# Insurance & Banking Subcommittee

**Wednesday, December 11, 2019**
**4:00 pm – 6:00 pm**
**Sumner Hall (404 HOB)**

**Jose Oliva**
**Speaker**

**Byron Donalds**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance & Banking Subcommittee

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|---|---|
| **Start Date and Time:** | Wednesday, December 11, 2019 04:00 pm |
| **End Date and Time:** | Wednesday, December 11, 2019 06:00 pm |
| **Location:** | Sumner Hall (404 HOB) |
| **Duration:** | 2.00 hrs |

**Consideration of the following bill(s):**

HB 437 Nurse Registries by Stone
HB 487 Fire Prevention and Control by Fetterhoff
HB 7003 OGSR/Payment Instrument Transaction Information/Office of Financial Regulation by Oversight, Transparency & Public Management Subcommittee, Andrade

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, December 10, 2019.

By Request of Chair Donalds, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, December 10, 2019.

**NOTICE FINALIZED on 12/04/2019 4:09PM by Harrell.Lindsey**

# The Florida House of Representatives

**Commerce Committee**

**Insurance & Banking Subcommittee**

**Jose R. Oliva**
**Speaker**

**Byron Donalds**
**Chair**

## AGENDA

December 11, 2019
404 House Office Building
4:00 PM – 6:00 PM

## I. Call to Order & Roll Call

## II. Consideration of the following bills:

A. HB 437 Nurse Registries by Stone

B. HB 487 Fire Prevention and Control by Fetterhoff

C. 7003 OGSR/Payment Instrument Transaction Information/Office of Financial Regulation by Andrade

## III. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 437 Nurse Registries
**SPONSOR(S):** Stone
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 880

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Lloyd | Cooper |
| 2) Health Market Reform Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

Under the workers' compensation law, injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires. There are serval types of medical care provided to injured workers both inside and outside of medical facilities, including emergency, interventional, palliative, rehabilitative, and attendant. "Attendant care" means care rendered by trained professional attendants that is beyond the scope of household duties. Attendant care include a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.

A nurse registry is a business that procures, offers, promises, or attempts to procure health care related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers and companions to provide services to patients in their homes and temporary staff to health care facilities or other business entities. The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity. A workers' compensation carrier may use a nurse registry to place attendant care services to be rendered to an injured worker.

The bill defines services provided by a nurse registry as "attendant care" for the purposes of workers' compensation. The administrative activity of a nurse registry in facilitating the placement of medical care is added to the types of services that are within the definition of "attendant care."

The bill has no fiscal impact on state or local government. It has an indeterminate fiscal impact on the private sector.

The bill has an effective date of July 1, 2020.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

*Workers' Compensation Attendant Care Benefits*

Workers' compensation provides medical benefits and, in cases where the injured worker is unable to work or earn as much as he or she did before the injury, compensation for lost income (also referred to as "wage replacement" or "indemnity" benefits) for compensable workplace injuries arising out of work performed by an employee in the course and scope of employment.[1] Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.[2] Medical services must be provided by a health care provider authorized by the workers' compensation insurance company prior to being provided (except for emergency care).[3]

There are serval types of medical care provided to injured workers both inside and outside of medical facilities, including emergency, interventional, palliative, rehabilitative, and attendant. "Attendant care" means care rendered by trained professional attendants that is beyond the scope of household duties.[4] Attendant care include a wide variety of services from skilled nursing care to unskilled tasks, such as bathing, dressing, personal hygiene, and administration of medications. Most attendant care is provided by licensed medical providers; however, family members may provide and receive carrier payment for non-professional attendant care services, excluding normal household duties.[5]

Providing in-home attendant care can provide significant advantages to both the injured worker and the carrier. The injured worker can be more comfortable than in an institution and realize better outcomes, both physically and mentally. The carrier can achieve significant cost savings. Carrier's may use a nurse registry or a home health agency to obtain professional and non-professional attendant care for the injured worker.

