

Insurance & Banking Subcommittee

Monday, February 7, 2022
4:00 PM - 6:00 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Monday, February 7, 2022
4:00 PM – 6:00 PM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 1001 Trusts by Beltran
- HB 7043 OGSR/Information Submitted by Insurers/DFS by Government Operations Subcommittee, Fabricio
- HB 7045 OGSR/Information on Financial Institutions, Affiliated International Trust Entities, and Qualified Limited Service Affiliates/OFR by Government Operations Subcommittee, Fabricio

Consideration of the following proposed committee substitute(s):

- PCS for HB 425 -- Posttraumatic Stress Disorder Benefits and Peer Support Programs

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1001 Trusts
SPONSOR(S): Beltran
TIED BILLS: **IDEN./SIM. BILLS:** SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	11 Y, 4 N	Mawn	Jones
2) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
3) Judiciary Committee			

SUMMARY ANALYSIS

A trust is a relationship in which one party, the "settlor," gives another party, the "trustee," the right to hold title to the settlor's property or assets for a third party's benefit. A trust may be created and take effect during a settlor's lifetime ("a living trust") or a trust may be created by a will and take effect when the settlor dies. A living trust may be revocable or irrevocable. The Florida Trust Code ("Trust Code") applies to express trusts, charitable and non-charitable trusts, and trusts created by a law, judgment, or decree that requires the trust to be administered like an express trust. The Trust Code:

- Contains a rule against perpetuities which provides that a trust is invalid unless it vests within 90 or 360 years, depending on the trust's creation date.
- States that a trust's terms control over the Trust Code, with exceptions including the trustee's duty to provide a:
  - Complete copy of the trust instrument to a qualified beneficiary upon reasonable request.
  - Trust accounting containing specified information at least annually and upon trust termination or trustee change.
- Specifies acceptable methods for serving notices and documents, which includes posting notices and documents on an electronic account or website or service by "other electronic methods."
- Authorizes a parent to represent or bind his or her unborn or minor child in specified circumstances.
- Permits a trustee to elect to reimburse a grantor trust's grantor for tax payments made by the grantor in certain situations.
- Establishes a 21-year enforcement period for a purpose trust.

The bill:

- Amends Florida's rule against perpetuities for a trust created on or after July 1, 2022 by extending to 1,000 years the time in which the trust must vest.
- Authorizes a specified financial statement in lieu of an annual trust accounting when not otherwise prohibited by the trust's terms.
- Expressly authorizes service of a notice or document by e-mail, which may include use of a hyperlink or an attached document.
- Extends the right of a parent to represent or bind his or her unborn or minor child to such child's unborn or minor children in specified circumstances.
- Clarifies the applicability of a statute relating to a trustee's reimbursement to a grantor trust's grantor for tax payments made by the grantor.
- Extends the enforcement period for a purpose trust from 21 years to 1,000 years.

The bill may have a positive indeterminate fiscal impact on state government and the private sector but does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A trust is a relationship in which one party, the "settlor,"[1] gives another party, the "trustee," the right to hold title to the settlor's property or assets for a third party's benefit ("beneficiary"). A trust may be created and take effect during a settlor's lifetime ("a living trust") or a trust may be created by a will and take effect when the settlor dies.[2] A living trust may be revocable[3] or irrevocable.[4] The Florida Trust Code ("Trust Code"), set out in ch. 736, F.S., applies to express trusts,[5] charitable[6] and non-charitable trusts, and trusts created by a law, judgment, or decree requiring the trust to be administered like an express trust.[7]

Rule Against Perpetuities

Background

The Florida Uniform Statutory Rule Against Perpetuities ("FUSRAP") is a rule designed to prevent remoteness in vesting.[8] Under FUSRAP, a non-vested property interest in real or personal property, including an interest in a trust, is invalid unless:

- When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or
- The interest either vests or terminates within 90 years after its creation.[9]

Similar parameters apply to the maximum permissible period for exercising a power of appointment.[10]

However, as to any trust created after December 31, 2000, the maximum trust duration and power of appointment exercise period is extended from 90 years to 360 years unless the trust's terms require that all beneficial interests in the trust vest or terminate within a lesser time period.[11] Further, some states, including Alaska, Colorado, Utah, and Wyoming, have increased the maximum trust vesting period to 1,000 years, while other states, including Delaware, allow a trust to extend in perpetuity.[12]

[1] "Settlor" means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.
[2] *See* "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019).
[3] A "revocable trust" is "[a] trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income." Black's Law Dictionary (11th ed. 2019). Florida law specifically defines "revocable" as applied to a trust to mean "revocable by the settlor without the consent of the trustee or a person holding an adverse interest." S. 736.0103(17), F.S.
[4] An "irrevocable trust" is "[a] trust that cannot be terminated by the settlor once it is created." Black's Law Dictionary (11th ed. 2019).
[5] An "express trust" is "[a] trust created with the settlor's express intent, [usually] declared in writing." Black's Law Dictionary (11th ed. 2019).
[6] "Charitable trust" means a trust created for a charitable purpose, including the relief of poverty; the advancement of the arts, the sciences, education, or religion; and the promotion of health, governmental, or municipal purposes. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more purposes or beneficiaries, which selection must be consistent with the settlor's intent to the extent it can be ascertained. S. 736.0405, F.S.
[7] Ss. 736.0101 and 736.0102(1), F.S.
[8] David F. Powell, *Florida's Statutory Rule Against Perpetuities*, 11 Fla. St. U. L. Rev. 767 (1984), https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=2147&context=lr (last visited Jan. 19, 2022).
[9] S. 689.225(2)(a), F.S.
[10] "Power of appointment" is the legal authority to direct where an interest in a trust or estate may go. In the case of a trust, the beneficiary may hold such power, and the trust instrument typically instructs the beneficiary as to the ways in which he or she may exercise the power. S. 689.225(2)(b) and (c), F.S.
[11] S. 689.225(2)(f), F.S.
[12] Other states that allow a trust to extend in perpetuity include Idaho, Illinois, Kentucky, Missouri, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Dakota, and Virginia. *See* Alaska Statute s. 34.27.051; Colo. Rev. Stat. s. 15-11-1102.5(1)(a); 25 Del. Code. S. 503(e); Utah Code s. 75-2-1203; Wyo. Statute s. 34-1-139(a).

Effect of Proposed Changes

The bill amends s. 689.225, F.S., to provide that, under FUSRAP, unless the trust's terms require that all beneficial interests in the trust vest or terminate within a shorter time period, the maximum trust vesting period for any trust created:

- After December 31, 2000, through June 30, 2022, is 360 years.
- On or after July 1, 2022, is 1,000 years.

Practically speaking, a trust that fails to vest within these times, or a shorter time period specified in the trust instrument, would be invalid and unenforceable.

Trust Instruments and Trust Accounting

Background

The Trust Code governs the duties and powers of a trustee, relations among trustees, and a beneficiary's rights and interests except as otherwise provided in a trust's terms.[13] A trust's terms prevail over any Trust Code provision except those specified in statute, which includes the trustee's duty to keep the qualified beneficiaries reasonably informed of the trust and its administration[14] by:

- Providing a complete copy of the trust instrument to a qualified beneficiary upon reasonable request.[15]
- Providing a trust accounting from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary of an irrevocable trust at least annually and on trust termination or a trustee change.[16]
- Responding to a beneficiary's reasonable request for relevant information about the trust's assets and liabilities and trust administration particulars.[17]

In other words, these duties are mandatory and cannot be waived or altered by a trust's terms. However, a qualified beneficiary may waive the trustee's duty to account.[18]

A trust accounting must be a reasonably understandable report that adequately discloses the following information:

- A statement identifying the trust, the trustee furnishing the accounting, and the accounting period;
- A list of all cash and property transactions and all significant transactions affecting trust administration during the accounting period, including compensation paid to the trustee and the trustee's agents;
- The identity and value of trust assets on hand at the accounting period's close and each known noncontingent liability with an estimated current liability amount;
- A list of significant transactions that do not affect the amount for which the trustee is accountable;
- The allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any trust beneficiary; and
- A distribution plan for any undistributed assets shown on the final accounting.[19]

Effect of Proposed Changes

The bill amends ss. 736.0105 and 736.08135, F.S., to create an alternative to the annual trust accounting requirement. Specifically, the bill provides that the trustee of an irrevocable trust may elect, for any accounting period beginning on or after January 1, 2021, to provide a financial statement in lieu

[13] S. 736.0105(1), F.S.
[14] S. 736.0813, F.S.
[15] Ss. 736.0105(2) and 736.0813(1)(c), F.S.
[16] Ss. 736.0105(2) and 736.0813(1)(d), F.S.
[17] S. 736.0813(1)(e), F.S.
[18] S. 736.0813(2), F.S.
[19] S. 736.08135(1)-(3), F.S.

of a trust accounting to any beneficiary, though a trustee must still provide a trust accounting upon trust termination. The financial statement must indicate that the trustee has made such election for that period and include:

- Information identifying the trust, the trustee furnishing the accounting, and the accounting period and, if applicable, a distribution plan for any undistributed assets shown on the final accounting.
- A financial statement for the trust, prepared by a certified public accountant, summarizing the information normally required in a trust accounting and containing sufficient information to put the beneficiary on notice of the trust's comprehensive assets and liabilities and the transactions occurring during the accounting period.

Under the bill:

- A financial statement reporting the aggregate amounts of all cash and property transactions, gains, losses, receipts, expenses, disbursements, accruals, or allowances occurring within the accounting period for each category is an authorized financial statement.
- Such a financial statement is deemed to be a trust accounting that adequately discloses all the information required by statute to be disclosed in a trust accounting.
- A trustee that elects to provide such a financial statement must, upon a beneficiary's request made within six months of the beneficiary's receipt of the statement, make available the detailed information necessary for the statement's preparation within 30 days of the request.

The bill does not:

- Prevent a trustee from voluntarily providing a trust accounting to the qualified beneficiaries annually or at other times of the trustee's choosing;
- Relieve a trustee from the duty to provide a trust accounting to the qualified beneficiaries upon demand of such beneficiaries annually, or at less frequent intervals;
- Relieve a trustee from the duty to respond to a beneficiary's reasonable request for relevant information about the trust's assets and liabilities and trust administration particulars; or
- Prevent a settlor from requiring in the trust's terms that a trustee provide a trust accounting rather than a financial statement.

Methods and Waivers of Notice

Background

Notice to a person or the sending of a document under the Trust Code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.[20] Permissible methods of notice or for sending a document include first-class mail; personal delivery; delivery to the person's last known place of residence or business; a properly directed facsimile or other electronic message; or posting on a secure electronic account or website in accordance with statutory requirements.[21] Any such notice or document sent by electronic message is complete when the document is sent, and an electronic message is presumed received on the date it is sent.[22] However, if the sender has knowledge that an electronic message did not reach the recipient, the electronic message is deemed to have not been received, and the sender has the burden to prove that another copy of the notice or document was sent by electronic message or other authorized means.[23]

Further, a document sent solely by posting on an electronic account or website is not deemed sent under the Trust Code unless:

- The recipient signed a separate written authorization solely to authorize the sender to post documents to an electronic account or website before such posting, which authorization contains specific information and advisements.[24]

[20] S. 736.0109(1), F.S.
[21] *Id.*
[22] S. 736.0109(4), F.S.
[23] *Id.*
[24] S. 736.0109(3)(a), F.S.

