

Insurance & Banking Subcommittee

Wednesday, January 19, 2022
3:30 PM - 5:30 PM
Morris Hall (17 HOB)

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, January 19, 2022
3:30 PM – 5:30 PM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following proposed committee substitute(s):

- PCS for HB 431 -- Office of Financial Regulation

Consideration of the following bill(s):

- HB 453 Records of Physical Examinations of Officers by Duggan
- HB 557 Fire Investigator Cancer Treatment Benefits by Salzman
- HB 749 Fraud Prevention by Clemons
- HB 959 Department of Financial Services by LaMarca

V. Closing Remarks

VI. Adjournment

PCS for HB 431

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 431 Office of Financial Regulation
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Hinshelwood	Luczynski

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes and the rules promulgated thereunder. The bill makes the following changes to the financial institutions codes:

- Permits a foreign national to appear through video conference, rather than in person, at a hearing regarding the foreign national's proposal to have a controlling interest in a current or proposed state bank or trust company.
- Provides the OFR an additional 90 days to comply with the examination requirement for financial institutions if the federal regulator suspends or cancels a scheduled examination.
- Requires each director of a financial institution to review and sign a report of examination.
- Clarifies provisions relating to a financial institution's acquisition of another financial institution's assets or liabilities.
- Amends the definition of "financial institution" for purposes of the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.
- Relocates and clarifies a provision relating to a credit union's reporting of names and addresses of newly elected or appointed officers and directors.
- Permits OFR to approve a bank or trust company based on the intended "target market"; currently, OFR must consider the geographic area from which the bank or trust company intends to draw deposits and accounts.
- Allows the OFR to waive the experience requirement for a proposed president or CEO of a new bank or trust company pursuant to specified considerations about the person and the proposed institution.
- Provides a process for persons to seek approval to own a controlling interest in a financial institution in the event of inheritance of such controlling interest.
- Defines "de novo branch" in the context of permissibility of interstate bank branching by state-chartered banks.
- Permits certain family trust companies to maintain a deposit account at an insured bank or credit union located anywhere in the United States, regardless of whether the bank or credit union has a principal office or branch in Florida.
- Amends the deadline for a family trust company to file an annual renewal.
- Permits certain international bank offices licensed by OFR to maintain required assets in an insured bank located anywhere in the United States, not just those banks that are located in Florida.
- Updates reference to the name of a list of international jurisdictions that have weak measures to combat money laundering and terrorist financing, and requires a specified licensed entity to suspend its activities relating to a jurisdiction on that list.

The bill has an indeterminate fiscal impact on state and local governments and the private sector.

The bill provides an effective date of July 1, 2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes and the rules promulgated thereunder.[2] The specific chapters under the financial institutions codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:[3]

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Formation and Regulation of a Florida-Chartered Bank or Trust Company

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the state of Florida is the OFR, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[4]
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.[5] As such, the OCC is the primary federal regulator for national banks.[6]

A trust company is a business organization, other than a bank, which is authorized by lawful authority to engage in the business of acting as a fiduciary.[7] Trust companies are chartered by states, and the state regulator for trust companies chartered by the state of Florida is the OFR. Trust companies do not have a federal regulator.

[1] S. 20.121(3)(a)2., F.S.
[2] Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.
[3] Office of Financial Regulation, *Fast Facts* (2021 ed.), https://flofr.gov/sitePages/documents/FastFacts.pdf.
[4] 12 U.S.C. § 1813(q).
[5] 12 U.S.C. § 38.
[6] 12 U.S.C. § 1813(q).
[7] S. 658.12(20) and (21), F.S.

In order to apply for authority to organize a new state-chartered bank or trust company, the proposed directors must file a written application with the OFR.[8] The application includes such information as the name, residence, and occupation of each proposed director; the name and residence of the proposed president and chief executive officer, if known; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.[9]

The OFR utilizes the information contained in the application in order to make an investigation of:[10]

1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
2) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area[11] where the proposed bank or trust company is to be located.
3) The ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.[12]

After making such investigation, the OFR must approve an application if it finds the following:[13]

1) Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company.
2) The proposed capitalization is adequate, but at least $8 million for a bank and at least $3 million for a trust company.
3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
4) Regarding officers and directors:
    a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
    b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
    c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than five years before the date of the application, the OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
    d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.
5) The corporate name of the proposed state bank is approved by the OFR.
6) Provision has been made for suitable quarters at the location in the application.

---

[8] S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C..
[9] *Id.*
[10] S. 658.20(1), F.S.
[11] "Primary service area" is defined by agency rule as "the smallest geographical area from which the proposed state bank, savings bank or association expects to draw approximately seventy-five percent of its deposits. Said term also means the smallest geographical area from which a state trust company expects to draw approximately 75 percent of the asset value of its fiduciary accounts. It should be drawn around a natural customer base and should not be unrealistically delineated to exclude competing financial institutions or to include areas of concentrated population." R. 69U-105.001(9), F.A.C.
[12] Office of Financial Regulation, Agency Analysis of 2022 Senate Bill 1680 (Jan. 12, 2022).
[13] s. 658.21, F.S.

Due to technological advancements, the banking industry has become increasingly interconnected and more digitally driven; many customers no longer engage with their bank exclusively through brick and mortar branches.[14] In order to remain competitive, many financial institutions have adopted online banking platforms and apps.[15] Despite the advent of online banking, the financial institutions codes remain premised on a brick and mortar centric business plan.[16]

In recent years, the banking industry both in Florida and nationally has consolidated.[17] As mergers and acquisitions occur in the banking industry, executives are commonly subjected to non-compete agreements that may last several years.[18] Because a proposed president or chief executive officer must have requisite experience within a five-year time frame, the current statutory timeframe narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank.[19] Groups of individuals seeking to organize a new bank have found the five-year requirement an impediment to finding quality president or CEO candidates.[20] This timeframe is not required for nationally chartered banks.[21] Further, for existing Florida-chartered banks, the OFR may waive the timeframe after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company.[22]

Interstate Bank Branching by State-Chartered Banks

A Florida-chartered bank may establish and maintain a de novo branch (new branch) or acquire a branch in a state other than Florida. To do so, the Florida-chartered bank must submit an application and fee to the OFR and receive the OFR's approval.[23]

A bank chartered by a state other than Florida may establish and maintain a de novo branch or acquire a branch in Florida upon compliance with Florida's limited liability company or corporations laws relating to doing business in Florida as a foreign business entity.[24] No application is filed with the OFR.

Currently, Florida law does not contain a definition for "de novo branch". Under FDIC regulations, "de novo branch" is defined[25] as a branch of a state bank which:

1) Is originally established by the State bank as a branch; and
2) Does not become a branch of such bank as a result of:
    a. The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or
    b. The conversion, merger, or consolidation of any such institution or branch.

Acquisition of Control of a Florida-Chartered Bank or Trust Company

A person or group of persons is considered to have a controlling interest over a state bank or state trust company if any of the following are true:[26]

---

[14] Office of Financial Regulation, *supra* note 12.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] "The president, chief executive officer, or any other person, regardless of title, who has equivalent rank or leads the overall operations of [an existing] bank or trust company must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. *This requirement may be waived by the office after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company, as reflected in the most recent regulatory examination report and other available data*." S. 658.33(5), F.S. (emphasis added).
[23] S. 658.2953(11)(a) and (b), F.S.
[24] S. 658.2953(11)(c), F.S.
[25] 12 U.S.C. § 1828(d)(4)(C).
[26] Ss. 658.27(2) and 658.28(2), F.S.

- They directly or indirectly own, control, or have the power to vote 25 percent or more of any class of voting securities of the institution.
- They control, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution; they own, control, or have the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution.
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence.

A person or group of persons who proposes to purchase or acquire a controlling interest in a state bank or trust company may not acquire such an interest until they have submitted an application to the OFR and have been approved.[27] In order to be approved, an applicant must have the reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and in such a way that would not jeopardize the interests of the stockholders, depositors, and creditors of the institution, or the public.[28] Conviction for certain crimes, such as money laundering, is a disqualifier.[29]

If a foreign national proposes to own or control 10 percent or more of a class of voting securities of a new state bank or trust company, or proposes to acquire a controlling interest in an existing state bank or trust company, the OFR must conduct a public hearing at which the foreign national must appear in person.[30] The failure of a foreign national to appear is grounds for denial.[31]

In certain situations, the presumption of control may be rebutted. A person or group of persons who proposes to own, control, or have the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution may rebut the presumption of control by notifying the OFR of the proposal and presenting information rebutting control at an informal conference.[32] If, after the conference, the OFR determines that such person or group of persons will exercise a controlling influence over the bank, such person or persons will be required to file an application for change of control.[33]

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval.[34] However, not every such acquisition is planned.[35] Shares may pass to an unapproved owner by operation of law, such as by way of inheritance.[36] For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.[37]

Formation and Regulation of Credit Unions

Like banks, credit unions accept deposits and make loans, and can be state-chartered or federally-chartered:

- *State-chartered credit unions* may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[38] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their

[27] S. 658.28(1), F.S.
[28] S. 658.28(1)(b), F.S.
[29] S. 658.28(1)(c), F.S.
[30] S. 120.80(3)(a)4., F.S.
[31] *Id.*
[32] Ss. 658.27(2)(c) and 658.28(3), F.S.
[33] S. 658.28(3), F.S.
[34] Office of Financial Regulation, *supra* note 12.
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.

economic and social condition."[39] State-chartered credit unions have both a state regulator, the OFR, and a federal regulator, the National Credit Union Association (NCUA).
- *Federally-chartered credit unions* are chartered under the Federal Credit Union Act of 1934[40] and are regulated by the NCUA.

For Florida-chartered credit unions, the executive officers are elected by the board of directors at the organizational meeting, and new officers may be elected at each annual meeting of the board of directors.[41] The terms of executive officers are one year, or until their successors are chosen and have been duly qualified.[42] Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, all officers of the credit union, and the credit manager must be filed with the OFR on forms prescribed by the Financial Services Commission (commission).[43]

Formation and Regulation of Family Trust Companies

A family trust company is a corporation or limited liability company that is exclusively owned by family members, acts as a fiduciary to serve family members, and generally may not serve as a fiduciary for a person that is not a family.[44] Family trust companies are usually formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons.

There are three types of family trust companies authorized under Florida law:
- *Licensed family trust companies*: A family trust company may elect to be a licensed family trust company if the company desires to be subject to the regulatory oversight of the OFR, and it must file an application for licensure with the OFR.[45] With respect to a licensed family trust company, the OFR is responsible for regulating, supervising, and examining the company.[46]
- *Foreign licensed family trust company*: A foreign licensed family trust company is licensed by and has its principal place of business in a state other than Florida, is operated in accordance with applicable laws of its licensing state, is subject to supervision by the state in which the principal place of business is located, and is not a subsidiary of a foreign country.[47] A foreign licensed family trust company must register with the OFR before beginning operations in this state.[48] The OFR's oversight role is limited to ensuring that fiduciary services provided by the foreign licensed family trust company are restricted to family members and authorized related interests and not to the general public.[49]
- *Registered family trust company*: A family trust company that is not a foreign licensed family trust company and does not apply to become a licensed family trust company must register with the OFR before beginning operations in this state.[50] The OFR's oversight role is limited to ensuring that fiduciary services provided by the registered family trust company are restricted to family members and authorized related interests and not to the general public.[51]

[39] s. 657.003, F.S.
[40] Pub. L. 73-467, codified at 12 U.S.C. § 1751 *et seq.*
[41] S. 657.022(1), F.S.
[42] S. 657.022(2), F.S.
[43] S. 657.028(6), F.S. The commission is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.
[44] S. 662.111(12), F.S.
[45] Ss. 662.102(2) and 662.121, F.S.
[46] S. 662.102(3)(a), F.S.
[47] S. 662.111(15)(c), F.S.
[48] S. 662.122(2), F.S.
[49] S. 662.102(3)(b), F.S.
[50] S. 662.122(1), F.S.
[51] S. 662.102(3)(b), F.S.

All three types of family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in this state.[52]

Within 45 days after the end of each calendar year, all three types of family trust companies are required to file an annual renewal application.[53] Currently, the timing of renewal does not account for when the initial application was filed. Thus, a family trust company may have to submit a renewal application shortly after becoming licensed or registered in this state.

Formation and Regulation of International Banking Offices

One type of financial institution regulated by the OFR is an international banking corporation (IBC) that transacts business in Florida. An IBC is "a banking corporation organized and licensed under the laws of a foreign country."[54] The OFR does not regulate the IBC, i.e., the home-country depository institution, itself but rather the offices that the IBC establishes in Florida. Florida's regulation of IBC offices are designed to provide for appropriate supervision and regulatory oversight to ensure that financial services activities of IBCs in this state are conducted responsibly and in a safe and sound manner.[55]

IBCs may operate in Florida through a variety of business models, which must be licensed by the OFR[56] and include the following:

- International representative offices - Permissible activities include:[57]
  - Promoting or assisting the deposit-taking, lending, or other financial or banking activities of an IBC;
  - Serving as a liaison in Florida between an IBC and its existing and potential customers;
  - Soliciting business for the IBC and its subsidiaries and affiliates;
  - Providing information to customers concerning their accounts;
  - Answering questions;
  - Receiving applications for extensions of credit and other banking services;
  - Transmitting documents on behalf of customers; and
  - Making arrangements for customers to transact business on their accounts.

  However, a representative office may not conduct any banking or trust business in Florida.[58]
- International administrative offices - Permissible activities include:[59]
  - Administering personnel and operations;
  - Engaging in data processing or recordkeeping activities; and
  - Negotiating, approving, or servicing loans or extensions of credit and investments.

  Additionally, this type of office may engage in any activities permissible for an international representative office.[60]
- International bank agencies - Permissible activities include: [61]
  - Making loans, extensions of credit, or investments;
  - Acting as custodian;
  - Furnishing investment management and investment advisory services to nonresident persons whose principal places of business or domicile are outside the United States and to resident persons with respect to international, foreign, or domestic investments;
  - Receiving specified types of deposits; and
  - With prior authorization from the OFR, accepting appointments as trustee by nonresident persons and exercising trust powers with respect to such fiduciary accounts.

  Additionally, this type of office may engage in any activities permissible for an international administrative office or international representative office.[62]

[52] S. 662.1225(1)(d) and (2)(d), F.S.
[53] S. 662.128(1), F.S.
[54] S. 663.01(6), F.S.
[55] S. 663.001(2), F.S.
[56] Ss. 663.04 and 663.05, F.S.
[57] S. 663.062, F.S.
[58] *Id.*
[59] S. 663.063, F.S.
[60] S. 663.063(2), F.S.
[61] S. 663.061, F.S.; Rule 69U-140.008, F.A.C.

- International branches - An international branch has the same rights and privileges as a federally licensed international branch.[63] Additionally, this type of office may engage in any activities permissible for an international bank agency, international administrative office, or international representative office.[64]

If an IBC desires to maintain any of the above offices in this state, the IBC is required to meet minimum licensure requirements, and its offices in Florida are subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an IBC for one of the above offices unless the IBC: [65]

- In the case of an international bank agency or branch, holds an unrestricted license to receive deposits from the general public in the foreign country under the laws of which the IBC is organized and chartered;
- Has been authorized by the foreign country's bank regulatory authority to establish the proposed international bank office;
- Is adequately supervised by the central bank or bank regulatory agency in the foreign country in which the IBC is organized and chartered; and
- Meets minimum capital requirements.

International bank agencies and international branches are required to maintain dollar deposits or investment securities with one or more banks in this state equal to the greater of:[66]

- $4 million dollars; or
- 7 percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities.

Formation and Regulation of Florida Offices Performing Services for an International Trust Entity

An international trust entity is an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised.[67] A qualified limited service affiliate is a person or entity that is qualified to perform specified permissible activities related to or for the benefit of one or more affiliated international trust entities.[68] Such permissible activities include:[69]

1) Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
2) Advertising and marketing at trade, industry, or professional events;
3) Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
4) Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

A qualified limited service affiliate is prohibited from engaging in the following activities:[70]

1) Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public;
2) Acting as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts;

---

[62] S. 663.061(1), F.S.
[63] S. 663.064(2), F.S.
[64] S. 663.064(3), F.S.
[65] Ss. 663.05(8) and 663.055(1)-(2), F.S.
[66] S. 663.07, F.S.
[67] S. 663.530(1)(c), F.S.
[68] S. 663.530(1)(f), F.S.
[69] S. 663.531(1), F.S.
[70] S. 663.531(2), F.S.

3) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the qualified limited service affiliate;
4) Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity;
5) Adding a director, an executive officer, a principal shareholder, a manager, a managing member, or an equivalent position to the qualified limited service affiliate without prior written notification to the OFR;
6) Commencing services for an international trust entity without complying with applicable requirements;
7) Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country; or
8) Otherwise conducting banking or trust business.

In order to qualify as a qualified limited service affiliate, a proposed qualified limited service affiliate must file a written notice that includes the name under which the proposed qualified limited service affiliate will conduct business in this state; a copy of the articles of incorporation or articles of organization, or the equivalent, of the proposed qualified limited service affiliate; the physical address where the proposed qualified limited service affiliate will conduct business; the mailing address of the proposed qualified limited service affiliate; the name and biographical information of each director, executive officer, manager, managing member, or equivalent position of the proposed qualified limited service affiliate; the number of officers and employees of the proposed qualified limited service affiliate; a detailed list and description of the activities to be conducted by the proposed qualified limited service affiliate; background information for certain individuals; information related to each international trust entity for which the proposed qualified limited service affiliate will provide services; and other information as the office reasonably requires.[71] Additionally, the notice to the OFR must include: [72]

- A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge the jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.
- Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.

Under current law, the OFR does not have a means of prohibiting the qualified limited service affiliate from providing services to an international trust entity in a jurisdiction that is included on the Financial Action Task Force's list of international jurisdictions that have weak measures to combat money laundering and terrorist financing.

Examination of Florida Financial Institutions

The OFR is required to conduct an examination of the condition of each state financial institution at least every 18 months, though the OFR may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations.[73] For state financial institutions that have a federal regulator, the OFR is permitted to accept an examination performed by the federal regulator or to conduct a joint or concurrent examination of the state financial institution with the federal regulator.[74] The result is that the OFR may alternate with

[71] S. 663.532(1), F.S.
[72] *Id.*
[73] S. 655.045(1), F.S.
[74] S. 655.045(1)(a), F.S.

the federal regulator such that, while the state financial institution is examined at least every 18 months, the OFR itself performs the examination every 36 months.

Such alternating, joint, or concurrent examination reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.[75] Many of these federal regulators have policies in place authorizing them to alter examination schedules based on emergency conditions, for example following a major disaster or emergency.[76] Many of the documents which the OFR examiners must analyze are kept in paper files.[77] The lack of digital copies and the confidential nature of these documents often necessitates that examiners be physically present in the financial institution to perform the examination.[78] Most recently, the COVID-19 pandemic up-ended examination schedules; however, Florida examiners commonly face obstacles when attempting to perform in-person examinations during hurricane season, where weather hazards and property damage create an unsafe environment.[79] Unlike the federal regulators, the OFR does not have a method by which it can delay an examination due to such hazards.[80]

After the examination of the state financial institution is complete, a copy of the report of examination must be furnished to the entity examined and must be presented to the board of directors at its next meeting.

Acquisition of Assets or Liabilities of a Financial Institution

Current law requires the OFR's approval for a financial entity to acquire all or substantially all of the assets of, or assume all or any part of the liabilities of, any other financial institution.[81] A mutual financial institution may not sell all or substantially all of its assets to a stock financial institution until it has first converted into a capital stock financial institution.[82] These provisions of current law have generated confusion for the industry, as the term "substantially all" is not defined.[83] The OFR regularly receives questions from industry participants regarding the application of these provisions; financial institutions have asked what percentage meets the threshold of "substantially all," and how to calculate that percentage.[84]

Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act (Act)

The Act is found within the financial institutions codes in s. 655.50, F.S. The purpose of the Act is to require the submission to the OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.[85] The Act applies to financial institutions as defined under the federal anti-money laundering laws.[86] The federal definition of "financial institution" is very broad and encompasses entities beyond the scope of those regulated under the financial institutions codes. For example, the federal definition includes entities not regulated by the OFR at all, such as a travel agency, a casino, and the United States Postal Service.[87] The federal definition also includes entities which the OFR does regulate but does so under different chapters of law, not the financial institutions codes, such as a broker or dealer in securities (regulated

[75] Office of Financial Regulation, *supra* note 12.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] S. 655.414, F.S.
[82] S. 655.414(6), F.S.
[83] Office of Financial Regulation, *supra* note 12.
[84] *Id.*
[85] S. 655.50(2), F.S.
[86] S. 655.50(3)(c), F.S.; 31 U.S.C. § 5312.
[87] 31 U.S.C. § 5312(a)(2)(Q), (V), and (X).

by the OFR under ch. 517, F.S.) and various money services businesses (regulated by the OFR under ch. 560, F.S.).[88] Chapter 560, F.S., relating to money services businesses, contains a statute similar to the Act.[89] Thus, both statutes may be read to apply to these entities, which may generate confusion for the industry.[90]

Effect of the Bill

Examinations of Florida Financial Institutions (Section 4)

The bill provides the OFR an additional 90 days to comply with the examination requirement for state financial institutions if the federal regulator suspends or cancels a previously scheduled examination. In such case, the requirement is deemed met by the federal agency conducting the examination or upon the OFR conducting the examination instead.

The bill clarifies language within the requirement that the report of examination be furnished to the entity examined by replacing the term "entity" with "state financial institution". Additionally, the bill requires that each director review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the OFR.

Acquisition of Assets or Liabilities of a Financial Institution (Section 5)

The bill amends provisions relating to the acquisition of assets and liabilities such that OFR's approval is needed if a financial institution acquires 50 percent or more of the assets of, liabilities of, or a combination of assets and liabilities of, another financial institution. The bill provides that a mutual financial institution may not sell 50 percent or more of its assets to a stock financial institution until it has first converted to a capital stock financial institution. These provisions will no longer include the ambiguous phrase "substantially all". The bill also provides that the percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act (Section 6)

The bill amends the definition of "financial institution" for purposes of the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act by pointing to the definition of "financial institution in s. 655.001, F.S., and removing OFR-regulated entities whose permissible activities do not involve monetary transactions.

Credit Union Reporting of Elected or Appointed Officers, Directors, Etc. (Sections 7 and 8)

The bill relocates and clarifies a provision relating to a credit union's reporting of names and addresses of newly elected or appointed officers, directors, etc. Specifically, the bill provides that, within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union must submit to the OFR the names and residence addresses of the elected or appointed person or persons on a form adopted by the commission and provided by the OFR.

Target Market (Sections 9, 10, and 11)

The bill introduces the concept of a "target market" for a proposed state bank or trust company and defines "target market" as the group of clients or potential clients from whom:

(a) A bank or proposed bank expects to draw deposits and to whom the bank or proposed bank focuses or intends to focus its marketing efforts; or

[88] 31 U.S.C. § 5312(a)(2)(H), (J), (K), (R).
[89] S. 560.123, F.S.
[90] Office of Financial Regulation, *supra* note 12.

(b) A trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or association expects to draw its fiduciary accounts and to whom the trust company, the trust department of a bank or association, the proposed trust company, or the proposed trust department of a bank or association focuses or intends to focus its marketing efforts.

In addition to the considerations under current law that are based largely on a geographic location, the bill allows the OFR to evaluate the following considerations with regard to approving an application for a new state bank or trust company:

- The need for the target market that the proposed state bank or trust company intends to engage with in business;
- The ability of the target market to support the proposed state bank or trust company and all other existing bank or trust facilities that serve the same target market; and
- Whether the target market conditions indicate reasonable promise of successful operations for the proposed state bank or trust company.

Proposed President or Chief Executive Officer of a New State-Chartered Bank or Trust Company (Section 11)

The bill allows the OFR to waive the experience requirement for a proposed president or CEO of a new state bank or trust company after considering:

1) The adequacy of the overall experience and expertise of the proposed president or chief executive officer;
2) The likelihood of successful operation of the proposed state bank or trust company;
3) The adequacy of the proposed capitalization;
4) The proposed capital structure;
5) The experience of the other proposed officers and directors; and
6) Any other relevant data or information.

Amending this requirement will allow organizers of new state banks the ability to attract higher quality president or CEO candidates and, therefore, make new bank formations more feasible in today's competitive business environment.[91]

Acquisition of Control of a Florida-Chartered Bank or Trust Company (Sections 1 and 12)

When a hearing is required regarding a foreign national's proposal to own or control 10 percent or more of a class of voting securities of a new state bank or trust company, or on a foreign national's proposal to acquire a controlling interest in an existing state bank or trust company, the bill permits the foreign national to participate through video conferencing in lieu of appearing in person.

The bill provides a process for seeking approval to own a controlling interest in a financial institution in the event of inheritance of such controlling interest. If a person or a group of persons, directly or indirectly, acquires a controlling interest in a state bank or state trust company, through probate or trust, the person or group of persons must notify the OFR within 90 days after acquiring such an interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the OFR has issued a certificate of approval in response to an application for change in control.

Interstate Bank Branching by State-Chartered Banks (Section 13)

The bill defines "de novo branch" for purposes of Florida law regarding interstate bank branching by Florida-chartered banks and banks chartered by other states. The definition is based on the definition for "de novo branch" within FDIC regulations.

[91] Office of Financial Regulation, *supra* note 12.

The bill amends the catchline of a subsection of the statute in order to clarify application of the subsection. The subsection relates to interstate bank branching by both Florida-chartered banks and banks chartered by other states. The catchline currently uses the term "state bank", which is defined to mean a Florida-chartered bank; the term does not capture banks chartered by other states.

Family Trust Companies (Sections 14 and 15)

The bill expands the banking options of a registered family trust company and a licensed family trust company by allowing these entities to maintain a deposit account at an insured bank or credit union located anywhere in the United States, regardless of whether the bank or credit union has a principal office or branch in Florida.

The bill amends the deadline for a family trust company to file an annual renewal such that the renewal application is due no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

Location of an International Bank Agency's or International Branch's Required Minimum Assets (Section 16)

The bill expands the banking options for an international bank agency or an international branch regarding the location of required minimum dollar deposits or investment securities. The bill permits these entities to maintain the required assets in an insured bank located anywhere in the United States, not just those banks that are located in Florida.

Qualified Limited Service Affiliates (Section 17)

The bill updates two references to the name of a list of international jurisdictions that have weak measures to combat money laundering and terrorist financing. The bill also requires a qualified limited service affiliate to suspend its activities relating to an international trust entity in a jurisdiction on that list. Such a suspension must remain in effect until the jurisdiction is removed from the list.

Conforming Changes (Sections 2, 3, 18)

The bill conforms cross-references to reflect amendments to the definitions in s. 658.12, F.S.

Reenactment (Section 19)

The bill reenacts s. 658.165, F.S., for the purpose of incorporating the amendment made by the bill to s. 658.20, F.S.

Effective Date (Section 20)

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

B. SECTION DIRECTORY:

Section 1. Amends s. 120.80, F.S., relating to exceptions and special requirements; agencies.

Section 2. Amends s. 475.01, F.S., relating to definitions.

Section 3. Amends s. 518.117, F.S., relating to permissible investments of fiduciary funds.

Section 4. Amends s. 655.045, F.S., relating to examinations, reports, and internal audits; penalty.

Section 5. Amends s. 655.414, F.S., relating to acquisition of assets; assumption of liabilities.

Section 6. Amends s. 655.50, F.S., relating to Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.

Section 7. Amends s. 657.021, F.S., relating to board of directors; executive committee.

Section 8. Amends s. 657.028, F.S., relating to activities of directors, officers, committee members, employees, and agents.

Section 9. Amends s. 658.12, F.S., relating to definitions.

Section 10. Amends s. 658.20, F.S., relating to investigation by office.

Section 11. Amends s. 658.21, F.S., relating to approval of application; findings required.

Section 12. Amends s. 658.28, F.S., relating to acquisition of control of a bank or trust company.

Section 13. Amends s. 658.2953, F.S., relating to interstate branching.

Section 14. Amends s. 662.1225, F.S., relating to Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.

Section 15. Amends s. 662.128, F.S., relating to annual renewal.

Section 16. Amends s. 663.07, F.S., relating to asset maintenance or capital equivalency.

Section 17. Amends s. 663.532, F.S., relating to qualification.

Section 18. Amends s. 736.0802, F.S., relating to duty of loyalty.

Section 19. Reenacts s. 658.165, F.S., relating to banker's banks; formation; applicability of financial institutions codes; exceptions.

Section 20. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may encourage and attract the formation of new financial institutions as Florida-chartered institutions, in which case the OFR's revenues would be positively affected through application fees and annual assessments. However, the sum of increased revenue is indeterminate.

2. Expenditures:

   The bill may encourage and attract the formation of new financial institutions as Florida-chartered institutions, in which case the OFR's expenditures would increase for the cost of regulation and oversight of such new institutions. However, the sum of increased expenditures is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage and attract the formation of new financial institutions as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

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:

Section 7 requires the commission to adopt a form for a credit union to report to OFR the names and residence addresses of persons elected or appointed at the credit union's annual meeting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to financial institutions; amending s. 120.80, F.S.; providing that the failure of foreign nationals to participate through video conference in certain hearings is grounds for denial of certain applications; amending s. 475.01, F.S.; conforming a cross-reference; amending s. 518.117, F.S.; conforming a cross-reference; amending s. 655.045, F.S.; revising the circumstances under which the Office of Financial Regulation is required to conduct certain examinations; authorizing the office to delay examinations of state financial institutions under certain circumstances; specifying that examination requirements are deemed met under certain circumstances; requiring copies of certain examination reports to be furnished to state financial institutions; requiring certain directors to review such reports and acknowledge receipt of such reports; amending s. 655.414, F.S.; revising the entities that may acquire liabilities and assets, and the liabilities and assets that may be acquired, according to certain procedures, conditions, and limitations; specifying the basis for calculating percentages of assets or liabilities; revising the assets a mutual financial institution may sell, subject to certain

conditions; amending s. 655.50, F.S.; revising the definition of the term "financial institution"; amending s. 657.021, F.S.; requiring credit unions to submit specified information to the office after certain meetings; repealing s. 657.028(6), F.S., relating to credit union board member, committee member, and officer election and appointment record reporting requirements; amending s. 658.12, F.S.; defining the term "target market"; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or for a target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; revising financial institution application approval requirements to include consideration of target market conditions; authorizing the office to waive a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe; amending s. 658.28, F.S.; requiring a person or group to notify the office within a specified timeframe upon acquiring a controlling interest in a state bank or state trust

company; amending s. 658.2953, F.S.; defining the term "de novo branch"; amending s. 662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits or investment securities; amending s. 663.532, F.S.; revising references to lists of jurisdictions used for qualifying qualified limited service affiliates; requiring limited service affiliates to suspend certain permissible activities under certain circumstances; specifying that such suspensions remain in effect until certain conditions are met; amending s. 736.0802, F.S.; conforming a cross-reference; reenacting s. 658.165(1), F.S., relating to banker's banks, for the purpose of incorporating amendments made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an application for license for a new bank, new

trust company, new credit union, new savings and loan association, or new licensed family trust company must be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at or to participate

through video conference in the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 2. Subsection (4) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12 ~~s. 658.12(23)~~.