*Placement of Attendant Care Services Through Nurse Registries and Home Health Agencies*

A nurse registry is a business that procures, offers, promises, or attempts to procure health care related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers and companions to provide services to patients in their homes and temporary staff to health care facilities or other business entities.[6] Nurse registries are governed by part II of chapter 408, F.S.,[7] associated rules in Chapter 59A-35, F.A.C., and the nurse registry rules in Chapter 59A-18, F.A.C. A nurse registry must be licensed by the Agency for Health Care Administration (AHCA), pursuant to Part III of ch. 400, F.S., to offer contracts in Florida.[8]

The providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity (e.g., a workers' compensation carrier).[9] This is a key defining feature of a nurse registry; it cannot have any employees except for the administrator, alternate

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[1] S. 440.09(1), F.S.
[2] S. 440.13(2)(a), F.S.
[3] S. 440.13(3)(a), F.S.
[4] S. 440.13(1)(b), F.S. Attendant care must be medically necessary and performed at the direction and control of an authorized treating physician pursuant to a written prescription. S. 440.13(2)(b), F.S.
[5] The valuation of family-member provided attendant care is limited in both duration and cost. S. 440.13(2)(b), F.S.
[6] S. 400.642(21), F.S.
[7] S. 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.
[8] S. 400.506(1), F.S.
[9] *Id.*

administrator, and office staff – all individuals who enter the home of patients to provide direct care must be independent contractors.

Home health agencies (HHAs) are organizations that provide health and medical services and medical supplies to an individual in the individual's home or place of residence.[10] HHAs are governed by part II of chapter 408, F.S.,[11] associated rules in Chapter 59A-35, F.A.C., and Chapter 59A-8, F.A.C. Like a nurse registry, an HHA must be licensed by AHCA, pursuant to Part III of ch. 400, F.S., to offer contracts in Florida.[12]

The key difference between HHAs and nurse registries is the nature of the employment relationship with the health care professionals with whom they contract. Health care providers who contract with an HHA are employees of that agency. In contrast, health care providers who contract with nurse registries are independent contractors. Additionally, while a nurse registry and an HHA may provide services that are privately paid for by insurance or other means to patients in their home or place of residence and provide staff to health care facilities, schools, or other business entities, a nurse registry does not qualify for Medicare reimbursements; an HHA qualifies for such reimbursement.

*Effect of the Bill*

The bill defines services provided by a nurse registry as "attendant care" for the purposes of workers' compensation. Medical services provided by the independent contractors (i.e., medical providers) that receive attendant care assignments through a nurse registry are already within the definition of attendant care. The administrative activity of a nurse registry in facilitating the placement of medical care is added to the types of services that are within the definition of "attendant care."[13]

B. SECTION DIRECTORY:

**Section 1.** Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations..

**Section 2.** Provides an effective date of July 1, 2020.

## 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.

[10] S. 400.462(12), (14), F.S.
[11] S. 400.464(1), F.S. An HHA is also governed by the provisions in s. 400.464, F.S.
[12] *Id.*
[13] See Section III.C., Drafting Issues or Other Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill reclassifies an administrative cost as a medical claim cost. Workers' compensation insurers will need to reprogram their claim management systems and train personnel to accommodate the change. The fiscal impact of this change has not been estimated.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill revises the term "attendant care" to include services provided by a licensed nurse registry. Currently, "attendant care" only includes professional and non-professional services rendered to an injured worker by a care provider. In other words, "attendant care" is a medical benefit and the costs associated with such services are allocated to medical claim costs for ratemaking purposes. By contrast, a nurse registry provides an administrative service to the workers' compensation carrier by facilitating the placement of care providers for the purposes of providing "attendant care." Such administrative costs are allocated to loss adjustment expenses for ratemaking purposes. By including the services of a nurse registry in the definition of "attendant care," an administrative cost is turned into a medical cost, which may affect workers' compensation rate filings and ratemaking.

Staff has consulted with the bill sponsor about the intent of the bill. According to the sponsor, the intent of the bill is to specifically authorize workers' compensation carriers to use nurse registries to place authorized compensable attendant care services, rather than reallocate a claim administration cost to a medical cost. An amendment to conform the bill to the sponsor's intent is anticipated.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to nurse registries; amending s. 440.13, F.S.; revising the definition of the term "attendant care" to include services provided by licensed nurse registries for workers' compensation purposes; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

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

(b) "Attendant care" means care rendered by trained professional attendants which is beyond the scope of household duties. The term includes services provided by a nurse registry licensed pursuant to s. 400.506. Family members may provide nonprofessional attendant care, but may not be compensated under this chapter for care that falls within the scope of household duties and other services normally and gratuitously provided by family members. "Family member" means a spouse, father, mother, brother, sister, child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

Section 2. This act shall take effect July 1, 2020.