- The sender provides a separate notice to the recipient that the authorization may be amended or revoked at any time and includes specific instructions for doing so.[25]
- At least annually after a recipient signs a written authorization, the sender sends a notice in a statutorily-prescribed form advising recipients who have authorized documents to be posted on an electronic account or website that:
    - Such posting may commence a limitations period as short as six months even if the recipient never accesses the electronic account or website; and
    - Authority to receive documents by electronic posting may be amended or revoked at any time.[26]

A sender may rely on the recipient's authorization to receive documents by electronic posting until the recipient amends or revokes the authorization by sending notice of its revocation or amendment.[27]

Further, if a document is provided to a recipient solely through electronic posting, the recipient must be able to access and print or download the document until the earlier of four years after the date the document is deemed received or when the recipient's access to the electronic account or website is terminated.[28] If a recipient's access to the electronic account or website is terminated by the sender sooner than four years after the date the document is deemed received, any applicable limitations period is tolled for any information adequately disclosed in a document sent solely by electronic posting from the date of access termination until 45 days after the date on which the sender provides, by means other than electronic posting, notice to the recipient of such termination and that:

- The recipient may request that any documents sent during the prior four years solely through electronic posting be provided to him or her by alternative means at no costs; or
- The recipient's access to the electronic account or website has been restored.[29]

However, current law does not expressly address what happens if a notice or document is contained in an attachment or hyperlink sent by e-mail but the information provided in the notice or document is not conveyed in the body of the e-mail itself. Thus, it is unclear whether such attachment or hyperlink would be treated as a notice or document sent by electronic message or solely by electronic posting.

Effect of Proposed Changes

The bill amends s. 736.0109, F.S., to clarify that "other electronic message" includes, but is not limited to, e-mail. The bill also specifies that, notwithstanding the requirements for sending a document solely through electronic posting:

- A properly directed e-mail message with an attached notice, document, or hyperlink through which the recipient can view a notice or document is a permissible method of notice under the Trust Code if any username, password, or other specific instructions needed to access the document or notice are communicated to the recipient either contemporaneously or on request.
- Notice to a person under the Trust Code by electronic message, including e-mail with an attached notice, document, or hyperlink, is complete when the notice or document is sent.

In other words, the bill:

- Authorizes the sender of a notice or document to embed the information in a secure attachment or hyperlink rather than requiring that such information be contained in the body of the e-mail itself.
- Clarifies that a person sending a notice, document, or hyperlink through e-mail is not required to comply with the additional requirements for sending a document solely through electronic posting.

Representations by Fiduciaries and Parents

[25] S. 736.0109(3)(b), F.S.
[26] S. 736.0109(3)(d) and (e), F.S.
[27] S. 736.0109(3)(f), F.S.
[28] S. 736.0109(3)(g), F.S.
[29] *Id.*

Background

Under Florida's guardianship laws, parents jointly are the natural guardians of their own children, during minority, unless the parents' parental rights have been lawfully terminated.[30] Although natural guardians have all the rights and authority over their minor child's person, natural guardians do not have all the rights and authority over their minor child's property; instead, natural guardians are only authorized to settle, collect, receive, and manage real or personal property distributed from an estate or trust to their minor child when the amounts received, in the aggregate, do not exceed $15,000.[31] Where property distributed from an estate or trust to a minor child exceeds $15,000, the court may appoint a property guardian to administer the property on the minor child's behalf.[32]

Under the Trust Code, certain parties may be authorized to represent and bind other parties. Specifically, to the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- A property guardian may represent and bind the estate that the guardian controls.[33]
- A parent may represent and bind the parent's unborn or minor child if a property guardian for the child has not been appointed.[34]

However, the Trust Code only binds one generation of minors and unborn children, even though subsequent generations also lack legal competence to represent their own interests in a trust proceeding. Thus, a trustee seeking the consent of, or a release by, the beneficiaries of a multi-generational trust[35] can only obtain such consent or release from living adult beneficiaries and of minor or unborn children with living adult parents.

Effect of Proposed Changes

The bill amends s. 736.0303, F.S., to extend the right of parents to represent and bind their unborn and minor children to:

- The unborn descendants of any such unborn or minor children; and
- The minor children of any such minor children.

Such right would only apply where a property guardian has not been appointed for such persons and only to the extent that there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute. Practically speaking, this would expand the number of beneficiaries of a multi-generational trust from which a trustee could seek consent or a release through the trust's living adult beneficiaries.

Noncharitable Trust Without Ascertainable Beneficiary

Background

Except as otherwise provided by law, a trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary; this type of trust, commonly referred to as a "purpose trust," is enforceable for a period of 21 years unless the trust's terms provide for a shorter enforcement period.[36] A purpose trust's property may be applied only to its intended use, except to the extent the court determines that the trust property's value exceeds the amount required for the intended use.[37]

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[30] S. 744.301(1), F.S.
[31] S. 744.301(2), F.S.
[32] S. 736.0103(12), F.S.
[33] S. 736.0303(1), F.S.
[34] S. 736.0303(5), F.S.
[35] A "multi-generational trust," sometimes referred to as a dynasty trust, is a long-term trust created to pass wealth from generation to generation within a family without incurring transfer taxes (such as the gift or estate tax) for as long as the trust has assets. Investopedia, *Dynasty Trust*, https://www.investopedia.com/terms/d/dynasty-trust.asp (last visited Jan. 19, 2022).
[36] A purpose trust is enforceable by a person appointed in the trust's terms or, if no person is so appointed, by a court-appointed person. Contrast the enforceability period of a purpose trust with that of a charitable trust, which may be enforced in perpetuity. Ss. 689.225(5)(e) and 736.0409(1) and (2), F.S.
[37] S. 736.0409(3), F.S.

Property determined to not be required for the trust's intended use must be distributed to the settlor, if then living, and otherwise as part of the settlor's estate, unless the trust's terms provide otherwise.[38]

Effect of Proposed Changes

The bill amends s. 736.0409, F.S., to increase a purpose trust's maximum enforceability period from 21 years to 1,000 years, consistent with the changes made to FUSRAP under the bill. However, a purpose trust's terms may still provide for a shorter enforceability period.

Grantor Trust Reimbursement

Background

A settlor may be treated as the trust's owner for federal income tax purposes under certain circumstances.[39] A settlor so treated is referred to as the "grantor" and the trust is referred to as a "grantor trust."[40] A grantor must report all of the grantor trust's income, losses, deductions, and credits on his or her individual income tax return and must pay any taxes on the grantor trust's income even if the grantor has no beneficial interest[41] in the trust.[42] Where a grantor is unable or unwilling to bear the grantor trust's income tax burden, the trust may be converted into a non-grantor trust so that the trust or its beneficiaries bear the tax burden.[43] However, a conversion is not always desirable, as the conversion may make the trust ineligible to own stock in an S corporation[44] or to qualify for a federal capital gains tax exclusion[45] on the sale of the grantor's primary residence.[46]

Alternatively, except as otherwise provided under a trust's terms or as prohibited by law, if all or any portion of a trust is being treated as a grantor trust, the trustee may, in the trustee's sole discretion, reimburse the grantor for any amount of the person's federal, state, or other income tax liability attributable to the inclusion of the trust's income, capital gains, deductions, or credits in the calculation of the grantor's taxable income ("reimbursement provision").[47] The reimbursement provision applies to all trusts, whether created on, before, or after July 1, 2020, unless:

- The trustee provides written notification that the trustee intends to irrevocably elect out of the reimbursement provisions, at least 60 days before the effective date of such election, to the grantor and all persons who have the ability to remove and replace the trustee.[48]
- Applying the provisions would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, which was originally claimed or could have been claimed for the contribution.[49]

Effect of Proposed Changes

The bill amends s. 736.08145, F.S., to limit the application of the reimbursement provision to trusts that are governed by Florida law or have a principal place of administration in Florida, whether created on,

[38] S. 736.0409(1) and (2), F.S.
[39] 26 U.S.C. §§ 673a, 674a, 675, 676a, and 677a (2022).
[40] The Florida Coalition for Modern Laws ("FCML"), *White Paper* (2019).
[41] A "beneficial interest" is the right of a party to some profit, distribution, or benefit from a contract or trust. Legal Information Institute, *Beneficial Interest*, https://www.law.cornell.edu/wex/beneficial_interest (last visited Jan. 19, 2022).
[42] 26 U.S.C. § 671 (2020).
[43] FCML, *supra* note 40.
[44] An "S corporation" is a corporation that qualifies and elects to be an S corporation under the Internal Revenue Code. S Corporations typically do not pay taxes to the federal government. Instead, most S corporations are taxed indirectly through their shareholders. An S corporation must have a limited number of shareholders, giving rise to the statutory term "small business" or "S" corporation. Legal Information Institute, *S Corporation*, https://www.law.cornell.edu/wex/s_corporation (last visited Jan. 19, 2022).
[45] Capital gains are the profit on the sale of a capital asset, such as stock or real estate. If a person sells a primary residence, current tax law lets the seller exclude $250,000 in profit from capital gains tax. A couple can exclude $500,000. Legal Information Institute, Capital Gains, https://www.law.cornell.edu/wex/capital_gains (last visited Jan. 19, 2022).
[46] FCML, *supra* note 40.
[47] A trustee may not exercise the reimbursement provision right if the trustee is: treated as the grantor; a trust beneficiary; or a related or subordinate party with respect to the grantor. Further, if a trust's terms require the trustee to act at the direction or with the consent of a trust advisor, the reimbursement right must instead or also be granted to the trust advisor. S. 736.08145(1), (3), and (4), F.S.
[48] S. 736.08145(2)(a), F.S.
[49] S. 736.08145(2)(b), F.S.

before, or after July 1, 2020, unless a pre-existing exception, noted above, applies. This clarifies for a trust the circumstances under which the trustee's reimbursement provision authority applies.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 689.225, F.S., relating to statutory rule against perpetuities.
Section 2: Amends s. 736.0105, F.S., relating to default and mandatory rules.
Section 3: Amends s. 736.0109, F.S., relating to methods and waiver of notice.
Section 4: Amends s. 736.0303, F.S., relating to representation by fiduciaries and parents.
Section 5: Amends s. 736.0409, F.S., relating to noncharitable trust without ascertainable beneficiary.
Section 6: Amends s. 736.08135, F.S., relating to trust accountings.
Section 7: Amends s. 736.08145, F.S., relating to grantor trust reimbursement.
Section 8: 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 have a positive indeterminate fiscal impact on state government by attracting additional trusts to Florida and helping to retain trust assets and related business. This may result in an increased number of trusts and related business subject to taxation in this state.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a direct economic impact on the private sector by:

- Providing additional time in which a trust may vest or be enforced before it is rendered invalid.
- Reducing costs associated with providing trust information to qualified trust beneficiaries where the election to provide a financial statement in lieu of a trust accounting is made.
- Allowing the parents of a minor or unborn child to bind such child's minor or unborn children in certain circumstances, thereby facilitating trust administration without the need for court intervention.
- Reducing the potential for litigation over the application of a trustee's reimbursement provision authority to a particular trust.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to trusts; amending s. 689.225, F.S.; revising criteria for application of the rule against perpetuities to trusts created on or after a specified date; amending s. 736.0105, F.S.; specifying that the terms of a trust do not prevail over a trustee's duty to account to qualified beneficiaries upon termination of the trust; providing construction; amending s. 736.0109, F.S.; clarifying circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; amending s. 736.0303, F.S.; specifying circumstances under which a parent may represent and bind the unborn descendants of his or her unborn or minor child; amending s. 736.0409, F.S.; revising the timeframe for which certain noncharitable trusts may be enforced; amending s. 736.08135, F.S.; providing an alternate procedure for trust accountings under certain circumstances; specifying requirements and applicability; amending s. 736.08145, F.S.; clarifying the application of law governing grantor trust reimbursement; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 689.225, Florida Statutes, is amended, and paragraph (g) is added to that subsection to read:

689.225 Statutory rule against perpetuities.—

(2) STATEMENT OF THE RULE.—

(f) As to any trust created after December 31, 2000, through June 30, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 360 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

(g) As to any trust created on or after July 1, 2022, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this section unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

Section 2. Paragraph (s) of subsection (2) of section 736.0105, Florida Statutes, is amended to read:

736.0105 Default and mandatory rules.—

(2) The terms of a trust prevail over any provision of this code except:

(s) The duty under s. 736.0813(1)(c) and (d) to provide a

complete copy of the trust instrument and to account to qualified beneficiaries on termination of the trust; provided that nothing in this paragraph shall be construed to:

1. Prevent a trustee from voluntarily accounting to qualified beneficiaries annually or at other times selected by the trustee; or

2. Relieve a trustee from the duty to account to the qualified beneficiaries upon demand of such qualified beneficiaries annually, or at less frequent intervals.