Section 3. Section 518.117, Florida Statutes, is amended to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12 ~~s. 658.12(20)~~ may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 4. Paragraph (a) of subsection (1) and subsection (4) of section 655.045, Florida Statutes, are amended, and

paragraph (f) is added to subsection (1) of that section, to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examination methods for very large or complex state financial institutions and financial institutions owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes.

(a) The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, if the office accepts an examination in accordance with this paragraph, the office shall conduct at least once during each 36-month period beginning July 1, 2023 ~~2014~~, a subsequent ~~the office shall conduct an~~ examination of each state financial institution in a manner that allows the preparation of a complete examination

report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under s. 655.057.

(f) In coordinating an examination required under this section, if a federal agency suspends or cancels a previously scheduled examination of a state financial institution, the office has an additional 90 days to meet the examination requirement of this section. In such case, the requirement is deemed met by the federal agency conducting the examination or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the state financial institution ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 5. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office, and upon such conditions as

the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets of, liabilities of, or a combination of assets and ~~or assume all or any part of the~~ liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of

the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3)~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or

stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7) ~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a

credit union, the provision concerning proxy statements does not apply.

Section 6. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

(3) As used in this section, the term:

(c) "Financial institution" has the same meaning as in s. 655.005(1)(i), excluding an international representative office, an international administrative office, or a qualified limited service affiliate ~~means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 7. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee responsibilities; oaths; reports to the office.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected or appointed person or persons on a form adopted by

the commission and provided by the office.

Section 8. Subsection (6) of section 657.028, Florida Statutes, is amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

~~(6) Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, all officers of the credit union, and the credit manager shall be filed with the office on forms prescribed by the commission.~~

Section 9. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(20) "Target market" means the group of clients or potential clients from whom:

(a) A bank or proposed bank expects to draw deposits and to whom the bank or proposed bank focuses or intends to focus its marketing efforts; or

(b) A trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or association expects to draw its

fiduciary accounts and to whom the trust company, the trust department of a bank or association, the proposed trust company, or the proposed trust department of a bank or association focuses or intends to focus its marketing efforts.

Section 10. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or the need for the target market that the bank or trust company intends to engage with in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area~~.

Section 11. Subsections (1) and (4) of section 658.21, Florida Statutes, are amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(1) Local and target market conditions indicate reasonable promise of successful operation for the proposed state bank or

trust company. In determining whether an applicant meets the requirements of this subsection, the office shall consider all materially relevant factors, including:

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(4)(a) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law.

(b) At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at

least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years.

(c) The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The office may waive this requirement after considering:

1. The adequacy of the overall experience and expertise of the proposed president or chief executive officer;

2. The likelihood of successful operation of the proposed state bank or trust company pursuant to subsection (1);

3. The adequacy of the proposed capitalization under subsection (2);

4. The proposed capital structure under subsection (3);

5. The experience of the other proposed officers and directors; and

6. Any other relevant data or information.

Section 12. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) If a person or a group of persons, directly or indirectly, acquires a controlling interest in a state bank or state trust company, as contemplated by this section, through probate or trust, the person or group of persons shall notify the office within 90 days after acquiring such an interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 13. Present paragraphs (a), (b), and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as paragraphs (b), (c), and (d), respectively, and a new paragraph (a) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING ~~BY STATE BANKS~~.—

(a) As used in this subsection, the term "de novo branch" means a branch of a bank which is originally established by the bank as a branch and does not become a branch of such bank as a result of:

1. The bank's acquisition of another bank or of a branch of another bank; or

2. The conversion, merger, or consolidation of any bank or branch.

Section 14. Paragraph (d) of subsection (1) of section

662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account with:

1. A bank located in the United States and insured by the Federal Deposit Insurance Corporation; or

2. A credit union located in the United States and insured by the National Credit Union Administration ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 15. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) ~~Within 45 days after the end of each calendar year,~~ A family trust company, licensed family trust company, or foreign licensed family trust company shall file an ~~its~~ annual renewal application with the office on an annual basis no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

Section 16. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international

branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 17. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and paragraphs (i) and (j) of subsection (1) of that section are amended, to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a proposed qualified limited service affiliate must file a written notice with the office, in the manner and on a form prescribed by the commission. Such written notice must include:

(i) A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge:

1. No employee, representative, or agent provides, or will provide, banking services; promotes or sells, or will promote or sell, investments; or accepts, or will accept, custody of assets.

2. No employee, representative, or agent acts, or will act, as a fiduciary in this state, which includes, but is not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

3. The jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring ~~Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

(j) For each international trust entity that the proposed qualified limited service affiliate will provide services for in this state, the following:

1. The name of the international trust entity;

2. A list of the current officers and directors of the international trust entity;

3. Any country where the international trust entity is organized or authorized to do business;

4. The name of the home-country regulator;

5. Proof that the international trust entity has been authorized by charter, license, or similar authorization by its home-country regulator to engage in trust business;

6. Proof that the international trust entity lawfully exists and is in good standing under the laws of the jurisdiction where it is chartered, licensed, or organized;

7. A statement that the international trust entity is not

in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws of any country;

8. Proof that the international trust entity is not operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation, through government intervention or any other extraordinary actions, and confirmation that it has not been in such a status or under such control at any time within the prior 3 years;

9. Proof and confirmation that the proposed qualified limited service affiliate is affiliated with the international trust entities provided in the notice; and

10. Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring ~~Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

The proposed qualified limited service affiliate may provide additional information in the form of exhibits when attempting

to satisfy any of the qualification requirements. All information that the proposed qualified limited service affiliate desires to present to support the written notice must be submitted with the notice.

(4) The qualified limited service affiliate shall suspend the permissible activities provided in s. 663.531 relating to a specific jurisdiction if the qualified limited service affiliate becomes aware that the jurisdiction of an international trust entity served by the qualified limited service affiliate is included on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring. Suspensions under this subsection must remain in effect until the jurisdiction is removed from the Financial Action Task Force's list of High Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring.

Section 18. Paragraph (a) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)(a) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12 ~~s. 658.12(20)~~, in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as

trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided the investment otherwise complies with chapters 518 and 660 and the trustee complies with the requirements of this subsection.

Section 19. For the purpose of incorporating the amendment made by this act to section 658.20, Florida Statutes, in a references thereto, subsection (1) of section 658.165, Florida Statutes, is reenacted to read:

658.165 Banker's banks; formation; applicability of financial institutions codes; exceptions.—

(1) If authorized by the office, a corporation may be formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to ss. 658.19, 658.20, and 658.21, except that s. 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.

Section 20. This act shall take effect July 1, 2022.

HB 453

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 Records of Physical Examinations of Officers
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) Criminal Justice & Public Safety Subcommittee			
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

If a law enforcement officer, correctional officer, correctional probation officer, or firefighter becomes disabled by tuberculosis, heart disease, or hypertension, Florida law presumes that the disease has been contracted in the line of duty, and is therefore compensable under workers compensation law, unless the contrary can be shown by competent evidence.

To be eligible for this legal presumption, the officer or firefighter must have taken a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill requires that the employing agency maintain records of a pre-employment physical examination for at least five years after a law enforcement, correctional, or correctional probation officer separates from the employing agency.

If the employing agency fails to maintain records of the pre-employment physical examination, and contests a petition for workers' compensation benefits filed by a law enforcement, correctional, or correctional probation officer, the bill makes the officer entitled to the presumption that disability due to tuberculosis, heart disease, or hypertension is compensable as an occupational disease under workers' compensation law. The presumption shifts the burden of proof to the employer, who must prove that the disabling disease is not related to the officer's job duties or workplace exposures.

The bill does not address firefighters, who are also eligible for the presumption so long as they undergo a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension

The bill does not impose any new costs on government employers, because state and local government agencies are already subject to records retention laws. Government employers that participate in the Florida Retirement System (FRS) must retain reports of job-related medical examinations for 25 years after a participating employee separates from the state or local agency. Local government employers that do not participate in the FRS must maintain reports of job-related medical examinations for 50 years after a participating employee separates from the local agency.

The bill has no fiscal impact on state or local governments and no economic impact on the private sector.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Qualifications for Employment as a Law Enforcement, Correctional, or Probation Officer

Florida law sets forth the minimum requirements for any person to be employed or appointed in a full- or part-time capacity, or in an auxiliary capacity, as a law enforcement officer, correctional officer, or correctional probation officer; or to be appointed as an auxiliary correctional officer by a private entity contracting with the Department of Corrections.

To become a law enforcement, correctional, or correctional probation officer, an applicant must satisfy age, education, and citizenship requirements; complete a training course; pass a certification exam; pass a criminal background check; and pass a physical examination.[1]

The physical examination requires screening for evidence of tuberculosis, heart disease, or hypertension.[2]

If the physical examination fails to reveal any evidence of tuberculosis, heart disease, or hypertension – and the officer is subsequently partially or totally disabled by tuberculosis, heart disease, or hypertension – such disability is presumed to have been accidental and to have been suffered in the line of duty, unless the contrary is shown by competent evidence.[3]

In addition to law enforcement, correctional, and correctional probation officers, the presumption applies to firefighters working for any unit of Florida government.[4]

Workers' Compensation Presumption

A legal presumption makes it easier for an employee to obtain workers' compensation benefits by shifting the burden of proof in a disability determination from the employee to the employer.[5]

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job is associated with a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.[6]

Florida law includes a presumption that treats tuberculosis, heart disease, or hypertension as an occupational disease associated with firefighters, law enforcement officers, correctional officers, and correctional probation officers. If these employees become temporarily or partially disabled by tuberculosis, heart disease, or hypertension, the law presumes that the employee contracted the disease in the line of duty unless the contrary can be shown by competent evidence.[7]

---

[1] S. 943.13, F.S.
[2] S. 943.13(6), F.S.
[3] Ss. 943.13(6) and 112.18(1)(a), F.S.
[4] Ss. 112.18(1)(a) and 175.231, F.S.
[5] *Caldwell v. Division of Retirement, Florida Dept. of Administration*, 372 So. 2d 438, (Fla. 1979).
[6] S. 440.151(2), F.S.
[7] Ss. 112.18(1)(a) and 175.231, F.S.

However, firefighters, law enforcement officers, correctional officers, and correctional probation officers are entitled to the presumption only if the officer passed a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.[8]

If the employee's pre-employment physical failed to reveal any evidence of disease, the employee must demonstrate the he or she suffers from tuberculosis, heart disease, or hypertension, but does not have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.[9]

To overcome the statutory presumption, the employer must present clear and convincing evidence that the disease was caused by a non-work-related event or exposure.[10]

Pre-Employment Physicals

To be employed as a law enforcement, correctional, or correctional probation officer, an applicant must pass a physical exam.[11] The law that establishes minimum employment standards states that such officers are eligible for the presumption of s. 112.18, F.S., only if the physical exam fails to reveal any evidence of tuberculosis, heart disease, or hypertension.[12]

To enroll in firefighting training courses and be certified as a firefighter, an applicant must be in good physical condition, as determined by a doctor or nurse practitioner.[13] The law does not mention specific screening for tuberculosis, heart disease, or hypertension. The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.[14]

Records Retention

According to the records retention schedule for state and local government agencies published by the Florida Department of State, reports of job-related medical examinations must be retained by the Florida Retirement System (FRS) for 25 years after a participating employee separates from government employment.[15]

Local governments that do not participate in the FRS must maintain reports of job-related medical examinations for 50 years after a participating employee separates from government employment.[16]

State agencies that employ people through the Other Personnel Services system, as interns, or on a voluntary basis must maintain reports of job-related medical examinations for three years after the employee separates from government employment.[17]

Eligibility for the Workers' Compensation Presumption

---

[8] S. 112.18(1)(a), F.S.

[9] *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019), citing *Walters v. State*, *DOC/Div. of Risk Management*, 100 So. 3d 1173 (Fla. 1st DCA 2019), rehearing denied, review denied 108 So. 3d 654 (The presumption is an adequate substitute for evidence of occupational causation, and compels the legal result that a claimant has proven occupational causation).

[10] *Butler v. City of Jacksonville*, 980 So. 2d 1250 (Fla. 1st DCA 2008).

[11] S. 943.13(6), F.S.

[12] *Id.*

[13] Ss. 633.408(6)(a)3 and 633.412(5), F.S.

[14] Rule 69A-37.037 and Form DFS-K3-1022.

[15] Florida Department of State, Division of Library and Information Services, *General Records Schedule GS1-SL for State and Local Government Agencies*, p. 31, https://dos.myflorida.com/library-archives/records-management/general-records-schedules/ (last visited Jan. 13, 2022).

[16] *Id*. at 32.

[17] *Id*.

In a disputed workers' compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment; or
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.[18]

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment or the employing agency.[19]

Firefighters are not subject to the exclusion for prior treatment or compensation and they are not covered by the claim-fling deadline that lets a law enforcement officer, correctional officer or correctional probation officer file a claim up to 180 days after leaving the employment.

Thus, a firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.[20]

The Pre-Employment Physical is Crucial Evidence

To use the presumption, a "firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition."[21]

The requirement of a pre-employment physical makes the record of such physical crucial evidence in a dispute over workers' compensation benefits.

For example, an elevated blood pressure reading during a pre-employment physical did not constitute evidence of hypertension when a law enforcement officer claimed that his disability, due to hypertension, was a compensable occupational disease.[22] But a firefighter who was found fit for duty, even though a doctor diagnosed him with hypertension during a pre-employment physical, was not eligible for workers' compensation benefits when he later became disabled by hypertension.[23] Meanwhile, a law enforcement officer who suffered a heart attack was not eligible for workers' compensation benefits, even though his pre-employment physical did not reveal evidence of hypertension or heart disease, because the employer demonstrated that the heart attack was caused by a genetic condition that had not been detected in the officer's pre-employment physical.[24]

When the parties cannot produce a record of a pre-employment physical, a firefighter or law enforcement officer cannot use the presumption to establish a compensable occupational disease.

For example, a fireman who did not undergo a physical examination prior to employment, because the employer did not require such physical, was denied workers' compensation benefits. The First District Court of Appeal held: "The statute creating the presumption is very clear and unambiguous and

[18] S. 112.18(1)(b)(1), F.S.
[19] S. 112.18(1)(b)(4), F.S.
[20] S. 440.151(6) and 440.185(1), F.S.
[21] S. 112.18(1)(a), F.S.
[22] *City of Tavares v. Harper*, 230 So. 3d 918 (Fla 1st DCA, 2017).
[23] *Volusia County Fire Services v. Taaffe*, So. 3d 81 (Fla. 1st DCA, 2009).
[24] *Punsky v. Clay County Sheriff's Office*, 18 So. 3d 577 (Fla. 1st DCA, 2009).

requires a physical examination upon entering into any service as a fireman as a prerequisite to entitlement to the presumption."[25]

Effect of the Bill:

The bill requires that the employing agency maintain records of a pre-employment physical examination for at least five years after a law enforcement, correctional, correctional probation, or auxiliary correctional officer separates from the employing agency.

If the employing agency fails to maintain records of an officers' physical exam, the law enforcement, correctional, correctional probation, or auxiliary correctional officer is entitled to the presumption that disability due to tuberculosis, heart disease, or hypertension is compensable as an occupational disease under workers' compensation law.

The record retention requirement ensures that records of the pre-employment physicals of law enforcement, correctional, correctional probation, and auxiliary correctional officers are available for review if a contested claim is litigated before a judge of compensation claims.

This requirement does not impose additional duties on government employers, because state and local government agencies are already subject to record retention requirements that exceed the five-year benchmark established in this bill.

The bill amends a law that sets the minimum requirements for law enforcement, correctional, correctional probation, and auxiliary correctional officers working in Florida. The bill does not affect the certification or training requirements for firefighters, or record-retention requirements for agencies that employ firefighters.

The bill has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.13, F.S., relating to officers' minimum qualifications for employment or appointment.

Section 2. Provides an effective date of July 1, 2022.

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.

[25] *Cumbie v. City of Milton*, 496 So. 2d 923 (Fla. 1st DCA, 1986).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

B. RULE-MAKING AUTHORITY:

The bill does not require rule-making authority and does not affect existing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to records of physical examinations of officers; amending s. 943.13, F.S.; requiring an employing agency to maintain records of employee physical examinations for a specified period; creating a presumption if records are destroyed before that period has elapsed; providing an effective date.

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

Section 1. Subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.—On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(6)(a) Have passed a physical examination by a licensed physician, physician assistant, or licensed advanced practice registered nurse, based on specifications established by the

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

commission. In order to be eligible for the presumption set forth in s. 112.18 while employed with an employing agency, a law enforcement officer, correctional officer, or correctional probation officer must have successfully passed the physical examination required by this subsection upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. A law enforcement officer, correctional officer, or correctional probation officer may not use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

(b) The employing agency must maintain records of the physical examination for at least 5 years after the employee's separation from the employing agency. If the employing agency fails to maintain the records of the physical examination for the 5-year period after the employee's separation, it is presumed that the employee has met the requirement of paragraph (a).

Section 2. This act shall take effect July 1, 2022.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 453 by Rep. Duggan
Records of Physical Examinations of Officers

AMENDMENT SUMMARY
January 19, 2022

Amendment 1 by Rep. Duggan (Line 46): The amendment makes the following changes:

- States that a medical examination used to determine an applicant's fitness for firefighter training (instead of a pre-employment physical) may be used to satisfy a legal presumption that certain occupational diseases have been contracted in the line of duty.

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 Duggan offered the following:

Amendment (with title amendment)

Remove line 46 and insert:

Section 2. Paragraph (1)(a) of Section 112.18, Florida Statutes, is amended to read:

112.18 - Firefighters and law enforcement or correctional officers; special provisions relative to disability.

(1)(a) Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial

disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. The medical examination required by s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter. Such presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

Section 3. This act shall take effect July 1, 2022.

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

Remove line 7 and insert:

Amending s. 112.18, F.S.; authorizing use of specified physical examination for a presumption; providing an effective date.

HB 557

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 557 Fire Investigator Cancer Treatment Benefits
SPONSOR(S): Salzman
TIED BILLS: **IDEN./SIM. BILLS:** SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) Government Operations Subcommittee			
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

In 2019, the Legislature created a special benefit package for firefighters suffering from certain types of cancer, because studies have demonstrated a link between firefighting and cancer. The special benefit package is an alternative to filing a workers' compensation claim, which requires proof that workplace exposures are the cause of a firefighter's occupational disease. Like firefighters, fire investigators sustain significant exposure to hazardous vapors, gases and particles that are known to contribute to chronic health conditions, including cancer; however, fire investigators are not eligible for the special benefit package.

The bill amends the definition of "firefighter" to include Florida-certified fire investigators, making fire investigators eligible for the special benefit package.

The special benefit package provides that firefighters who are diagnosed with certain types of cancer are eligible for a $25,000 payment and employer-sponsored health insurance, including repayment for any deductible, co-payment, or co-insurance amount the firefighter pays for the treatment of cancer. The firefighter must: 1) have been working full-time as a firefighter, for a government employer, for at least five continuous years; 2) have not used tobacco products for at least the five years prior to the cancer diagnosis; and 3) have not been employed in any other position which is proven to create a high risk of cancer during the five years prior to the cancer diagnosis.

Twenty-one types of cancer are covered and employment-sponsored health benefits must be made available for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently re-employed as a firefighter.

If a firefighter becomes disabled or dies due to cancer, the employer must consider the cancer diagnosis as an injury or illness incurred in the line of duty. This makes the firefighter eligible for line-of-duty disability retirement benefits and also makes surviving family members eligible for line-of-duty death benefits.

The number of Florida-certified fire investigators working full-time for state and local governments, including special fire districts, is unclear. The Florida State Fire College has certified 1,740 fire investigators since 2005, and about half of these people also hold certifications as firefighters. The State Fire Marshall employs 104 fire investigators; 86 of these fire investigators are Florida-certified or in the process of becoming certified.

The bill may have an indeterminate fiscal impact on state and local governments, which are solely responsible for the cost of the special benefit package. Three cancer claims have been reported to the Risk Management Trust Fund by state agencies that employ firefighters since s. 112.1816, F.S., went into effect on July 1, 2019, and $66,308 has been paid.

The effective date of the bill is July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighters Face an Increased Risk of Cancer

A two-part study by the Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety (NIOSH) concluded that firefighters have a nine percent greater risk of being diagnosed with cancer – and a 14 percent greater risk of dying from cancer – than the general population of the United States.[1]

The study was launched in 2010 and reviewed records of more than 30,000 career firefighters who served in Chicago, Philadelphia, and San Francisco fire departments between 1950 and 2010.

- In 2013, researchers reported statistically significant mortality and incidence rates of cancers of the esophagus, intestine, lung, kidney, and oral cavity, as well as increased mesothelioma for firefighters compared with the general population, and excess risk of bladder and prostate cancer at younger ages.[2]
- In 2015, researchers reported that the risk of developing lung cancer and leukemia increases with exposure to smoke and hazardous chemicals that are released from burning materials, asbestos, and diesel exhaust.[3]

In 2018, the federal government directed the Centers for Disease Control to create a National Firefighter Registry that, with voluntary participation from firefighters, will track cancer and occupational risk factors to help researchers and the medical community better understand the causes of disease and death among firefighters.[4]

Special Benefit Package for Firefighters in lieu of Workers' Compensation Benefits

The Florida Legislature took action in 2019, by creating s. 112.1816, F.S. Instead of seeking benefits through the workers' compensation system, where the employee must prove that workplace exposures caused cancer, firefighters diagnosed with certain types of cancer may receive a one-time cash payment of $25,000 and a guarantee that his or her employer-sponsored health insurance will continue while the firefighter remains on the job and for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently re-employed as a firefighter. The employer must reimburse the firefighter for any deductible, co-payment, or co-insurance amount paid for the treatment of cancer.

Every state board, commission, department, division, bureau, agency, county, municipality, or other political subdivision of the state that employs firefighters, including fire control districts, must make these benefits available to firefighters who are employed on a full- or part-time basis.[5]

Eligibility Requirements

[1] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Findings from a Study of Cancer among U.S. Fire Fighters*, www.cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final-508.pdf (last visited Dec. 20, 2021).
[2] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia* (1950− 2009), http://www.cdc.gov/niosh/firefighters/pdfs/OEM_FF_Ca_Study_10-2013.pdf (last visited Dec. 20, 2021).
[3] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009)*, https://stacks.cdc.gov/view/cdc/34054, (last visited Dec. 20, 2021).
[4] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *National Firefighter Registry*, https://www.cdc.gov/niosh/firefighters/registry.html (last visited Dec. 20, 2021).
[5] S. 112.191(a), F.S.

To be eligible, a firefighter must be diagnosed with one of the following types of cancer: bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.[6] Additionally, the firefighter:

- Must have been employed by his or her employer for at least 5 continuous years;
- Must not have used tobacco products for at least the preceding 5 years; and
- Must not have been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer.[7]

Line-of-Duty Disability Retirement and Death Benefits

Many firefighters are members of the Florida Retirement System (FRS) which provides retirement benefits to 980 participating employers, including all state and county government agencies, school boards, state universities and community colleges, as well as many cities and special districts.[8] Firefighters who are members of the FRS are included in a special risk class whose members receive enhanced benefits, due to the unique challenges and risks of their jobs.[9]

Municipalities and special fire districts that do not participate in the FRS offer retirement plans that are secured by the Firefighters Pension Trust Fund (FPTF), which must meet minimum requirements established by the state.[10]

When a firefighter diagnosed with cancer qualifies for the $25,000 cash payment and health benefits, the employer must consider a firefighter's cancer diagnosis as an injury incurred in the line of duty.[11]

If the firefighter becomes totally and permanently disabled by cancer, the firefighter is entitled to a line-of-duty retirement,[12] as follows:

- Under the FRS, a line-of-duty disability retirement results in payment of 65 percent of the firefighter's average final compensation for the remainder of his or her life; [13]
- Under the FPTF, a line-of-duty disability retirement results in payment of at least 42 percent of the firefighters' average monthly compensation for the remainder of his or her life;[14] and
- If the firefighter did not participate in a retirement plan, the employer must pay 42 percent of the firefighters' most recent annual salary, for life.[15]

If the firefighter dies due to cancer or the treatment of cancer, the firefighter's beneficiary is entitled to line-of-duty death benefits,[16] as follows:

---

[6] S. 112.1816(1)(a), F.S.
[7] S. 112.1816(2), F.S.
[8] Department of Management Services, Division of Retirement, Florida Retirement System Pension Plan and other State Administered Systems, *Comprehensive Annual Financial Report FY 2019-2020*, p. 8, Annual Reports / Publications / Retirement / Workforce Operations / Florida Department of Management Services - DMS (myflorida.com) (last visited Dec. 20, 2021).
[9] S. 121.0515, F.S.
[10] Ss. 175.021, and 175.351, F.S.; *also see* Department of Management Services, *Municipal Police and Fire Plans/Overview*, Overview / Municipal Police and Fire Plans / Local Retirement Plans / Retirement / Workforce Operations / Florida Department of Management Services - DMS (myflorida.com) (last visited Dec. 20, 2021).
[11] S. 112.1816(2)(b), F.S.
[12] S. 112.1816(4), F.S.
[13] Department of Management Services, s*upra* note 8, at 39. Under s. 121.091(4)(b), F.S., an employee is totally and permanently disabled if he or she cannot render useful and efficient service as an officer or employee.
[14] S. 175.191, F.S., states that an employee is totally and permanently disabled if he or she cannot render useful and efficient service as a firefighter and is likely to remain so disabled continuously and permanently.
[15] S. 112.1816(3)(b), F.S.
[16] S. 112.1816(3)(a), F.S

- Under the FRS, a line-of-duty death benefit provides a lifetime monthly benefit equal to the firefighter's salary at death to the surviving spouse. If the spouse dies, the benefit is paid on behalf of the member's dependent children until the youngest reaches age 18, and the benefit may be extended until the youngest child reaches age 25 if the child is unmarried and a full time student.[17]
- State law does not require a line-of-duty death benefit for the FPTF. However, if a firefighter with 10 years of service dies prior to retirement, the firefighter's beneficiary receives either early or normal retirement benefits for 10 years.[18]
- If the firefighter did not participate in a retirement plan, the employer must provide a death benefit of at least 42 percent of the firefighters' most recent annual salary to the beneficiary, for at least 10 years.[19]

Additionally, the firefighter's beneficiary is eligible for a death benefit of $75,000.[20]

The employer is required to pay the costs of the special benefit package without increasing employee contributions to a retirement plan.[21]

Three cancer claims have been reported to the Risk Management Trust Fund by state agencies that employ firefighters since s. 112.1816, F.S., went into effect on July 1, 2019 and $66,308 has been paid.[22] Two claimants received the $25,000 cash payment and compensation for medical benefits, and one claim was settled for $15,000.[23]

Workers' Compensation Benefits

A firefighter who declines the special benefit package may instead file a claim for workers' compensation benefits. Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment.

The Employee Must Demonstrate Causation

In addition to on-the-job injuries, employers may be required to pay compensation for lost wages or furnish benefits (such as medical care, medical devices, attendant care) if an occupational disease causes disablement, is due to the nature of the employee's occupation, and the employee contracted the disease during the course of his or her employment.[24] In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job presents a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.[25]

Thus, under the workers' compensation system, a firefighter suffering from cancer must show a causal relationship between the diagnosis of cancer and his or her work as a firefighter to receive medical benefits and compensation for lost work time.

Temporary Disability

---

[17] Department of Management Services, s*upra* note 8, at 39.
[18] S. 175.201, F.S.
[19] S. 112.1816(3)(b), F.S.
[20] S. 112.191(2)(a), F.S.
[21] S. 112.1816(5), F.S.
[22] Department of Financial Services, *Agency Analysis of 2022 House Bill 557*, p. 1 (Dec. 7, 2021).
[23] Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: HB 557 (Dec. 22, 2021).
[24] Ss. 440.09 and 440.151, F.S.
[25] S. 440.151(2), F.S.

Disability is defined as the incapacity to earn wages the employee was receiving at the time of injury.[26] It is a measure of the earning capacity that is lost as a result of a work-related injury.[27] Disability may be temporary or permanent, and partial or total.[28]

When an authorized doctor declares an injured employee to be temporarily but totally disabled, the employee is eligible for up to 260 weeks (five years) of disability benefits.[29]

Injured workers who earn less than the statewide average weekly wage[30] are paid two thirds of their average weekly salary, typically beginning on the eighth day after the employee loses time from work.[31] The minimum payment is $20 per week and the maximum payment is 100 percent of the statewide average weekly wage; thus, payments to injured workers who earn more than the statewide average weekly wage are capped at the statewide average weekly wage that was in effect on the date of injury.[32]

Temporary disability benefits end when the injured worker's doctor indicates that the employee can work in some capacity and the employee returns to work, or when the employee reaches the maximum medical improvement and the carrier has paid five years of benefits.[33]

Total and Permanent Disability

When an employee is totally and permanently disabled after the date of maximum medical improvement, the employee who is not able to work in any job, for any employer, must be paid 66 2/3 percent of the employee's average weekly wage at the time of injury, or up to 100 percent of the statewide average weekly wage, until age 75, or until the end of the injured workers' life if the injury prevented the worker from working sufficient quarters to be eligible for Social Security disability.[34]

An order of compensation may require lifetime medical benefits for a catastrophic injury. Additionally, people who are disabled prior to age 65 are eligible for Medicare.[35] If a totally and permanently disabled worker receives Social Security disability benefits, the federal benefit may offset some or all of the benefits paid by the workers' compensation system.[36]

---

[26] S. 440.02(13), F.S.
[27] *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121 (1997).
[28] S. 440.15, F.S.
[29] S. 440.15(2)(a), F.S., limits disability benefits to 104 weeks (two years), but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks (five years) be reinstated. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).
[30] S. 440.12(2), F.S., defines the "statewide average weekly wage" as the average weekly wage paid by employers' subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity.
[31] S. 440.14(1), F.S.
[32] S. 440.12(2), F.S.
[33] S. 440.15(3)(d), F.S.
[34] S. 440.15(1)(a) and (b), F.S.
[35] Department of Management Services, myBenefits, *Frequently Asked Questions-Retirees*, https://www.mybenefits.myflorida.com/health/resources/faq_s/frequently_asked_questions_retirees (last visited Dec. 20, 2021).
[36] S. 440.15(1)(b) and (f), F.S.

