Not commingle the currency, monetary value, payment instruments, or virtual currency ~~money~~ received for transmissions accepted or payment instruments sold on behalf of the licensee with the assets ~~money~~ or property of the authorized vendor, except for making change in the ordinary course of the vendor's business;~~, and~~

6. Ensure that the currency, monetary value, payment instruments, or virtual currency received for transmissions accepted or payment instruments sold ~~money~~ is accounted for at the end of the business day;

7 ~~6~~. Consent to examination or investigation by the office;

8 ~~7~~. Adhere to the applicable state and federal laws and rules pertaining to a money services business; and

9 ~~8~~. Provide such other information or disclosure as may be required by rule.

Section 8. Subsections (2) and (3) of section 560.210, Florida Statutes, are renumbered as subsections (3) and (4),

respectively, and a new subsection (2) is added to that section, to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency, either directly or through an authorized vendor, for the purpose of transmitting such virtual currency from one person to another location or person must at all times hold virtual currency of the same type and amount owed or obligated to the other location or person. Virtual currency received and held under this subsection is not included in the amount of outstanding money transmissions for purposes of calculating the permissible investments required by subsection (1).

Section 9. Paragraphs (a), (e), and (f) of subsection (1) of section 560.211, Florida Statutes, are amended, and paragraph (j) is added, to that subsection read:

560.211 Required records.—

(1) In addition to the record retention requirements under s. 560.1105, each licensee under this part must make, keep, and preserve the following books, accounts, records, and documents for 5 years:

(a) A daily record of payment instruments sold and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(e) Records of outstanding payment instruments and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(f) Records of each payment instrument paid and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmission delivered.

(j) Any additional records, as prescribed by rule, related to virtual currency.

Section 10. Section 560.212, Florida Statutes, is amended to read:

560.212 Financial liability.—A licensee under this part is liable for the payment of all currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted and payment instruments that it sells, in whatever form and whether directly or through an authorized vendor, as the maker, drawer, or principal thereof, regardless of whether such item is negotiable or nonnegotiable.

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**T I T L E A M E N D M E N T**

Remove lines 6-12 and insert:

definitions; amending s. 560.123, F.S.; revising the purpose of the Florida Control of Money Laundering in Money Services Business Act; revising the duties of money services businesses; amending s. 560.125, F.S.;

revising the violations of money services business activities; amending s. 560.204, F.S.; revising certain prohibited activities without a license; revising the definition of the term "compensation"; amending s. 560.208, F.S.; revising requirements for a money transmitter or payment instrument seller to conduct business; amending s. 560.2085, F.S.; revising requirements for a written contract between a money transmitter or payment instrument seller and an authorized vendor; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments; amending s. 560.211, F.S.; revising recordkeeping requirements for a money transmitter or payment instrument seller; amending s. 560.212, F.S.; revising financial liability requirements for a money transmitter or payment instrument seller; providing an