Section 3. Subsections (1) and (4) of section 736.0109, Florida Statutes, are amended to read:

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, a properly directed facsimile or other electronic message which includes, but is not limited to, e-mail, or posting on a secure electronic account or website in accordance with subsection (3). Notwithstanding subsection (3), a properly directed e-mail message with an attached notice or document or hyperlink through which the recipient can view a notice or document is a permissible method of notice under this

section, provided that any username, password, or other specific instructions needed to access the document or notice is communicated to the recipient either contemporaneously or on request.

(4) Notice to a person under this code, or the sending of a document to a person under this code by electronic message, including e-mail with an attached notice or document or an included hyperlink through which the recipient can access the notice or document, is complete when the notice or document is sent.

(a) An electronic message is presumed received on the date that the message is sent.

(b) If the sender has knowledge that an electronic message did not reach the recipient, the electronic message is deemed to have not been received. The sender has the burden to prove that another copy of the notice or document was sent by electronic message or by other means authorized by this section.

Section 4. Subsection (5) of section 736.0303, Florida Statutes, is amended to read:

736.0303 Representation by fiduciaries and parents.—To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(5) A parent may represent and bind the parent's unborn child and the unborn descendants of such unborn child, or the

parent's minor child and the minor or unborn descendants of such minor child, if a guardian of the property for the unborn child, minor child, or such child's descendants has not been appointed.

Section 5. Subsection (1) of section 736.0409, Florida Statutes, is amended to read:

736.0409 Noncharitable trust without ascertainable beneficiary.—Except as otherwise provided in s. 736.0408 or by another provision of law, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 1,000 ~~21~~ years.

Section 6. Subsection (3) of section 736.08135, is renumbered as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

736.08135 Trust accountings.—

(3) Notwithstanding subsections (1) and (2), a trustee may elect, for any accounting period, to provide a statement to any beneficiary which indicates that the trustee has made such election for that period and which includes all of the following:

(a) The information required by paragraph (2)(a) and, if applicable, the information required by paragraph (2)(f).

(b) A financial statement for the trust prepared by a

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

certified public accountant which summarizes the information specified in paragraphs (2)(b)-(e), provided that such financial statement shall contain sufficient information to put the beneficiary on notice of the trust's comprehensive assets and liabilities as well as the transactions occurring during the accounting period. A financial statement that reports the aggregate amounts of all cash and property transactions, gains, losses, receipts, expenses, disbursements, accruals, or allowances occurring within the accounting period for each category would be authorized under this paragraph.

For purposes of this chapter, a statement that a trustee provides to a beneficiary of the trust under this subsection is deemed to be a trust accounting that adequately discloses the information required in subsection (2). Any trustee that makes the election provided in this subsection shall, upon a request of any beneficiary of the trust made within the limitations period prescribed by s. 736.1008, make available the detailed information necessary for preparation of the statement within 30 days after such request.

(4) ~~(3)~~ Subsections (1) and (2) govern the form and content of all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2018. The election provided in subsection (3) for trustees is available for any accounting

periods beginning on or after January 1, 2021. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 7. Subsection (2) of section 736.08145, Florida Statutes, is amended to read:

736.08145 Grantor trust reimbursement.—

(2) This section applies to all trusts that are governed by the laws of the state or that have a principal place of administration within the state, whether created on, before, or after July 1, 2020, unless:

(a) The trustee provides written notification that the trustee intends to irrevocably elect out of the application of this section, at least 60 days before the effective date of such election, to the person treated as the owner of all or a portion of the trust under s. 671 of the Internal Revenue Code or any similar federal, state, or other tax law and to all persons who have the ability to remove and replace the trustee.

(b) Applying this section would prevent a contribution to the trust from qualifying for, or would reduce, a federal tax benefit, including a federal tax exclusion or deduction, which was originally claimed or could have been claimed for the contribution, including:

1. An exclusion under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;

2. A marital deduction under s. 2056, s. 2056A, or s. 2523

of the Internal Revenue Code;

3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code; or

4. Direct skip treatment under s. 2642(c) of the Internal Revenue Code.

Section 8. This act shall take effect July 1, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 1001 by Rep. Beltran
Trusts

AMENDMENT SUMMARY
February 7, 2022

Amendment 1 by Rep. Beltran (lines 52-153): The amendment:

- Limits application of the following portions of the bill to family trust companies:
  - Permitting a trustee to provide a specified financial statement in lieu of an annual trust accounting when not otherwise prohibited by the trust's terms.
  - Permitting the sender of a notice or document to embed the information in a secure attachment or hyperlink rather than requiring that such information be contained in the body of the e-mail itself.
- Makes technical and conforming changes.

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 Beltran offered the following:

Amendment (with title amendment)

Remove lines 52-153 and insert:

qualified beneficiaries, except as otherwise provided in s. 736.0813(1)(d).

Section 3. Subsections (4), (5), and (6) of section 736.0109, Florida Statutes, are renumbered as subsections (5), (6), and (7), respectively, subsection (1) and present subsection (4) are amended, and a new subsection (4) is added to that section, to read:

736.0109 Methods and waiver of notice.—

(1) Notice to a person under this code or the sending of a document to a person under this code must be accomplished in a

manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, a properly directed facsimile or other electronic message including e-mail, or posting on a secure electronic account or website in accordance with subsection (3).

(4)(a) Notwithstanding subsection (3), a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, that is a trustee of the trust, may use:

1. Any of the permissible methods of notice or for sending a document described in subsection (1); or

2. A properly directed e-mail message with an attached notice or document or containing a hyperlink through which the recipient can view the notice or document.

(b) For purposes of this subsection, the notice or document is deemed sent only if any username, password, or other specific instructions needed to access the notice or document are communicated to the recipient either prior to or contemporaneously with the e-mail message containing the notice, document, or hyperlink, or upon request by the recipient.

(5)~~(4)~~ Notice to a person under this code, or the sending

of a document to a person under this code ~~by electronic message~~ electronically, is complete when ~~the document is~~ sent.

(a) An electronic message is presumed received on the date that the message is sent.

(b) If the sender has knowledge that an electronic message did not reach the recipient, the electronic message is deemed to have not been received. The sender has the burden to prove that another copy of the notice or document was sent by electronic message or by other means authorized by this section.

Section 4. Subsection (5) of section 736.0303, Florida Statutes, is amended to read:

736.0303 Representation by fiduciaries and parents.—To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(5) A parent may represent and bind the parent's unborn child and the unborn descendants of such unborn child, or the parent's minor child and the minor or unborn descendants of such minor child, if a guardian of the property for the unborn child, minor child, or such child's descendants has not been appointed.

Section 5. Subsection (1) of section 736.0409, Florida Statutes, is amended to read:

736.0409 Noncharitable trust without ascertainable beneficiary.—Except as otherwise provided in s. 736.0408 or by another provision of law, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 1,000 ~~21~~ years.

Section 6. Subsection (1) of section 736.0813, is amended to read:

736.0813 Duty to inform and account.—

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies

with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d)1. A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

2. Notwithstanding s. 736.0105 or the duties set forth in this paragraph, if a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee of an irrevocable trust, the terms of the trust may permit such a trustee to only account to the qualified beneficiaries upon:

a. The termination of the trust;

b. The removal, resignation, or other event resulting in a trustee ceasing to serve; or

c. Demand of a qualified beneficiary or the representative of a qualified beneficiary.

3. Nothing in this paragraph shall prevent a trustee that is a family trust company, licensed family trust company, or foreign licensed family trust company from voluntarily

accounting to the qualified beneficiaries annually or at other times selected by such trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

Section 7. Subsection (3) of section 736.08135, is renumbered as subsection (4) and amended, and a new subsection (3) is added to that section, to read:

736.08135 Trust accountings.—

(3) Notwithstanding subsections (1) and (2), if a family trust company, licensed family trust company or foreign licensed family trust company, as defined in s. 662.111, is a trustee of the trust, such a trustee may elect, for any accounting period, to provide the qualified beneficiaries all of the following information:

(a) A notice stating that the trustee has made an election to provide the information enumerated in this subsection.

(b) The information required by paragraph (2)(a) and, if applicable, the information required by paragraph (2)(f).

(c) A financial statement for the trust which summarizes the information specified in paragraphs (2)(a), (2)(b), (2)(c), (2)(d), and (2)(e). The financial statement must contain sufficient information to put the beneficiary on notice of the trust's comprehensive assets and liabilities as well as the transactions occurring during the accounting period. A financial statement that reports the comprehensive assets and liabilities at the beginning and end of the accounting period, and the aggregate amounts of all cash and property transactions, gains, losses, receipts, expenses, disbursements, distributions, accruals, or allowances occurring within the accounting period for each category of assets and liabilities, meets the requirements of this paragraph.

For the purposes of this chapter, a financial statement that a trustee provides to a beneficiary of the trust under this subsection is deemed to be a trust accounting. Any trustee that makes the election provided by this subsection shall, upon a request of any beneficiary made within the limitations period prescribed by s. 736.1008, make available the detailed information necessary for the preparation of the statement within 30 days of the date of the request, including copies of the requested information. A request by a beneficiary for the

detailed information necessary for the preparation of the financial statement shall toll the running of any applicable limitations period until the detailed information is made available to the beneficiary.