Death Benefits

In the event that an injured worker dies within one year of an accident that causes injury or within five years of continuous disability, the employer must pay up to $7,500 for funeral expenses; and compensation up to $150,000.[37]

The surviving spouse may also receive payment for up to 1,800 classroom hours at a college or career center, or 80 semester hours at a community college. If the deceased was a state employee, the spouse is entitled to a full tuition waiver at a state university or community college.[38]

In cases that involve a compensable occupational disease, death benefits are provided to surviving beneficiaries, if the employee demonstrates causation and sufficient exposure to a specific harmful substance shown to be present in the workplace, and the employee dies within 350 weeks (6.7 years) after the last exposure to the harmful substance.[39]

Statutory Presumptions

Florida law includes several statutory presumptions that make a disability due to certain communicable diseases compensable under workers' compensation law, for first responders, unless the employer can prove that the disease was caused by a non-work related event or exposure. For firefighters, these laws include heart disease, hypertension, hepatitis, meningococcal meningitis, and tuberculosis.[40]

Workers' compensation law does not include any statutory presumption for firefighters who are diagnosed with cancer.

Florida-certified Fire Investigators

Fire investigators determine the origin and cause of fires and explosions, preserve evidence and ensure that the chain of custody is maintained, and create a record of the investigation. They also support law enforcement in the detection and apprehension of persons suspected of arson and explosive-related crimes.

According to experts in the field, the best evidence of the cause and origin of a fire may be found after a fire has been suppressed and before the process of "overhaul" begins. Overhaul involves detecting and extinguishing hidden fires or hot spots that may rekindle. Thus, fire investigators, like firefighters, face significant exposure to hazardous vapors, gases, and dangerous chemicals and carcinogens that contribute to chronic health conditions, including cancer.[41] Respiratory protective equipment is crucial to first responders working in and around a fire scene.[42]

The Florida State Fire College provides training for firefighters, fire inspectors, fire investigators, and a variety of administrative positions within the fire service.[43] Certified firefighters, certified law enforcement officers, law enforcement crime scene technicians, and certified fire safety inspectors who have fire investigation responsibilities may become certified fire investigators by completing a 360-hour certification program and

---

[37] S. 440.16(1)(a)-(b), F.S., states that compensation is based on 50 percent of the statewide average weekly wage to the surviving spouse if there are no children, and 66 2/3 percent of the statewide average weekly wage if the injured worker had a surviving spouse and children.

[38] S. 440.16(1)(c), F.S.

[39] S. 440.151(1)(a), F.S.

[40] Ss. 112.18, 112.181 and 175.231, F.S.

[41] International Association of Arson Investigators, Inc., *Fire Investigator Health and Safety Best Practices*, May 4, 2020, FireInvestigatorHealthSafetyBestPracticesSecond.pdf, (last visited Dec. 20, 2021); and FireRescue1, *It's in the smoke: cancer-causing compounds and contaminates*, August 31, 2018, It's in the smoke: cancer-causing compounds and contaminates (firerescue1.com) (last visited Dec. 20, 2021).

[42] ScienceDirect, *The "Warm Zone" Cases: Environmental Monitoring Immediately Outside the Fire Incident Response Arena by Firefighters*, September 2018, at 352-355, The "Warm Zone" Cases: Environmental Monitoring Immediately Outside the Fire Incident Response Arena by Firefighters - ScienceDirect (last visited Dec. 20, 2021).

[43] Department of Financial Services, Division of State Fire Marshal, *Certification and Testing*, www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm (last visited Dec. 20, 2021).

passing a certification exam.[44] The program includes coursework on fire chemistry, fire origin and cause, fire protection systems, building construction, latent investigation, arson investigation, post blast investigation, and legal issues for fire investigators.[45]

Since 2005, the Florida State Fire College has certified 1,740 fire investigators; 947 of these persons also hold a firefighter certification.[46] The number of certified investigators working as full-time fire investigators for state and local governments is not known.

The State Fire Marshal's Division of Investigative and Forensic Services, Bureau of Fire and Arson Investigation employs 104 fire investigators and 86 of these employees are either Florida-certified or in the process of becoming certified. These fire investigators respond to fire scenes throughout the state, on the day of a fire or within three days of a fire, and spend an average of three hours on site for each investigation.[47] They handled an average of 39 fires per fire investigator in 2019, and 33 fires per investigator in 2020.[48]

The State Fire Marshal conducts investigations when:

- A local agency does not have an organized fire department or arson investigators within its law enforcement agency;
- An initial investigation gives reason to believe a fire or explosion was the result of an intentional or reckless act, or the cause of a fire or explosion is not readily determined by the initial investigation;
- A firefighter is injured or killed in the line of duty;
- A civilian is injured or killed by a fire or explosion;
- The cost of a fire or explosion exceeds $1 million; or
- A fire or explosion may be due to the failure of a fire suppression or detection device.[49]

According to the U.S. Fire Administration, firefighters in Florida spent about 1.8 percent of their time fighting fires, and 73.2 percent of their time responding to requests for emergency medical services.[50] Thus, fire investigators employed by the State Fire Marshal likely have as much exposure to cancer-causing carcinogens as the 19,000 firefighters who respond to the scenes of active fires in Florida.[51]

Some employers that participate in FRS consider fire investigators to be members of the special risk class, while others place fire investigators in the regular class, according to the Department of Management Services, which oversees the FRS. Employees in the special risk class receive enhanced benefits. For example, a line-of-duty disability retirement benefit for a member of the special risk class is 65 percent of the employee's monthly salary, while an employee in the regular class receives 42 percent of his or her monthly salary.[52] If a fire investigator placed in the regular class wishes to receive the increased benefits of the special risk class, he or she must complete an application and his or her employer must certify that the fire inspectors' duties include on-the-scene firefighting, fire prevention, or fire training, or the supervision of persons who have such responsibilities.[53]

---

[44] Department of Financial Services, Division of State Fire Marshal, Bureau of Fire Standards & Training, *Fire Investigation Certification*, https://www.myfloridacfo.com/division/sfm/bfst/Standards/FireInvestigator.pdf (last visited Dec. 20, 2021).
[45] Rule 69A-37.065(3), F.A.C.
[46] Department of Financial Services, *supra* note 22, at 1.
[47] Department of Financial Services, *supra* note 22, at 1.
[48] Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: HB 557 / SB 838 (Jan. 11, 2021).
[49] S. 633.112, F.S., and Rule 69D-4.001, F.A.C.
[50] U.S. Fire Administration, *Florida Fire Loss and Fire Department Profile*, https://www.usfa.fema.gov/data/statistics/states/florida.html (last visited Jan. 11, 2022). The U.S. Fire Administration is an entity of the U.S. Department of Homeland Security's Federal Emergency Management Agency.
[51] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020, Firefighters, https://www.bls.gov/oes/current/oes332011.htm (last visited Jan. 12, 2022).
[52] S. 121.091(4)(f), F.S.
[53] S. 121.0515(3)(b), F.S., and Rule 60S-1.005, F.A.C.

A fire investigator who is diagnosed with cancer may file a petition for workers' compensation benefits. If the fire investigator's cancer is compensable as an occupational disease, the fire investigator is eligible for temporary disability benefits described above, based on his or her level of impairment, and may be deemed totally and permanently disabled if he or she is unable to work in any job for any employer.

A fire investigator who is disabled by cancer, but denied workers' compensation benefits, may be eligible for a general disability retirement rather than a line-of-duty retirement, so long as the fire investigator has completed eight years of service as a member of the FRS or 10 years of service as a member of the FPTF. The fire investigator would be paid 25 percent of his or her average monthly compensation.[54]

Effect of the Bill

The bill amends the definition of "firefighter" to make fire investigators certified by the Florida State Fire College eligible for the special benefit package provided by s. 112.1816, F.S.

The bill also expands the duties of firefighters to include the investigation of fires and explosives as well as the protection of life and property and the enforcement of fire prevention laws.

The special benefit package would be available to any full-time firefighter or certified fire investigator who has been employed by the state or a local government, including special fire districts, for at least five continuous years and is diagnosed with one of 21 types of cancer discussed above. Additionally, the fire investigator must not have used tobacco products and cannot have been employed in any other position which is proven to create a high risk of cancer during the five years prior to diagnosis.

A certified fire investigator who qualifies for the special benefit package would be presumed to have developed cancer in the course of employment, due to the exposures of the job, and be eligible for a line-of-duty disability retirement (discussed above) if he or she became unable to work as a firefighter.

If a certified fire investigator qualifies for the special benefit package and dies due to cancer or the treatment of cancer, his or her beneficiaries would be eligible for line-of-duty death benefits (discussed above). The fire investigator's beneficiary would also be eligible for a $75,000 death benefit paid by the employer or the employer's liability insurance carrier.

The cost of the benefits would be paid by the employer; the employer would not be permitted to increase employee contributions to a retirement plan to pay for the benefits.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.1816(1)(c), F.S., relating to firefighters; cancer diagnosis.

Section 2. Provides a statement of important state interest.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: State agencies that employ certified fire investigators would pay the costs of benefits and may not raise employee contributions to an employer-sponsored retirement plan to do so. Costs include the $25,000 payment; continuation of health insurance for 10 years after the

[54] Ss. 121.091(4)(f) and 175.191(1), F.S.

firefighter separates from employment; reimbursement for all co-payments, deductibles, and co-insurance payments related to the treatment of cancer; and the cost of any line-of-duty disability or death benefits that may be required. The state government employer also would pay a $75,000 survivor's benefit if a fire investigator is eligible for the benefits of s. 112.1816, F.S., and dies from cancer.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: Local governments that employ certified fire investigators, including special fire districts, would pay the costs of benefits and may not raise employee contributions to an employer-sponsored retirement plan to do so. Costs include the $25,000 payment; continuation of health insurance for 10 years after the firefighter separates from employment; reimbursement for all co-payments, deductibles, and co-insurance payments related to the treatment of cancer; and the cost of any line-of-duty disability or death benefits that may be required. The local government employer also would pay a $75,000 survivor's benefit if a fire investigator is eligible for the benefits of s. 112.1816, F.S., and dies from cancer.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The cost of benefits for certified fire investigators is not known.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires cities and counties and special districts to spend money or take an action that requires the expenditure of money; however, an exemption may apply as the Legislature has determined that this bill satisfies an important state interest and similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements
Article X, s. 14 of the Florida Constitution provides:

> A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to

transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

B. RULE-MAKING AUTHORITY:

The bill does not alter existing rulemaking authority or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fire investigator cancer treatment benefits; amending s. 112.1816, F.S.; revising the definition of the term "firefighter" to include full-time, Florida-certified fire investigators for the purpose of expanding eligibility for certain cancer treatment benefits to include such investigators; providing a declaration of important state interest; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 112.1816, Florida Statutes, is amended to read:

112.1816 Firefighters; cancer diagnosis.—

(1) As used in this section, the term:

(c) "Firefighter" means an individual employed as a full-time firefighter or full-time, Florida-certified fire investigator within the fire department or public safety department of an employer whose primary responsibilities are the prevention and extinguishing of fires; the investigation of fires and explosives; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

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

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2022.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 749 Fraud Prevention
SPONSOR(S): Clemons
TIED BILLS: **IDEN./SIM. BILLS:** SB 1292

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

SUMMARY ANALYSIS

The bill makes the following changes to existing law to help prevent insurance fraud:

- **Service Contracts and Agreements –**
  - **Contracts –** establishes that sellers of service contracts that include automatic renewal provisions must allow consumers to cancel these contracts in the same manner and by the same means as the consumers entered the contracts;
  - **Agreements –** expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties; requires that a service agreement company's or salesperson's disclosures in written advertisements be made in at least 12-point, boldface type and include a Florida Company Code; requires such company or salesperson disclose the full name of the company or salesperson in radio or television advertisements; requires that a service agreement salesperson must identify his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending such a call.
- **Public Adjusters and Public Adjuster Apprentices –** establishes a new maximum fine amount, not to exceed $20,000 per act, for a public adjusters or public adjuster apprentices who commit certain prohibited acts during a state of emergency declared by the Governor; implements the same penalties for individuals who engage in these prohibited acts, but are not public adjusters or public adjuster apprentices, and are not otherwise exempt from licensure.
- **Investigation by the Division of Investigative and Forensic Services (DIFS) and the State Fire Marshal (SFM) –**
  - **Public Records Exemptions for Active Investigations –** amends the definition of "active" as it pertains to investigations of fraudulent insurance acts by DIFS and of fires and explosions by SFM so that it has the same meaning as "active" in the public records law;
  - **Compliance with Investigations –** removes language that makes it a misdemeanor for a person who violates the statute regarding investigation of fraudulent insurance claims and crimes related to a fire or explosion loss; establishes that the Department of Financial Services may fine an insurer up to $2,000 per day if the insurer fails or refuses to comply with the investigation of a fraudulent insurance act by DIFS, or a fire or explosion by the SFM.
- **Prosecution of False and Fraudulent Insurance Claims –** replaces the word "and" with the word "or" that violations of certain statutes are separate crimes, and criminal prosecution for violation of either section must begin within five years of the violation; allows an insurer that has been damaged by a false or fraudulent insurance act to recover investigation and litigation expenses, including attorney fees, if the insurer has reported the false or fraudulent act to DIFS and there has been a criminal adjudication of guilt.

The bill has no impact on state or local government revenues or expenditures and no direct economic impact on the private sector.

The bill as effective upon becoming law except as otherwise provided within the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service Contracts and Agreements

A service contract is a written contract for the performance of services over a fixed time period or for a specific duration of time.[1] A service agreement is a contract or agreement indemnifying the agreement holder for the motor vehicle listed on the agreement and arising out of the ownership, operation, and use of the motor vehicle against loss cause by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[2]

Cancellation of Service Contracts

A consumer may enter a service contract in a variety of ways. Sometimes entering a service contract is accomplished easily by a consumer, but the consumer may have difficulty cancelling the contract because the service contract requires cancellation by a different method.[3] Any seller that sells or offers to sell a service contract to a consumer that has an automatic renewal provision must "disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer."[4] However, current law does not require that a service contract or offer for a contract to provide a specific method of contract cancellation.[5]

Effect of the Bill

The bill establishes that sellers of service contracts that include automatic renewal provisions must allow consumers to cancel these contracts in the same manner and by the same means as the consumers entered into the contracts.

Advertising Disclosures by Service Agreement Companies and Salespersons

Current law provides that a service agreement company or salesperson that engages in certain acts is subject to denial, suspension, revocation, or refusal to renew or continue any appointment or license, or is guilty of a second-degree misdemeanor.[6] These acts include limited violations of advertising requirements.[7]

Effect of the Bill

The bill expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties. The bill requires that a service agreement company or salesperson make disclosures in written advertisements in at least 12-point, boldface type. Such written advertisements must include a Florida Company Code, in addition to the name and address of the company. The bill requires that a service agreement company or salesperson disclose the full legal name of the company or salesperson in radio or television advertisements. Additionally, the bill requires that a service agreement salesperson must identify his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending such a call. The bill specifies that the phone number may be either the telephone number on file with the Department of Financial Service (DFS) or another number at which the salesperson may be reached. Violation of any of these requirements by a company or a salesperson may result in the denial,

[1] S. 501.165(1)(d), F.S. This statute does not apply to warranty associations licensed under ch. 634, F.S.
[2] S. 634.011(8), F.S.
[3] Department of Financial Services, Agency Analysis of 2022 House Bill 749, p. 1 (Dec. 16, 2021).
[4] S. 501.165(2)(a), F.S.
[5] DFS, *supra,* note 3, at 1.
[6] S. 634.095, F.S.
[7] S. 634.095(3), F.S.

suspension, revocation, or refusal to renew or continue an appointment or license, or a second-degree misdemeanor. These portions of the bill are effective January 1, 2023.

Public Adjusters and Public Adjuster Apprentices

Public adjusters and public adjuster apprentices are prohibited from engaging in a list of practices in current law and can be fined up to $10,000 per act for engaging in these practices at any time, including a declared state of emergency.[8] Any person who engages in the same acts, but is not a public adjuster or public adjuster apprentice, and who is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may also be subject to the same fines.[9]

Effect of the Bill

The bill establishes a new maximum fine amount, not to exceed $20,000 per act, for a public adjusters or public adjuster apprentices who commit certain prohibited acts during a state of emergency declared by the Governor through an executive order or proclamation. The bill implements the same penalties for individuals who engage in these prohibited acts, but are not public adjusters or public adjuster apprentices, and are not otherwise exempt from licensure.

Investigations by the Division of Investigative and Forensic Services (DIFS) and the State Fire Marshal (SFM)

Public Records Exemptions for Active Investigations

Chapter 119, F.S., contains the state policy on public records, including specifics about when documents are exempt from release in response to public records requests. In general, documents related to an investigation by a state agency are exempt while the investigation is "active." Under s. 119.011(3)(d), F.S., "active" has the following meaning:

> 1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
>
> 2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
>
> In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

However, the statutes regarding investigations of fraudulent insurance acts by DIFS[10] and investigations of fires and explosions by the SFM[11] contain their own definitions of an active investigation. These statutes provide that an investigation is "active" while the investigation with being conducted with a "reasonable, good faith belief" that it might lead to the filing of administrative, civil or criminal proceedings.[12] Additionally, an investigation does not cease to be active if DIFS or SFM is "proceeding with reasonable dispatch, and [has]…a good faith belief that action" might be initiated by DFS or another administrative or law enforcement agency.[13]

[8] S. 626.854(22), F.S.
[9] S. 626.854(22)(c), F.S.
[10] *See* s. 626.989, F.S.
[11] *See* s.633.112, F.S.
[12] Ss. 626.989 and 633.112, F.S.
[13] *Id.*

Effect of the Bill

The bill amends the definition of "active" as it pertains to investigations of fraudulent insurance acts by DIFS and of fires and explosions by SFM so that they have the same meaning as "active" in the public records law.[14]

Compliance with Investigation by DIFS and SFM

Statutes require insurers to report knowledge of fraudulent insurance acts or any other act or practice which constitutes a crime to DIFS[15] and knowledge that an intentional act resulted in a fire or explosion loss to its insured's real or personal property.[16] However, these statutes do not provide consequences for an insurer's failure to report this knowledge.

Effect of the Bill

The bill specifies that DFS may fine an insurer up to $2,000 per day, until it deems the insurer to be compliant, if an insurer fails or refuses to comply with the DIFS's investigation of a fraudulent insurance act or SFM's investigation of a fire or explosion, including the requirement to report fraudulent acts to DFS. The bill removes language that makes it a misdemeanor for a person who violates the statute regarding investigation of fraudulent insurance claims and crimes related to a fire or explosion loss.

Prosecution of False and Fraudulent Insurance Claims and Crimes

Criminal Charges for Insurance Fraud

Section 775.15(11), F.S., specifies that felony violations of two specific statutes[17] regarding criminal insurance fraud must be commenced within five years after the violation is committed. However, the present statutory construction could be interpreted to mean that someone must violate both of these statutes before they are prosecuted for a felony violation of s. 775.15(11), F.S.

Effect of the Bill

The bill replaces the word "and" with the word "or" between two statutory sections to clarify that violations of either section are separate crimes, and that criminal prosecution for violation of either section must begin within five years of the violation of that section.

Recovery of Costs by Insurers

Section 817.234, F.S., provides criminal penalties for any person who commits insurance fraud by engaging in certain acts with intent to injure, defraud, or deceive any insurer. An insurer that has been damaged as a result of a violation of this statute has a cause of action to recover compensatory damages, plus reasonable investigation and litigation expenses, including attorney fees, at a trial or appellate court, if the violation has resulted in a criminal adjudication of guilt.[18]

Effect of the Bill

In addition to the requirement under existing law that there has been a criminal adjudication of guilt, the bill adds the requirement that, in order to recover reasonable investigation and litigation expenses,

[14] S. 119.011(3)(d), F.S.; This change may have the effect of expanding a public records exemption. Please see Drafting Issues for further detail.
[15] S. 626.989(6), F.S.
[16] S. 633.126(2), F.S.
[17] *See* ss. 440.105 and 817.234, F.S.
[18] S. 817.235(5), F.S.

including attorney fees when it has been damaged due to a false or fraudulent insurance claim, an insurer must report the false or fraudulent claim to DIFS.

B. SECTION DIRECTORY:

Section 1. Amends s. 501.165, F.S., relating to automatic renewal of service contracts.

Section 2. Amends s. 626.854, F.S., relating to "public adjuster" defined; prohibitions.

Section 3. Amends s. 626.989, F.S., relating to investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.

Section 4. Amends s.633.112, F.S., relating to State Fire Marshal; hearings; investigations; recordkeeping and reports; subpoenas of witnesses; orders of circuit court.

Section 5. Amends s. 633.126, F.S., relating to Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.

Section 6. Amends s. 634.095, F.S., relating to prohibited acts.

Section 7. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 8. Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

Section 9. Provides that the bill is effective upon becoming law except as otherwise provided.

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:

None.

D. FISCAL COMMENTS:

None.

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:

The bill requires DIFS to adopt rules to administer the statutory sections regarding investigation of fraudulent insurance acts and fire or explosion claims or crimes, but the bill provides DIFS with the authority necessary to adopt these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The changes to the definition of "active" in sections 3 (lines 158-166) and 4 (lines 255-263) of the bill may have the unintended consequence of expanding existing public records exemptions for investigations by DIFS and SFM such that a separate public records bill might be required. However, this concern has been discussed with the bill sponsor and he intends to file an amendment to remove the language that changes the definition of "active" from the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fraud prevention; amending s. 501.165, F.S.; requiring sellers to allow consumers to cancel in specified manners and by specified means service contracts that have automatic renewal provisions; amending s. 626.854, F.S.; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; revising maximum fines for certain violations by certain persons under a specified circumstance; amending s. 626.989, F.S.; defining the term "active"; deleting provisions relating to circumstances under which investigations are considered active; authorizing the Department of Financial Services to impose an administrative fine on insurers under certain circumstances; authorizing the Division of Investigative and Forensic Services to adopt rules; providing requirements for the rules; amending s. 633.112, F.S.; defining the term "active"; deleting provisions relating to circumstances under which investigations are considered active; amending s. 633.126, F.S.; authorizing the department to impose an administrative fine on insurance companies under certain circumstances; deleting criminal penalties; authorizing the division to adopt rules; providing

requirements for the rules; amending s. 634.095, F.S.; revising requirements for advertisements issued or caused to be issued by service agreement companies or licensed salespersons; amending s. 775.15, F.S.; revising felony violations for which prosecutions must be commenced within a specified timeframe; amending s. 817.234, F.S.; providing that certain insurers are entitled to specified expenses at trials and appellate courts under certain circumstances; providing effective dates.

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

Section 1. Subsection (2) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(a) A ~~Any~~ seller that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract that has an automatic renewal provision, unless the consumer cancels that contract, shall disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.

(b) A ~~Any~~ seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which

is a specified period of 12 months or more and that automatically renews for a specified period of more than 1 month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer no less than 30 days or no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification shall disclose clearly and conspicuously:

1. That unless the consumer cancels the contract the contract will automatically renew.

2. Methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the seller at a specified telephone number or address, by referring to the contract, or by any other method.

(c) A seller that fails to comply with the requirements of this subsection violates ~~is in violation of~~ this subsection unless the seller demonstrates that:

1. As part of the seller's routine business practice, the seller has established and implemented written procedures to comply with this section and enforces compliance with the procedures;

2. Any failure to comply with this subsection is the result of error; and

3. As part of the seller's routine business practice,

where an error has caused the failure to comply with this subsection, the unearned portion of the contract subject to the automatic renewal provision is refunded as of the date on which the seller is notified of the error.

(d) A seller shall allow a consumer to cancel a service contract that has an automatic renewal provision in the same manner, and by the same means, as the service contract was entered into.

(e) ~~(d)~~ This subsection does not apply to:

1. A financial institution as defined in s. 655.005 or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

4. A health studio as defined in s. 501.0125.

5. Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

6. Any electric utility as defined in s. 366.02.

7. Any private company as defined in s. 180.05 providing services described in chapter 180 which is competing against a governmental entity or has a governmental entity providing billing services on its behalf.

(f) ~~(e)~~ A violation of this subsection renders the automatic renewal provision void and unenforceable.

Section 2. Paragraphs (b) and (c) of subsection (22) of section 626.854, Florida Statutes, are amended, and paragraph (a) of that subsection is republished, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(22)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a

public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 3. Subsections (7), (8), and (9) of section 626.989, Florida Statutes, are renumbered as subsections (9), (10), and (11), respectively, subsections (5) and (6) are amended, and new subsections (7) and (8) and subsection (12) are added to that section, to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity;

confidential information; reports to division; division investigator's power of arrest.—

(5) The office's and the department's papers, documents, reports, or evidence relative to the subject of an investigation under this section are confidential and exempt from ~~the provisions of~~ s. 119.07(1) until such investigation is completed or ceases to be active. For purposes of this subsection, the term ~~an investigation is considered~~ "active" has the same meaning as in s. 119.011(3)(d) ~~while the investigation is being conducted by the office or department with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office or department is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the office or department or other administrative or law enforcement agency~~. After an investigation is completed or ceases to be active, portions of records relating to the investigation shall remain exempt from ~~the provisions of~~ s. 119.07(1) if disclosure would:

(a) Jeopardize the integrity of another active investigation;

(b) Impair the safety and soundness of an insurer;

(c) Reveal personal financial information;

(d) Reveal the identity of a confidential source;

(e) Defame or cause unwarranted damage to the good name or

reputation of an individual or jeopardize the safety of an individual; or

(f) Reveal investigative techniques or procedures.

Further, such papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to discovery until the investigation is completed or ceases to be active. Office, department, or division investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the division.

(6) Any person, other than an insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed may send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the code, or

an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed shall send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may require.

(7) If an insurer fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurer to be in compliance.

(8) The Division of Investigative and Forensic Services shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed. The Division of Investigative and Forensic Services shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violation, as provided in

s. 624.310. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the division's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the division of the reasons for the lack of prosecution.

(12) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 4. Subsection (7) of section 633.112, Florida Statutes, is amended to read:

633.112 State Fire Marshal; hearings; investigations; recordkeeping and reports; subpoenas of witnesses; orders of circuit court.—

(7) The State Fire Marshal shall keep a record of all fires and explosions occurring in this state upon which she or he had caused an investigation to be made and all facts concerning the same. These records, obtained or prepared by the State Fire Marshal pursuant to her or his investigation, include

documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence. These records are confidential and exempt from ~~the provisions of~~ s. 119.07(1) until the investigation is completed or ceases to be active. For purposes of this section, the term ~~an investigation is considered~~ "active" has the same meaning as in s. 119.011(3)(d) ~~while such investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the department or other administrative or law enforcement agency~~. Further, these documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence relative to the subject of an investigation are ~~shall~~ not ~~be~~ subject to subpoena until the investigation is completed or ceases to be active, unless the State Fire Marshal consents. These records shall be made daily from the reports furnished the State Fire Marshal by her or his agents or others.

Section 5. Subsection (9) of section 633.126, Florida Statutes, is amended, subsection (10) is added to that section, and subsection (2) of that section is republished, to read:

633.126 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—

(2) If an insurance company has reason to suspect that a fire or explosion loss to its insured's real or personal property was caused by intentional means, the company shall notify the State Fire Marshal and shall furnish her or him with all material acquired by the company during its investigation. The State Fire Marshal may adopt rules to implement this subsection.

(9) If an insurance company fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurance company to be in compliance ~~A person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

(10) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 6. Effective January 1, 2023, paragraphs (b), (c), and (d) of subsection (3) of section 634.095, Florida Statutes,

are redesignated as paragraphs (d), (e), and (f), respectively, paragraph (a) of that subsection is amended, and new paragraphs (b) and (c) are added to that subsection, to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement that ~~which~~:

(a) Does not fully disclose in a written advertisement, in at least 12-point, boldface ~~boldfaced~~ type, the name, address, and Florida Company Code ~~license number~~ of the service agreement company.

(b) Does not fully disclose in a radio or television advertisement the full legal name of the licensed salesperson or the service agreement company.

(c) Does not fully identify the soliciting licensed salesperson's full legal name and license number when the salesperson begins, and the soliciting salesperson's telephone number when the salesperson concludes, each telephone solicitation. For the purposes of this paragraph, the actual telephone number of the salesperson may be the number on file with the department or the number at which the salesperson may

be contacted.

Section 7. Subsection (11) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(11) A prosecution for a felony violation of s. 440.105 or s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5 years after the violation is committed.

Section 8. Subsection (5) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(5)(a) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney ~~attorneys'~~ fees, at the trial and appellate courts.

(b) If an insurer damaged as a result of a violation of any provision of this section has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services pursuant to s. 626.9891 and if there has been a criminal adjudication of guilt, the insurer is entitled to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts.

Section 9. Except as otherwise provided in this act, this

act shall take effect upon becoming a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 749 by Rep. Clemons
Fraud Prevention

AMENDMENT SUMMARY
January 19, 2022

Amendment 1 by Rep. Clemons (strike-all): The strike-all amendment contains the current provisions of the bill and makes the following modifications and clarifications:

- Requires the Department of Highway Safety and Motor Vehicles' (DHSMV) electronic credentialing system (system) to display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage needed to meet financial responsibility requirements, and allow the driver to update policy information by the system.
- Requires DHSMV to provide the Legislature with recommendations regarding electronic verification of drivers' compliance with financial responsibility laws.
- Removes the sections of the bill that change the definition of "active" so that the current definitions of "active" investigations by the Department of Financial Services' Division of Forensic and Investigative Services and State Fire Marshal will remain unchanged.
- Makes various formatting and minor technical wording changes for clarity.

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 Clemons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 324.252, Florida Statutes, is created to read:

324.252 Electronic insurance verification.—

(1)In order to empower drivers in this state and reduce the incidence of automobile insurance fraud within this state, by July 1, 2023, the electronic credentialing system, as defined in s. 322.032(1), must display driver vehicle registration and insurance information, provide a driver with notification of any lapse in his or her insurance coverage needed for compliance with the financial responsibility requirements of this chapter,

and allow the driver to update his or her policy information via the system.

(2) By October 1, 2023, the department shall provide the Legislature with recommendations on the means by which the department, law enforcement agencies, and other entities authorized by the department may electronically verify a driver's compliance with the financial responsibility requirements of this chapter.

Section 2. Subsection (2) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(a) A ~~Any~~ seller that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract that has an automatic renewal provision, unless the consumer cancels that contract, shall disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.

(b) A ~~Any~~ seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or more and that automatically renews for a specified period of more than 1 month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to

the consumer no less than 30 days or no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification shall disclose clearly and conspicuously:

1. That unless the consumer cancels the contract the contract will automatically renew.

2. Methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the seller at a specified telephone number or address, by referring to the contract, or by any other method.

(c) A seller that fails to comply with the requirements of this subsection violates ~~is in violation of~~ this subsection unless the seller demonstrates that:

1. As part of the seller's routine business practice, the seller has established and implemented written procedures to comply with this section and enforces compliance with the procedures;

2. Any failure to comply with this subsection is the result of error; and

3. As part of the seller's routine business practice, where an error has caused the failure to comply with this subsection, the unearned portion of the contract subject to the automatic renewal provision is refunded as of the date on which the seller is notified of the error.