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

## INSURANCE & BANKING SUBCOMMITTEE

## HB 437 by Rep. Stone
## Nurse Registries

## AMENDMENT SUMMARY
## December 11, 2019

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**Amendment 1 by Rep. Stone (Line 10):** The amendment authorizes a workers' compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker, rather than defining nurse registry services as "attendant care."

Amendment No. 1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Stone offered the following:

**Amendment (with title amendment)**

Remove lines 10-24 and insert:

Section 1. Paragraph (b) of subsection (2) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

(b)1. The employer shall provide appropriate professional or nonprofessional attendant care performed only at the direction and control of a physician when such care is medically necessary. The physician shall prescribe such care in writing. The employer or carrier shall not be responsible for such care

until the prescription for attendant care is received by the employer and carrier, which shall specify the time periods for such care, the level of care required, and the type of assistance required. A prescription for attendant care shall not prescribe such care retroactively. The value of nonprofessional attendant care provided by a family member must be determined as follows:

a.~~1.~~ If the family member is not employed or if the family member is employed and is providing attendant care services during hours that he or she is not engaged in employment, the per-hour value equals the federal minimum hourly wage.

b.~~2.~~ If the family member is employed and elects to leave that employment to provide attendant or custodial care, the per-hour value of that care equals the per-hour value of the family member's former employment, not to exceed the per-hour value of such care available in the community at large. A family member or a combination of family members providing nonprofessional attendant care under this paragraph may not be compensated for more than a total of 12 hours per day.

c.~~3.~~ If the family member remains employed while providing attendant or custodial care, the per-hour value of that care equals the per-hour value of the family member's employment, not to exceed the per-hour value of such care available in the community at large.

2. The employer or carrier may use a nurse registry

licensed pursuant to s. 400.506 for the placement of authorized compensable attendant care services.

Failure of the carrier to timely comply with this subsection shall be a violation of this chapter and the carrier shall be subject to penalties as provided for in s. 440.525.

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

Remove lines 3-6 and insert:

440.13, F.S.; authorizing the use of licensed nurse registries for the placement of attendant care provided for workers' compensation purposes; providing an effective date.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 487 Fire Prevention and Control
**SPONSOR(S):** Fetterhoff
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1092

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | | Salter | Cooper |
| 2) Government Operations & Technology Appropriations Subcommittee | | | |
| 3) Commerce Committee | | | |

## SUMMARY ANALYSIS

Cancer has become the second leading cause of death among firefighters. Firefighters have a higher risk of diagnosis and death from cancer than the general U.S. population. Following certain procedures and using specific equipment has been shown to provide enhanced protection for firefighters against frequent exposure to cancer causing agents.

The Division of State Fire Marshal (DSFM), Office of the Director, is located within the Department of Financial Services (DFS). The Division is comprised of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training.

The bill creates the Firefighter Cancer Decontamination Equipment Grant Program within DSFM to provide financial assistance in an effort to help protect firefighters from acquiring cancer. Funds allocated through this program can be used for equipment, supplies, and education training related to mitigating exposure to hazardous fire contaminants. The program will award grants on a need-based basis and require grant recipients to contribute a minimum of 25 percent nonstate funding. DSFM is given rulemaking authority to adopt rules and procedures for the program.

The bill does not contain an appropriation to create the Firefighter Cancer Decontamination Equipment Grant Program within DFS. The bill has no fiscal impact on local government revenue or expenditures.

The bill has an effective date of July 1, 2020.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Cancer has become the second leading cause of death to firefighters.[1] Cancer caused 61 percent of career firefighter line of duty deaths between January 1, 2002 and December 31, 2016.[2] Firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general U.S. population.[3]

Inhalation of dangerous chemicals is one of many cancer-causing risks associated with firefighting, as well as skin absorption.[4] Newer homes are made with high levels of plastics and synthetics, intensifying the carcinogenic atmosphere firefighters work in.[5] While performing firefighting activities, body temperature usually increases 3-5 degrees.[6] With every 5 degree increase in skin temperature, the skin's absorption rate increases by 400%.[7] The neck area is one of the most likely areas to become contaminated with toxic chemicals, even with the protection of a hood.[8] Firefighters who have only a single hood experience heightened exposure to hazardous, cancer-causing chemicals, since they cannot immediately decontaminate their hood after use.