(4)~~(3)~~ Subsections (1) and (2) govern the form and content of all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2018. The election provided in subsection (3) for trusts for which a family trust company, licensed family trust company, or foreign licensed family trust company, as defined in s. 662.111, is a trustee is available for any accounting periods beginning on or after July 1, 2022. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

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

Remove lines 5-16 and insert:
date; amending s. 736.0105, F.S.; providing that certain irrevocable trusts may specify a trustee's duty to account to certain beneficiaries; amending s. 736.0109, F.S.; specifying additional circumstances under which notice, or the sending of a document, to a person under the Florida Trust Code is deemed satisfied; amending s. 736.0303, F.S.; specifying

circumstances under which a parent may represent and bind the unborn descendants of his or her unborn or minor child; amending s. 736.0409, F.S.; revising the timeframe for which certain noncharitable trusts may be enforced; amending s. 736.0813; providing that certain irrevocable trusts may specify a trustee's duty to account to certain beneficiaries;

HB 7043

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7043 PCB GOS 22-09 OGSR/Information Submitted by Insurers/DFS
SPONSOR(S): Government Operations Subcommittee, Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** SB 7016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	15 Y, 0 N	Villa	Toliver
1) Insurance & Banking Subcommittee		Fortenberry	Luczynski
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Division of Investigative and Forensic Services (DIFS) within the Department of Financial Services (DFS) investigates a wide range of fraudulent and criminal acts and comprises all law enforcement and forensic components residing within DFS. Currently, every insurer admitted to do business in the state must adopt an anti-fraud plan, establish and maintain a designated anti-fraud investigative unit, annually provide education and training to the anti-fraud investigative unit, and report anti-fraud investigative information to DFS.

In 2017, the Legislature created a public record exemption for certain anti-fraud investigative information submitted to DFS by insurers. Specifically, the exemption makes the following information exempt from public record requirements:

- The description of an insurer's anti-fraud education and training.
- The description or chart of an insurer's anti-fraud investigative unit.
- An insurer's rationale for the level of staffing and resources being provided for the anti-fraud investigative unit.
- The number of claims referred to the anti-fraud investigative unit.
- The number of claims investigated or accepted by the anti-fraud investigative unit.
- The number of other insurance fraud matters referred to, investigated by, or accepted by the anti-fraud investigative unit that were not claim related.
- The estimated dollar amount or range of damages on cases referred to DIFS or other agencies.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2022, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services (DIFS) within the Department of Financial Services (DFS) encompasses all law enforcement and forensic components residing within DFS. DIFS investigates a wide range of fraudulent and criminal acts including:

- Insurance fraud;
- Workers' compensation fraud;
- Fire, arson, and explosives investigations;
- Theft/misuse of state funds; and
- Fire and explosives sample analysis.[5]

The DIFS is directed to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, false and fraudulent insurance claims, and willful violations of the Florida Insurance Code and rules adopted thereunder.[6] The DIFS employs sworn law enforcement officers to investigate insurance fraud. These officers may make warrantless arrests upon probable cause for criminal violations established as a result of an investigation.[7] The general laws applicable to arrests by state law enforcement officers apply to DIFS investigators.

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Article I, s. 24(c), FLA. CONST.
[5] My Florida CFO, *Investigative and Forensic Services*, available at https://www.myfloridacfo.com/division/difs/ (last visited January 25, 2022).
[6] *See* s. 626.989, F.S.
[7] Section 626.989(7), F.S.

Insurer Anti-Fraud Investigative Units and Plans

Florida law requires every insurer admitted to do business in the state to establish and maintain a designated anti-fraud unit within the company to investigate and report possible fraudulent insurance acts or to contract with others for such services.[8] These insurers are required to file a detailed description of their anti-fraud unit or the contract for services, whichever is applicable, with DIFS.[9] Additionally, the insurers are required to annually provide education and training to the anti-fraud investigative unit and to adopt an anti-fraud plan, which must be filed with DIFS and must include:

- An acknowledgment that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance written by that insurer;
- An acknowledgment that the insurer has established procedures for the mandatory reporting of possible fraudulent insurance acts to DIFS;
- A description of the required anti-fraud education and training;
- An acknowledgment that the insurer provides the required anti-fraud education and training to the anti-fraud investigative unit;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing; and
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit.[10]

Current law also requires every insurer to report fraud related data for each line of insurance written in the prior calendar year. The data must be submitted to DFS by March 1, and include:

- The number of policies in effect;
- The amount of premiums written for polices;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to DIFS;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount or range of damages on cases referred to DIFS or other agencies.[11]

DFS may impose an administrative fine on an insurer that fails or otherwise refuses to comply with the above-described reporting requirements.[12]

Public Record Exemption under Review

In 2017, the Legislature created a public record exemption for certain anti-fraud investigative information submitted to DFS by insurers.[13] Specifically, the exemption makes the following information exempt[14] from public record requirements:

- The description of an insurer's anti-fraud education and training.

[8] Section 626.9891(2)(a), F.S.
[9] Section 626.9891(2)(d), F.S.
[10] Section 626.9891(3), F.S.
[11] Section 626.9891(5), F.S.
[12] Section 626.9891(8), F.S.
[13] Chapter 2017-179, Laws of Fla.
[14] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the

- The description or chart of an insurer's anti-fraud investigative unit.
- An insurer's rationale for the level of staffing and resources being provided for the anti-fraud investigative unit.
- The number of claims referred to the anti-fraud investigative unit.
- The number of claims accepted or investigated by the anti-fraud investigative unit.
- The number of other insurance fraud matters referred to, investigated by, or accepted by the anti-fraud investigative unit that were not claim related.
- The number of claims accepted or investigated by the anti-fraud investigative unit.
- The estimated dollar amount or range of damages on cases referred to DIFS or other agencies.[15]

The 2017 public necessity statement[16] for the exemption provides that:

> The public disclosure of [information relating to an insurer's anti-fraud investigative unit] would allow criminal elements to use such information to identify fraud prevention or detection strategies employed by insurers and use this information to commit insurance fraud. . . . The public disclosure of [data submitted to DFS] could injure a business in the marketplace by providing its competitors with detailed insights into the claim investigation processes and statistics of the company, thereby diminishing the advantage that the business maintains over competitors that do not possess such information.[17]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless reenacted by the Legislature.

During the 2021 interim, the House Government Operations Subcommittee staff conducted an interview with staff from DFS as part of its review under the Open Government Sunset Review Act. According to DFS staff, there are approximately 170 insurers admitted to do business in Florida. The exemption, according to DFS staff, is functioning well and the department has not experienced any difficulties regarding the exemption. DFS staff indicated they were unaware of any litigation concerning the exemption or its interpretation. DFS staff recommended the exemption be reenacted to prevent criminals from obtaining the information and using it to commit insurance fraud as well as to protect insurer's proprietary business information.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for certain anti-fraud investigative information submitted to DFS by insurers.

B. SECTION DIRECTORY:

Section 1 amends s. 626.9891, F.S., relating to insurer anti-fraud investigative units.

Section 2 provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04-09 (2004).

[15] *See* s. 626.9891(11)(a), F.S.

[16] Article I, s. 24(c), Fla. Const., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

[17] Chapter 2017-179, Laws of Fla.

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 does not require rulemaking nor confer or alter an agency's rulemaking authority

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 626.9891, F.S., which provides an exemption from public records requirements for certain information submitted by insurers to the Department of Financial Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (11) of section 626.9891, Florida Statutes, is amended to read:

626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—

(11)(a) The information submitted to the department pursuant to paragraphs (3)(d), (e), and (f) and paragraphs (5)(d), (e), (f), (g), and (k) is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(b) ~~(c)~~ This exemption applies to records held before, on, or after the effective date of this act.

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

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

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

HB 7045

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7045 PCB GOS 22-10 OGSR/Information on Financial Institutions, Affiliated International Trust Entities, and Qualified Limited Service Affiliates/OFR
SPONSOR(S): Government Operations Subcommittee, Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** SB 7020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 5 N	Villa	Toliver
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Office of Financial Regulation (OFR) regulates "financial institutions," the definition of which was expanded in 2017 to include two new entities called an "international trust entity" and a "qualified limited service affiliate." Public record exemptions were created for each of the new entities that make the following information confidential and exempt from public disclosure:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office (ITCRO) or a qualified limited service affiliate (QLSA) or which appears in records relating to reports of examinations, operations, or condition of an ITCRO or a QLSA, including working papers.
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity or a QLSA.
- Information received by OFR from a person from another state or country or the Federal Government which is otherwise confidential and exempt pursuant to the laws of that state or country or pursuant to federal law.

As a result of international trust entities and QLSAs being included within the definition of "financial institution," the following public record exemptions in s. 655.057, F.S., relating to financial institutions generally were amended in 2017 to incorporate the new definition:

- Records and information relating to an investigation by OFR until the investigation is completed or ceases to be active.
- Reports of examinations, operations, and condition, including working papers, or portions thereof, prepared by, or for the use of, OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida.
- Information that may be provided to particular parties under certain circumstances.
- Confidential documents supplied to OFR or to employees of any financial institution by other state or federal governmental agencies.

The bill saves from repeal the above-described public record exemptions, which will repeal on October 2, 2022, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[5] 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.[6] OFR also ensures that state financial institutions (i.e. financial institutions[7] chartered or organized by the state of Florida) comply with state and applicable federal requirements for safety and soundness.

As part of its general supervisory powers, OFR has access to all state financial institutions' books and records necessary for the performance of its duties and functions prescribed under the financial institutions codes.[8] Among its duties, OFR is required to conduct examinations of the condition of each state financial institution at least every 18 months.[9] In relation to state financial institutions that also have a federal regulator, OFR may accept an examination of a state financial institution made by an

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Article I, s. 24(c), FLA. CONST.
[5] Section 20.121(3)(a)2., F.S.
[6] Chapters 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.
[7] "Financial institution" is defined as "a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq." Section 655.005(1)(i), F.S.
[8] Section 655.012(1)(b), F.S.
[9] Sections 655.045(1) and 663.537, F.S.

appropriate federal regulatory agency, and may conduct joint or concurrent examinations with federal agencies.[10] However, at least once during every 36-month period, OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report.[11]

In addition to performing regular examinations, OFR may also make investigations which it deems necessary to determine whether a person has violated or is about to violate any provision of the financial institutions codes or the rules promulgated thereunder.[12]

International Trust Entities, International Trust Company Representative Offices, and Qualified Limited Service Affiliates

In 2017, the Legislature expanded the definition of "financial institution" to include two new entities called an "international trust entity" and a "qualified limited service affiliate."[13] 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.[14] Currently, an international trust entity can operate in Florida either directly through an international trust company representative office (ITCRO) or indirectly through a qualified limited service affiliate (QLSA).[15]

An ITCRO is defined as an office of an international trust entity which is established or maintained in Florida for the purpose of engaging in specified nonfiduciary activities, or any affiliate, subsidiary, or other person that engages in such activities on behalf of such international trust entity from an office located in Florida. Permissible activities of an ITCRO include:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international trust entity;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international trust entity and its existing or potential customers; and
- Engaging in any other activities approved by OFR or under rules of the Financial Services Commission.[16]

An ITCRO's representatives and employees may not act as a fiduciary, which means they may not do such things as accept fiduciary appointment, execute the fiduciary documents that create the fiduciary relationship, or make discretionary decisions regarding the investment or distribution of fiduciary accounts.[17]

A QLSA, on the other hand, is a separate legal entity from the international trust entity and is defined as 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.[18] Such permissible activities include:

- 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;
- Advertising and marketing at trade, industry, or professional events;

[10] Section 655.045(1)(a), F.S.
[11] *Id*.
[12] Section 655.032(1), F.S.
[13] Chapter 2017-83, L.O.F.
[14] Section 663.401(3), F.S.
[15] Prior to 2017, the equivalent of an international trust entity, an offshore non-depository trust company, was included within the definition of an International Banking Corporation (IBC) and governed under that regulatory framework. However, given the distinct nature of the two entities, the Legislature separated them and relocated the regulations related to licensed offices of an international trust entity, i.e., ITCROs, from the regulations related to licensed offices of an IBC. The Legislature also created a new kind of entity called a QLSA (of an international trust entity).
[16] Section 663.409(1), F.S.
[17] Section 663.409(2), F.S.
[18] Section 663.530(1)(f), F.S.