(d) A seller shall allow a consumer to cancel a service contract that has an automatic renewal provision in the same manner, and by the same means, as the service contract was entered into.

(e) This subsection does not apply to:

1. A financial institution as defined in s. 655.005 or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

4. A health studio as defined in s. 501.0125.

5. Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

6. Any electric utility as defined in s. 366.02.

7. Any private company as defined in s. 180.05 providing services described in chapter 180 which is competing against a governmental entity or has a governmental entity providing billing services on its behalf.

(f)~~(e)~~ A violation of this subsection renders the automatic renewal provision void and unenforceable.

Section 3. Paragraphs (b) and (c) of subsection (22) of section 626.854, Florida Statutes, are amended, and paragraph (a) of that subsection is republished, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(22)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a

violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 4. Present subsections (7), (8), and (9) of section 626.989, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, new subsections (7) and (8) and subsection (12) are added to that section, and subsection (6) of that section is amended, to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(6) Any person, other than an insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed may send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed shall send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may require.

(7) If an insurer fails or otherwise refuses to comply with this section, the department may impose an administrative

fine of not more than $2,000 per day for such failure until the department deems the insurer to be in compliance.

(8) The Division of Investigative and Forensic Services shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed. The Division of Investigative and Forensic Services shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violation, as provided in s. 624.310. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the division's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the division of the reasons for the lack of prosecution.

(12) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 5. Subsection (9) of section 633.126, Florida Statutes, is amended, subsection (10) is added to that section, and subsection (2) of that section is republished, to read:

633.126 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—

(2) If an insurance company has reason to suspect that a fire or explosion loss to its insured's real or personal property was caused by intentional means, the company shall notify the State Fire Marshal and shall furnish her or him with all material acquired by the company during its investigation. The State Fire Marshal may adopt rules to implement this subsection.

(9) If an insurance company fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurance company to be in compliance ~~A person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

(10) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 6. Effective January 1, 2023, present paragraphs (b), (c), and (d) of subsection (3) of section 634.095, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, new paragraphs (b) and (c) are added to that subsection, and paragraph (a) of that subsection is amended, to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement that ~~which~~:

(a) Does not fully disclose in a written advertisement, in at least 12-point, boldface ~~boldfaced~~ type, the name, address,

and Florida Company Code ~~license number~~ of the service agreement company.

(b) Does not fully disclose in a radio or television advertisement the full legal name of the licensed salesperson or the service agreement company.

(c) Does not fully identify the soliciting licensed salesperson's full legal name and license number when the salesperson begins, and the soliciting salesperson's telephone number when the salesperson concludes, each outbound telephone solicitation. For the purposes of this paragraph, the actual telephone number of the salesperson may be the number on file with the department or the number at which the salesperson may be contacted.

Section 7. Subsection (11) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(11) A prosecution for a felony violation of s. 440.105 or s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5 years after the violation is committed.

Section 8. Subsection (5) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(5)(a) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal

adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney ~~attorneys'~~ fees, at the trial and appellate courts.

(b) If an insurer damaged as a result of a violation of any provision of this section has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services pursuant to s. 626.9891 and if there has been a criminal adjudication of guilt, the insurer is entitled to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law

---

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

Remove everything before the enacting clause and insert: An act relating to fraud prevention; creating s. 324.252, F.S.; requiring that the electronic credentialing system display certain vehicle information for specified purposes by a specified date; requiring the Department of Highway Safety and Motor Vehicles to provide the Legislature with recommendations for compliance verification with certain financial responsibility requirements by a specified date; amending s. 501.165, F.S.; requiring sellers to allow consumers to cancel in

a specified manner and by specified means service contracts that have automatic renewal provisions; amending s. 626.854, F.S.; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; revising maximum fines for certain violations by certain persons under a specified circumstance; amending s. 626.989, F.S.; authorizing the Department of Financial Services to impose an administrative fine on insurers under certain circumstances; authorizing the Division of Investigative and Forensic Services to adopt certain rules; amending s. 633.126, F.S.; authorizing the department to impose an administrative fine on insurance companies under certain circumstances; deleting criminal penalties; authorizing the division to adopt certain rules; amending s. 634.095, F.S.; revising requirements for advertisements issued or caused to be issued by service agreement companies or salespersons; amending s. 775.15, F.S.; revising felony violations for which prosecutions must be commenced within a specified timeframe; amending s. 817.234, F.S.; providing that certain insurers are entitled to recover specified expenses at the trial and appellate courts under certain circumstances; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 Department of Financial Services
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 1874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) Finance & Facilities Subcommittee			
3) Appropriations Committee			
4) Commerce Committee			

SUMMARY ANALYSIS

The bill makes changes to programs of the Department of Financial Services (DFS):

- Amends several laws related to a multi-year upgrade to the state's financial systems, known as the PALM Project (Planning, Accounting, and Ledger Management).
- Employees of the Division of Rehabilitation and Liquidation join the State Group Insurance Program.
- Transfers the Stop Inmate Fraud Program from the Division of Public Assistance Fraud to the Department of Economic Opportunity.
- Reduces penalties and creates educational tools within the Division of Workers' Compensation:
  - Changes the definition of "employer" used in workers' compensation law;
  - Requires an online tutorial for persons seeking an exemption from the workers' compensation law;
  - Lengthens a deadline for non-compliant employers to submit payroll records for penalty calculation;
  - Reduces penalties for employers with no prior incidents of non-compliance;
  - Requests an exemption from the legislative ratification process for reimbursement manuals that govern payments to ambulatory surgical centers, healthcare providers, and hospitals;
  - Provides that a required notice of rights may be sent to employees by mail or email; and
  - Eliminates a requirement that payroll audits of some construction businesses be conducted in person.
- In the Division of State Fire Marshal, the bill updates boiler regulations related to inspections and fees; makes changes to the certification requirements for firefighters and firesafety inspectors; and permits the use of grant funding to pay for tools and protective clothing.
- Amends licensing requirements for embalmers and funeral directors regulated by the Division of Funeral, Cemetery, and Consumer Services
- Amends laws of the Division of Insurance Agent and Agency Services to:
  - Make process served upon the Chief Financial Officer binding when delivered to the insurer;
  - Add an exemption to the examination requirement for the all-lines adjuster license;
  - Provide additional authority for investigation of licensees;
  - Allow unaffiliated insurance agents to adjust claims without surrendering their appointments;
  - Revise statutes related to the use of fingerprints in background checks, to comply with federal law;
  - Create notice requirements for insurance agencies that stop doing business;
  - Clarify existing laws for title agents and agencies; and
  - Modifies existing laws for public adjuster compensation, qualifications and bonding requirements.
- Terminates the Florida Patient's Compensation Fund and requires that DFS supervise the liquidation and dissolution of the inactive fund.

The bill will have an indeterminate, but insignificant fiscal impact on state government. The bill provides an effective date of July 1, 2022; except otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PALM Project

Since 2014, DFS has been upgrading its financial systems, known as the Cash Management Subsystem (CMS) and the Florida Accounting Information Resource subsystem (FLAIR), which were developed in the 1970s and implemented in the 1980s.[1]

Effect of the Bill

Amendments reflect the transition to the new system, called Florida PALM (Planning, Accounting, and Ledger Management) which has begun. A task force that developed a business plan for the new financial and cash management system is disbanded. Technical changes are made because agencies will no longer need to post a journal transfer to notify the CFO that a charge-back is needed. And the term "Cash Management Subsystem" is replaced with "Financial Management Subsystem." [2]

Division of Rehabilitation and Liquidation

The DFS Division of Rehabilitation and Liquidation serves as the receiver whenever an insolvent Florida insurer is ordered into rehabilitation or liquidation. The division has 51 employees and 14 retirees who participate in the Florida Retirement System; these persons have not been part of the State Group Insurance Program because their salaries and benefits are funded by assets managed by the division rather than state appropriations. To be eligible for participation in the State Group Insurance Program, an employee must be paid by a state warrant. The State Group Insurance Program includes health and welfare insurance benefits for active and retired state employees and their families, including: health insurance; flexible spending and health savings accounts; life insurance; and dental, vision and supplemental insurance products.[3]

Effect of the Bill

The bill makes full- and part-time state employees, retired employees, and surviving spouses of employees of the Division of Rehabilitation and Liquidation eligible for the State Group Insurance Plan, beginning with the 2023 plan year.

The bill amends the definitions for full- and part-time state employees, retirees, and surviving spouses to make such persons eligible for benefits even though employees of the Division of Rehabilitation and Liquidation are not paid by state warrant.

If adopted, the cost of employee health insurance would continue to be paid by estates that are liquidated by the division; therefore, no state appropriations are needed. The division would no longer have the administrative burden of procuring health insurance on its own.

[1] S. 17.0315, F.S.
[2] Florida Department of Financial Services, *Florida Palm*, https://www.myfloridacfo.com/floridapalm/ (last visited Jan. 7, 2022).
[3] S. 110.123, F.S.

Division of Accounting and Auditing

Every state and local government entity provides its financial information to DFS annually, so DFS can prepare annual financial statements for the state of Florida and provide an online clearinghouse for the financial statements of every county, municipality, and special district in Florida. The Florida Open Financial Statement System is open to public inspection.[4]

Effect of the Bill

The bill changes the name of the state's annual report from "comprehensive annual financial report" to "annual comprehensive financial report." The bill also specifies the electronic file format (XBRL) local governments must use to file audits and financial reports with the Florida Open Financial Statement System.

Division of Public Assistance Fraud

Since 2011, DFS has been responsible for investigations of public assistance fraud.[5]

The Stop Inmate Fraud Program provides for the sharing of correctional records that are open to public inspection with state agencies involved in fraud detection, so the state can compare correctional records with records of the Department of Children and Families (DCF) and the Department of Economic Opportunity (DEO), to identify inmates receiving benefits or re-employment assistance.[6] Correctional records may also be matched against the client files of any other state or local agency as needed to identify persons who are wrongfully receiving benefits.[7]

Florida law directs DFS to establish procedures and implement the record-sharing program, conduct database searches, and share relevant results with counties where benefits such as food stamps, Medicaid, and cash assistance originate.[8] Results may also be shared with the Child Support Enforcement Program of the Department of Revenue, to locate persons who are not paying child support, and to the Social Security Administration, to reduce federal entitlement fraud in Florida.[9]

The DFS Division of Public Assistance Fraud receives corrections data and transmits the data to the agencies listed in s. 414.40, F.S., as part of an interagency agreement. DCF performs the initial screening of incarceration status of persons receiving public assistance. Investigators employed by the Division of Public Assistance Fraud act on referrals from DCF. Investigators can obtain the incarceration status of individuals under investigation from the website of the Department of Corrections. DFS has not promulgated rules for the Stop Inmate Fraud Program and does not anticipate any cost associated with the transfer to DEO.

Florida law provides two methods for reorganizations within the executive branch: 1) An existing agency or department may be transferred to another agency or department; or 2) A unit of an existing agency or department may be merged into another agency or department. Any funds allocated to the agency, department, or program being transferred move to the agency or department accepting the transfer. Applicable administrative rules remain in effect until they are changed by rulemaking promulgated by the agency that accepted the transfer.[10]

[4] S. 218.32(1)(h), F.S.
[5] SB 2156 (2011) moved the Stop Inmate Fraud Program from the Department of Law Enforcement to the Department of Financial Services.
[6] S. 414.40, F.S.
[7] S. 414.40(2)(d), F.S.
[8] S. 414.40(2), F.S.
[9] S. 414.40(2)(e), F.S.
[10] S. 20.06, F.S.

The fiscal year 2022-23 budget recommended by Gov Ron Desantis appropriates $4.2 million in recurring contracted services to the DEO, to obtain and share data related to the Stop Inmate Fraud Program.[11]

Effect of the Bill

The bill transfers the Stop Inmate Fraud Program from the DFS Division of Public Assistance Fraud to the DEO by merging the record-sharing program into the DEO. The bill states that a type two transfer is intended and directs DEO to implement the Stop Inmate Fraud Program and share the results of data-matching with counties where such benefits originated. In addition to sharing results with the Child Support Enforcement Program and the Social Security Administration, DEO may share results with the Division of Public Assistance Fraud.

There are no ongoing appropriations from either DFS or DEO associated with the transfer and the division has not promulgated rules for the record-sharing program. However, the transfer is proposed in connection with a recommended appropriation of $4.2 million in recurring contracted services that is included in the governor's proposed budget for fiscal year 2022-23.

DEO proposes to use a single vendor to monitor state correctional and county jail data for state agencies that are affected by benefit fraud, including the Agency for Health Care Administration (Medicaid), DCF (SNAP and TANF), DEO (Reemployment Assistance), and Child Support Enforcement (Department of Revenue).

Division of Workers' Compensation

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage, and may do so by purchasing insurance from an authorized carrier or through an employee-leasing agreement, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, which is the state-sponsored insurer of last resort. In return for providing compensation, the employer is relieved of liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.[12]

Definition of Employer

Chapter 440, F.S., includes a specific definition of "employer" for the purposes of workers' compensation, at s. 440.02(16)(a), F.S., which states:

> "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107.

[11] Freedom First Budget for Fiscal Year 2022-23, Department of Economic Opportunity, *Stop Inmate Fraud Program*, http://www.freedomfirstbudget.com/web%20forms/Budget/BudgetIssueDetail.aspx?p=Stop%20inmate%20fraud&AgencyTitle=ECONOMIC%20OPPORTUNITY%20%3E%20WORKFORCE%20SERVICES%20(Program)%20%3E%20REEMPLOYMENT%20ASSISTANCE%20PROGRAM%20%3E%20&si=40200200&pc=1102000000&icd=8100850&title=STOP%20INMATE%20FRAUD%20PROGRAM (last visited Dec. 21, 2021).

[12] Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.

The meaning of the words "similar agents" was disputed in a lawsuit brought against the Florida Workers' Compensation Joint Underwriting Association, Inc. (FWCJUA), which is the state's insurer of last resort and refused to issue a policy to an out-of-state talent agency doing business in Florida because the talent agency was not licensed in Florida as an employee leasing company.

The question of whether the FWCJUA was required to issue a policy to the talent agency was not resolved, but the First District Court of Appeal held that the use of the words "similar agents" in the definition of employer supported the conclusion that the talent agency was an employer subject to the workers' compensation law, even though the talent agency was not an employee leasing company subject to licensure in Florida.[13]

Effect of the Bill

The bill deletes the works "similar agents" from the statutory definition of employer used in the workers' compensation law.

Exemptions

All private sector non-construction businesses with four or more employees must have workers' compensation coverage for employees, and may provide coverage by purchasing insurance or qualifying as a self-insurer. In the construction industry, coverage is required for every employee, even if a business consists of a single sole proprietor.[14]

Corporate officers identified in a charter or articles of incorporation filed with the Division of Corporations of the Department of State may elect an exemption from Florida's Workers' Compensation law by electronically submitting a form and paying a $50 fee to the DFS Division of Worker's Compensation (DWC). By doing so, the exempt officer indicates that he or she is not covered by workers' compensation insurance, and not entitled to benefits in the event of injury. In the construction industry, no more than three corporate officers may elect such exemptions.[15]

If a corporate officer elects an exemption, or DWC revokes an exemption, DWC sends a notice to any carrier the corporate officer identified in his or her application for exemption.[16]

Effect of the Bill

The bill adds an online tutorial to the exemption application process to ensure that business owners receive accurate information and understand the penalties that can result from violations of the coverage and compliance requirements. Corporate officers would have to complete the online tutorial to obtain an exemption. DWC has videos on a variety of topics posted on its website.

Additional changes include:

- Applicants must provide the Federal Employer Identification Number of their business rather than a personal Social Security number;
- A notice would be added to the Certificate of Election to be Exempt, stating that the certificate is not a license issued by the Department of Business and Professional Regulation.
- A provision that requires exempt corporate officers in the construction industry to maintain business records would be deleted.
- And DWC would send electronic notice that a corporate officer has elected an exemption, or has been issued a notice of revocation only upon the request of an insurance carrier, and thus

[13] *Florida Workers' Compensation Joint Underwriting Association, Inc. v. American Residuals and Talent, Inc.*, 284 So.3d 1115, 1119 (Fla. 1st DCA 2019).
[14] S. 440.02(17)(b)2, F.S.
[15] Ss. 440.02(15)(a) and 440.05, F.S.
[16] S. 440.05(3), F.S.

avoid the cost of mailing notices (which can be retrieved online) to any carrier(s) the corporate officer identified in his or her application for exemption.

The proposed effective date for changes to s. 440.05, F.S., is January 1, 2023.

Compliance

Investigators employed by DWC visit worksites around the state to identify businesses that are required to secure the payment of workers' compensation for their employees but fail to do so.

If an investigator identifies employees who are not covered by workers' compensation insurance and do not have an exemption from the law, the investigator issues a stop-work order and advises the employer that business records reflecting payroll during the two years prior to the stop-work order are due within 10 business days.[17]

If there is reason to believe an employer has materially misrepresented the number of employees on the payroll, concealed information about injuries or accidents that would affect the amount of premium due to the insurer, or misclassified employee duties to avoid paying appropriate premium, the investigator issues a request for business records to determine if a penalty is warranted. If the employer does not produce business records within 10 business days, the investigator serves a stop-work order.[18]

Stop-work orders cannot be released until the employer pays the penalty in full.[19] However, stop-work orders may be conditionally released if the employer secures compensation for all employees and provides proof of insurance to DWC, pays a $1,000 down-payment toward the assessed penalty, and enters into a payment agreement or pays the penalty in full.[20] DWC will not enter into a payment agreement with an employer that has defaulted on a prior payment agreement; in such cases, DWC reinstates a stop-work order that had been conditionally released.[21] DWC posts information about stop-work orders on its website for five years, and is required to update such orders daily.[22]

Penalties must be equal to the greater of: two times the premium the employer would have paid, according to the employer's payroll records, based on the approved manual rates for every non-exempt employee who was not covered by workers' compensation insurance during any period of time within the two years prior to service of the stop-work order; or $1,000.[23]

If an employer fails to submit business records for the calculation of a penalty, or the employer's business records are not sufficient to determine an employer's payroll during the two years prior to issuance of a stop-work order, the law directs DWC to calculate a penalty for each employee, corporate officer, sole proprietor, or partner based upon the statewide average weekly wage[24] multiplied by 1.5.[25] The law provides two credits that may reduce a penalty assessed by DWC:

- An employer who has not previously been issued a stop-work order or order of penalty assessment, and has purchased insurance to comply with the workers' compensation law, may receive a credit equal to the initial payment of the estimated annual policy premium, so long as

[17] S. 440.107(3)(a)(c) and (f), and 440.107(7)(a), F.S.
[18] S. 440.107(3)(a)(b)(c) and (f) and 440.107(7)(a), F.S.
[19] S. 440.107(7)(a), F.S.
[20] *Id.*
[21] R. 69L-6.025, F.A.C.
[22] S. 440.107(7)(a), F.S.
[23] S. 440.107(7)(d)1, F.S
[24] Pursuant to S. 440.12(2)(b), F.S., the "statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the Department of Economic Opportunity on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following.
[25] S. 440.107(7)(e), F.S.,

proof of coverage and payment of the initial premium is provided to DWC within 28 days of service of the stop-work order or penalty assessment.[26]
- An employer who has not previously been issued a stop-work order or order of penalty assessment may receive a 25 percent reduction in the assessed penalty if the employer provides business records to DWC within 10 business days of receipt of a written request for such records.[27]

DWC must reinstate the stop-work order and make the unpaid penalty immediately due if the employer fails to pay the penalty or enter into a payment agreement with the division within 28 days of the stop-work order.[28] Penalty orders are rarely calculated and served within 28 days of the stop-work order; thus, the law requires the employer to enter into a payment agreement before the employer knows the amount of the penalty.

Effect of the Bill

The bill makes changes to workers' compensation enforcement and compliance laws to increase the likelihood of compliance and make penalties better reflect the type of violation the law addresses.

Specifically, the law makes business records due 21 days after receipt of a written request from DWC (rather than 10 business days), and makes payment of the penalty, or execution of a payment agreement, due within 21 days of service of the penalty assessment (rather than 28 days after service of the stop-work order).

The two-year penalty period used for calculation of penalty would be reduced to one year for employers who have not previously been issued a stop-work order and order of penalty assessment. The penalty period would remain two years for employers that have previously been issued orders for non-compliance with the workers' compensation law.

DWC would continue to post stop-work orders on its website for five years, but the requirement that the website be updated daily would be eliminated.

Credits that may reduce a penalty would be adjusted:

- The credit for the initial payment for workers' compensation insurance would be allowed so long as proof of payment is provided within 21 days of service of the penalty assessment, rather than 28 days of service of the stop-work order or penalty assessment.
- And the 25 percent penalty reduction for employers who have not previously been issued a stop-work order or order of penalty assessment would be allowed so long as the employer provides business records within 21 days of receipt of a written request for such records.

The bill creates one new credit: An employer who takes an online tutorial at a DWC worksite, and correctly answers 80 percent of the questions, may receive an additional 15 percent reduction in the penalty assessed by DWC.

The bill adds a requirement that an employer cannot enter into a payment agreement if the employer has previously been assessed a penalty that remains unpaid. This is addressed in rules promulgated by DWC but has not been required by statute.

DWC is funded by quarterly fees applied to net premiums and paid by insurance carriers and employers that self-insure to the Workers' Compensation Administration Trust Fund (WCATF). Fines and penalties levied by DWC are also paid to the WCATF. DWC anticipates minimal fiscal impact, because the collection rate may increase as the cost of assessed penalties decreases. Data provided

[26] S. 440.107 (d)1.a, F.S.
[27] S. 440.107(d)1.b, F.S.
[28] S. 440.107(7)(a), F.S.

by DWC shows that less than one-third of penalties issued by DWC between 2015 and 2019 were paid in full.

The proposed effective date for changes to s. 440.107, F.S., is January 1, 2023.

Medical Services

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.[29]

In 1980, the Legislature delegated authority over maximum reimbursement allowances to a Three-Member-Panel which consists of the Insurance Commissioner (as a representative of the Chief Financial Officer) and two others appointed by the governor and subject to confirmation by the Senate. Section 440.13(12)(a), F.S., states: "Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs."

DWC provides administrative support to the panel, which is statutorily charged with collecting data to evaluate the adequacy of the fee schedule, surveying healthcare providers to determine the availability and accessibility of healthcare, and surveying carriers to determine the impact of changes to the reimbursement schedule.[30] According to DWC, medical costs represent 67 percent of all workers' compensation costs in Florida.

Maximum reimbursements approved by the Three-Member Panel must be based on the following statutory requirements:

- For inpatient treatment, hospitals must be reimbursed 75 percent of the usual and customary charges;[31]
- For schedule surgeries, hospitals must be reimbursed 60 percent of the charges;[32]
- For physicians, reimbursement is 110 percent of the reimbursement allowed by Medicare for an office visit, and 140 percent of the reimbursement allowed by Medicare for a surgical procedure.[33]
- For prescription medications, reimbursement is the wholesale price plus a $4.18 dispensing fee; but for repackaged or relabeled prescription medications, reimbursement is 112.5 percent of the average wholesale price plus an $8 dispensing fee.[34]

Healthcare providers cannot recover fees that are higher than those outlined in the schedule. This applies to treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program.[35] Florida courts have enforced fee schedule limits against healthcare providers who sought higher fees for their services.[36]

The law requires reimbursement to medical providers at either the agreed-upon contract price or the maximum reimbursement allowed in the appropriate schedule.

[29] S. 440.13, F.S.
[30] S. 440.13(12)(e), F.S.
[31] S. 440.13(12)(a), F.S.
[32] S. 440.13(12)(b), F.S.
[33] *Id.*
[34] S. 440.13(12)(c), F.S
[35] S. 440.13(12)(d), F.S.
[36] *Sun Bank/South Florida, N.A. v. Baker*, 632 So. 2d 669 (Fla. 4th DCA 1994), cause dismissed, 639 So. 2d 982 (Fla. 1994); citing, *Easter Elevator Co. v. Hedman,* 290 So. 2d 56, 58 (Fla. 1974).

The Three-Member Panel adopts the schedules as an independent entity, but DWC relies on the schedules when rendering determinations in reimbursement disputes between health care providers and insurance carriers,[37] and when adopting fee schedules for services rendered by medical providers.[38] As a result, DWC adopts the maximum reimbursement schedules through rulemaking, and, when the cost of a schedule exceeds $1 million in the aggregate within a five-year period, the adopted rule is subject to legislative ratification.

The Administrative Procedures Act requires a statement of regulatory cost that includes an economic analysis showing whether the rule directly or indirectly:

> 1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;
> 2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or
> 3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.[39]

The law provides three exemptions to the ratification requirement. Legislative ratification does not apply to triennial updates of the Florida Building Code and Florida Fire Prevention Code, which are expressly authorized by statute, or when a state agency adopts federal standards or rules that are needed to receive federal funds or other benefits under federal law.[40]

Stakeholders in Florida's $4.3 billion workers' compensation marketplace are using a 2015 manual for ambulatory surgical centers (which was ratified by the Legislature),[41] a 2016 manual for health care providers (which did not require ratification),[42] and a 2014 manual for hospitals (which did not require legislative ratification).[43]

---

[37] S. 440.13(7), F.S.
[38] S. 440.13(13), F.S.
[39] S. 120.541(2)(a), F.S.
[40] S. 120.541(4), F.S.
[41] The Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers, found at r. 69L-7.100, F.A.C., was ratified by the Legislature and effective July 1, 2016. *See* Florida Administrative Code & Florida Administrative Register, *Rule 69L-7.100,* https://www.flrules.org/gateway/ruleno.asp?id=69L-7.100&Section=0 (last visited Jan. 12, 2022). Rulemaking proposals submitted to the Joint Administrative Procedures Committee (JAPC) in 2017 and 2018 were subsequently withdrawn. *See* Joint Administrative Procedures Committee, Florida Administrative Law Central Online Network, *Search for Rule 69L-7.100,* www.japc.state.fl.us/Pages/results.aspx?ruleNumber=69L-7.100&showAll=True&isTextSearch =False (last visited Jan. 12, 2022).
[42] The Florida Workers' Compensation Health Care Provider Reimbursement Manual, found at r. 69L-7.020, F.A.C., was effective e January 1, 2016, and did not require legislative ratification. *See* Florida Administrative Code & Florida Administrative Register, *Rule 69L-7.020* 69L-7.020 : Florida Workers' Compensation Health Care Provider Reimbursement Manual - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking (flrules.org) (last visited Jan. 12, 2022). Rulemaking proposals submitted to JAPC in 2017 and 2018 were withdrawn. *See* Joint Administrative Procedures Committee, Florida Administrative Law Central Online Network, *Search for Rule 69L-7.020* https://www.japc.state.fl.us/Pages/ResultDetails.aspx?controlNumber=R183748&ruleNumber=69L-7.020 (last visited Jan. 12, 2022).
[43] The 2014 edition of the Florida Workers' Compensation Reimbursement Manual for Hospitals, found at r. 69L-7.501, F.A.C., did not require legislative ratification and was effective January 1, 2015. *See* Florida Administrative Code & Florida Administrative Register, *Rule 69L-7.501,* https://www.flrules.org/gateway/RuleNo.asp?title=WORKERS%27%27%20COMPENSATION%20MEDICAL%20REIMBURSEMENT%20AND%20UTILIZATION%20REVIEW&ID=69L-7.501 (last visited Jan. 12, 2022). Rulemaking proposals submitted to JAPC in 2016 and 2017 were withdrawn. *See* Joint Administrative Procedures Committee, Florida Administrative Law Central Online Network, *Search for Rule 69L-7.501* www.japc.state.fl.us/Pages/results.aspx?ruleNumber=69L-7.501&showAll=True&isText Search=False (last visited Jan. 12, 2022).

A 2020 reimbursement manual for healthcare providers was adopted on October 22, 2021, but will not go into effect unless it is ratified by the legislature. HB 1123 (2022) and SB 1274 (2022) request legislative ratification for Rule 69L-7.020, F.A.C., which contains the reimbursement manual for healthcare providers.

Effect of the Bill

The bill adds a section within the Administrative Procedures Act, related to the statement of estimated regulatory costs, to exempt schedules of maximum reimbursement allowances adopted by the three-member panel from legislative ratification.

The bill gives DWC explicit rulemaking authority to administer programs related to maximum reimbursement allowances established by the Three-Member panel.

And, if there is no agreed-upon contract price, the bill permits reimbursement at the lesser of the maximum reimbursement allowance in the appropriate schedule or the provider's billed charge.

Notice of Rights to the Employee

When an employee suffers an injury in the course of employment, the employee must notify the employer of the injury within 30 days, and the employer must report the injury to its insurance carrier within seven days of such notification. The employer also must mail the injured worker an informational brochure explaining the employee's rights, benefits, and obligations, and the process for accessing workers' compensation benefits.

Effect of the Bill

The bill permits delivery of the brochure by mail or email and changes the deadline for mailing from three days to three business days.

Payroll Audits

The cost of workers' compensation insurance is based primarily upon an employer's payroll and the types of duties employees perform. Employers pay an estimated premium at the commencement of a workers' compensation policy and receive a refund or a bill for additional premium due at the end of the policy year, based on a payroll audit conducted by the insurance carrier.

The law requires payroll audits every other year for non-construction businesses. Businesses in the construction industry that are large enough to have an experience rating factor applied to their premium (meaning the policy is based on Florida premium of $5,750 in the prior year or $11,500 in the prior two years) must be audited annually and the audit must take place at the employer's worksite.[44]

The Office of Insurance Regulation (OIR) promulgates rules for payroll audits that are adopted by the Financial Services Commission. The rules require:

- An annual physical audit for policies with premium of $10,000 or more, regardless of governing classification;
- A physical audit for all new businesses that have construction classifications, regardless of premium; and
- An annual physical audit for renewal policies that have construction classifications if the estimated annual premium is $5,000 or more.[45]

Other audits may be conducted by mail. Audits conducted by telephone are not permitted in lieu of mail or physical audits.[46]

[44] S. 440.381, F.S.
[45] R. 69O-189.003(b)1, F.A.C.
[46] R. 69O-189.003(b)3, F.A.C.

Effect of the Bill

The bill requires in-person audits for construction businesses only if the construction business has an estimated annual premium of $10,000 or more. Adoption of the bill would require changes to OIR rules that require physical audits for all new construction businesses and for construction businesses that have an annual premium of $5,000 or more.

Division of Funeral, Cemetery, and Consumer Services

The Division of Funeral, Cemetery, and Consumer Services has authority over pre-need burial contracts as well as funerals and burial services. The division licenses funeral directors, embalmers, and sales agents, and also conducts annual inspections of cemeteries and related facilities.[47]

Fees for Services

In general, the price charged for burial rights, merchandise, and burial services is left to the marketplace, but Florida law places limits on fees charged for certain related services, including the transfer of burial rights from one purchaser to another, which may not exceed $50.[48]

Effect of the Bill

The bill eliminates the $50 limit for fees paid for transferring burial rights, meaning the parties may agree to a negotiated rate.