In 2016, Florida law established the Firefighter Assistance Grant Program, to annually provide financial assistance to volunteer and combination fire departments.[9] Grants offered through this program are awarded based on the Florida Fire Service Needs Assessment Survey, which is to be conducted annually by applicants.[10] The goal of the Firefighter Assistance Grant Program is to improve firefighter safety and enable fire departments to provide services to their communities.

In August, 2018, DFS distributed a grant of one million dollars to be dispersed to Florida fire departments. Partial funds were allocated to decontamination kits, used to further prevention of cancer. Over 4,200 kits have been distributed to 405 Florida fire departments, each containing a 5-gallon bucket, detergents, scrub brushes, hoses, and spray bottles, all of which are used to effectively clean gear following a fire.[11]

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[1] *Firefighter Cancer Alliance*, Firefighter Cancer Alliance, 2018.
[2] Robert Daniels, *NIOSH Science Blog*, Centers for Disease and Control Prevention (May 2017), blogs.cdc.gov/niosh-science-blog/2017/05/10/ff-cancer-facts/ (last visited Nov. 27, 2019).
[3] National Institute for Occupational Safety and Health conducted a study on 30,000 firefighters located in three different metro areas, focusing on understanding the potential link between firefighting and cancer.
[4] *Taking Action against Cancer in the Fire Service*, Firefighter Cancer Support Network (Aug. 2013), https://firefightercancersupport.org/wp-content/uploads/2017/11/taking-action-against-cancer-in-the-fire-service-pdf.pdf (last visited Nov. 25, 2019).
[5] Marilyn Meyer, *Florida Doesn't Have a Presumptive-Cancer Law*, The Ledger (Oct. 2017), https://www.theledger.com/news/20171021/florida-doesnt-have-presumptive-cancer-law (last visited Nov. 20, 2019) (quoting Jim Davis, Program Coordinator at Polk State College Fire Science Technology Program).
[6] *Firefighter Cancer Reduction and Decontamination Suggested Guideline*, NJ Department of Community Affairs.
[7] *Taking Action Against Cancer in the Fire Service*, Firefighter Cancer Support Network (Aug. 2013).
[8] Kenneth Fent, *et al*, *Evaluation of Dermal Exposure to Polycyclic Aromatic Hydrocarbons in Fire Fighters*, U.S. Department of Health and Human Services Centers for Disease Control and Prevention National Institute for Occupational Safety and Health, Dec. 2013. Report No. 2010-0156-3196.
[9] S. 633.135, F.S.
[10] *Id.*
[11] *CFO and State Fire Marshal Jimmy Patronis Delivers Cancer-Fighting Kits to Orange County Fire Rescue*, Press Release (Aug. 2018) https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5083 (last visited Nov. 20, 2019).

Studies have been conducted to determine the best ways to help firefighters prevent cancer on and off the job.[12] These steps include immediate decontamination of equipment, wearing full personal protective equipment throughout an entire incident, providing a second set of gear to each firefighter within a department, and keeping contaminated equipment out of interior areas, especially following exposure to combustion.[13] When a firefighter enters an atmosphere with fire, smoke, or byproducts of combustion, he or she comes into contact with a number of cancer-causing chemicals, including but not limited to arsenic, benzene, cadmium, chlorophenols, carbon monoxide, formaldehyde, and vinyl chloride.[14] Proper education, use, and storage of equipment will lessen the extent of contact with these hazardous post-fire contaminants. With only a single set of gear, a firefighter must wait until the end of a shift to decontaminate his or her gear, potentially elongating exposure to cancer-causing chemicals. Funds from this program will assist departments' abilities to have the proper gear and equipment offered to all firefighters.

The Federal Government has appropriated funds to assist the Centers for Disease Control and Prevention in creating and maintaining a registry of firefighters, in an effort to track occupational history and related incidences of cancer.[15] Additionally, the National Fire Protection Association requires firefighters to receive annual medical examinations, improving efforts to track the correlation between work and health.[16]

**Effect of Proposed Changes**

The bill creates the Firefighter Cancer Decontamination Equipment Grant Program, within DSFM, to assist in protecting firefighters from exposure to hazardous post-fire contaminants.