- Transmitting documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmitting information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.[19]

A QLSA is prohibited from engaging in the following activities:

- Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public.
- 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.
- 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.
- Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity.
- 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 OFR.
- Commencing services for an international trust entity without complying with applicable requirements.
- Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country.
- Otherwise conducting banking or trust business.[20]

Public Record Exemptions under Review

International Trust Company Representative Offices and Qualified Limited Service Affiliates
As a result of the Legislature creating two new entity types, the below-described public record exemptions were created relating to each of those entities that make the following information confidential and exempt from public disclosure:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an ITCRO or a QLSA or which appears in records relating to reports of examinations, operations, or condition[21] of an ITCRO or a QLSA, including working papers.[22]
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity or a QLSA.
- Information received by OFR from a person from another state or country or the Federal Government which is otherwise confidential and exempt pursuant to the laws of that state or country or pursuant to federal law.[23]

The information made confidential and exempt by the public record exemptions may be disclosed by OFR:

- To the authorized representative or representatives of the ITCRO or QLSA under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity or QLSA;

[19] Section 663.531(1), F.S.
[20] Section 663.531(2), F.S.
[21] "Reports of examination, operations, and condition" is defined to mean records submitted to or prepared by OFR as part of OFR's duties performed pursuant to ss. 655.012, 655.045, or 663.537, F.S. Sections 663.416(1)(a) and 663.540(1)(a), F.S.
[22] "Working papers" is defined to mean the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under ss. 655.032, 655.045, or 663.537, F.S. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, and schedules or commentaries prepared or obtained in the course of such investigation or examination. Sections 663.416(1)(b) and 663.540(1)(b), F.S.
[23] Chapter 2017-84, L.O.F.; codified as ss. 663.416(2) and 663.540(2), F.S.

- To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity or QLSA;
- To an independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity or QLSA;
- To the liquidator, receiver, or conservator for the international trust entity or QLSA, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity or QLSA, must be redacted by OFR before releasing such portion to the liquidator, receiver, or conservator;
- To a law enforcement agency in furtherance of the agency's official duties and responsibilities;
- To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity; and
- Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.[24]

Nothing in the public record exemptions prevent or restrict the publication of a report required by federal law.[25]

A person who willfully discloses information made confidential and exempt by the public record exemptions commits a felony of the third degree.[26]

The 2017 public necessity statement[27] for the exemptions provides that:

> The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity. . . . [Furthermore,] [t]he office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would such disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.[28]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2022, unless reenacted by the Legislature.

Financial Institutions Generally

As a result of the Legislature creating two new entity types – international trust entities and QLSAs – the below-described public record exemptions in s. 655.057, F.S., relating to financial institutions generally were amended following the incorporation of those two entities into the definition of "financial institution."[29]

[24] Sections 663.416(3) and 663.540(3), F.S.
[25] Sections 663.416(4) and 663.540(4), F.S.
[26] Sections 663.416(5) and 663.540(5), F.S.
[27] Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.
[28] Chapter 2017-84, L.O.F.
[29] Chapter 2017-84, L.O.F.

Section 655.057(1), F.S., which provides a public record exemption for all records and information relating to an investigation by OFR until the investigation is completed or ceases to be active.[30] After an investigation is completed or ceases to be active, portions of the covered documents remain confidential and exempt[31] from public disclosure to the extent that disclosure would:

- Jeopardize the integrity of another active investigation;
- Impair the safety and soundness of the financial institution;
- Reveal personal financial information;[32]
- Reveal the identity of a confidential source;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- Reveal investigative techniques or procedures.

Section 655.057(2), F.S., which provides a public record exemption for reports of examinations,[33] operations, or condition, including working papers,[34] or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida. However, examination, operation, or condition reports must be released by OFR within one year after the appointment of a liquidator, receiver, or conservator to the financial institution except any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution. Additionally, such reports or papers or portions thereof may be released to:

- The financial institution under examination;
- Any holding company of which the financial institution is a subsidiary;
- Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;
- Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;
- Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or
- A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

Section 655.057(9), F.S., which provides that any confidential documents provided to OFR or to employees of any financial institution by other state or federal governmental agencies are confidential

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[30] An investigation is considered "active" while such investigation is being conducted by OFR 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 OFR is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by OFR or other administrative or law enforcement agency. Section 655.057(1), F.S.

[31] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04-09 (2004).

[32] "Personal financial information" is defined to mean: information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt; information relating to a person's financial transactions of any kind; or information relating to the existence, identification, nature, or value of a person's assets, liabilities, or net worth. Section 655.057(12)(c), F.S.

[33] "Examination report" is define to mean "records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045(1)." Section 655.057(12)(a), F.S.

[34] "Working papers" is defined to mean "the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032 or s. 655.045. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation." Section 655.057(12)(d), F.S.

and exempt from public record requirements. Such information may only be made public with the consent of the agency that owns the documents.

Section 655.057(5), F.S., which specifies that the above-described public record exemptions do not prevent or restrict OFR from:

- Publishing reports that are required to be submitted to OFR pursuant to s. 655.045(2), F.S., or required by applicable federal statutes or regulations to be published.[35]
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and OFR.

However, any such information or records obtained from OFR that is confidential must be maintained as confidential and exempt from public record requirements.

A person who willfully discloses information made confidential by the foregoing public record exemptions commits a felony of the third degree.[36]

The 2017 public necessity statement[37] for the exemption provides that:

> An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and qualified limited service affiliates which are afforded to other financial institutions, thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as "financial institutions.". . . Public disclosure of records and information relating to an examination or investigation by the office could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state.[38]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2022, unless reenacted by the Legislature.

Open Government Sunset Review

During the 2021 interim, the House Government Operations Subcommittee staff conducted an interview with staff from OFR as part of its review under the Open Government Sunset Review Act. According to OFR staff, there are currently 12 international trust entities operating in Florida. OFR staff indicated that the exemptions are functioning well and that OFR has not received any complaints regarding the exemptions. OFR staff recommended the exemptions be reenacted to protect the sensitive information shared with the agency in the course of administering its examination and investigative duties, to maintaining information sharing practices between OFR and other regulatory bodies, and to protect the

[35] *See* r. 69U-120.0451, F.A.C., providing for the quarterly filing of Call Reports.
[36] Section 655.057(13), F.S.
[37] Article I, s. 24(c), Fla. Const., requires each public record exemption state with specificity the public necessity justifying the exemption.
[38] Chapter 2017-84, L.O.F.

personal identifying information of individuals served by an international trust entity and shareholders or members of certain financial institutions.

Effect of the Bill

The bill removes the scheduled repeal dates of the public record exemptions relating to ITCROs and QLSAs specifically, thereby maintaining the public record exemptions for the personal identifying information of individuals served by an international trust entity and shareholders or members of certain financial institutions; as well as information received by OFR from other regulatory entities that is confidential and exempt under the laws of that entity's jurisdiction.

The bill also removes the scheduled repeal date of certain public record exemptions in s. 655.057, F.S., that were amended in 2017 to incorporate the addition of international trust entities and QLSAs within the definition of "financial institution." The following exemptions that relate to financial institutions generally are maintained by the bill:

- Records and information relating to an investigation by OFR until the investigation is completed or ceases to be active.
- Reports of examinations, operations, and condition, including working papers, or portions thereof, prepared by, or for the use of, OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida.
- Information that may be provided to particular parties under certain circumstances.
- Confidential documents supplied to OFR or to employees of any financial institution by other state or federal governmental agencies.

B. SECTION DIRECTORY:

Section 1 amends s. 655.057, F.S., to save from repeal certain public record exemptions relating to financial institutions.

Section 2 amends s. 663.416, F.S., to save from repeal the public record exemption for certain sensitive information of an international trust entity held by OFR.

Section 3 amends s. 663.540, F.S., to save from repeal the public record exemption for certain sensitive information of an international trust entity and QLSA held by OFR.

Section 4 provides an effective date of October 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.

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 does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 655.057, F.S., which provides exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to active investigations and the regulation of financial institutions; removing the scheduled repeal of the exemption; amending s. 663.416, F.S., which provides an exemption from public records requirements for certain information held by the office relating to affiliated international trust entities; removing the scheduled repeal of the exemption; amending s. 663.540, F.S., which provides an exemption from public records requirements for certain information held by the office relating to qualified limited service affiliates; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (14) of section 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

~~(14) Subsections (1), (2), (5), and (9) are subject to the~~

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

~~Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (6) of section 663.416, Florida Statutes, is amended to read:

663.416 Public records exemption.—

~~(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. Subsection (6) of section 663.540, Florida Statutes, is amended to read:

663.540 Public records exemption.—

~~(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 4. This act shall take effect October 1, 2022.

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

PCS for HB 425

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 425 Posttraumatic Stress Disorder Benefits and Peer Support Programs
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Workers' compensation benefits for a nervous or mental injury are typically allowed only if an employee suffers a physical injury that triggers a mental injury. However, the Legislature created special rules for certain first responders in 2018, making Posttraumatic Stress Disorder (PTSD) a compensable occupational disease for firefighters, paramedics, emergency medical technicians, and law enforcement officers who suffer from PTSD after experiencing certain types of qualifying events, even though they were not physically injured.

This bill extends workers' compensation benefits for PTSD to full- and part-time correctional officers, full- and part-time correctional probation officers, part-time law enforcement officers, and auxiliary law enforcement officers. The bill defines the qualifying events that would make such employees eligible for medical benefits and compensation for lost wages even if the employee did not suffer a physical injury.

Additionally, the bill recognizes the unique demands of persons who work in corrections, emergency rescue, and law enforcement by increasing training requirements related to mental health awareness, prevention, and mitigation. Employers of firefighters, paramedics, emergency medical technicians, law enforcement officers, correctional officers, and correctional probation officers would be required to provide at least one hour of training annually. Training must include, but is not limited to, peer support programs, training provided by a licensed mental health practitioner, and suicide prevention.

To support the required training, confidentiality provisions for peer support programs are extended to correctional and correctional probation officers. Such provisions already apply to firefighters, paramedics, emergency medical technicians, law enforcement officers, and 911 public safety telecommunicators.

To help ensure claims are legitimate, the employing agency must document an employees' personal involvement in a qualifying event before awarding medical benefits or compensation for lost wages.

Provisions related to notice of injury and notice of claim are adjusted. Currently, notice of a PTSD-related injury is due to the employer within 90 days of a qualifying event or the manifestation of the disorder, whichever is later. If the compensability of an injury is disputed, a claim must be filed within 52 weeks of the qualifying event. The bill makes the notice of injury due within 90 days of a qualifying event or diagnosis of the disorder, whichever is later. Similarly, the bill extends the claim filing deadline to within 52 weeks of the qualifying event or diagnosis of the disorder, whichever is later. This allows claims more than one year after a qualifying event.