Licensing of Embalmers

To be licensed as an embalmer in Florida, an applicant must:

- Complete coursework in mortuary science;
- Complete coursework in communicable diseases;
- Complete a one-year internship under a licensed embalmer;
- Pass a written exam on the disposal of dead bodies;
- Pass a licensing exam;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.[49]

For persons who are licensed to practice embalming in a state other than Florida and wish to be licensed by DFS, there are two options:

Option One: The applicant must have been licensed in a state where the requirements are substantially equivalent or more stringent than the requirements in Florida, and:

- Provide documentation showing coursework in communicable diseases;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check;
- Submit an application and pay an application fee.[50]

Option Two: The applicant must have:

- Practiced as a licensed embalmer for at least one year;
- Passed a state licensing exam during the 10 years prior to application;

[47] Ch. 497, F. S.
[48] S. 497.277(2), F.S.
[49] S. 497.368, F.S.
[50] S. 497.369(b)1, F.S.

- Provide documentation showing coursework in communicable diseases;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.[51]

Effect of the Bill

The bill simplifies requirements for persons who are licensed embalmers in another state and wish to be licensed in Florida under Option 1. Instead of demonstrating current licensure in a state where the requirements are substantially equivalent or more stringent to those in Florida, the applicant must show that he or she has worked full-time as a licensed embalmer in another state for no less than five years.

Duties of Funeral Directors

Persons who sell and make financial arrangements for funeral services (including the disposition of human remains through embalming, cremation or other means) must be licensed as funeral directors and be affiliated with a licensed funeral establishment.[52]

Certain duties may only be performed by licensed funeral directors, including setting the time of services, acquiring the services of a clergy, obtaining vital information needed to file death certificates, and obtaining burial transit permits. The funeral director must directly or indirectly supervise any memorial service held prior to or within 72 hours of burial or cremation, if such memorial service is sold or arranged by a licensee.

Licensure is not required for persons who perform related services, like ordering flowers, furnishing price lists, and transporting bodies.[53]

Effect of the Bill

The bill eliminates the requirement that only licensed funeral directors can set the time of services, acquire the services of a clergy, obtain vital information needed to file death certificates, and obtain burial transit permits. Additionally, the bill requires that the funeral director directly or indirectly supervise all memorial services sold or arranged by a licensee.

[51] S. 497.369(b)2, F.S.
[52] S. 497.372, F.S.
[53] *Id.*

Licensing of Funeral Directors

To be licensed as a funeral director, an applicant must:

- Have an associates' degree in mortuary science or an associates' degree in another subject and also completed an approved course of study in mortuary science;
- Complete a course on communicable diseases;
- Complete a one-year internship under a licensed funeral director;
- Pass an exam on the disposal of dead bodies;
- Pass a licensing exam;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.[54]

For persons who are licensed as a funeral director in a state other than Florida and wish to be licensed by DFS, there are two options:

Option One: The applicant must have been licensed in a state where the requirements are substantially equivalent or more stringent than the requirements in Florida, and:

- Complete coursework in communicable diseases;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check;
- Submit an application and pay an application fee.[55]

Option Two: The applicant must have completed a licensing exam in another state that is substantially equivalent or more stringent than the licensing exam in Florida, and:

- Have an associates' degree in mortuary science or an associates' degree in another subject and also completed an approved course of study in mortuary science;
- Complete coursework in communicable diseases;
- Complete a one-year internship under a licensed funeral director;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.[56]

Effect of the Bill

The bill changes the licensing requirements for persons who are licensed funeral directors in other states and seek licensure in Florida. Applicants seeking licensure under Option One must show that they are in good standing in their state of licensure and that they have practiced as a licensed funeral director for no less than five years. Applicants seeking licensure under Option Two may be licensed if they hold a certificate from an accredited program in mortuary science but have not earned an associate's degree.

Division of State Fire Marshal

The State Fire Marshal protects people and property throughout Florida and has authority to inspect buildings, structures, equipment, vehicles and chemicals when there is reasonable cause to believe a violation of the Florida Fire Code has occurred.[57]

The State Fire Marshall has two bureaus:

[54] S. 497.373, F.S.
[55] S. 497.374(b)1, F.S.
[56] S. 497.374(b)2, F.S.
[57] Chs. 554 and 633, F. S.

- The Bureau of Fire Prevention conducts safety inspections and reviews construction plans for all state-owned buildings, regulates fireworks and the fire sprinkler industry, inspects and licenses boilers, and certifies persons working in the fire suppression industry; and
- The Bureau of Firefighter Standards and Training approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards. Persons may be certified as a volunteer firefighter, firefighter, or administrator of a fire service provider (*i.e.* fire chief, fire coordinator, fire director, or fire administrator).[58]

Boiler Inspections

The State Fire Marshall performs inspections to ensure the safety of boilers in public buildings.[59]

Effect of the Bill

The bill updates boiler inspection requirements so the law reflects current industry standards:

- Requires carbon monoxide detectors in public lodging establishments that use boilers;
- Deletes a $50 fee for a required exam that is now offered by the National Board of Boiler and Pressure Vessel Inspectors;
- Clarifies the type of information needed to obtain a boiler permit;
- Clarifies that a fee is required if an inspector is required to make a special trip to conduct a testing and verification inspection; and
- Adjusts compliance deadlines if an insurance company authorized to sell boiler and machinery insurance or an inspection agency accredited by the National Board of Boiler and Pressure Vessel Inspectors fails to perform required inspections in a timely manner or fails to correct a violation within 30 days.

Certification of Fire Inspectors

State and local fire inspectors may enter and inspect any buildings subject to fire safety laws.

To be certified by the State Fire Marshal, a person who wants to be a fire inspector must complete a 200-hour fire-safety inspector training program and pass a fire-safety inspector certification examination or demonstrate that he or she has had equivalent education and training in another state.[60] Additionally, the applicant must be in good physical condition, as determined by a medical examination, and have good moral character, as determined by a background investigation that includes the processing of fingerprints for a national criminal background check. The applicant must provide a sworn affidavit stating that he or she does not use tobacco.[61]

Certificates are valid for four years; a certified fire safety inspector must complete 54 hours of continuing education during the four-year period or pass an examination to renew the certificate.[62]

[58] Department of Financial Services, Division of State Fire Marshal, *What We Do*, https://myfloridacfo.com/Division/SFM/ (last visited Jan. 7, 2022).
[59] Department of Financial Services, Division of State Fire Marshal, *Boiler Safety Section*, https://www.myfloridacfo.com/Division/sfm/BFP/BoilerSafety/default.htm (last visited Jan. 7, 2022).
[60] S. 633.216, F.S.
[61] S. 633.412, F.S.
[62] S. 633.216(4), F.S.

Effect of the Bill

The bill eliminates the option of passing an exam, rather than completing 54 hours of continuing education, to renew a fire safety certificate. Thus, the fire safety inspector certificate could only be renewed if the certificate-holder completes 54 hours of continuing education during the four-year certification period.

Certification of Firefighters and Commanders

To be certified as a firefighter, a person must complete a minimum standards course and exam established by the State Fire Marshal or show proof of equivalent training in another state, and pass an exam within one year of completing the minimum standards course. Additionally, the applicant must be in good physical condition, as determined by a medical examination, and have good moral character, as determined by a background investigation that includes the processing of fingerprints for a national criminal background check. The applicant also must provide a sworn affidavit stating that he or she does not use tobacco.[63]

To serve as an administrative and command head of a fire service provider, or to work in a position directing incident outcomes, a certified firefighter must earn a Special Certificate of Compliance. Such person must be active as a firefighter, maintain a valid fire service instructor certificate and teach at least 40 hours of instruction during a four-year period, and complete a Firefighter Retention Refresher Course prior to expiration of the four-year period.[64]

A certified firefighter who is employed as a fire chief, fire coordinator, fire director, or fire administrator must obtain a Special Certificate of Compliance within one year of beginning employment.[65]

Effect of the Bill

The bill deletes specific requirements for the Special Certificate of Compliance and instead provides that the requirements to obtain and renew the Special Certificate of Compliance shall be established by rule.

Renewing a Firefighter's Certificate

Firefighter certificates of compliance are valid for four years. To renew a certification, a firefighter must:

- Be active as a firefighter, meaning the certificate holder was employed as a firefighter or served as a volunteer firefighter for at least six months during a four-year period; or
- Hold a fire service instructor certificate and instruct at least 40 hours during a four-year period, or
- Complete a Firefighter Retention Refresher Course during the six months before the four-year period expires, or
- Retake and pass the Minimum Standards Course examination during the six months before the four-year period expires.[66]

Effect of the Bill

The bill provides that the special certificate of compliance has the same renewal requirements as a firefighter certificate of compliance. The bill also changes the definition of an active firefighter. Instead of requiring at least six months of active service during a four-year certification period, the bill provides the following definition:

[63] S. 633.408(4), F.S.
[64] S. 633.408(6), F.S.
[65] S. 633.408(6)(b), F.S.
[66] S. 633.414, F.S.

> As used in this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter as evidenced by the individual's name appearing on a fire service provider's employment roster in the Florida State Fire College database or a letter by the fire service provider attesting to dates of employment.

Thus, to renew a certification, a firefighter would have to be included in a fire service provider's employment roster or provide a letter from a fire service provider attesting to the firefighter's dates of employment.

Additionally, the bill permits completion of the Firefighter Retention Refresher Course or passage of the Minimum Standards Course examination at any time prior to expiration of the certificate.

Grants to Local Fire Departments

The Office of the State Fire Marshall also oversees the Firefighter Assistance Grant Program which awards grants to fire departments based on an annual needs assessment survey and restricts funding to training, personal protective equipment, breathing equipment, and fire engine pumper equipment.[67]

Effect of the Bill

The bill expands the types of equipment and tools that can be purchased with funds from the Firefighter Assistance Grant Program. This allows the use of grant funds for equipment and tools that improve fire safety and rescue capabilities, and for protective clothing and equipment that complies with standards of the National Fire Protection Association.

Division of Insurance Agent and Agency Services

The DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.[68]

Service of Process

Every insurer licensed to do business in Florida must appoint the Chief Financial Officer (CFO) as agent for service of legal process in any civil action or proceeding in Florida and provide the name and e-mail address of the person to whom process received by the CFO should be forwarded.[69]

The CFO also serves as the agent for service of legal process against any nonresident agent,[70] reinsurance intermediary,[71] nonresident health insurance agent,[72] nonresident independent or public adjuster,[73] surplus lines insurer,[74] unauthorized insurer,[75] and viatical settlement provider.[76]

Florida law requires that process be served upon a state officer, and then forwarded to the regulated entity, to ensure that the regulator is aware of lawsuits served upon regulated entities. This is a standard practice that is recommended by the National Association of Insurance Commissioners and used in many states.[77]

---

[67] S. 633.135, F.S. and Rule 69A-37.502, F.A.C.
[68] Ch. 626, parts I, II, III, IV, V, VI, VIII, IX, and XIII, F. S.
[69] S. 624.423(3), F.S.
[70] S. 626.742, F.S.
[71] S. 626.7492, F.S.
[72] S. 626.836, F.S.
[73] S. 626.8736, F.S.
[74] S. 626.937, F.S.
[75] S. 626.909, F.S.
[76] S. 626.9912, F.S.
[77] National Association of Insurance Commissioners, *Uniform Consent to Service of Process/Form 12*,

Effect of the Bill

The bill clarifies existing law, to clearly state that service of process is valid and binding on the insurer on the date such process is delivered to the insurer or the insurer is notified that such information is available on a secure network, rather than the date the process is served upon the CFO.

Unaffiliated Insurance Agents Adjusting Claims

Unaffiliated insurance agents are licensed agents who work as independent consultants, analyzing policies and providing advice or recommendations on insurance products for a fee. Such persons may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agent contracted with or employing insurer-appointed insurance agents.[78]

Insurance agents who are licensed to sell and service insurance must be appointed by an authorized insurer who sells the type of insurance the agent is authorized to sell.[79]

The law was intended to prohibit conflicts of interest that would allow unaffiliated agents to compel payments for referrals from affiliated agents or companies.[80]

Effect of the Bill

The bill permits an insurance professional who holds both unaffiliated insurance agent license and an adjuster license to obtain an adjuster appointment while continuing his or her work as an independent consultant in the insurance industry. After a catastrophic storm, for example, the adjuster could be appointed to adjust claims for an insurer without surrendering his or her unaffiliated agent appointments.

Specifically, the bill amends the definition of unaffiliated insurance agent to state that a licensed adjuster who is also an unaffiliated insurance agent may obtain an adjuster appointment while simultaneously holding an unaffiliated appointment on his or her agent license.

Additionally, the bill amends the scope of the licensing law for insurance agents, to permit unaffiliated agents who also hold an adjuster license to obtain an adjuster appointment and be compensated for adjusting claims while maintaining his or her license as an unaffiliated insurance agent.

Fingerprints for Background Checks

The Florida Insurance Code authorizes DFS to investigate any applicant or licensee, and further states that licensing statutes which require an evaluation of an applicant's character or fitness must include the submission of fingerprints for a national criminal records check.[81] Applicants and licensees submit fingerprints to FDLE, which forwards the fingerprints to the FBI for a national background check.[82]

National background checks conducted for non-criminal purposes are subject to Public Law 92-544, which was enacted by Congress in 1972 and permits states to receive criminal history records from the FBI so long as the state has enacted a law that requires the submission of fingerprints for appropriate licensing and employment purposes.

---

https://www.naic.org/documents/industry_ucaa_form12.pdf (last visited Dec. 22, 2021).
[78] S. 626.015(20), F.S.
[79] S. 626.112, F.S.
[80] S. 626.311(6), F.S.
[81] S. 626.201, F.S.
[82] S. 624.34, F.S.

The FBI processes fingerprints only if the criteria established by the U.S. Department of Justice has been satisfied. To satisfy federal law, a state licensing statute must identify the specific categories of licenses that require the submission of fingerprints as part of an application and expressly state that the applicant's fingerprints will be submitted to the FBI or submitted for a national criminal records background check.

Effect of the Bill

The bill makes technical amendments to licensing laws to ensure compliance with federal law and continuation of FBI background checks for agents and agencies seeking licensure in Florida.

Seven of the laws being amended set forth the application requirements for persons seeking licensure:

- As an insurance agent, customer representative, adjuster, service representative, or reinsurance intermediary;[83]
- For an insurance agency;[84]
- As a limited lines licensee to transact motor vehicle physical damage and mechanical breakdown insurance; industrial fire or burglary insurance; travel insurance; motor vehicle rental insurance; credit insurance; crop hail and multiple-peril crop insurance; in-transit and storage personal property insurance; and portable electronics insurance;[85]
- As a nonresident all-lines adjustor;[86]
- As an insurance navigator;[87]
- As a bail bond agent;[88] or
- For temporary licensure (pending examination) as a limited surety agent or professional bail bond agent.[89]

Four of the laws being amended:

- Provide authority to investigate the character, experience, background, and fitness of licensees and applicants seeking licensure, and to require the submission of fingerprints as part of such investigation;[90]
- Require the submission of fingerprints if DFS has reason to believe a licensee has been convicted of a crime; is the subject of an acquisition; or employs or appoints a new partner, officer, or director;[91]
- Authorize investigations of allegations of improper conduct by licensed persons and entities (adjustors, agents, agencies, insurers) and related professionals (mediators and continuing education providers);[92] and
- Identify portions of the Insurance Code that are applicable to title agents and agencies.[93]

Authority to Investigate Licensees

Applicants seeking licensure by DFS as an insurance agent, insurance agency, or bail bond agent are subject to a background investigation to determine the applicant's character, experience, background, and fitness for the desired license.[94]

[83] S. 626.171, F.S.
[84] S. 626.172, F.S.
[85] S. 626.321, F.S.
[86] S. 626.8734, F.S.
[87] S. 626.9953, F.S
[88] S. 648.34, F.S.
[89] S. 648.355, F.S.
[90] S. 626.201, F.S.
[91] S. 626.202, F.S.
[92] S. 626.601, F.S.
[93] S. 626.8411, F.S.
[94] Ss. 626.201 and 648.27 F.S.

The application process includes the submission of fingerprints for a national criminal background check and a review of any prior violations of the Insurance Code. DFS may inquire about any matter that is reasonably related to the character and fitness of a licensee upon application for a license, renewal of a license, or reinstatement of a license.[95]

DFS has authority expressly conferred upon it and reasonably implied from the provisions of the Insurance Code.[96] For investigations, the law provides the following express authority:

- DFS may investigate any matter to determine whether a violation of the Insurance Code has occurred, or to secure information that may be useful in the lawful administration of the Insurance Code.[97] This includes the authority to investigate the accounts, records, documents, and transactions of licensees.[98]
- DFS may investigate the conduct of any licensee, upon its own motion or upon receiving a written complaint signed by an interested person, so long as there is reasonable cause to believe that a licensee has violated a provision of the Insurance Code.[99] A licensee that fails to respond to a written request for documents or other information within 20 days of receipt of such request may be subject to administrative penalties of up to $2,500.[100]
- Enforcement powers granted to DFS – including authority to issue orders to cease and desist, administrative complaints to suspend or revoke a license and/or remove affiliated parties – apply to licensees and their affiliated parties, and to unlicensed persons who engage in activities for which licensure is required.[101]

Effect of the Bill

The bill provides explicit authority to investigate licensees for violations of the Insurance Code even if a license expires, is not renewed, or is surrendered. The bill also states that the withdrawal of a complaint does not affect DFS's authority to investigate or take administrative action against a licensee or former licensee. An alleged violation must have occurred while the licensee held an active license.

Express authority is added to s. 626.201, F.S., which permits DFS to investigate applicants seeking licensure or appointment in Florida. Identical express authority is added to s. 648.46, F.S., which permits DFS to take disciplinary actions against licensed bail bond agents.

Closure of an Insurance Agency

Current law does not address the closure of an insurance agency. Some insurance agencies have abandoned their offices and records, forcing DFS to work with landlords, retrieve records, and complete unfinished work, like remitting checks to insurers and managing applications that were not filed.

Effect of the Bill

The bill provides instructions for closure in the event that an insurance agency stops doing business for a period exceeding 31 days. Within 30 days of the date the insurance agency stops doing business, the insurance agency must:

- Notify DFS of its closure and cancel its agency license;
- Notify insurers, policyholders, and premium finance companies of the closure and provide information about the agency or agent who has taken over the book of business; and

[95] Ss. 626.201, 648.27, 648.34 and 648.355 F.S.
[96] S. 624.401(2), F.S.
[97] S. 624.307(3), F.S.
[98] S. 624.317, F.S.
[99] S. 626.601, F.S.
[100] S. 624.307 (10)(b), F.S.
[101] Ss. 624.310(2), 624.319(3)-(4) and (8), and 626.016, F.S.

- Ensure that all funds held in a fiduciary capacity are properly distributed to the rightful owner(s).

Failure to provide the required notifications could result in a fine and suspension or revocation of the agency license.

All-Lines Adjusters

An all-lines adjuster is a person who determines the value of a claim, loss, or damage payable under a property or casualty insurance contract and tries to negotiate a settlement of such claim, loss, or damage.[102]

Such persons must pass a written exam recognized by DFS to be licensed unless they qualify for an exemption.[103]

Examination is not required for persons who earn an appropriate designation from a regionally accredited postsecondary institution in Florida; or certification from a recognized professional association whose curriculum has been approved by DFS, like the Insurance Institute of America or the Claims and Litigation Management Alliance.[104]

Effect of the Bill

The bill adds the Certified All Lines Adjuster certificate from Kaplan Financial Education to a list of recognized programs that exempt an applicant from the examination requirement.

Title Agents and Agencies

Title insurance insures property owners against claims related to the ownership of an insured property, liability for back taxes, and liens or other encumbrances.[105]

Effect of the Bill

The bill includes clarifying amendments in six sections related to the sale of title insurance:

- A title insurer may not sell policies unless both the agent and the agency are appointed by the insurer;[106]
- Pre-licensing classes for title insurance agents may be taught online as well as in a classroom;[107]
- Both title agents and title agencies are required to have a separate appointment for each insurer that has appointed the agent or agency;[108]
- Appointments for title agents and title agencies are renewable every two years;[109]
- Notice requirements related to the termination of an appointment apply to both title agents and title agencies;[110]
- Sanctions related to the suspension or revocation of a license apply to both title agents and title agencies.[111]

Public Adjusters

[102] S. 626.8548, F.S.
[103] Ss. 626.211 and 626.292, F.S.
[104] S. 626.221(2)(j), F.S.
[105] Ch. 626, part V, F.S.
[106] S. 626.8412, F.S.
[107] S. 626.8417, F.S.
[108] S. 626.8421, F.S.
[109] S. 626.843, F.S.
[110] S. 626.8433, F.S.
[111] S. 626.8447, F.S.

Public adjusters file and negotiate insurance claims on behalf of a policyholder, for a fee. Florida law limits reimbursement to a public adjuster to no more than 20 percent of a claim payment, or no more than 10 percent of a payment for a claim that arose from an event that was declared a state of emergency. The law additionally prohibits a public adjuster from offering any gratuity worth more than $25, or any loan or advance to a client in return for representation in an insurance claim. Further, public adjusters may not offer residential property owners any type of gratuity or rebate in return for permitting a roof inspection, or making an insurance claim for roof damage.[112]

Persons seeking licensure as a public adjuster must have been licensed and appointed as a public adjuster apprentice, independent adjuster, or company employee adjuster for at least six months prior to application.[113]

Persons seeking licensure as a public adjuster apprentice must be licensed as an all-lines adjuster and must post a $50,000 bond during his or her appointment to a public adjusting firm and for a year following termination of such appointment.[114]

Nonresident public adjusters may be licensed to do business in Florida if they satisfy the application requirements, including passing a written exam, and demonstrating that they have been licensed and employed as a public adjuster or insurance company adjuster or independent adjuster in a state other than Florida during the six months prior to application. Additionally, the applicant must post a $50,000 bond that may not be terminated without 30 days written notice to DFS.[115]

Effect of the Bill

The bill establishes requirements for public adjusting firms and their apprentices, and makes technical changes to related laws:

- Most homeowners, condo, and renter insurance include coverage for additional living expenses a policyholder incurs if the policyholder cannot live in his or her home due to a covered loss. The bill prohibits compensation to a public adjuster based on amounts attributable to additional living expenses unless the public adjuster and the policyholder agree to such compensation in a separate agreement that includes the following disclosure: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."
- Creates a new provision which states that compensation paid to a public adjuster may not be increased based on a claim being resolved by litigation.
- Requires that adjusting firms seeking licensure include the name and license number of the designated primary adjuster who is responsible for adjusters at each business location, and requires fingerprints for background checks of the owner(s) as well as corporate officers and directors;
- Requires that an applicant for licensure as a public adjuster must have been licensed and appointed in Florida as a non-resident public adjuster, or as an all-lines adjuster, on a continual basis, during the six months prior to application;
- Amends the definition of “public adjuster apprentice” to state that such apprentice must be employed by a public adjusting firm, rather than employed by a public adjuster;
- Requires that a $50,000 bond posted by each public adjuster apprentice remain in effect for one year after termination of the public adjuster apprentice license, and requires that the public adjusting firm provide DFS with notice of the primary adjuster who responsible for the supervision of all adjusters at the firm’s location;
- Requires that the $50,000 bond posted by each nonresident public adjuster must remain in effect for one year following the expiration or termination of the public adjuster license, and also makes

[112] S. 626.854, F.S.
[113] S. 626.865(1)(e), F.S.
[114] S. 626.8651(1), F.S.
[115] S. 626.8732, F.S.

changes to comply with federal law related to the use of fingerprints in national background checks, discussed above.

The Florida Patient's Compensation Fund

Florida experienced a medical malpractice insurance crisis in the mid-1970s when 20 professional liability insurers responded to rising medical malpractice awards and settlements by cancelling coverage of Florida physicians and withdrawing from the market. Companies remaining in the market increased rates dramatically, with the leading insurer at the time requesting and receiving approval for a 100 percent increase in premium rates paid by doctors.[116]

The Legislature responded by enacting The Medical Malpractice Reform Act of 1975, which, among other things, created the Florida Patient's Compensation Fund (Fund) to limit the risk exposure of participating health care providers. Participants had to show proof of $100,000 coverage from an insurer or self-insurance plan and deposit an annual fee into the Fund. The Fund paid the excess over $100,000 for any judgment or settlement against a member. The Fund was capped at $25 million and could not pay more than $1 million on a given claim in any single year.[117]

The Fund attracted providers and ran smoothly for a few years but was not actuarially sound, so substantial losses began to accumulate.[118] In 1982, The Fund assessed its members to cover deficits, hospitals dropped out because most of the claims were against physicians, and the Fund was unable to continue operating.[119] During its short tenure, the Fund received $72 million in membership fees and $280 million in assessments; closed 4,595 claims and paid more than $311 million to victims of medical malpractice.[120]

Initially, the Fund was scheduled for sunset in 1991 and repeal in 1995; however, during a special session in 1991 the Legislature revived and readopted all statutes that had been subject to future repeal, including Section 766.105, F.S.[121] As a result, the law has not been subject to sunset review even though the Fund has not accepted new members since June 30, 1983.[122]

All private hospitals were required to join the Fund or demonstrate financial responsibility of at least $10,000 per bed through self-insurance, by posting a bond or establishing an escrow account, or by purchasing professional liability insurance. Compliance was delegated to the Agency for Health Care Administration (AHCA), which required proof of membership or exemption for licensing and license renewal. The requirement that AHCA determine compliance with Section 766.105(2)(d)2, F.S., remains, so hospitals must demonstrate that they are exempt from participation in the Florida Patient's Compensation Fund by providing proof of financial responsibility through one of the following:

- A bond posted in the amount equivalent to $10,000 per claim for each hospital bed, not to exceed a $2,500,000 annual aggregate.

---

[116] U.S. General Accounting Office, *Medical Malpractice Case Study on Florida*, *Report to Congressional Requestors*, December 1986, at 8, www.gao.gov/assets/hrd-87-21s-3.pdf, (last visited Oct. 8, 2021); and Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, December 10, 1994, at 1-7.

[117] S. 765,105, F.S.

[118] *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, supra note 116, at 7. Section 766.105(3)(h), F.S., provides that the Fund must determine whether it has minimum membership levels to offer coverage one week prior to the beginning of each fiscal year. The minimum membership thresholds of $5 million for non-hospital providers and $12.5 million for hospitals could not be met when hospitals stopped participating.

[119] *Medical Malpractice Case Study on Florida*, *Report to Congressional Requestors*, supra note 116, at 10.

[120] *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, supra note 116, at 17-18.

[121] *Id.*, at 1.

[122] Office of Insurance Regulation, *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, April 25, 2014, at 4, lamainrouge.net/siteDocuments/FLPatientsCompensationFund 04252014.pdf (last visited Oct. 8, 2021).

- An escrow account in an amount equivalent to $10,000 per claim for each hospital bed, not to exceed a $2,500,000 annual aggregate to the satisfaction of the Agency for Health Care Administration.
- Professional liability coverage in an amount equivalent to $10,000 or more per claim for each hospital bed, from a private insurer, the Joint Underwriting Association; or through a plan of self-insurance as provided in section 627.357, F.S., not to exceed a $2,500,000 annual aggregate. Include proof of funding any self-insurance retention.
- Sovereign immunity. State Agencies, subdivisions or instrumentalities of the state. No additional documentation necessary if previously documented.[123]

The Fund is an independent, tax-exempt entity created by the state, but OIR has supervisory authority over the Fund's Plan of Operation and any changes to the Plan of Operation, including repeal.[124]

The law requires that OIR review any request for assessments of plan participants or refunds of plan participants, and further states that the Fund is required to furnish audited financial reports annually, upon request, to any fund participant and to the OIR and the Joint Legislative Auditing Committee.[125]

The following provides a short history of interactions between the Fund and OIR:

- OIR Approved the Fund's Plan of Operations in 1979;[126]
- OIR approved member fees in 1981, 1985, 1986 and 1989;[127]
- OIR ordered 12 assessments of Fund members and approved 11 refunds between 1982 and 2004;[128]
- In 1994, the Fund's general manager advised the House of Representatives that it would take about six or seven years to wind down the Fund's operations, which, at that time, included 69 open claims that were the subject of litigation;[129]
- The Fund rejected a proposal to merge with the Florida Medical Malpractice Joint Underwriting Association in 2008, but promised to reduce its budget by 20 percent in 2009 and an additional 10 percent in 2010.[130]
  - In response, OIR noted that operating expenses of $325,950 (including $111,000 salary to the general manager, at that time the Fund's only employee) were not prudent because the Fund had not written any new policies in 20 years. OIR suggested that the Fund meet once per year, via conference call, and outsource the duties of the general manager.[131]
  - In reply, the Fund provided a legal opinion stating that its Articles of Association require a general manager and that the Fund benefited from the general manager's knowledge of the Fund's history and activities.[132]

---

[123] Agency for Health Care Administration, *Health Quality Assurance Licensure Form3130-8001s, Hospital*, at 11, https://Ahca.myflorida.com/MCHQ/HQALicensureForms, (last visited Oct. 8, 2021).
[124] S. 766.105(3)(c), F.S.
[125] S. 766.105(3)(e)4, F.S
[126] Email from Grant Phillips, Director of Legislative Affairs for the Office of Insurance Regulation, *FPCF Order Timeline*, at 26 (Nov. 16, 2021).
[127] *Id*.
[128] *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund, supra* note *122, at 7.*
[129] *Id.*, at 20-21.
[130] Correspondence from Stanley Marguilies, M.D., chairman of the Board of Governors of the Florida Patient's Compensation Fund to Insurance Commissioner Kevin McCarty, June 13, 2008.
[131] Correspondence from Insurance Commissioner Kevin McCarty to Stanley Marguilies, M.D., chairman of the Board of Governors of the Florida Patient's Compensation Fund, August 14, 2008.
[132] Legal opinion of Zollie M. Maynard, Esq., general counsel for the Florida Patient's Compensation Fund, September 18, 2008.

- A 2014 market conduct exam conducted by OIR noted that the Fund's operating expenses were $330,950 in 2010, $338,700 in 2011, and $359,700 in 2012.
  - The increase in operating costs was attributed to a "catastrophic computer failure" that caused the Fund to lose all digital records related to refunds. A vendor used microfilm records to restore the Fund's digital system and the Fund installed automated backup programs on its one desktop and two laptop computers.[133]
- By spring 2016, the Fund had negotiated a $3,334,000 deal with Berkshire Hathaway, which was willing to accept liability for 10 annuities that were owned by the Fund and did not have a unified qualified assignment that would have released the Fund from liability in the event an insurer paying annuitants through a structured settlement became insolvent. A transfer to Berkshire Hathaway would have allowed the Fund to issue refunds to former members and wind down its activities. The Fund rejected the deal when final contract language gave OIR contractual control over most of the Fund's activities.[134]
- In the fall of 2016, the Fund submitted a request to OIR to issue refunds and wind the Fund down, but was unable to persuade OIR that it did not have any contingent liability for some of the annuities that were issued by insurance companies, and continue to be serviced by those insurance companies, as part of structured settlements negotiated by the Fund decades earlier.[135]
- In 2019, the Fund obtained releases of contingent liability from five annuitants whose remaining payments exceed the $300,000 limit of the Florida Life and Health Insurance Guaranty Association (FLHIGA), which would be responsible for claims in the event an insurer servicing the annuities became insolvent.[136]
- In 2021, an actuarial report conducted for the Fund found the Fund retains an ownership interest in 15 annuities that have an aggregate future value of $12,680,687. In the event of an insurer insolvency, many of the annuities would be covered by FLHIGA, therefore the actuary concluded that the Fund's exposure to contingent liability is $2,403,590. About half of the remaining annuitants were children when their parents entered into structured settlements with the Fund; therefore, some of the remaining annuities may continue for another 40 years.[137]

Audited financial reports state that the Fund had total assets of $15,135,541 at the close of 2020; this includes $14,888,634 held in investment accounts.[138] Thus, it appears that the Fund has enough assets to cover its liabilities.

Operating costs have increased in recent years, because the Board of Governors approved the general manager's request for an assistant in 2015 and approved 4 percent annual salary increases for the two Fund employees for 2017, 2018, 2019 and 2020.[139] The Fund contributes to an employee pension plan and pays for legal counsel, accounting and auditing, rent and utilities, travel, and insurance.[140]

---

[133] *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund, supra* note *122, at 6-8.*
[134] Correspondence from OIR Assistant General Counsel Alyssa S. Lathrop to General Manager of the Florida Patient's Compensation Fund Charles J. Portrero, November 17, 2016; and Minutes of the May 18, 2017, meeting of the Florida Patient's Compensation Fund Operations Committee.
[135] Correspondence from OIR Assistant General Counsel Alyssa S. Lathrop to General Manager of the Florida Patient's Compensation Fund Charles J. Portrero, November 17, 2016; and Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Susan Herendeen, Esq., of the Insurance and Banking Subcommittee of the Florida House of Representatives, Dec. 22. 2021.
[136] Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Jane Nelson of the Office of Insurance Regulation, Aug. 4, 2021.
[137] Jack Swisher, ACAS, MAAA, Florida Patient's Compensation Fund Annuity Insolvency Analysis, June 28, 2021, at 4-5; and Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Jane Nelson of the Office of Insurance Regulation, Aug. 4, 2021.
[138] Carr Riggs & Ingram CPAs and Advisors, *Florida Patient's Compensation Fund Financial Statements*, Dec. 31, 2020, at 4.
[139] Memo to the Florida Patient's Compensation Fund Operating Committee from General Manager Charles Portrero, November 19, 2018.
[140] OIR monitors meetings of the Florida Patient's Compensation Fund by telephone and receives copies of meeting materials the Fund provides to its Board of Governors. OIR provided copies of meeting materials from 2011-2020 to the Insurance and Banking Subcommittee.

The following comes from financial statements the Fund shared with its governing board and OIR:

	2016	2017	2018	2019	2020
Salaries	$181,754.00	$213,668.00	$221,600.00	$229,764.00	$240,417.00
Pension Plan	$59,684.00	$52,303.00	$55,677.00	$54,424.00	$45,891.00
Rent, Utilities, and Janitorial	$20,336.00	$16,704.00	$16,158.00	$16,758.00	$12,841.00
General Counsel	$3,500.00	$42,195.00	$36,992.00	$35,339.00	$37,065.00
Accounting and Audit	$73,513.00	$58,294.00	$52,578.00	$52,821.00	$39,126.00
Travel & Expenses (staff)	$1,463.00	$4,087.00	$3,841.00	$1,962.00	$4,404.00
Travel & Expenses (board)	$7,124.00	$20,327.00	$17,627.00	$21,905.00	$22,751.00

Effect of the Bill

The bill repeals the Florida Patient's Compensation Fund and states that DFS will supervise any liquidation or dissolution of the Fund.

Effective Date

The bill shall be effective upon becoming a law, except as otherwise provided. The effective date for the educational tutorial that will be part of the workers' compensation exemption application process is January 1, 2023. The effective date changes to reduce financial penalties for non-compliance with workers' compensation law is October 1, 2022.

B. SECTION DIRECTORY:

Section 1. Repeals s. 17.0315, F.S., Financial and cash management system; task force.

Section 2. Amends s. 110.123, F.S., State Group Insurance Program.

Section 3. Amends s. 110.131, F.S., Other-personal-services employment.

Section 4. Amends s. 120.541, F.S., Statement of estimated regulatory costs.

Section 5. Amends s. 215.34, F.S., State funds; noncollectible items; procedure.

Section 6. Amends s. 215.93, F.S., Florida Financial Management Information System.

Section 7. Amends s. 215.94, F.S., Designation, duties, and responsibilities of functional owners.

Section 8. Amends s. 216.102, F.S., Filing of financial information; handling by Chief Financial Officer; penalty for noncompliance.

Section 9. Amends s. 218.32, F.S., Annual financial reports; local government entities.

Section 10. Amends s. 414.40, F.S., Stop Inmate Fraud Program established; guidelines.

Section 11. Amends s. 440.02, F.S., Definitions.

Section 12. Amends s. 440.05, F.S., Election of exemption; revocation of election; notice; certification of exemptions.

Section 13. Amends s. 440.107, F.S., Department powers to enforce employer compliance with coverage requirements.

Section 14. Amends s. 440.13, F.S., Medical services and supplies; penalty for violations; limitations.

Section 15. Amends s. 440.185, F.S., Notice of injury or death; reports; penalties for violations.

Section 16. Amends s. 440.381, F.S., Application for coverage; reporting payroll; payroll audit procedures; penalties.

Section 17. Amends s. 497.277, F.S., Other charges.

Section 18. Amends s. 497.369, F.S., Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.

Section 19. Amends s. 497.372, F.S., Funeral directing; conduct constituting practice of funeral directing.

Section 20. Amends s. 497.374, F.S., Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.

Section 21. Amends s. 554.108, F.S., Inspection.

Section 22. Amends s. 544.111, F.S., Fees.

Section 23. Amends s. 554.114, F.S., Prohibitions; penalties.

Section 24. Amends s. 624.423, F.S., Serving process.

Section 25. Amends s. 626.015, F.S., Definitions.

Sections 26, 27, 30, 34, 35, 48, 49, 54, and 55. Amend fingerprint requirements for background checks that are part of the licensing processes detailed in ss. 626.171, 626.172, 626.202, 626.601, 626.8411, 626.8734, 626.9953, 648.34, and 648.355, F.S., Amendments make it clear that the authority for the use of fingerprints in background checks comes from s. 626.201, F.S.

Section 28. Creates s. 626.173, F.S., Insurance agency closure; cancellation of licenses.

Section 29. Amends s. 626.201, F.S., Investigation.

Section 31. Amends s. 626.221, F.S., Examination requirements; exemption.

Section 32. Amends s. 626.311, F.S., Scope of license.

Section 33. Amends s. 626.321, F.S., Limited licenses and registration.

Section 36. Amends s. 626.8412, F.S., License and appointments required.

Section 37. Amends s. 626.8417, F.S., Title insurance agent licensure; exemptions.

Section 38. Amends s. 626.8421, F.S., Number of appointments permitted or required.

Section 39. Amends s. 626.843, F.S., Renewal; continuation; reinstatement; termination of title insurance agent's; appointment.

Section 40. Amends s. 626.8433, F.S., Filing of reasons for terminating appointment of title insurance agent's; confidential information.

Section 41. Amends s. 626.8447, F.S., Effect of suspension or revocation upon other licensees, appointees.

Section 42. Amends s. 626.854, F.S., "Public adjuster" defined; prohibitions.

Section 43. Amends s. 626.8561, F.S., "Public adjuster apprentice" defined.

Section 44. Amends s. 626.865, F.S., Public adjuster qualifications, bond.

Section 45. Amends s. 626.8651, F.S., Public adjuster apprentice appointment; qualifications.

Section 46. Amends s. 626.8696, F.S., Application for adjusting firm license.

Section 47. Amends s. 626.8732, F.S., Nonresident public adjuster's qualifications, bond.

Section 50. Amends s. 633.135, F.S., Firefighter Assistant Grant Program.

Section 51. Amends s. 633.216, F.S., Inspection of Buildings and Equipment; orders; firesafety inspection training requirements; certification; disciplinary action.

Section 52. Amends s. 633.408, F.S., Firefighter and volunteer firefighter training and certification.

Section 53. Amends s. 633.414, F.S., Retention of firefighter and volunteer firefighter certifications.

Section 56. Amends s. 648.46, F.S., Procedure for disciplinary action against licensees.
Section 57. Repeals s. 766.105, F.S., Florida Patient's Compensation Fund.

Section 58: Amends s. 945.6041, F.S., Inmate Medical Services.

Section 59: Amends s. 985.6441, F.S., Health care services.

Section 60. Provides DFS authority over the liquidation or dissolution of the Florida Patient's Compensation Fund.

Section 61. Provides that the transfer of the Stop Inmate Fraud Program from DFS to DEO shall take place in accordance with s. 20.06, F.S.

Section 62. Provides that the bill shall be effective July 1, 2022, except as otherwise provided. The bill proposes an effective date of January 1, 2023, for Sections 12 and 13.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have insignificant but indeterminate impact on state revenues.

2. Expenditures:

   The bill may have insignificant but indeterminate impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reducing the penalty calculation period and increasing credits for businesses that fail to comply with the workers' compensation law, so long as the business has not previously failed to provide workers' compensation coverage for its employees, should reduce the cost of non-compliance for small businesses, particularly those in the construction industry.

Exempting schedules of maximum reimbursement for ambulatory surgical centers, healthcare providers, and hospitals from legislative ratification likely would result in increased fees to providers of healthcare, but could also force insurers to request rate increases to pay such costs.

Permitting payroll audits by mail, rather than in person, for employers in the construction industry that have an estimated annual workers' compensation premium of less than $10,000 could result in modest cost savings for insurance carriers.

Permitting unaffiliated insurance agents to adjust claims, so long as the agent is also a licensed adjuster, could create employment opportunities for persons who hold both licenses and increase the pool of adjusters who can respond in the aftermath of a large storm or catastrophic event.

Terminating the Florida Patient's Compensation Fund could result in refunds to doctors and hospitals that were members of the Fund in the late 1970s and early 1980s.

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:

Restricting compensation to public adjusters when a claim is resolved by litigation (Section 42 of the bill) could deter public adjusters from assisting consumers who have complex disputes with a property insurer and infringe on the public adjuster's right to bargain for his or her services.

B. RULE-MAKING AUTHORITY:

Section 14. The bill gives DWC explicit rulemaking authority to administer programs related to maximum reimbursement allowances established by the Three-Member panel in accordance with s. 440.13(12), F.S.

Section 16. Amendments to s. 440.381, F.S., will require revisions to Rule 69O-189.003(b)3, F.A.C., promulgated by OIR, relating to payroll audits for workers' compensation insurance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Termination of the Florida Patient Compensation's Fund requires preservation of the financial responsibility requirements for hospitals that are outlined in s. 766.105, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Department of Financial Services; repealing s. 17.0315, F.S., relating to the financial and cash management system and task force; amending s. 110.123, F.S.; revising definitions; authorizing specified persons relating to the Division of Rehabilitation and Liquidation to purchase coverage in a state group health insurance plan at specified premium costs; providing that the enrollment period for the state group insurance program begins with a specified plan year for certain persons relating to the division; amending s. 110.131, F.S.; conforming a cross-reference; amending s. 120.541, F.S.; revising applicability of certain provisions relating to a specified proposed rule; amending s. 215.34, F.S.; deleting the requirement for specified entities receiving certain charged-back items to prepare a journal transfer; amending s. 215.93, F.S.; renaming a subsystem of the Florida Financial Management Information System; amending s. 215.94, F.S.; conforming a provision to changes made by the act; amending s. 216.102, F.S.; making technical changes; amending s. 218.32, F.S.; revising legislative intent; providing functions of the Florida Open Financial Statement System; requiring local governments to use

the system to file specified reports; providing requirements for the system; revising the list of entities with which the Chief Financial Officer may consult with regard to the system; authorizing, rather than requiring, certain local governmental financial statements to be filed in a specified format; deleting certain requirements for such statements; providing construction; providing exceptions; amending s. 414.40, F.S.; transferring the Stop Inmate Fraud Program from the Department of Financial Services to the Department of Economic Opportunity; authorizing the program to provide reports of certain data to the Division of Public Assistance Fraud for a specified purpose; amending s. 440.02, F.S.; revising the definition of the term "employer"; amending s. 440.05, F.S.; revising information that must be submitted with the notice of election to be exempt from workers' compensation coverage; requiring the circumstances under which the Department of Financial Services must send certain notifications to workers' compensation carriers; requiring such notifications to be electronic; requiring certificates of election to be exempt to contain certain notice; deleting a provision requiring certain corporation officers to maintain business records; revising applicability of

certificates of election to be exempt; amending s. 440.107, F.S.; revising the timeframe for certain employers to produce specified records under certain circumstances; prohibiting employers who have failed to secure payment of workers' compensation from entering a payment agreement schedule with the department unless a specified condition is met; revising circumstances that result in immediate reinstatement of stop-work orders; revising penalty assessments; amending s. 440.13, F.S.; revising statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance; authorizing the department to adopt rules; amending s. 440.185, F.S.; revising the timeline and methods for workers' compensation carriers to send certain informational brochure to injured workers; revising methods by which such informational brochure is sent to employers; amending s. 440.381, F.S.; specifying new and renewal workers' compensation policies that require physical onsite audits for a specified class; amending s. 497.277, F.S.; deleting a cap on transferring burial rights fees; amending s. 497.369, F.S.; revising requirements for licenses by endorsement to practice embalming; amending s. 497.372, F.S.; revising the scope of

funeral directing practice; amending s. 497.374, F.S.; revising requirements for licenses by endorsement to practice funeral directing; amending s. 554.108, F.S.; requiring boilers manufactured after a specified date, rather than boilers of certain heat input, to be stamped with a specified code symbol; revising the boilers' information that must be filed; requiring that specified spaces and rooms be equipped with carbon monoxide detector devices; amending s. 554.111, F.S.; deleting a requirement for a specified fee for a certificate of competency; requiring applications for boiler permits to include a specified report; revising the purpose for special trips that the department is required to make for boiler inspections; amending s. 554.114, F.S.; revising the schedules of penalties against boiler insurance companies, inspection agencies, and other persons for specified violations; amending s. 624.423, F.S.; specifying procedures for service of process upon insurers; amending s. 626.015, F.S.; revising the definition of the term "unaffiliated insurance agent"; amending s. 626.171, F.S.; requiring fingerprints for certain licenses to be processed in accordance with specified laws; amending s. 626.172, F.S.; revising the method by which fingerprints for applications for insurance

agency licenses are submitted; deleting a fingerprint processing fee; creating s. 626.173, F.S.; requiring insurance agencies' licenses to be immediately cancelled under certain circumstances; providing the method by which such cancellations must be made; providing duties for certain insurance agency persons within a specified timeframe after cessation of insurance transactions; authorizing the department to impose administrative fines against such persons for specified violations; providing a cap on such fines; authorizing the department and the Office of Insurance Regulation to suspend or revoke licenses under certain circumstances; providing requirements for determining penalties and remedies; amending s. 626.201, F.S.; conforming a provision to changes made by the act; providing continuation of jurisdiction of the licensing authority to investigate and prosecute specified violations under certain circumstances; amending s. 626.202, F.S.; conforming provisions to changes made by the act; amending s. 626.221, F.S.; adding a designation to the list of designations that allow applicants for all-lines adjuster license to be exempt from an examination; amending s. 626.311, F.S.; providing an exception to the prohibition against unaffiliated insurance agents' holding appointments

from insurers; amending ss. 626.321, 626.601, 626.8411, and 626.8412, F.S.; conforming provisions to changes made by the act; amending s. 626.8417, F.S.; revising requirements to qualify for title insurance agent licenses; amending s. 626.8421, F.S.; requiring title agencies to have separate appointments under certain circumstances; amending s. 626.843, F.S.; providing appointments of title insurance agencies; amending s. 626.8433, F.S.; requiring title insurers that terminate appointments of title insurance agencies to file certain information with the department; amending s. 626.8447, F.S.; providing effects of suspension or revocation of title insurance agency licenses; amending s. 626.854, F.S.; providing restrictions on public adjuster compensations; providing exceptions to such restrictions; amending s. 626.8561, F.S.; revising the definition of the term "public adjuster apprentice"; amending s. 626.865, F.S.; revising requirements to qualify for public adjuster licenses; requiring that certain bonds remain in effect for a specified period after expiration of the license; amending s. 626.8651, F.S.; requiring that certain bonds remain in effect for a specified period after expiration of the public adjuster apprentice license; revising requirements for public

adjuster apprentices to be, act as, or hold themselves out to be public adjust apprentices; amending s. 626.8696, F.S.; revising requirements for adjusting firm license applications; amending s. 626.8732, F.S.; requiring applicants for nonresident public adjuster licenses to maintain certain bonds after the expiration or termination of licenses; amending ss. 626.8734 and 626.9953, F.S.; conforming provisions to changes made by the act; amending s. 633.135, F.S.; providing additional uses for firefighter funds; amending s. 633.216, F.S.; revising requirements for renewal of firesafety inspector certificates; amending s. 633.408, F.S.; revising requirements for the issuance of a Firefighter Certificate of Compliance and Special Certificate of Compliance; deleting provisions relating to requirements to retain a Special Certificate of Compliance; amending s. 633.414, F.S.; providing requirements to retain a Special Certificate of Compliance; revising requirements to retain a Firefighter Certificate of Compliance; providing a definition; amending ss. 648.34 and 648.355, F.S.; conforming provisions to changes made by the act; amending s. 648.46, F.S.; providing continuation of jurisdiction of the licensing authority to investigate and prosecute

specified violations under certain circumstances; repealing s. 766.105, F.S., relating to the Florida Patient's Compensation Fund; amending ss. 945.6041 and 985.6441, F.S.; conforming provisions to changes made by the act; requiring the Department of Financial Services to supervise liquidation and dissolution of the Florida Patient's Compensation Fund and to have all power granted to it with respect to such liquidation or dissolution; transferring the Stop Inmate Fraud Program within the Department of Financial Services to the Department of Economic Opportunity by a type two transfer; providing effective dates.

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

Section 1. Section 17.0315, Florida Statutes, is repealed.

Section 2. Subsections (9) through (13) of section 110.123, Florida Statutes, are renumbered as subsection (10) through (14), respectively, paragraphs (b), (c), (f), (h), (i), and (o) of subsection (2) and paragraph (i) of subsection (5) are amended, and a new subsection (9) is added to that section, to read:

110.123 State group insurance program.—

(2) DEFINITIONS.—As used in ss. 110.123-110.1239, the

term:

(b) "Enrollee" means all state officers and employees, retired state officers and employees, surviving spouses of deceased state officers and employees, and terminated employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. The term ~~"Enrollee"~~ includes all state university officers and employees, retired state university officers and employees, surviving spouses of deceased state university officers and employees, and terminated state university employees or individuals with continuation coverage who are enrolled in an insurance plan offered by the state group insurance program. As used in this paragraph, state employees and retired state employees also include employees and retired employees of the Division of Rehabilitation and Liquidation.

(c) "Full-time state employees" means employees of all branches or agencies of state government holding salaried positions who are paid by state warrant or from agency funds and who work or are expected to work an average of at least 30 ~~or more~~ hours per week; employees of the Division of Rehabilitation and Liquidation who work or are expected to work an average of at least 30 hours per week; employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts; and employees paid from other-personal-services (OPS) funds as described in subparagraphs 1.

and 2. The term includes all full-time employees of the state universities. The term does not include seasonal workers who are paid from OPS funds.

1. For persons hired before April 1, 2013, the term includes any person paid from OPS funds who:

a. Has worked an average of at least 30 hours or more per week during the initial measurement period from April 1, 2013, through September 30, 2013; or

b. Has worked an average of at least 30 hours or more per week during a subsequent measurement period.

2. For persons hired after April 1, 2013, the term includes any person paid from OPS funds who:

a. Is reasonably expected to work an average of at least 30 hours or more per week; or

b. Has worked an average of at least 30 hours or more per week during the person's measurement period.

(f) "Part-time state employee" means an employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, or an employee of the Division of Rehabilitation and Liquidation, ~~and~~ who is employed for less than an average of 30 hours per week or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period, but does not include a person paid from other-personal-services (OPS) funds. The term includes all

part-time employees of the state universities.

(h) "Retired state officer or employee" or "retiree" means any state or state university officer or employee, or, beginning with the 2023 plan year, an employee of the Division of Rehabilitation and Liquidation, who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement, and who was insured under the state group insurance program or the Division of Rehabilitation and Liquidation's group insurance program at the time of retirement, and who begins receiving retirement benefits immediately after retirement from state or state university office or employment. The term also includes any state officer or state employee who retires under the Florida Retirement System Investment Plan established under part II of chapter 121 if he or she:

1. Meets the age and service requirements to qualify for normal retirement as set forth in s. 121.021(29); or

2. Has attained the age specified by s. 72(t)(2)(A)(i) of the Internal Revenue Code and has 6 years of creditable service.

(i) "State agency" or "agency" means any branch, department, or agency of state government. "State agency" or "agency" includes any state university and the Division of Rehabilitation and Liquidation for purposes of this section only.

(o) "Surviving spouse" means the widow or widower of a

deceased state officer, full-time state employee, part-time state employee, or retiree if such widow or widower was covered as a dependent under the state group health insurance plan, TRICARE supplemental insurance plan, ~~or~~ a health maintenance organization plan established pursuant to this section, or the Division of Rehabilitation and Liquidation's group insurance program at the time of the death of the deceased officer, employee, or retiree. "Surviving spouse" also means any widow or widower who is receiving or eligible to receive a monthly state warrant from a state retirement system as the beneficiary of a state officer, full-time state employee, or retiree who died prior to July 1, 1979. For the purposes of this section, any such widow or widower shall cease to be a surviving spouse upon his or her remarriage.

(5) DEPARTMENT POWERS AND DUTIES.—The department is responsible for the administration of the state group insurance program. The department shall initiate and supervise the program as established by this section and shall adopt such rules as are necessary to perform its responsibilities. To implement this program, the department shall, with prior approval by the Legislature:

(i) Contract with a single custodian to provide services necessary to implement and administer the health savings accounts authorized in subsection (13) ~~(12)~~.

Final decisions concerning enrollment, the existence of coverage, or covered benefits under the state group insurance program shall not be delegated or deemed to have been delegated by the department.

(9) COVERAGE AND ENROLLMENT PERIOD FOR EMPLOYEES, RETIREES, AND WIDOWS AND WIDOWERS OF EMPLOYEES AND RETIREES OF THE DIVISION OF REHABILITATION AND LIQUIDATION.—

(a) Beginning with the 2023 plan year:

1. A retired employee insured under the Division of Rehabilitation and Liquidation's group insurance program, or a widow or widower of an employee or of a retired employee of the Division of Rehabilitation and Liquidation who is covered as a dependent under the Division of Rehabilitation and Liquidation's group insurance program, may purchase coverage in a state group health insurance plan at the same premium cost as that for a retiree or a surviving spouse, respectively, enrolled in the state group insurance program.

2. A terminated employee of the Division of Rehabilitation and Liquidation, or an individual with continuing coverage, who is insured under the Division of Rehabilitation and Liquidation's group insurance program, may purchase coverage in a state group health insurance plan at the same premium cost as that for a terminated employee or an individual with continuation coverage, respectively, enrolled in the state group insurance program.

(b) The enrollment period for the state group insurance program begins with the 2023 plan year for:

1. Current and retired employees of the Division of Rehabilitation and Liquidation.

2. Widows and widowers of employees and of retired employees of the Division of Rehabilitation and Liquidation.

3. Terminated employees of the Division of Rehabilitation and Liquidation, or individuals with continuation coverage, who are insured under the Division of Rehabilitation and Liquidation's group insurance program.

Section 3. Subsection (5) of section 110.131, Florida Statutes, is amended to read:

110.131 Other-personal-services employment.—

(5) Beginning January 1, 2014, an other-personal-services (OPS) employee who has worked an average of at least 30 or more hours per week during the measurement period described in s. 110.123(14)(c) or (d) ~~s. 110.123(13)(c) or (d)~~, or who is reasonably expected to work an average of at least 30 or more hours per week following his or her employment, is eligible to participate in the state group insurance program as provided under s. 110.123.

Section 4. Paragraph (d) is added to subsection (4) of section 120.541, Florida Statutes, and paragraph (a) of subsection (2) and subsection (3) of that section are republished, to read:

120.541 Statement of estimated regulatory costs.—

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Subsection (3) does not apply to the adoption of:

(d) Schedules of maximum reimbursement allowances by the three-member panel which are expressly authorized by s. 440.13.

Section 5. Subsection (1) of section 215.34, Florida Statutes, is amended to read:

215.34 State funds; noncollectible items; procedure.—

(1) Any check, draft, or other order for the payment of money in payment of any licenses, fees, taxes, commissions, or charges of any sort authorized to be made under the laws of the state and deposited in the State Treasury as provided herein, which may be returned for any reason by the bank or other payor upon which same shall have been drawn shall be forthwith returned by the Chief Financial Officer for collection to the state officer, the state agency, or the entity of the judicial branch making the deposit. In such case, the Chief Financial Officer may issue a debit memorandum charging an account of the agency, officer, or entity of the judicial branch which originally received the payment. The original of the debit memorandum shall state the reason for the return of the check, draft, or other order and shall accompany the item being returned to the officer, agency, or entity of the judicial branch being charged. The officer, agency, or entity of the judicial branch receiving the charged-back item shall ~~prepare a journal transfer which shall~~ debit the charge against the fund or account to which the same shall have been originally credited. Such procedure for handling noncollectible items shall

not be construed as paying funds out of the State Treasury without an appropriation, but shall be considered as an administrative procedure for the efficient handling of state records and accounts.

Section 6. Paragraph (c) of subsection (1) of section 215.93, Florida Statutes, is amended to read:

215.93 Florida Financial Management Information System.—

(1) To provide the information necessary to carry out the intent of the Legislature, there shall be a Florida Financial Management Information System. The Florida Financial Management Information System shall be fully implemented and shall be upgraded as necessary to ensure the efficient operation of an integrated financial management information system and to provide necessary information for the effective operation of state government. Upon the recommendation of the coordinating council and approval of the board, the Florida Financial Management Information System may require data from any state agency information system or information subsystem or may request data from any judicial branch information system or information subsystem that the coordinating council and board have determined to have statewide financial management significance. Each functional owner information subsystem within the Florida Financial Management Information System shall be developed in such a fashion as to allow for timely, positive, preplanned, and prescribed data transfers between the Florida

Financial Management Information System functional owner information subsystems and from other information systems. The principal unit of the system shall be the functional owner information subsystem, and the system shall include, but shall not be limited to, the following:

(c) Financial ~~Cash~~ Management Subsystem.

Section 7. Subsection (3) of section 215.94, Florida Statutes, is amended to read:

215.94 Designation, duties, and responsibilities of functional owners.—

(3) The Chief Financial Officer shall be the functional owner of the Financial ~~Cash~~ Management Subsystem. The Chief Financial Officer shall design, implement, and operate the subsystem in accordance with the provisions of ss. 215.90-215.96. The subsystem shall include, but shall not be limited to, functions for:

(a) Recording and reconciling credits and debits to treasury fund accounts.

(b) Monitoring cash levels and activities in state bank accounts.

(c) Monitoring short-term investments of idle cash.

(d) Administering the provisions of the Federal Cash Management Improvement Act of 1990.

Section 8. Subsection (3) of section 216.102, Florida Statutes, is amended to read:

216.102 Filing of financial information; handling by Chief Financial Officer; penalty for noncompliance.—

(3) The Chief Financial Officer shall:

(a) Prepare and furnish to the Auditor General annual financial statements for the state on or before December 31 of each year, using generally accepted accounting principles.

(b) Prepare and publish an annual ~~a~~ comprehensive ~~annual~~ financial report for the state in accordance with generally accepted accounting principles on or before February 28 of each year.

(c) Furnish the Governor, the President of the Senate, and the Speaker of the House of Representatives with a copy of the annual comprehensive ~~annual~~ financial report prepared pursuant to paragraph (b).

(d) Notify each agency and the judicial branch of the data that is required to be recorded to enhance accountability for tracking federal financial assistance.

(e) Provide reports, as requested, to executive or judicial branch entities, the President of the Senate, the Speaker of the House of Representatives, and the members of the Florida Congressional Delegation, detailing the federal financial assistance received and disbursed by state agencies and the judicial branch.

(f) Consult with and elicit comments from the Executive Office of the Governor on changes to the Florida Accounting

Information Resource Subsystem which clearly affect the accounting of federal funds, so as to ensure consistency of information entered into the Federal Aid Tracking System by state executive and judicial branch entities. While efforts shall be made to ensure the compatibility of the Florida Accounting Information Resource Subsystem and the Federal Aid Tracking System, any successive systems serving identical or similar functions shall preserve such compatibility.

The Chief Financial Officer may furnish and publish in electronic form the financial statements and the annual comprehensive ~~annual~~ financial report required under paragraphs (a), (b), and (c).

Section 9. Paragraph (h) of subsection (1) of section 218.32, Florida Statutes, is amended, and paragraph (i) is added to subsection (1) of that section, to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(h) ~~It is the intent of the Legislature to create~~ The Florida Open Financial Statement System must serve as~~,~~ an interactive repository for governmental financial statements. This system serves as the primary reporting location for government financial information. A local government shall use the system to file with the department copies of all audit

reports compiled pursuant to ss. 11.45 and 218.39. The system must be accessible to the public and must be open to inspection at all times by the Legislature, the Auditor General, and the Chief Inspector General.

1. The Chief Financial Officer may consult with stakeholders with regard to~~, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector, for input on the design and implementation of~~ the Florida Open Financial Statement System.

2. The Chief Financial Officer may choose contractors to build one or more eXtensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to easily create XBRL documents consistent with such taxonomies. The Chief Financial Officer must recruit and select contractors through an open request for proposals process pursuant to chapter 287.

3. The Chief Financial Officer must require that all work products be completed no later than December 31, 2021.

4. If the Chief Financial Officer deems the work products adequate, all local governmental financial statements for fiscal years ending on or after September 1, 2022, may ~~must~~ be filed in XBRL format prescribed by the Chief Financial Officer ~~and must~~

~~meet the validation requirements of the relevant taxonomy~~.