The bill has an indeterminate, likely significant, negative fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Workers' Compensation System

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, 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.[1]

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease caused death or 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.[2] 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.[3]

Benefits for Temporary and Permanent Disability

The insurance carrier or self-insured employer must provide medical and indemnity benefits for any employee who suffers an injury "arising out of and in the course of employment."[4]

Medical Benefits

To be compensable, a work-related accident must be the major contributing cause of any resulting injury or illness, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.[5]

Employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.[6]

Indemnity Benefits

[1] Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.
[2] Ss. 440.09, and 440.151, F.S.
[3] S. 440.151(2), F.S.
[4] S. 440.185, F.S.
[5] S. 440.09(1), F.S.
[6] S. 440.13(2)(a), F.S.

Payments for lost wages, known as indemnity benefits, may be required if an injured employee is unable to work, as determined by an authorized doctor, for more than seven calendar days. Indemnity benefits fall into four categories:

- Temporary Total Disability – 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.[7] Temporary total disability benefits end when the employee returns to work or the employee reaches maximum medical improvement and the employer/insurance carrier has paid five years of benefits.[8]
- Temporary Partial Disability – When an authorized doctor determines that an injured employee may work, with restrictions, the employee receives 80 percent of the difference between his or her earnings prior to injury and post injury. Payments may be required for up to 260 weeks.[9]
- Permanent Impairment – When an authorized doctor determines that the injured employee has reached maximum medical improvement but remains unable to perform certain work activities, the doctor assigns an impairment rating that represents a percentage of disability to the body as a whole; a monetary benefit is calculated based on the percent of impairment.[10]
- Permanent Total Disability – When an authorized doctor determines that the injured employee is unable to work in any job for any employer, the employer/insurance carrier must pay total disability benefits until the injured employee reaches age 75.[11]

Injured workers are typically paid two thirds of their average weekly salary, typically beginning on the eighth day after the employee loses time from work.[12]

The minimum payment is $20 per week and the maximum payment is 100 percent of the statewide average weekly wage, which is based on the average weekly wage paid by employers' subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity.[13] 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.[14]

General Rules of Compensability for Mental or Nervous Injuries

Mental or Nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment. Thus, if a workplace accident causes both a physical injury and a related mental or nervous injury, both may be compensable so long as the physical injury that requires medical treatment is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.[15]

As discussed above, an employee who is temporarily disabled by a workplace injury is eligible for up to 260 weeks of disability benefits, which typically results in payment of about two-thirds of the employee's regular wages, beginning on the eighth day after the employee loses time from work.[16] However, temporary disability benefits caused by a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement for the physical injury that triggered the mental or nervous injury.[17]

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[7] 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).
[8] S. 440.15(1), F.S.
[9] S 440.15(4), F.S.
[10] S 440.15(3), F.S.
[11] S. 440.15(1)(b), F.S.
[12] S. 440.14(1), F.S.
[13] S. 440.12(2), F.S.
[14] *Id*.
[15] S. 440.093, F.S.
[16] S. 440.15(2)(a), F.S. limits disability benefits to 104 weeks, but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks be reinstated. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).
[17] S. 440.093(3), F.S.

Special Rules for First Responders

The 2007 Law

The Legislature recognized the unique occupational hazards associated with the work of first responders in 2007, by providing additional coverage for employment-related accidents and injuries of both paid and volunteer firefighters, emergency medical technicians and paramedics, and law enforcement officers.[18] The law relaxed certain standards to make it easier for first responders to obtain workers' compensation benefits.

For mental and nervous injuries, lawmakers:

- Authorized medical benefits for first responders who did not suffer a physical injury but demonstrate, by clear and convincing evidence, that a mental or nervous injury arose out of employment;
- Authorized indemnity benefits (lost wages) for first responders who demonstrate that a mental or nervous injury arose out of a physical injury suffered during the course of employment; and
- Exempted first responders from limits that typically apply to temporary disability benefits for mental and nervous injuries. For employees who are not first responders, benefits for mental or nervous injuries: 1) may last no longer than six months from the date of the maximum medical improvement from the physical injury,[19] and 2) may not exceed the 1 percent limit on permanent psychiatric impairment benefits.[20]

For occupational diseases, lawmakers:

- Reduced the evidentiary burden for claims of occupational disease due to exposure to a specific toxic substance, requiring proof of causation by a preponderance of the evidence, rather than the clear and convincing evidentiary standard typically applied to such claims; and
- Eliminated the requirement that a first responder's claim of occupational disease be supported by epidemiological studies showing 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.

Additionally, lawmakers:

- Created a presumption that any adverse reaction to a smallpox vaccination administered to a first responder is a compensable accident; and
- Required that permanent total supplemental benefits received by a first responder whose employer does not participate in the Social Security program shall not terminate when the first responder reaches age 62.

2018 Amendments

In 2018, the Legislature authorized medical benefits and compensation for lost wages for first responders who are diagnosed with PTSD (as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association).[21]

[18] Chapter 2007-87, Laws of Florida, created s. 112.1815, F.S.
[19] S. 440.093, F.S.
[20] S. 440.14(3), F.S.
[21] Chapter 2018-124, Laws of Florida, amended s. 112.1815, F.S.

As a result, a first responder who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Seeing a deceased minor;
- Witnessing the death of a minor;
- Witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Participating in the treatment of an injured minor who dies before or on arrival at a hospital emergency department;
- Transporting an injured minor who dies before or on arrival at a hospital emergency department;
- Seeing a decedent whose death was due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing a death (including suicide) that involved grievous bodily harm of a nature that shocks the conscience;
- Witnessing a homicide, whether criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Witnessing an injury (including an attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the treatment of an injury (including attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Transporting a person who was injured (including by attempted suicide) who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

Diagnosis of Posttraumatic Stress Disorder

According to the American Psychiatric Association, PTSD is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have been threatened with death, sexual violence, or serious injury.[22] Exposure to an upsetting traumatic event may be indirect rather than first hand. PTSD can occur if a person learns of the violent death of a close family member or friend, or is repeatedly exposed to the horrible details of trauma.[23]

Symptoms of PTSD may begin shortly after the traumatic event, or may not appear until years after the event. For a person to be diagnosed with PTSD, symptoms must last for more than one month and must cause significant distress or interfere with the individual's daily functioning.[24]

Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.[25]

Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.[26]

Notice Requirements

[22] American Psychiatric Association, *What is Posttraumatic Stress Disorder*, https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited Jan. 24, 2022).
[23] *Id*.
[24] *Id*.
[25] Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causeds/syc-20355967 (last visited Jan. 24, 2022).
[26] *Id*.

A first responder who suffers from PTSD must notify his or her employer within 90 days of a qualifying event identified in the law, or the manifestation of the disorder, whichever is later.[27]

If the compensability of an injury is disputed, the first responder must file a petition for workers' compensation benefits within 52 weeks of a qualifying event.[28]

A first responder who develops symptoms of PTSD after the one-year deadline for filing a claim has elapsed has no cause of action.[29]

Training Requirements

The 2018 amendments directed state and local government employers to provide educational training related to mental health awareness, prevention, mitigation, and treatment to both paid and volunteer first responders. The DWC published a website with training materials that employing agencies may use to satisfy the training requirement.[30]

Rulemaking

In Rule 69L-3.009, F.A.C., the DWC specified the types of injuries that qualify as grievous bodily harm of a nature that shocks the conscience. According to the rule, these are:

- Decapitation (full or partial),
- Degloving,
- Enucleation,
- Evisceration,
- Exposure of one or more of the following internal organs:
  - Brain,
  - Heart,
  - Intestines,
  - Kidneys,
  - Liver, or
  - Lungs
- Impalement,
- Severance (full or partial), and
- Third degree burn on 9 percent or more of the body.

Fiscal Impact of the 2018 Amendments

Since the 2018 amendments, there have been 84 workers' compensation claims involving PTSD by first responders, and 50 of those claims were brought by first responders who did not suffer any physical injury. Those 50 PTSD claims have incurred an average cost of $42,326 per claim in just three years, for a total of approximately $2.1 million.[31]

Available Resources

[27] Ss. 112.1815(5)(d), and 440.151(6), F.S.
[28] *Id*. The one-year timeframe to file a petition for benefits under S. 112.1815, F.S., is shorter than the two-year limitation period of s. 440.19, F.S., which applies to workplace injuries. S. 440.19, F.S., states: "Except to the extent provided elsewhere in this section, all employee petitions for benefits under this chapter shall be barred unless the employee, or the employee's estate if the employee is deceased, has advised the employer of the injury or death pursuant to s. 440.185(1) and the petition is filed within 2 years after the date on which the employee knew or should have known that the injury or death arose out of work performed in the course and scope of employment."
[29] *Palm Beach County Fire Rescue v. Wilkes*, 309 So. 3d 687 (Fla. 1st DCA, 2020).
[30] Florida Department of Financial Services, Division of Workers' Compensation, *Educational Training Materials/PTSD*, https://www.myfloridacfo.com/division/wc/Employer/PTSD/default.htm (last visited Jan. 24, 2022).
[31] Department of Financial Services, Agency Analysis of 2022 House Bill 425, at 2 (Jan. 21, 2022).

Peer Support

In 2020, the Legislature recognized the need for mental health counseling for first responders by adopting confidentiality provisions intended to encourage peer support programs for paid and volunteer law enforcement officers, firefighters, emergency medical technicians, paramedics and 911 public safety telecommunicators.[32]

In a peer support program, a person who has recovered from a mental health problem helps a peer establish or maintain his or her recovery.[33] In Florida, the peer must receive training to provide peer support, and be designated by the employing agency, and may not be a health care practitioner.[34] Peer support is focused on prevention. A peer supporter reaches out to a colleague in a time of personal or professional crisis. The peer supporter may serve as a mentor, an active listener, or help the first responder find professional counseling.[35]

Communications between the peers are privileged and confidential unless the first responder: agrees in writing that private information may be revealed; the peer and the first responder are adverse parties in civil or criminal litigation; or the peer has reason to fear for the safety of the first responder, another person, or society.[36]

First Responders Suicide Deterrence Task Force

In 2020, the Legislature created the First Responders Suicide Deterrence Task Force within the Statewide Office of Suicide Prevention, which is housed in the Department of Children and Families and coordinates education and training curricula on suicide prevention efforts for veterans and service members.[37]

The first report of the task force, published July 1, 2021, provides an outline of resources available to the members of the law enforcement and emergency rescue communities. The report also provides the findings of two studies conducted in fall 2020.