5. A local government that begins filing in XBRL format may not be required to make filings in Portable Document Format.

(i) Each local governmental entity that enters all required information in the Florida Open Financial Statement System is deemed to be compliant with this section, except as otherwise provided in this section.

Section 10. Section 414.40, Florida Statutes, is amended to read:

414.40 Stop Inmate Fraud Program established; guidelines.—

(1) There is created within the Department of Economic Opportunity ~~Financial Services~~ a Stop Inmate Fraud Program.

(2) The Department of Economic Opportunity ~~Financial Services~~ is directed to implement the Stop Inmate Fraud Program in accordance with the following guidelines:

(a) The program shall establish procedures for sharing public records not exempt from the public records law among social services agencies regarding the identities of persons incarcerated in state correctional institutions, as defined in s. 944.02, and ~~or~~ in county, municipal, or regional jails or other detention facilities of local governments under chapter 950 and ~~or~~ chapter 951 who are wrongfully receiving public assistance benefits or entitlement benefits.

(b) Pursuant to these procedures, the program shall have access to records containing correctional information not exempt

from the public records law on incarcerated persons which have been generated as criminal justice information. As used in this paragraph, the terms "record" and "criminal justice information" have the same meanings as provided in s. 943.045.

(c) Database searches shall be conducted of the inmate population at each correctional institution or other detention facility. A correctional institution or a detention facility shall provide the Stop Inmate Fraud Program with the information necessary to identify persons wrongfully receiving benefits in the medium requested by the Stop Inmate Fraud Program if the correctional institution or detention facility maintains the information in that medium.

(d) Data obtained from correctional institutions or other detention facilities shall be compared with the client files of the Department of Children and Families, the Department of Economic Opportunity, and other state or local agencies as needed to identify persons wrongfully obtaining benefits. Data comparisons shall be accomplished during periods of low information demand by agency personnel to minimize inconvenience to the agency.

(e) Results of data comparisons shall be furnished to the appropriate office for use in the county in which the data originated. The program may provide reports of the data it obtains to appropriate state, federal, and local government agencies or governmental entities, including, but not limited

to:

1. The Child Support Enforcement Program of the Department of Revenue, so that the data may be used as locator information on persons being sought for purposes of child support.

2. The Social Security Administration, so that the data may be used to reduce federal entitlement fraud within the state.

3. The Division of Public Assistance Fraud of the Department of Financial Services, so that an investigation of the fraudulent receipt of public assistance may be facilitated.

(f) Reports by the program to another agency or entity shall be generated bimonthly, or as otherwise directed, and shall be designed to accommodate that agency's or entity's particular needs for data.

(g) Only those persons with active cases, or with cases that were active during the incarceration period, shall be reported, in order that the funding agency or entity, upon verification of the data, may take whatever action is deemed appropriate.

(h) For purposes of program review and analysis, each agency or entity receiving data from the program shall submit reports to the program which indicate the results of how the data was used.

Section 11. Paragraph (a) of subsection (16) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(16)(a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. The term ~~"Employer"~~ also includes employment agencies and~~,~~ employee leasing companies that~~, and similar agents who~~ provide employees to other business entities or persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107.

Section 12. Effective January 1, 2023, subsections (11) through (15) of section 440.05, Florida Statutes, are renumbered as subsections (10) through (14), respectively, subsections (3) and (4) and present subsections (10) and (12) of that section are amended, to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(3) The notice of election to be exempt must be electronically submitted to the department by the officer of a

corporation who is allowed to claim an exemption as provided by this chapter and must list the name, date of birth, valid driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the ~~social security number or~~ federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, ~~and~~ must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance, and must certify that the officer electing an exemption has completed an online workers' compensation coverage and compliance tutorial developed by the department. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the

election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. Upon written request from a workers' compensation carrier, the department shall send thereafter an electronic notification to the carrier identifying each of its policyholders for which a notice of election to be exempt has been issued or for which a notice of revocation to be exempt has been received ~~A notice of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption~~. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. ~~Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.~~

(4) The notice of election to be exempt from the provisions of this chapter must contain a notice that clearly

states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive the department or any employer or employee, insurance company, or any other person, files a notice of election to be exempt containing any false or misleading information is guilty of a felony of the third degree." Each person filing a notice of election to be exempt shall personally sign the notice and attest that he or she has reviewed, understands, and acknowledges the foregoing notice. The certificate of election to be exempt must contain the following notice: "This certificate of election to be exempt is NOT a license issued by the Department of Business and Professional Regulation (DBPR). To determine if the certificateholder is required to have a license to perform work or to verify the license of the certificateholder, go to (insert DBPR's website address for where to find this information)."

~~(10) Each officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the department by rule.~~

(11) ~~(12)~~ Certificates of election to be exempt issued under subsection (3) ~~shall~~ apply only to the corporate officer named on the notice of election to be exempt ~~and apply only within the scope of the business or trade listed on the notice of election to be exempt~~.

Section 13. Effective January 1, 2023, paragraphs (a) and

(d) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 21 ~~10~~ business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the

worksite. Information related to an employer's stop-work order shall be made available on the division's website~~, be updated daily,~~ and remain on the website for at least 5 years. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. An employer may not enter into a payment agreement schedule unless the employer has fully paid any previous penalty assessed under this section. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 21 ~~28~~ days after service of the first penalty assessment calculation ~~stop-work order~~ upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due.

(d)1. In addition to any penalty, stop-work order, or

injunction, the department shall assess against an ~~any~~ employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 12-month ~~2-year~~ period or $1,000, whichever is greater. However, for an employer who is issued a stop-work order for materially understating or concealing payroll or has been previously issued a stop-work order or order of penalty assessment, the preceding 24-month period shall be used to calculate the penalty as specified in this subparagraph.

a. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing

contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 21 ~~28~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph ~~service of the stop-work order or first order of penalty assessment upon the employer~~.

b. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 21 ~~10 business~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph.

c. For an employer who has not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 15 percent if the employer correctly answers at least 80 percent of the questions

from an online workers' compensation coverage and compliance tutorial, developed by the department, within 21 days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph. The online tutorial must be taken in a department office location identified by rule.

~~c.~~ The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit provided in sub-subparagraph a., the ~~and~~ 25 percent reduction provided in sub-subparagraph b., and the 15 percent reduction provided in sub-subparagraph c., as applicable, have been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

Section 14. Subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's

designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. An individual physician, hospital, ambulatory surgical center, pain

program, or work-hardening program shall be reimbursed:

1. ~~either~~ The agreed-upon contract price; or

2. If there is no agreed-upon contract price, the lesser of the provider's billed charge or the maximum reimbursement allowance in the appropriate schedule.

(b) It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:

1. Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

2. Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

3. Outpatient reimbursement for scheduled surgeries shall be reduced from 75 percent of charges to 60 percent of charges.

4. Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be increased to 110 percent of the reimbursement allowed by Medicare, using appropriate codes

and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

5. Maximum reimbursement for surgical procedures shall be increased to 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee. For repackaged or relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service

company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(d) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level

of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities

to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel and may adopt rules necessary to administer this subsection. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler,

distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 15. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(3) Within 3 business days after the employer or the employee informs the carrier of an injury, the carrier shall send by regular mail or e-mail to the injured worker an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. Annually, the carrier or its third-party administrator shall send by regular mail or e-mail to the employer an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. All such informational brochures shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-

insured program, files a statement of claim containing any false or misleading information commits a felony of the third degree."

Section 16. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class, generating more than the amount of premium required to be experience rated must~~,~~ be audited at least ~~less than~~ annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite

audits for new and renewal policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 17. Subsection (2) of section 497.277, Florida Statutes, is amended to read:

497.277 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(2) Charges paid for transferring burial rights from one purchaser to another~~; however, no such fee may exceed $50~~.

Section 18. Paragraph (b) of subsection (1) of section 497.369, Florida Statutes, is amended to read:

497.369 Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.—

(1) The licensing authority shall issue a license by endorsement to practice embalming to an applicant who has

remitted an examination fee set by rule of the licensing authority not to exceed $200 and who the licensing authority certifies:

(b)1. Holds a valid license in good standing to practice embalming in another state of the United States and has engaged in the full-time, licensed practice of embalming in that state for at least 5 years~~, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state~~; or

2. Meets the qualifications for licensure in s. 497.368, except that the internship requirement shall be deemed to have been satisfied by 1 year's practice as a licensed embalmer in another state, and has, within 10 years before ~~prior to~~ the date of application, successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 19. Paragraphs (b) and (f) of subsection (1) of section 497.372, Florida Statutes, are amended to read:

497.372 Funeral directing; conduct constituting practice of funeral directing.—

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed

only by a licensed funeral director:

(b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, and ~~including the removal of such remains from the state; setting the time of the services;~~ establishing the type of services to be rendered~~; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits~~.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service ~~held prior to or within 72 hours of the burial or cremation,~~ if such memorial service is sold or arranged by a licensee.

Section 20. Paragraph (b) of subsection (1) of section 497.374, Florida Statutes, is amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed $200 and who:

(b)1. Holds a valid license in good standing to practice funeral directing in another state of the United States and has engaged in the full-time, licensed practice of funeral directing in that state for at least 5 years~~, provided that, when the~~

~~applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state~~; or

2. Meets the qualifications for licensure in s. 497.373, except that the applicant need not hold an associate degree or higher if the applicant holds a diploma or certificate from an accredited program of mortuary science, and has successfully completed a state, regional, or national examination in mortuary science or funeral service arts, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 21. Subsection (6) of section 554.108, Florida Statutes, is renumbered as subsection (7), subsection (1) is amended, and a new subsection (6) is added to that section, to read:

554.108 Inspection.—

(1) The inspection requirements of this chapter apply only to boilers located in public assembly locations. A ~~potable hot water supply~~ boiler with an ~~a heat~~ input of 200,000 British thermal units (Btu) per hour and above, up to an ~~a heat~~ input not exceeding 400,000 Btu per hour, is exempt from inspection; however, such an exempt boiler, if manufactured after July 1, 2022, ~~but~~ must be stamped with the A.S.M.E. code symbol. Additionally, ~~"HLW" and~~ the ~~boiler's~~ A.S.M.E data report of a boiler with an input of 200,000 to 400,000 Btu per hour must be

filed as required under s. 554.103(2).

(6) Each enclosed space or room containing a boiler regulated under this chapter which is fired by the direct application of energy from the combustion of fuels and which is located in any portion of a public lodging establishment under s. 509.242 shall be equipped with one or more carbon monoxide detector devices.

Section 22. Paragraphs (a) and (e) of subsection (1) and paragraph (a) of subsection (2) of section 554.111, Florida Statutes, are amended to read:

554.111 Fees.—

(1) The department shall charge the following fees:

(a) For an applicant for a certificate of competency, the initial application fee shall be $50, and the annual renewal fee shall be $30. ~~The fee for examination shall be $50.~~

(e) An application for a boiler permit must include the manufacturer's data report ~~applicable certificate inspection fee provided in paragraph (b)~~.

(2) Not more than an amount equal to one certificate inspection fee may be charged or collected for any and all boiler inspections in any inspection period, except as otherwise provided in this chapter.

(a) When it is necessary to make a special trip for testing and verification inspections ~~to observe the application of a hydrostatic test~~, an additional fee equal to the fee for a

certificate inspection of the boiler must be charged.

Section 23. Subsection (4) of section 554.114, Florida Statutes, is amended to read:

554.114 Prohibitions; penalties.—

(4) A boiler insurance company, authorized inspection agency, or other person in violation of this section for more than 30 days shall pay a fine of $10 per day for the subsequent ~~first~~ 10 days of noncompliance, $50 per day for the subsequent 20 days of noncompliance, and $100 per day for each subsequent day ~~over 20 days~~ of noncompliance thereafter.

Section 24. Subsection (3) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(3) Service of process is valid and binding upon the insurer on the date the process served upon the Chief Financial Officer is delivered to the insurer ~~and sent~~ or the insurer has been notified by the department that such information has been made available on the department's secure online portal in accordance with this section and s. 624.307(9) ~~shall for all purposes constitute valid and binding service thereof upon the insurer~~.

Section 25. Subsection (20) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(20) "Unaffiliated insurance agent" means a licensed

insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. A licensed adjuster who is also an unaffiliated insurance agent may obtain an adjuster appointment in order to adjust claims while holding an unaffiliated appointment on the agent license.

Section 26. Subsection (4) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(4) An applicant for a license under this chapter ~~as an agent, customer representative, adjuster, service representative, or reinsurance intermediary~~ must submit a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay the fingerprint processing fee

set forth in s. 624.501. Fingerprints must be processed in accordance with s. 624.34 and used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department shall require all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee. The department may not approve an application for licensure as an agent, customer service representative, adjuster, service representative, or reinsurance intermediary if fingerprints have not been submitted.

Section 27. Subsection (2) of section 626.172, Florida Statutes, is amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must be signed by an individual required to be listed in the application under paragraph (a). An insurance agency may permit a third party to complete, submit, and sign an application on the insurance agency's behalf; however, the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must include:

(f) The fingerprints, submitted in accordance with s.

626.171(4), of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange.

~~Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must be processed in accordance with s. 624.34. However,~~ Fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

Section 28. Section 626.173, Florida Statutes, is created to read:

626.173 Insurance agency closure; cancellation of licenses.—

(1) If a licensed insurance agency permanently ceases the transacting of insurance or ceases the transacting of insurance for more than 31 days, the agent in charge, director of the agency, or other officer listed on the original application for licensure shall immediately cancel the insurance agency's

license by completing and submitting a form to notify the Bureau of Licensing of the Division of Insurance Agent and Agency Services within the department of the cancellation of the license.

(2) Within 30 days after the agency ceases the transacting of insurance, the agent in charge, director of the agency, or other officer listed on the original application for licensure shall:

(a) Notify all insurers by which the agency or agent in charge is appointed of the agency's cessation of operations, the date on which operations ceased, the identity of any agency or agent to which the agency's current book of business has been transferred, and the method by which agency records may be obtained during the time periods specified in ss. 626.561 and 626.748.

(b) Notify all policyholders currently insured by a policy written, produced, or serviced by the agency of the agency's cessation of operations; the date on which operations ceased; and the identity of the agency or agent to which the agency's current book of business has been transferred or, if no transfer has occurred, a statement directing the policyholder to contact the insurance company for assistance in locating a licensed agent to service the policy.

(c) Notify all premium finance companies through which active policies are financed of the agency's cessation of

operations, the date on which operations ceased, and the identity of the agency or agent to which the agency's current book of business has been transferred.

(d) Ensure that all funds held in a fiduciary capacity are properly distributed to the rightful owners.

(3)(a) The department or office may, in a proceeding initiated pursuant to chapter 120, impose an administrative fine against the agent in charge or director or officer of the agency found in the proceeding to have violated any provision of this section. A proceeding may not be initiated and a fine may not accrue until after the person has been notified in writing of the nature of the violation, has been afforded 10 business days to correct the violation, and has failed to do so.

(b) A fine imposed under this subsection may not exceed the amounts specified in s. 626.681 per violation.

(c) The department or office may, in addition to the imposition of an administrative fine under this subsection, also suspend or revoke the license of the licensee fined under this subsection.

(d) In imposing any administrative penalty or remedy provided under this subsection, the department or office shall take into account the appropriateness of the penalty with respect to the size of the financial resources and the good faith of the person charged, the gravity of the violation, the history of previous violations, and other matters as justice may

require.

Section 29. Subsection (3) of section 626.201, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

626.201 Investigation.—

(3) An inquiry or investigation of the applicant's qualifications, character, experience, background, and fitness must include submission of the applicant's fingerprints, in accordance with s. 626.171(4), to the Department of Law Enforcement and the Federal Bureau of Investigation and consideration of any state criminal records, federal criminal records, or local criminal records obtained from these agencies or from local law enforcement agencies.

(4) The expiration, nonrenewal, or surrender of a license under this chapter does not eliminate jurisdiction of the licensing authority to investigate and prosecute for a violation committed by the licensee while licensed under this chapter. The prosecution of any matter may be initiated or continued notwithstanding the withdrawal of a complaint.

Section 30. Section 626.202, Florida Statutes, is amended to read:

626.202 Fingerprinting requirements.—

(1) The requirements for completion and submission of fingerprints under this chapter in accordance with s. 626.171(4) are deemed to be met when an individual currently licensed under

this chapter seeks additional licensure and has previously submitted fingerprints to the department within the past 48 months. However, the department may require the individual to file fingerprints if it has reason to believe that an applicant or licensee has been found guilty of, or pleaded guilty or nolo contendere to, a felony or a crime related to the business of insurance in this state or any other state or jurisdiction.

(2) If there is a change in ownership or control of any entity licensed under this chapter, or if a new partner, officer, or director is employed or appointed, a set of fingerprints of the new owner, partner, officer, or director must be filed with the department or office within 30 days after the change. The acquisition of 10 percent or more of the voting securities of a licensed entity is considered a change of ownership or control. The fingerprints must be submitted in accordance with s. 626.171(4) ~~taken by a law enforcement agency or other department-approved entity and be accompanied by the fingerprint processing fee in s. 624.501~~.

Section 31. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a

regionally accredited postsecondary institution in this state, Certified All Lines Adjuster (CALA) from Kaplan Financial Education, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 32. Subsection (6) of section 626.311, Florida Statutes, is amended to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds, with the exception of an adjuster license; transact, solicit, or service an insurance contract on behalf of an insurer; interfere with commissions

received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received. An adjuster who holds an adjuster license and who is also an unaffiliated insurance agent may obtain an adjuster appointment while maintaining his or her unaffiliated insurance agent appointment and may adjust claims and receive compensation in accordance with the authority granted by the adjuster license and appointment.

Section 33. Paragraph (h) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines

insurance:

(h) Portable electronics insurance.—License for property insurance or inland marine insurance that covers only loss, theft, mechanical failure, malfunction, or damage for portable electronics.

1. The license may be issued only to:

a. Employees or authorized representatives of a licensed general lines agent; or

b. The lead business location of a retail vendor that sells portable electronics insurance. The lead business location must have a contractual relationship with a general lines agent.

2. Employees or authorized representatives of a licensee under subparagraph 1. may sell or offer for sale portable electronics coverage without being subject to licensure as an insurance agent if:

a. Such insurance is sold or offered for sale at a licensed location or at one of the licensee's branch locations if the branch location is appointed by the licensed lead business location or its appointing insurers;

b. The insurer issuing the insurance directly supervises or appoints a general lines agent to supervise the sale of such insurance, including the development of a training program for the employees and authorized representatives of vendors that are directly engaged in the activity of selling or offering the insurance; and

c. At each location where the insurance is offered, brochures or other written materials that provide the information required by this subparagraph are made available to all prospective customers. The brochures or written materials may include information regarding portable electronics insurance, service warranty agreements, or other incidental services or benefits offered by a licensee.

3. Individuals not licensed to sell portable electronics insurance may not be paid commissions based on the sale of such coverage. However, a licensee who uses a compensation plan for employees and authorized representatives which includes supplemental compensation for the sale of noninsurance products, in addition to a regular salary or hourly wages, may include incidental compensation for the sale of portable electronics insurance as a component of the overall compensation plan.

4. Brochures or other written materials related to portable electronics insurance must:

a. Disclose that such insurance may duplicate coverage already provided by a customer's homeowners insurance policy, renters insurance policy, or other source of coverage;

b. State that enrollment in insurance coverage is not required in order to purchase or lease portable electronics or services;

c. Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the

supervising entity, the amount of any applicable deductible and how it is to be paid, the benefits of coverage, and key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

d. Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable if the customer fails to comply with equipment return requirements; and

e. State that an enrolled customer may cancel coverage at any time and that the person paying the premium will receive a refund of any unearned premium.

5. A licensed and appointed general lines agent is not required to obtain a portable electronics insurance license to offer or sell portable electronics insurance at locations already licensed as an insurance agency, but may apply for a portable electronics insurance license for branch locations not otherwise licensed to sell insurance.

6. A portable electronics license authorizes the sale of individual policies or certificates under a group or master insurance policy. The license also authorizes the sale of service warranty agreements covering only portable electronics to the same extent as if licensed under s. 634.419 or s. 634.420.

7. A licensee may bill and collect the premium for the

purchase of portable electronics insurance provided that:

a. If the insurance is included with the purchase or lease of portable electronics or related services, the licensee clearly and conspicuously discloses that insurance coverage is included with the purchase. Disclosure of the stand-alone cost of the premium for same or similar insurance must be made on the customer's bill and in any marketing materials made available at the point of sale. If the insurance is not included, the charge to the customer for the insurance must be separately itemized on the customer's bill.

b. Premiums are incidental to other fees collected, are maintained in a manner that is readily identifiable, and are accounted for and remitted to the insurer or supervising entity within 60 days of receipt. Licensees are not required to maintain such funds in a segregated account.

c. All funds received by a licensee from an enrolled customer for the sale of the insurance are considered funds held in trust by the licensee in a fiduciary capacity for the benefit of the insurer. Licensees may receive compensation for billing and collection services.

8. Notwithstanding any other provision of law, the terms for the termination or modification of coverage under a policy of portable electronics insurance are those set forth in the policy.

9. Notice or correspondence required by the policy, or

otherwise required by law, may be provided by electronic means if the insurer or licensee maintains proof that the notice or correspondence was sent. Such notice or correspondence may be sent on behalf of the insurer or licensee by the general lines agent appointed by the insurer to supervise the administration of the program. For purposes of this subparagraph, an enrolled customer's provision of an electronic mail address to the insurer or licensee is deemed to be consent to receive notices and correspondence by electronic means if a conspicuously located disclosure is provided to the customer indicating the same.

10. The ~~provisions of this chapter requiring submission of~~ fingerprints requirements in s. 626.171(4) do not apply to licenses issued to qualified entities under this paragraph.

11. A branch location that sells portable electronics insurance may, in lieu of obtaining an appointment from an insurer or warranty association, obtain a single appointment from the associated lead business location licensee and pay the prescribed appointment fee under s. 624.501 if the lead business location has a single appointment from each insurer or warranty association represented and such appointment applies to the lead business location and all of its branch locations. Branch location appointments shall be renewed 24 months after the initial appointment date of the lead business location and every 24 months thereafter. Notwithstanding s. 624.501, the renewal

fee applicable to such branch location appointments is $30 per appointment.

12. For purposes of this paragraph:

a. "Branch location" means any physical location in this state at which a licensee offers its products or services for sale.

b. "Portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, and other similar devices and their accessories, and service related to the use of such devices.

c. "Portable electronics transaction" means the sale or lease of portable electronics or a related service, including portable electronics insurance.

Section 34. Subsection (5) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(5) If the department or office, after investigation, has reason to believe that an individual may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime

related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual to file with the department or office a complete set of his or her fingerprints, in accordance with s. 626.171(4), which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

Section 35. Paragraph (d) of subsection (2) of section 626.8411, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions applicable to general lines agents or agencies also apply to title insurance agents or agencies:

(f) Section 626.172(2)(f), relating to fingerprints.

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(d) Section 626.172, except for paragraph (2)(f) of that section, relating to agent in full-time charge.

Section 36. Paragraph (b) of subsection (1) of section 626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(b) A title insurance agent may not sell a title insurance policy issued by an insurer for which the agent and the agency do ~~does~~ not hold a current appointment.

Section 37. Paragraph (a) of subsection (3) of section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(3) The department may not grant or issue a license as a title insurance agent to an individual who is found by the department to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a 40-hour ~~classroom~~ course in title insurance, 3 hours of which are on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4). If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant

must submit, with the license application, an affidavit of the applicant and of the employer affirming the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

Section 38. Section 626.8421, Florida Statutes, is amended to read:

626.8421 Number of appointments permitted or required.—A title agent and a title agency shall be required to have a separate appointment as to each insurer by which they are ~~he or she is~~ appointed as agents ~~agent~~. As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing insurer stating that to the best of the insurer's knowledge and belief the applicant, or its principals in the case of a corporation or other legal entity, has met the requirements of s. 626.8417.

Section 39. Subsections (1) and (2) of section 626.843, Florida Statutes, are amended to read:

626.843 Renewal, continuation, reinstatement, termination of title insurance agent's and title insurance agency's appointments ~~appointment~~.—

(1) Appointments ~~the appointment~~ of a title insurance agent and a title insurance agency shall continue in force until suspended, revoked, or otherwise terminated, but subject to a renewed request filed by the insurer every 24 months after the

original issue dates ~~date~~ of the appointments ~~appointment~~, accompanied by payments ~~payment~~ of the renewal appointment fees ~~fee~~ and taxes as prescribed in s. 624.501.

(2) Title insurance agent and title insurance agency appointments shall be renewed pursuant to s. 626.381 for insurance representatives in general.

Section 40. Subsection (1) of section 626.8433, Florida Statutes, is amended to read:

626.8433 Filing of reasons for terminating appointment of title insurance agent and title insurance agency; confidential information.—

(1) Any title insurer that is terminating the appointment of a title insurance agent or title insurance agency, whether such termination is by direct action of the appointing title insurer or by failure to renew or continue the appointment as provided, shall file with the department a statement of the reasons, if any, for, and the facts relative to, such termination.

Section 41. Section 626.8447, Florida Statutes, is amended to read:

626.8447 Effect of suspension or revocation upon other licensees, appointees.—In case of the suspension or revocation of the license and appointment of any title insurance agent or title insurance agency, the licenses and appointments of all other title insurance agents who knowingly were parties to the

act that ~~which~~ formed the ground for such suspension or revocation may likewise be suspended or revoked for the same period as that of the offending title insurance agent or title insurance agency, but such suspension or revocation does ~~shall~~ not prevent any title insurance agent, except the one whose license and appointment was first suspended or revoked, from being issued an appointment for some other title insurer.

Section 42. Paragraph (d) of subsection (10) of section 626.854, Florida Statutes, is redesignated as paragraph (f), and a new paragraph (d) and paragraph (e) are added to subsection (10) of that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(10)

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster compensation may not be increased based on a claim being resolved by litigation.

Section 43. Section 626.8561, Florida Statutes, is amended to read:

626.8561 "Public adjuster apprentice" defined.—The term "public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by ~~a public adjuster or~~ a public adjusting firm;

(2) Assists the ~~public adjuster or~~ public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 44. Paragraph (e) of subsection (1) and subsection (2) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(e) Has been licensed and appointed in this state as a nonresident public adjuster on a continual basis for the previous 6 months, or has been licensed as an all-lines adjuster, and has been appointed on a continual basis for the

previous 6 months as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856.

(2) At the time of application for license as a public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a public adjuster under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license ~~and for at least 1 year after termination of the license~~.

(a) The bond must ~~shall~~ be in favor of the department and must ~~shall~~ specifically authorize recovery by the department of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as public adjuster.

(b) The bond must remain in effect for 1 year after the expiration or termination of the license.

(c) The aggregate liability of the surety for all such damages may not ~~shall in no event~~ exceed the amount of the bond. The ~~Such~~ bond may ~~shall~~ not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 45. Paragraph (a) of subsection (1) and subsection

(3) of section 626.8651, Florida Statutes, are amended to read:

626.8651 Public adjuster apprentice appointment; qualifications.—

(1)(a) The department shall issue an appointment as a public adjuster apprentice to a licensee who:

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of $50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment. The bond must remain in effect for 1 year after the expiration or termination of the license ~~and for at least 1 year after termination of the appointment~~.

(3) A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed ~~public all-lines adjuster or a~~ public adjusting firm that has designated with the department a primary ~~employs a licensed public~~ adjuster as required by s.

626.8695.

Section 46. Section 626.8696, Florida Statutes, is amended to read:

626.8696 Application for adjusting firm license.—

(1) The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, and director of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name of the adjusting firm and its principal business address.

(d) The location of each adjusting firm office and the name under which each office conducts or will conduct business.

(e) The name and license number of the designated primary adjuster for each adjusting firm location as required in s. 626.8695.

(f) The fingerprints of each individual required to be listed in the application under paragraph (a), filed in accordance with s. 626.171(4). However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter.

(g) ~~(e)~~ Any additional information that the department requires.

(2) An application for an adjusting firm license must be

signed by one of the individuals required to be listed in the application under paragraph (1)(a) ~~each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation~~.

~~(3) Each application must be accompanied by payment of any applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

~~(5) An adjusting firm required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is suspended or revoked. The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.~~

Section 47. Subsection (3) of section 626.8732, Florida Statutes, is amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(3) At the time of application for license as a nonresident public adjuster, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact surety business in this state, in the amount of $50,000, conditioned for the faithful performance of his or her duties as a nonresident public adjuster under the license applied for. Thereafter, the applicant shall maintain

the bond unimpaired throughout the existence of the license and for 1 year after the expiration or termination of the license.

(a) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained if the licensee commits fraud or unfair practices in connection with his or her business as nonresident public adjuster.

(b) The aggregate liability of the surety for all the damages may not exceed the amount of the bond. The bond may not be terminated unless at least 30 days' written notice is given to the licensee and filed with the department.

Section 48. Paragraph (a) of subsection (2) of section 626.8734, Florida Statutes, is amended to read:

626.8734 Nonresident all-lines adjuster license qualifications.—

(2) The applicant must furnish the following with his or her application:

(a) A complete set of his or her fingerprints in accordance with s. 626.171(4). ~~The applicant's fingerprints must be certified by an authorized law enforcement officer.~~

Section 49. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her

fingerprints in accordance with s. 626.171(4) ~~to the department and pay the processing fee established under s. 624.501(23)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 50. Paragraphs (e) and (f) are added to subsection (4) of section 633.135, Florida Statutes, to read:

633.135 Firefighter Assistance Grant Program.—

(4) Funds shall be used to:

(e) Purchase other equipment and tools that improve firesafety and fire rescue capabilities for firefighters.

(f) Purchase protective clothing and equipment compliant with NFPA 1977, "Standard on Protective Clothing and Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting."

Section 51. Subsections (6) through (9) of section 633.216, Florida Statutes, are renumbered as subsections (5) through (8), respectively, and subsection (4) and present subsection (5) of that section are amended, to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(4) Every firesafety inspector certificate is valid for a period of 4 years from the date of issuance. Renewal of certification is subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule adopted under this chapter, which must include completion of at least 54 hours during the preceding 4-year period of continuing education as required by the rule of the department ~~or, in lieu thereof, successful passage of an examination as established by the department~~.

~~(5) A previously certified firesafety inspector whose~~

~~certification has lapsed for 8 years or more must repeat the fire safety inspector training as specified by the division.~~

Section 52. Paragraph (b) of subsection (4) and paragraphs (a) and (c) of subsection (6) of section 633.408, Florida Statutes, are amended to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a Firefighter Certificate of Compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course certification ~~examination~~ within 12 months after completing the required courses.

(6)(a) The division may issue a Special Certificate of Compliance to an individual who does all of the following:

1. Satisfactorily completes the course established by rule by the division and successfully passes any examination corresponding to such course ~~in paragraph (1)(b)~~ to obtain a Special Certificate of Compliance.

~~2. Passes the examination established in paragraph (1)(b) to obtain a Special Certificate of Compliance.~~

2.~~3.~~ Possesses the qualifications in s. 633.412.

~~(c) In order to retain a Special Certificate of Compliance, every 4 years an individual must:~~

~~1. Be active as a firefighter;~~

~~2. Maintain a current and valid fire service instructor~~

~~certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division; or~~

~~3. Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training as prescribed by rule.~~

Section 53. Subsections (5), (6), and (7) of section 633.414, Florida Statutes, are renumbered as subsections (4), (5), and (6) respectively, and subsection (1) and present subsection (4) of that section are amended, to read:

633.414 Retention of firefighter and volunteer firefighter certifications.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance or Special Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter. As used in this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter as evidenced by the individual's name appearing on a fire service provider's employment roster in the Florida State Fire College database or a letter by the fire service provider attesting to dates of

employment.

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(c) Before the expiration of the certificate ~~Within 6 months before the 4-year period expires~~, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.

(d) Before the expiration of the certificate ~~Within 6 months before the 4-year period expires~~, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

~~(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.~~

The 4-year period may, in the discretion of the department, be extended to 12 months after discharge from military service if the military service does not exceed 3 years, but in no event more than 6 years from the date of issue or renewal, if applicable, for an honorably discharged veteran of the United States Armed Forces or the spouse of such a veteran. A qualified

individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 54. Subsection (4) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(4) The applicant shall furnish, with his or her application, a complete set of his or her fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. ~~The applicant's fingerprints shall be certified by an authorized law enforcement officer.~~ The department shall not authorize an applicant to take the required examination until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 55. Subsection (4) of section 648.355, Florida Statutes, is amended to read:

648.355 Temporary limited license as limited surety agent or professional bail bond agent; pending examination.—

(4) The applicant shall furnish, with the application for

temporary license, a complete set of the applicant's fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. ~~The applicant's fingerprints shall be certified by an authorized law enforcement officer.~~ The department shall not issue a temporary license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 56. Subsection (4) is added to section 648.46, Florida Statutes, to read:

648.46 Procedure for disciplinary action against licensees.—

(4) The expiration, nonrenewal, or surrender of licensure under this chapter does not eliminate the jurisdiction of the licensing authority to investigate and prosecute for a violation committed by a licensee while licensed under this chapter. The prosecution of any matter may be initiated or continued notwithstanding the withdrawal of a complaint.

Section 57. Section 766.105, Florida Statutes, is repealed.

Section 58. Paragraph (b) of subsection (1) of section 945.6041, Florida Statutes, is amended to read:

945.6041 Inmate medical services.—

(1) As used in this section, the term:

(b) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. "Other medical facility" as defined in paragraph (c).

8. A professional association, partnership, corporation, joint venture, or other association by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity ~~has the same meaning as provided in s. 766.105~~.

Section 59. Paragraph (a) of subsection (1) of section 985.6441, Florida Statutes, is amended to read:

985.6441 Health care services.—

(1) As used in this section, the term:

(a) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. "Other medical facility" as defined in paragraph (c).

8. A professional association, partnership, corporation, joint venture, or other association by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity ~~has the same meaning as provided in s. 766.105~~.

Section 60. The Department of Financial Services shall supervise any liquidation or dissolution of the Florida Patient's Compensation Fund and shall have, with respect to such liquidation or dissolution, all power granted to it under the insurance code.

Section 61. All powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, and administrative rules relating to the Stop Inmate Fraud Program within the Department of Financial Services are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Economic Opportunity.

Section 62. Except as otherwise expressly provided in this

act, this act shall take effect July 1, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 959 by Rep. LaMarca
Department of Financial Services

AMENDMENT SUMMARY
January 19, 2022

Amendment 1 by Rep. LaMarca (Line 710): The amendment makes the following changes:

- Requires that all service of process on the Chief Financial Officer be served through a secure online portal created and maintained by the Department of Financial Services; also makes conforming changes to related laws.
- Makes minor clarifications to the language related to payroll audits for workers' compensation insurance.
- Corrects a scriveners' error.

Amendment 2 by Rep. LaMarca (Line 1996): The amendment makes the following changes:

- Requires that the Florida Patient's Compensation Fund (Fund) would be subject to a two-year wind down supervised by the Chief Financial Officer.
- Requires dissolution of the Fund by Dec. 31, 2023.
- Requires repeal of the law that created the Fund on Jan. 1, 2024.
- Moves financial responsibility requirements for hospitals, which are part of the law that created the Fund, to a new section within Chapter 395, F.S.
- Makes conforming changes to retain the definition of "health care provider," which is part of the law that created the Fund, because the definition is cross-referenced in other laws.

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 LaMarca offered the following:

Amendment (with title amendment)

Remove lines 710-1171 and insert:

subsection (5) within 21 ~~10 business~~ days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In

addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. Information related to an employer's stop-work order shall be made available on the division's website~~, be updated daily,~~ and remain on the website for at least 5 years. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement schedule with the department or pay the remaining penalty amount in full. An employer may not enter into a payment agreement schedule unless the employer has fully paid any previous penalty assessed under this section. If an order of conditional release is issued,

failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 21 ~~28~~ days after service of the first penalty assessment calculation ~~stop-work order~~ upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due.

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against an ~~any~~ employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 12-month ~~2-year~~ period or $1,000, whichever is greater. However, for an employer who is issued a stop-work order for materially understating or concealing payroll or has been previously issued a stop-work order or order of penalty assessment, the preceding 24-month period shall be used to calculate the penalty as specified in this subparagraph.

a. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a

credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 21 ~~28~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph ~~service of the stop-work order or first order of penalty assessment upon the employer~~.

b. For an employer ~~employers~~ who has ~~have~~ not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed

penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 21 ~~10 business~~ days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph.

c. For an employer who has not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 15 percent if the employer correctly answers at least 80 percent of the questions from an online workers' compensation coverage and compliance tutorial, developed by the department, within 21 days after the employer's receipt of the written request to produce business records for calculating the penalty under this subparagraph. The online tutorial must be taken in a department office location identified by rule.

~~c.~~ The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit provided in sub-subparagraph a., the ~~and~~ 25 percent reduction provided in sub-subparagraph b., and the 15 percent reduction provided in sub-subparagraph c., as applicable, have been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

Section 14. Subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient

hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed:

1. ~~either~~ The agreed-upon contract price; or

2. If there is no agreed-upon contract price, the lesser of the provider's billed charge or the maximum reimbursement allowance in the appropriate schedule.

(b) It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:

1. Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

2. Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

3. Outpatient reimbursement for scheduled surgeries shall be reduced from 75 percent of charges to 60 percent of charges.

4. Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be increased to 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

5. Maximum reimbursement for surgical procedures shall be increased to 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee. For repackaged or relabeled prescription medications dispensed by a

dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(d) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as

determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance.

The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel and may adopt rules necessary to administer this subsection. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's

Section 14. Subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians,

hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program shall be reimbursed:

1. ~~either~~ The agreed-upon contract price; or

2. If there is no agreed-upon contract price, the lesser of the provider's billed charge or the maximum reimbursement allowance in the appropriate schedule.

(b) It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:

1. Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

2. Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be reduced to the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

3. Outpatient reimbursement for scheduled surgeries shall be reduced from 75 percent of charges to 60 percent of charges.

4. Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be increased to 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

5. Maximum reimbursement for surgical procedures shall be increased to 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(c) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee. For repackaged or relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database

as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(d) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation

payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408.

(e) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and

any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel and may adopt rules necessary to administer this subsection. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 15. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(3) Within 3 business days after the employer or the employee informs the carrier of an injury, the carrier shall send by regular mail or e-mail to the injured worker an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. Annually, the carrier or its third-party

administrator shall send by regular mail or e-mail to the employer an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. All such informational brochures shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits a felony of the third degree."

Section 16. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the

accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class, generating more than the amount of premium required to be experience rated must~~,~~ be audited at least ~~less than~~ annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite audits for policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 17. Subsection (2) of section 497.277, Florida Statutes, is amended to read:

497.277 Other charges.—Other than the fees for the sale of burial rights, burial merchandise, and burial services, no other

fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial merchandise, or burial service, except for:

(2) Charges paid for transferring burial rights from one purchaser to another~~; however, no such fee may exceed $50~~.

Section 18. Paragraph (b) of subsection (1) of section 497.369, Florida Statutes, is amended to read:

497.369 Embalmers; licensure as an embalmer by endorsement; licensure of a temporary embalmer.—

(1) The licensing authority shall issue a license by endorsement to practice embalming to an applicant who has remitted an examination fee set by rule of the licensing authority not to exceed $200 and who the licensing authority certifies:

(b)1. Holds a valid license in good standing to practice embalming in another state of the United States and has engaged in the full-time, licensed practice of embalming in that state for at least 5 years~~, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state~~; or

2. Meets the qualifications for licensure in s. 497.368, except that the internship requirement shall be deemed to have

been satisfied by 1 year's practice as a licensed embalmer in another state, and has, within 10 years before ~~prior to~~ the date of application, successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 19. Paragraphs (b) and (f) of subsection (1) of section 497.372, Florida Statutes, are amended to read:

497.372 Funeral directing; conduct constituting practice of funeral directing.—

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:

(b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, and ~~including the removal of such remains from the state; setting the time of the services;~~ establishing the type of services to be rendered~~; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits~~.

(f) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service ~~held~~

~~prior to or within 72 hours of the burial or cremation,~~ if such memorial service is sold or arranged by a licensee.

Section 20. Paragraph (b) of subsection (1) of section 497.374, Florida Statutes, is amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed $200 and who:

(b)1. Holds a valid license in good standing to practice funeral directing in another state of the United States and has engaged in the full-time, licensed practice of funeral directing in that state for at least 5 years~~, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state~~; or

2. Meets the qualifications for licensure in s. 497.373, except that the applicant need not hold an associate degree or higher if the applicant holds a diploma or certificate from an accredited program of mortuary science, and has successfully completed a state, regional, or national examination in mortuary science or funeral service arts, which, as determined by rule of

the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 21. Subsection (6) of section 554.108, Florida Statutes, is renumbered as subsection (7), subsection (1) is amended, and a new subsection (6) is added to that section, to read:

554.108 Inspection.—

(1) The inspection requirements of this chapter apply only to boilers located in public assembly locations. A ~~potable hot water supply~~ boiler with an ~~a heat~~ input of 200,000 British thermal units (Btu) per hour and above, up to an ~~a heat~~ input not exceeding 400,000 Btu per hour, is exempt from inspection; however, such an exempt boiler, if manufactured after July 1, 2022, ~~but~~ must be stamped with the A.S.M.E. code symbol. Additionally, ~~"HLW" and~~ the ~~boiler's~~ A.S.M.E data report of a boiler with an input of 200,000 to 400,000 Btu per hour must be filed as required under s. 554.103(2).

(6) Each enclosed space or room containing a boiler regulated under this chapter which is fired by the direct application of energy from the combustion of fuels and which is located in any portion of a public lodging establishment under s. 509.242 shall be equipped with one or more carbon monoxide detector devices.

Section 22. Paragraphs (a) and (e) of subsection (1) and paragraph (a) of subsection (2) of section 554.111, Florida Statutes, are amended to read:

554.111 Fees.—

(1) The department shall charge the following fees:

(a) For an applicant for a certificate of competency, the initial application fee shall be $50, and the annual renewal fee shall be $30. ~~The fee for examination shall be $50.~~

(e) An application for a boiler permit must include the manufacturer's data report ~~applicable certificate inspection fee provided in paragraph (b)~~.

(2) Not more than an amount equal to one certificate inspection fee may be charged or collected for any and all boiler inspections in any inspection period, except as otherwise provided in this chapter.

(a) When it is necessary to make a special trip for testing and verification inspections ~~to observe the application of a hydrostatic test~~, an additional fee equal to the fee for a certificate inspection of the boiler must be charged.

Section 23. Subsection (4) of section 554.114, Florida Statutes, is amended to read:

554.114 Prohibitions; penalties.—

(4) A boiler insurance company, authorized inspection agency, or other person in violation of this section for more

than 30 days shall pay a fine of $10 per day for the subsequent ~~first~~ 10 days of noncompliance, $50 per day for the subsequent 20 days of noncompliance, and $100 per day for each subsequent day ~~over 20 days~~ of noncompliance thereafter.

Section 24. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 that ~~which~~ is required to appoint the Chief Financial Officer as its agent ~~attorney~~ to receive service of all legal process, the Chief Financial Officer shall make the process available through a secure online portal~~, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website~~ established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall promptly send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to

receive legal process. The notice must state the date ~~and manner in which the copy of~~ the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) where ~~for a hyperlink to access files and information on the department's website to obtain a copy of~~ the process may be obtained.

Section 25. Section 624.422, Florida Statutes, are amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(1) Each licensed insurer, whether domestic, foreign, or alien, shall be deemed to have appointed the Chief Financial Officer and her or his successors in office as its agent ~~attorney~~ to receive service of all legal process issued against it in any civil action or proceeding in this state; and process so served shall be valid and binding upon the insurer.

(2) Before ~~Prior to~~ its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and e-mail address of the person to whom process against it served upon the Chief Financial Officer is to be made available through the department's secure online portal ~~forwarded~~. Each insurer shall also file with the department designation of the name and e-mail address of the person to whom the department shall forward civil

remedy notices filed under s. 624.155. The insurer may change a designation at any time by a new filing.

(3) Service of process submitted through the department's secure online portal upon the Chief Financial Officer as the insurer's agent ~~attorney~~ pursuant to such an appointment shall be the sole method of service of process upon an authorized domestic, foreign, or alien insurer in this state

Section 26. Subsection (1) of section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer under s. 624.422 and s. 626.937 shall be made ~~by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or~~ electronically as provided in s. 48.151(3) ~~s. 48.151~~. Upon receiving such service, the Chief Financial Officer shall retain a record of the process ~~copy~~ and promptly notify and make ~~forward one copy of~~ the process available through the department's secure online portal ~~by registered or certified mail or by other verifiable means~~, as provided under s. 624.307(9), to the person last designated by the insurer to receive the same, as provided under s. 624.422(2). For purposes

of this section, records shall ~~may~~ be retained electronically ~~as paper or electronic copies~~.

Section 27. Subsections (3) and (4) of section 626.937, Florida Statutes, are amended to read:

626.937 Actions against insurer; service of process.—

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Chief Financial Officer, on a form as furnished by the department, as its agent ~~attorney~~ to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(4) At the time of such appointment of the Chief Financial Officer as its process agent, the insurer shall file with the department designation of the name and e-mail address of the person to whom process against it served upon the Chief Financial Officer is to be made available through the department's secure online portal ~~forwarded~~. The insurer may change the designation at any time by a new filing.

Section 28. Subsections (1) and (3) of section 48.151, Florida Statutes, are amended to read:

48.151 Service on statutory agents for certain persons.—

(1) When any law designates a public officer, board, agency, or commission as the agent for service of process on any person, firm, or corporation, service of process thereunder shall be made by leaving one copy of the process with the public officer, board, agency, or commission or in the office thereof, or by mailing one copy to the public officer, board, agency, or commission, except as provided in subsection (3). The public officer, board, agency, or commission so served shall retain a record copy and promptly send the copy served, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public

officer, board, agency, or commission is statutory agent for service of process.

(3) The Chief Financial Officer ~~or his or her assistant or deputy or another person in charge of the office~~ is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. ~~As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office,~~ The Department of Financial Services shall ~~may~~ create a secure online portal as the sole means ~~an Internet-based transmission system~~ to accept service of process on the Chief Financial Officer~~, or his or her assistant or deputy, or another person in charge of the office~~ pursuant to this section.

Section 29. Subsection (3)(f) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(3)(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151, as its true and lawful agent ~~attorney~~ upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

Section 30. Subsection (4)(d) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(4)(d)

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151, as its true and lawful agent

~~attorney~~ upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer. This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable insolvency or delinquency laws.

Section 31. Section 626.906, Florida Statutes, is amended to read:

626.906 Acts constituting Chief Financial Officer as process agent.—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign insurer, alien insurer, or person representing or aiding such an insurer is equivalent to and shall constitute an appointment by such insurer or person representing or aiding such insurer of the Chief Financial Officer to be its true and lawful agent ~~attorney~~, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's or person's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer or person representing or aiding such insurer:

Section 32. Subsection (4) of section 626.912, Florida Statutes, is amended to read:

626.912 Exemptions from ss. 626.904-626.911.

(4) Issued under and in accordance with the Surplus Lines Law, when such insurer or person representing or aiding such insurer enters a general appearance or when such contract of insurance contains a provision designating the Chief Financial Officer or designating a Florida resident agent to be the true and lawful agent ~~attorney~~ of such unauthorized insurer or person representing or aiding such insurer upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or person representing or aiding such insurer or beneficiary arising out of any such contract of insurance; and service of process effected on such Chief Financial Officer or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer or person representing or aiding such insurer in such action.

Section 33. Subsection (3) of section 626.937, Florida Statutes, is amended to read:

626.937 Actions against insurer; service of process.—

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Chief Financial Officer, on a form as furnished by the department, as its agent ~~attorney~~ to receive

service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

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

Remove lines 69-94 and insert:
s. 440.381, F.S.; specifying workers' compensation policies that require physical onsite audits for a specified class; amending s. 497.277, F.S.; deleting a cap on transferring burial rights fees; amending s. 497.369, F.S.; revising requirements for licenses by endorsement to practice embalming; amending s. 497.372, F.S.; revising the scope of funeral directing practice; amending s. 497.374, F.S.; revising requirements for licenses by endorsement to practice funeral directing; amending s. 554.108, F.S.; requiring boilers manufactured after a specified date, rather than boilers of certain heat input, to be

stamped with a specified code symbol; revising the boilers' information that must be filed; requiring that specified spaces and rooms be equipped with carbon monoxide detector devices; amending s. 554.111, F.S.; deleting a requirement for a specified fee for a certificate of competency; requiring applications for boiler permits to include a specified report; revising the purpose for special trips that the department is required to make for boiler inspections; amending s. 554.114, F.S.; revising the schedules of penalties against boiler insurance companies, inspection agencies, and other persons for specified violations; amending s. 624.307, F.S.; providing that certain regulated persons or unauthorized insurers are required to appoint the Chief Financial Officer as their agents, rather than as their attorneys, to receive service of legal process; revising the method in which the Chief Financial Officer makes the process available; amending s. 624.422, F.S.; requiring insurers to file with the department email addresses, rather than addresses, of specified persons; conforming provisions to changes made by the act; providing that a specified method in which process is served upon the Chief Financial Officer is the sole

method of service; amending s. 624.423, F.S.; revising procedures for service of process; requiring the Chief Financial Officer to promptly notify certain persons of the process and to make the process available to such persons through a specified method; revising method by which records are retained; amending s. 626.937, F.S.; conforming provisions to changes made by the act; amending s. 48.151, F.S.; providing an exception to service of process on public entities under certain circumstances; requiring the department to create a secure online portal as the sole means to accept certain service of process; amending s. 624.610, F.S.; conforming provisions to changes made by the act; amending s. 626.906, F.S.; conforming provisions to changes made by the act; amending s. 626.912, F.S.; conforming provisions to changes made by the act; amending s. 626.937, F.S.; conforming provisions to changes made by the act; amending s. 626.015,

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 LaMarca offered the following:

Amendment (with title amendment)

Remove lines 1996-2042 and insert:

Section 57. Paragraph (d) of subsection (2) and paragraphs (b), (c), and (e) of subsection (3) of section 766.105, Florida Statutes, are amended, and paragraph (i) is added to subsection (3) and subsection (4) is added to that section, to read:

766.105 Florida Patient's Compensation Fund.—

(2) COVERAGE.—

(d)1. Any health care provider who participates in the fund and who does not meet the provisions of paragraph (b) shall not be covered by the fund.

2. Annually, the Agency for Health Care Administration shall require documentation by each hospital that such hospital is in compliance, and will remain in compliance, with the provisions of this section. ~~The agency shall review the documentation and then deliver the documentation to the board of governors. At least 60 days before the time a license will be issued or renewed, the agency shall request from the board of governors a certification that each hospital is in compliance with the provisions of this section. The board of governors shall not be liable under the law for any erroneous certification. The agency may not issue or renew the license of any hospital which has not been certified by the board of governors. The license of any hospital that fails to remain in compliance or fails to provide such documentation shall be revoked or suspended by the agency.~~

(3) THE FUND.—

(b) Fund administration and operation.—

1. The fund shall operate subject to the supervision and approval of the Chief Financial Officer or his or her designee ~~a board of governors consisting of a representative of the insurance industry appointed by the Chief Financial Officer, an attorney appointed by The Florida Bar, a representative of physicians appointed by the Florida Medical Association, a representative of physicians' insurance appointed by the Chief Financial Officer, a representative of physicians' self-~~

~~insurance appointed by the Chief Financial Officer, two representatives of hospitals appointed by the Florida Hospital Association, a representative of hospital insurance appointed by the Chief Financial Officer, a representative of hospital self-insurance appointed by the Chief Financial Officer, a representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer, and a representative of the general public appointed by the Chief Financial Officer~~. ~~The board of governors shall, during the first meeting after June 30 of each year, choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. The members of the board shall be appointed to serve terms of 4 years, except that the initial appointments of a representative of the general public by the Chief Financial Officer, an attorney by The Florida Bar, a representative of physicians by the Florida Medical Association, and one of the two representatives of the Florida Hospital Association shall be for terms of 3 years; thereafter, such representatives shall be appointed for terms of 4 years. Subsequent to initial appointments for 4-year terms, the representative of the osteopathic physicians' or podiatric physicians' insurance or self-insurance appointed by the Chief Financial Officer and the representative of hospital self-insurance appointed by the Chief Financial Officer shall be appointed for 2-year terms; thereafter, such representatives~~

~~shall be appointed for terms of 4 years. Each appointed member may designate in writing to the chair an alternate to act in the member's absence or incapacity. A member of the board, or the member's alternate, may be reimbursed from the assets of the fund for expenses incurred by him or her as a member, or alternate member, of the board and for committee work, but he or she may not otherwise be compensated by the fund for his or her service as a board member or alternate.~~

2. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the fund or its agents or employees, professional advisers or consultants, the Chief Financial Officer or his or her designee ~~members of the board of governors or their alternates~~, or the Department of Financial Services or the Office of Insurance Regulation of the Financial Services Commission or their representatives for any action taken by them in the performance of their powers and duties pursuant to this section.

(c) Powers of the fund.—The fund has the power to:

1. Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.

2. Adopt, change, amend, and repeal a plan of operation, not inconsistent with law, for the regulation and administration of the affairs of the fund. The plan and any changes thereto shall be filed with the Office of Insurance Regulation of the

Financial Services Commission and are all subject to its approval before implementation by the fund. All fund members, board members, and employees shall comply with the plan of operation.

3. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the fund is created.

4. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

5. Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the fund and to perform other necessary or proper functions unless prohibited by law.

6. Take such legal action as may be necessary to avoid payment of improper claims.

7. Indemnify any ~~employee, agent, member of the board of governors or his or her alternate, or~~ person acting on behalf of the fund in an official capacity, for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any action, suit, or proceeding, including any appeal thereof, arising out of his or her capacity in acting on behalf of the fund, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the fund and, with respect to any

criminal action or proceeding, he or she had reasonable cause to believe his or her conduct was lawful.

(e) Fund accounting and audit.—

1. Money shall be withdrawn from the fund only upon a voucher as authorized by the Chief Financial Officer or his or her designee ~~board of governors~~.

2. All books, records, and audits of the fund shall be open for reasonable inspection to the general public, except that a claim file in possession of the fund, fund members, and their insurers is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the fund is subject to the authority of the Chief Financial Officer or his or her designee ~~board of governors~~, which shall be responsible therefor.

3. Persons authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

4. Annually, the fund shall furnish, upon request, audited financial reports to any fund participant and to the Office of

Insurance Regulation and the Joint Legislative Auditing Committee. The reports shall be prepared in accordance with accepted accounting procedures and shall include income and such other information as may be required by the Office of Insurance Regulation or the Joint Legislative Auditing Committee.

5. Any money held in the fund shall be invested in interest-bearing investments ~~by the board of governors of the fund as administrator~~. However, in no case may any such money be invested in the stock of any insurer participating in the Joint Underwriting Association authorized by s. 627.351(4) or in the parent company of, or company owning a controlling interest in, such insurer. All income derived from such investments shall be credited to the fund.

6. Any health care provider participating in the fund may withdraw from such participation only at the end of a fiscal year; however, such health care provider shall remain subject to any assessment or any refund pertaining to any year in which such member participated in the fund.

(i) Dissolution of the fund.—The fund shall operate subject to the supervision of the Chief Financial Officer or his or her designee, pursuant to the policies and procedures and under the auspices of the Department of Financial Services' Division of Rehabilitation and Liquidation, until the department executes a legal dissolution of the fund on or before December

31, 2023. Before the legal dissolution of the fund, the Department of Financial Services must:

1. Obtain all existing records and retain necessary records of the fund pursuant to law.

2. Identify all remaining property held by the fund and attempt to return such property to its owners and, for property that cannot be returned to the owner, transfer such property to the Department of Financial Services' Division of Unclaimed Property.

3. Make a final accounting of the finances of the fund.

4. Ensure that the fund has met all its obligations pursuant to structured settlements, annuities, or other instruments established to pay covered claims and, if the fund has not done so, attempt to meet such obligations before final and complete dissolution of the fund.

5. Sell or otherwise dispose of all physical assets of the fund.

6. Execute a legal dissolution of the fund.

7. Transfer any remaining money or assets of the fund to the Chief Financial Officer for deposit in the General Revenue Fund.

(4) REPEAL.—This section is repealed January 1, 2024.

Section 58. Paragraph (b) of subsection (1) of section 945.6041, Florida Statutes, is amended to read:

945.6041 Inmate medical services.—

(1) As used in this section, the term:

(b) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. A professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity.

8. Other medical facility.

a. As used in this subparagraph, the term "other medical facility" means:

(I) A facility the primary purpose of which is to provide human medical diagnostic services, or a facility providing nonsurgical human medical treatment which discharges patients on the same working day that the patients are admitted; and

(II) A facility that is not part of a hospital.

b. The term does not include a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine ~~has the same meaning as provided in s. 766.105~~.

Section 59. Paragraph (a) of subsection (1) of section 985.6441, Florida Statutes, is amended to read:

985.6441 Health care services.—

(1) As used in this section, the term:

(a) "Health care provider" means:

1. A hospital licensed under chapter 395.

2. A physician or physician assistant licensed under chapter 458.

3. An osteopathic physician or physician assistant licensed under chapter 459.

4. A podiatric physician licensed under chapter 461.

5. A health maintenance organization certificated under part I of chapter 641.

6. An ambulatory surgical center licensed under chapter 395.

7. A professional association, partnership, corporation, joint venture, or other association established by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity

8. Other medical facility.

a. As used in this subparagraph, the term "other medical facility" means:

(I) A facility the primary purpose of which is to provide human medical diagnostic services, or a facility providing nonsurgical human medical treatment which discharges patients on the same working day that the patients are admitted; and

(II) A facility that is not part of a hospital.

b. The term does not include a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine ~~has the same meaning as provided in s. 766.105~~.

Section 60. 395.1061, Florida Statutes, is created to read:

395.1061 Professional liability coverage.—

(1) As used in this section, the term:

(a) "Committee" means a committee or board of a hospital established to make recommendations, policies, or decisions regarding patient institutional utilization, patient treatment, or institutional staff privileges or to perform other administrative or professional purposes or functions.

(b) "Covered individuals" means the officers; trustees; volunteer workers; trainees; committee members, including physicians, osteopathic physicians, podiatric physicians, and dentists; and employees of the hospital other than employed physicians licensed under chapter 458, physician assistants

licensed under chapter 458, osteopathic physicians licensed under chapter 459, dentists licensed under chapter 466, and podiatric physicians licensed under chapter 461. However, with respect to a hospital, the term also includes: house physicians, interns, employed physician residents in a resident training program, and physicians performing purely administrative duties for the hospital instead of treating patients. This coverage applies to the hospital and those included in the definition of health care provider at s. 985.6441(1)(a), F.S.

(c) "Hospital system" means two or more hospitals associated by common ownership or corporate affiliation.

(d) "House physician" means any physician, osteopathic physician, podiatric physician, or dentist at a hospital, except:

1. The physician, osteopathic physician, podiatric physician, or dentist who has staff privileges at a hospital, provides emergency room services, or performs a medical or dental service for a fee; or

2. An anesthesiologist, pathologist, or radiologist.

(e) "Occurrence" means an accident or incident, including continuous or repeated exposure to certain harmful conditions, which results in patient injuries

(f) "Per claim" means all claims per patient arising out of an occurrence.

(2) Each hospital, unless exempted under paragraph (3)(b), must demonstrate financial responsibility for maintaining professional liability coverage to pay claims and costs ancillary thereto arising out of the rendering of or failure to render medical care or services and for bodily injury or property damage to the person or property of any patient arising out of the activities of the hospital or arising out of the activities of covered individuals, to the satisfaction of the Agency for Health Care Administration, by meeting one of the following requirements:

(a) Establish an escrow account in an amount equivalent to $10,000 per claim for each hospital bed in such hospital, not to exceed a $2.5 million annual aggregate.

(b) Obtain professional liability coverage in an amount equivalent to $10,000 or more per claim for each bed in such hospital from a private insurer, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. However, no hospital may be required to obtain such coverage in an amount exceeding a $2.5 million annual aggregate.

(3)(a) Each hospital, unless exempted under paragraph (b), shall provide evidence of compliance and remain in continuous compliance with the professional liability coverage provisions of this section. The Agency for Health Care Administration may not issue or renew the license of any hospital that does not

provide evidence of compliance or that provides evidence of insufficient coverage.

(b) Any hospital operated by an agency, subdivision, or instrumentality of the state is exempt from the provisions of this section.

(4) A hospital system may meet the professional liability coverage requirement with an escrow account, insurance, or self-insurance policies if the $10,000 per claim and $2.5 million annual aggregate is met for each hospital in the hospital system.

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

Remove lines 177-184 and insert:

amending s. 766.105, F.S.; deleting certain provisions relating to the Agency for Health Care Administration; requiring that the Florida Patient's Compensation Fund be subject to the supervision and approval of the Chief Financial Officer rather than a board of governors and be dissolved on or before a specified date; deleting certain provisions relating to the board of governors; providing duties of the department before the legal dissolution of the fund; requiring that provisions relating to the fund be repealed on a specified date; amending ss. 945.6041 and 985.6441, F.S.; conforming provisions to changes made by the act; creating s. 395.1061, F.S.; providing

definitions; requiring certain hospitals and hospital systems to demonstrate financial responsibility for maintaining professional liability coverage; prohibiting the agency from issuing or renewing licenses of hospitals under certain circumstances; providing exemptions from professional liability coverage requirements; transferring the Stop