The Department of Children and Families and the Division of Emergency Management surveyed 2,300 first responders working in Florida and found:

- Nearly half of the respondents (49.8 percent) rated work-related stress as manageable;
- The other half (50.2 percent) reported their stress level as acute, episodic, or chronic.[38]

The Department of Law Enforcement and the Florida Firefighters Safety and Health Collaborative surveyed 189 agencies (107 law enforcement and 82 emergency rescue/firefighter) and found:

- 94 percent have Employee Assistance Programs;
- 71 percent provide chaplains for personal counseling and spiritual support;
- 70 percent provide mental health training;
- 67 percent use Critical Incident Stress Management teams after major incidents, to provide counseling and assess employee needs;
- 54 percent have peer support teams;
- 32 percent use mental health assessments to determine an employee's fitness for duty;

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[32] S. 111.09, F.S.
[33] Substance Abuse and Mental Health Services Administration, *What Are Peer Recovery Support Services?* (2009), https://store.samhsa.gov/sites/default/files/d7/priv/sma09-4454.pdf (last visited Jan. 24, 2022).
[34] S. 111.09(1)(b), F.S.
[35] First Responder Suicide Deterrence Task Force, *2021 Annual Report*, July 1, 2021, at 5, https://www.myflfamilies.com/service-programs/samh/publications/docs/First%20Responder%20Task%20Force%202021%20Report%20-%20Final%20-%208-4-21.pdf (last visited Jan. 24, 2022).
[36] S. 111.09(2), F.S.
[37] S. 14.2019, F.S.
[38] First Responder Suicide Deterrence Task Force, *2021 Annual Report, supra* note 35 at 4.

- 29 percent offer stress management wellness visits;
- 25 percent offer family educational programs;
- 24 percent use Clinical Response Teams whose members have been trained to assess and educate employees who experience crisis symptoms that may put them at risk for mental health issues; and
- 19 percent have on-site mental health clinicians.[39]

Effect of the Bill

The bill makes the following state and local government employees eligible for workers' compensation benefits for PTSD, even if they do not suffer a physical injury:

- Part-time law enforcement officers and auxiliary law enforcement officers may be eligible for medical benefits and compensation for lost time if they are diagnosed with PTSD after experiencing one of 11 qualifying events outlined in existing law (detailed above);
- Correctional officers may be eligible for medical benefits and compensation for lost time if they are diagnosed with PTSD after experiencing one of eight qualifying events outlined in the bill; which are:
  - Being seriously injured by an inmate in a manner that shocks the conscience;
  - Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act.
  - Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
  - Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
  - Manually transporting a person who was injured, including by suicide attempt, and who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
  - Directly witnessing a death, including a death by suicide, that involved grievous bodily harm of a nature that shocks the conscience.
  - Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence.
  - Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.
- Correctional probation officers may be eligible for medical benefits and compensation for lost time if they are diagnosed with PTSD after experiencing one of eight qualifying events outlined in the bill, which are:
  - Being seriously injured by a probationer in a manner that shocks the conscience.
  - Being taken hostage by a probationer or trapped in a life-threatening situation due to the actions of a probationer.
  - Receiving a credible threat of great bodily harm or death to himself or herself, or to a loved one, that is made by a probationer who has the means to carry out the threat or by a person who is acting on behalf of a probationer and has the means to carry out the threat.
  - Making a life-threatening mistake or not preventing a life-threatening situation that leads to the death or serious bodily injury of a probationer, bystander, correctional probation officer, or law enforcement officer.
  - Directly witnessing an injury or death, including injury or death due to suicide, of a probationer who suffered grievous bodily harm of a nature that shocks the conscience.
  - Participating in the physical treatment of a probationer's injury, including an injury due to attempted suicide, if the probationer dies before or upon arrival at a hospital emergency department and the probationer was injured by grievous bodily harm of a nature that shocks the conscience.
  - Manually transporting a probationer who was injured, including an injury due to attempted suicide, if the probationer dies before or upon arrival at a hospital emergency department and the probationer was injured by grievous bodily harm of a nature that shocks the conscience.

[39] *Id*. at 17.

- Directly witnessing a homicide committed by or against a probationer, regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence.

Existing law makes about 140,000 first responders eligible for workers' compensation benefits for PTSD; this includes 48,474 law enforcement officers,[40] 19,000 firefighters,[41] 40,385 emergency medical technicians,[42] and 34,893 paramedics.[43]

The bill extends PTSD benefits to about 18,500 correctional and correctional probation officers,[44] and 238 part-time and auxiliary law enforcement officers.[45]

The bill also creates a new requirement for the employing agency, to help ensure that claims are legitimate, by requiring the employer to document that the employee was personally involved in a qualifying event before the employee can be deemed eligible for workers' compensation benefits.

The bill amends notice requirements for PTSD claims brought by employees working as firefighters, paramedics, emergency medical technicians, law enforcement officers, correctional officers, or correctional probation officers as follows:

- Notice of Injury: Currently, a first responder who suffers from PTSD must file a notice of injury with his or her employer within 90 days of a qualifying event identified in the law, or the manifestation of the disorder, whichever is later. The bill requires notification within 90 days of a qualifying event identified in the law, or diagnosis of the disorder, whichever is later.
- Notice of Claim: Currently, If the compensability of an injury is disputed, the first responder must file a petition for workers' compensation benefits within 52 weeks after the qualifying event. The bill requires notification within 52 weeks of a qualifying event or diagnosis of PTSD, whichever is later.

Making a claim due within one year of diagnosis allows claims more than one year after a qualifying event, because symptoms of PTSD may begin shortly after a traumatic event, or may not appear until years after the event.

The bill places an emphasis on the need to mitigate traumatic stress by increasing training requirements for firefighters, paramedics, emergency medical technicians, law enforcement officers, and correctional officers, correctional probation officers. The law currently requires training to mitigate traumatic stress, but does not require any specific amount or type of training. The bill requires at least one hour of training, either in person or by electronic means, each year. The required training must include, but is not limited to, peer support programs, mental health awareness training provided by a licensed mental health practitioner who specializes in PTSD, and suicide prevention programs.

Finally, the bill extends confidentiality rules for peer support programs – which currently cover firefighters, paramedics, emergency medical technicians, law enforcement officers and 911 public safety telecommunicators – to include correctional officers and correctional probation officers.

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[40] Florida Department of Law Enforcement, *2020 Criminal Justice Agency Profile Report*, https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx (last visited Jan. 24, 2022) (reports 4,352 officers working for state agencies; 22,416 working for sheriff's offices; 1,902 working for schools, universities, and ports; and 19,804 working for municipal police departments).

[41] U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2020*, https://www.bls.gov/oes/current/oes_fl.htm (last visited Jan. 24, 2022).

[42] Department of Health, License Verification, https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders (last visited Jan. 24, 2022).

[43] *Id*.

[44] Department of Financial Services, Agency Analysis of 2022 House Bill 425 (Jan. 21, 2022).

[45] *Id*. In a fiscal analysis for a Senate bill that expands workers' compensation benefits for PTSD to correctional officers and correctional probation officers, the Department of Corrections indicates that it provides mental health awareness, prevention, and mitigation programs to inmates, and that it would have to develop new training programs if it were required to provide mental health awareness programs to correctional officers and correctional probation officers. *See* Department of Corrections, Agency Analysis of 2022 Senate Bill 664 (Dec. 2, 2021).

B. SECTION DIRECTORY:

Section 1. Amends s. 112.1815, F.S., Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2. Creates s. 112.18155, F.S., Correctional officers and part-time correctional officers; special provisions for posttraumatic stress disorders.

Section 3. Creates s. 112.18156, F.S., Correctional probation officers and part-time correctional probation officers; special provisions for posttraumatic stress disorders.

Section 4. Creates s. 111.095, F.S., Peer support for correctional officers and correctional probation officers.

Section 5. Amends s. 111.09, F.S., Peer support for first responders.

Section 6. Amends s. 119.071, F.S., General exemptions from inspection or copying of public records.

Section 7. Amends s. 627.659, F.S., Blanket health insurance; eligible groups.

Section 8. Provides a declaration of an important state interest.

Section 9. 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:

   The cost of providing PTSD benefits to correctional officers, correctional probation officers, part-time and auxiliary law enforcement officers who did not suffer a physical injury likely will be significant, as the average cost of providing such benefits to law enforcement officers, firefighters, emergency medical technicians and paramedics covered by the state's Risk Management Trust Fund has been $42,326 per claim. A fiscal impact for this bill has been requested.

   The cost of one hour of annual training is unknown; many state agencies already provide mental health training in some format. The Department of Corrections indicated that it provides mental health training programs to inmates but would need to develop new programs to provide such training to employees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Municipalities, counties, and special districts likely would be required to pay more workers' compensation claims due to the inclusion of part-time and auxiliary law enforcement officers.

   The cost of providing one hour of annual training is unknown; many local agencies already provide training in some format.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Physicians who are authorized providers could experience an increase in patients and insurance carriers could experience an increase in claims.

D. FISCAL COMMENTS:

The bill has an indeterminate, likely significant, negative fiscal impact on state and local governments.

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 extends workers' compensation benefits for PTSD to part-time and auxiliary law enforcement officers, correctional officers, and correctional probation officers, and also requires mental health awareness training for law enforcement officers, correctional officers, and correctional probation officers; however, an exemption may apply because all similarly situated state and local government employers of the aforementioned first responders are required to provide workers' compensation benefits.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Department of Financial Services, Division of Workers' Compensation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to posttraumatic stress disorder benefits and peer support programs; amending s. 112.1815, F.S.; providing special provisions for posttraumatic stress disorder to part-time and auxiliary law enforcement officers; specifying requirements for certain educational training; defining the term "first responder" to include part-time and auxiliary law enforcement officers under certain circumstances; creating ss. 112.18155, and 112.18156, F.S.; providing definitions; providing special provisions for posttraumatic stress disorder for correctional officers and part-time correctional officers, correctional probation officers and part-time correctional probation officers; requiring the Department of Financial Services to adopt rules; creating s. 111.095, F.S.; providing definitions; prohibiting peer support officers from divulging certain information or testifying about certain communication; providing exceptions; providing construction; amending ss. 111.09, 119.071, and 627.659, F.S.; conforming provisions to changes made by the act; declaring that this act fulfills an important state interest; providing an effective date.

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

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

Section 1. Subsections (5) and (6) of section 112.1815, Florida Statutes, are amended to read:

112.1815 Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.—

(5)(a) For the purposes of this section and chapter 440, and notwithstanding sub-subparagraph (2)(a)3. and ss. 440.093 and 440.151(2), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, suffered by a first responder is a compensable occupational disease within the meaning of subsection (4) and s. 440.151 if:

1. The posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment as provided in s. 440.091; ~~and~~

2. The first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440 ~~due to one of the following events:~~; and

3. The first responder's personal involvement in one of the following events is documented in a report maintained by the employing agency:

a. Seeing for oneself a deceased minor;

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

b. Directly witnessing the death of a minor;

c. Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

d. Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

e. Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

f. Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;

g. Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;

h. Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;

i. Directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

j. Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently

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died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or

k. Manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

(b) Such disorder must be demonstrated by clear and convincing medical evidence.

(c) Benefits for a first responder under this subsection:

1. Do not require a physical injury to the first responder; and

2. Are not subject to:

a. Apportionment due to a preexisting posttraumatic stress disorder;

b. Any limitation on temporary benefits under s. 440.093; or

c. The 1-percent limitation on permanent psychiatric impairment benefits under s. 440.15(3).

(d) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this subsection is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in subparagraph (a)2. or the diagnosis ~~manifestation~~ of the disorder, whichever is later. A claim under

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

this subsection must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

(e) As used in this subsection, the term:

1. "Directly witnessing" means to see or hear for oneself.

2. "First responder" includes those persons defined in subsection (1) and also includes a part-time law enforcement officer as defined in s. 943.10(6) and an auxiliary law enforcement officer as defined in s. 943.10(8).

3. "Manually transporting" means to perform physical labor to move the body of a wounded person for his or her safety or medical treatment.

4.~~3.~~ "Minor" has the same meaning as in s. 1.01(13).

(f) The Department of Financial Services shall adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this subsection.

(6) An employing agency of a first responder, including volunteer first responders, must provide at least 1 hour annually of educational training related to mental health awareness, prevention, mitigation, and treatment.

(a) The required educational training may be provided in person, in video format, or through other electronic means and must include evidence-based coping strategies to mitigate traumatic stress. The required educational training must also

include, but is not limited to, peer support programs as the term "peer support" is defined in s. 111.09, mental health awareness training provided by a licensed mental health practitioner who specializes in posttraumatic stress disorder, and suicide prevention programs.

(b) As used in this subsection, the term "first responder" includes those persons defined in subsection (1) and also includes a part-time law enforcement officer as defined in s. 943.10(6) and an auxiliary law enforcement officer as defined in s. 943.10(8).

Section 2. Section 112.18155, Florida Statutes, is created to read:

112.18155 Correctional officers and part-time correctional officers; special provisions for posttraumatic stress disorders.—

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

(a) "Correctional officer" has the same meaning as in s. 943.10(2).

(b) "Directly witnessing" has the same meaning as in s. 112.1815(5)(e).

(c) "Manually transporting" has the same meaning as in s. 112.1815(5)(e).

(d) "Mass killing" means three or more killings in a single incident.

(e) "Part-time correctional officer" has the same meaning

as in s. 943.10(7).

(2) For purposes of this section and chapter 440, and notwithstanding ss. 440.093 and 440.151(2), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, suffered by a correctional officer or part-time correctional officer is a compensable occupational disease within the meaning of s. 440.151 if:

(a) The posttraumatic stress disorder resulted from the correctional officer or part-time correctional officer acting within the course of his or her employment;

(b) The correctional officer or part-time correctional officer is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440; and

(c) The correctional officer or part-time correctional officer's personal involvement in one of the following events is documented in a report maintained by the employing agency:

1. Being seriously injured by an inmate in a manner that shocks the conscience.

2. Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act.

3. Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was

injured by grievous bodily harm of a nature that shocks the conscience.

4. Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

5. Manually transporting a person who was injured, including by suicide attempt, and who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

6. Directly witnessing a death, including a death by suicide, that involved grievous bodily harm of a nature that shocks the conscience.

7. Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence.

8. Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.

(3) The posttraumatic stress disorder must be demonstrated by clear and convincing medical evidence.

(4) Benefits for a correctional officer or part-time correctional officer under this section:

(a) Do not require a physical injury to the correctional officer or part-time correctional officer.

(b) Are not subject to any of the following:

1. Apportionment due to a preexisting posttraumatic stress disorder.

2. Any limitation on temporary benefits under s. 440.093.

3. The 1-percent limitation on permanent psychiatric impairment benefits under s. 440.15(3).

(5) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this section is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in paragraph (2)(c) or the diagnosis of the disorder, whichever is later. A claim under this section must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

(6) The Department of Financial Services shall adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this section.

(7) An employing agency of a correctional officer, including a part-time correctional officer, must provide at least 1 hour annually of educational training related to mental health awareness, prevention, mitigation, and treatment. The required educational training may be provided in person, in video format, or through other electronic means and must include

evidence-based coping strategies to mitigate traumatic stress. The required educational training must include, but is not limited to, peer support programs as the term "peer support" is defined in s. 111.095, mental health awareness training provided by a licensed mental health practitioner who specializes in posttraumatic stress disorder, and suicide prevention programs.

Section 3. Section 112.18156, Florida Statutes, is created to read:

112.18156 Correctional probation officers and part-time correctional probation officers; special provisions for posttraumatic stress disorders.—

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

(a) "Correctional probation officer" has the same meaning as in s. 943.10(3).

(b) "Directly witnessing" has the same meaning as in s. 112.1815(5)(e).

(c) "Manually transporting" has the same meaning as in s. 112.1815(5)(e).

(d) "Mass killing" means three or more killings in a single incident.

(e) "Part-time correctional probation officer" has the same meaning as in s. 943.10(19).

(f) "Probationer" means a person who is assigned to a correctional probation officer or part-time correctional probation officer for supervised custody, surveillance, and

control. The term includes, but is not limited to, an inmate, a parolee, and a community controllee.

(2) For purposes of this section and chapter 440, and notwithstanding ss. 440.093 and 440.151(2), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, suffered by a correctional probation officer or part-time correctional probation officer is a compensable occupational disease within the meaning of s. 440.151 if:

(a) The posttraumatic stress disorder resulted from the correctional probation officer or part-time correctional probation officer acting within the course of his or her employment;

(b) The correctional probation officer or part-time correctional probation officer examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440; and

(c) The correctional probation officer or part-time correctional probation officer's personal involvement in one of the following events is documented in a report maintained by the employing agency:

1. Being seriously injured by a probationer in a manner that shocks the conscience.

2. Being taken hostage by a probationer or trapped in a

life-threatening situation due to the actions of a probationer.

3. Receiving a credible threat of great bodily harm or death to himself or herself, or to a loved one, that is made by a probationer who has the means to carry out the threat or by a person who is acting on behalf of a probationer and has the means to carry out the threat.

4. Making a life-threatening mistake or not preventing a life-threatening situation that leads to the death or serious bodily injury of a probationer, bystander, correctional probation officer, or law enforcement officer.

5. Directly witnessing an injury or death, including injury or death due to suicide, of a probationer who suffered grievous bodily harm of a nature that shocks the conscience.

6. Participating in the physical treatment of a probationer's injury, including an injury due to attempted suicide, if the probationer dies before or upon arrival at a hospital emergency department and the probationer was injured by grievous bodily harm of a nature that shocks the conscience.

7. Manually transporting a probationer who was injured, including an injury due to attempted suicide, if the probationer dies before or upon arrival at a hospital emergency department and the probationer was injured by grievous bodily harm of a nature that shocks the conscience.

8. Directly witnessing a homicide committed by or against a probationer, regardless of whether the homicide was criminal

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or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence.

(3) The posttraumatic stress disorder must be demonstrated by clear and convincing medical evidence.

(4) Benefits for a correctional probation officer or part-time correctional probation officer under this section:

(a) Do not require a physical injury to the correctional probation officer or part-time correctional probation officer.

(b) Are not subject to any of the following:

1. Apportionment due to a preexisting posttraumatic stress disorder.

2. Any limitation on temporary benefits under s. 440.093.

3. The 1-percent limitation on permanent psychiatric impairment benefits under s. 440.15(3).

(5) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this section is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in paragraph (2)(c) or the diagnosis of the disorder, whichever is later. A claim under this section must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

(6) The Department of Financial Services shall adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this section.

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(7) An employing agency of a correctional probation officer, including a part-time correctional probation officer, must provide at least 1 hour annually of educational training related to mental health awareness, prevention, mitigation, and treatment. The required educational training may be provided in person, in video format, or through other electronic means and must include evidence-based coping strategies to mitigate traumatic stress. The required educational training must include, but is not limited to, peer support programs as the term "peer support" is defined in s. 111.095, mental health awareness training provided by a licensed mental health practitioner who specializes in posttraumatic stress disorder, and suicide prevention programs.

Section 4. Section 111.095, Florida Statutes, is created to read:

111.095 Peer support for correctional officers and correctional probation officers.—

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

(a) "Correctional officer" has the same meaning as in s. 943.10(2).

(b) "Correctional probation Officer" has the same meaning as in s. 943.10(3).

(c) "Part-time correctional officer" has the same meaning as in s. 943.10(7).

(d) "Part-time correctional probation officer" has the

same meaning as in s. 943.10(19).

(e) "Peer support" means the provision of physical, moral, or emotional support to a full- or part-time correctional officer or correctional probation officer for the purpose of addressing physical or emotional conditions or other issues associated with being a correctional officer or correctional probation officer.

(f) "Peer support communication" means electronic, oral, or written communication, made with a mutual expectation of confidentiality while a peer support officer is providing peer support in his or her official capacity.

(g) "Peer support officer" means a person who:

1. Has experience working as or with a correctional officer or correctional probation officer regarding any physical or emotional conditions or issues associated with the officer's employment.

2. Has been designated by the employing agency to provide peer support as provided in this section and has received training for this purpose.

(2) A peer support officer may not divulge information from or testify about a peer support communication in a civil, criminal, administrative, or disciplinary proceeding, unless:

(a) The correctional officer peer or correctional probation officer peer is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a

complaint filed by the peer support officer who was a party to the peer support communication, in which case such information may be divulged but is limited to the scope of the proceeding;

(b) The full- or part time correctional officer or correctional probation officer who was a party to the peer support communication agrees, in writing, to allow the peer support officer to testify about or divulge information related to the peer support communications;

(c) Based on the peer support communications, the peer support officer suspects that the full- or part-time correctional officer or correctional probation officer who was a party to the peer support communications has committed a criminal act or intends to commit a criminal act. There is no liability on the part of, and no cause of action of any nature may arise against, the peer support officer for disclosing information under this paragraph; or

(d) There are articulable facts or circumstances that would lead a reasonable, prudent person to fear for the safety of the full- or part-time correctional officer or correctional probation officer who was a party to the peer support communication, another person, or society, and the peer support officer communicates the information only to a potential victim and law enforcement or other appropriate authorities. There is no liability on the part of, and no cause of action of any nature may arise against, the peer support officer for

disclosing information under this paragraph.

(3) This section does not limit the disclosure, discovery, or admissibility of information, testimony, or evidence that is obtained by a peer support officer from a source other than a full- or part-time correctional officer or correctional probation officer through a peer support communication.

Section 5. Paragraph (a) of subsection (1) of section 111.09, Florida Statutes, is amended to read:

111.09 Peer support for first responders.—

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

(a) "First responder" has the same meaning as provided in s. 112.1815(5)(e)2. ~~s. 112.1815~~ and includes 911 public safety telecommunicators as defined in s. 401.465.

Section 6. Paragraph (d) of subsection (3) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(d)1. Information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq., held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if release of such information would reveal:

a. The design, development, construction, deployment, and operation of network facilities;

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b. Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;

c. The features, functions, and capabilities of network infrastructure and facilities;

d. The features, functions, and capabilities of network services provided to first responders, as defined in s. 112.1815(1) ~~s. 112.1815~~, and other network users;

e. The design, features, functions, and capabilities of network devices provided to first responders and other network users; or

f. Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 7. Subsection (4) of section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket health insurance is that form of health insurance which covers special groups of individuals as enumerated in one of the following subsections:

(4) Under a policy or contract issued in the name of a

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volunteer fire department, first aid group, local emergency management agency as defined in s. 252.34(6), or other group of first responders as defined in s. 112.1815(1) ~~s. 112.1815~~, which is deemed the policyholder, covering all or any grouping of the members or employees of the policyholder or covering all or any participants in an activity or operation sponsored or supervised by the policyholder.

Section 8. The Legislature determines and declares that this act fulfills an important state interest.

Section 9. This act shall take effect July 1, 2022.

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