The Program will award financial assistance to fire departments, including volunteer departments, on a need-based basis. Grant applicants must include a minimum of 25 percent nonstate funding. Funds awarded will assist fire departments in purchasing equipment like decontamination kits and additional personal protective gear, used to reduce the risk of cancer. Fire departments can also allocate grant funds to other equipment and educational training.

The DSFM is given rulemaking authority to adopt rules and procedures for the Program that require grant recipients to:

- Report their activity to the DSFM for submission in the Fire and Emergency Incident Information Reporting System created under s. 633.136, F.S.
- Comply with the Florida Firefighters Occupational Safety and Health Act, under ss. 633.502-633.536, F.S.
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program.

The bill does not contain an appropriation to fund the program.[17]

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[12] *See generally,* Chief Todd J. LeDuc, *6 Ways to Reduce Cancer in the Fire Service*, International Fire Chiefs Association (Nov. 2019), https://www.iafc.org/iCHIEFS/iCHIEFS-article/6-ways-to-reduce-cancer-in-the-fire-service (last visited Nov. 25, 2019); Chief James P. Seavey Sr., *Lavender Ribbon Report: 11 Actions to Mitigate the Risk of Cancer*, International Fire Chiefs Association (Aug. 2018), https://www.iafc.org/docs/default-source/1vcos/vcoslavendarribbonreport.pdf?sfvrsn=13f88b0d_8 (last visited Nov. 25, 2019). Grace LeMasters, *et al*, *Cancer Risk Among Firefighters: A Review and Meta-Analysis of 32 Studies*. J Occup. Environ. Med., 48, 1189-202 (2006).

[13] *Lavender Ribbon Report: 11 Actions to Mitigate the Risk of Cancer*, pg. 9.

[14] Jesse Roman, *Facing Cancer*, National Fire Protection Association Journal (May 2017), https://www.nfpa.org/News-and-Research/Publications-and-media/NFPA-Journal/2017/May-June-2017/Features/Facing-Cancer (last visited Nov. 25, 2019).

[15] Firefighter Cancer Registry Act of 2018, H.R. 931, 115th Cong. (2018).

[16] NFPA 1582: Standard on Comprehensive Occupational Medical Program for Fire Departments, Chapter 7.

[17] The Governor's Budget Recommendation for Fiscal Year 2020-2021 includes $150,000 nonrecurring from General Revenue to establish the program. See line item 2417.

B. SECTION DIRECTORY:

**Section 1**: creates s. 633.137, F.S., relating to the Firefighter Cancer Decontamination Equipment Grant Program.

**Section 2**: provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DFS's Fiscal Year 2020-2021 Legislative Budget Request included a request of $150,000 to establish the grant program.[18] According to DFS, the program will not require staffing beyond current resources.[19]

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

2. Other:

   None.

[18] Department of Financial Services, Agency Analysis of 2020 House Bill 487, p. 3 (Dec. 4, 2019).
[19] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, RE: HB 487 Decontamination Grant Program Questions (Nov. 22, 2019).

B. RULE-MAKING AUTHORITY:

DSFM is given rulemaking authority to adopt rules and procedures for the Firefighter Cancer Decontamination Equipment Grant Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to fire prevention and control; creating s. 633.137, F.S.; creating the Firefighter Cancer Decontamination Equipment Grant Program for certain purposes; requiring the Division of State Fire Marshal to administer the program and annually award grants to qualifying fire departments; requiring the State Fire Marshal to adopt rules and procedures; providing eligibility requirements; providing requirements for grant recipients; providing an effective date.

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

Section 1. Section 633.137, Florida Statutes, is created to read:

633.137 Firefighter Cancer Decontamination Equipment Grant Program.—

(1) The Firefighter Cancer Decontamination Equipment Grant Program is created within the division to help protect the health and safety of firefighters in this state. The program shall provide financial assistance to help fire departments, including volunteer fire departments, procure equipment, supplies, and educational training designed to mitigate exposure to hazardous, cancer-causing chemicals.



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

(2) The division shall administer the program and annually award grants to fire departments on a need-based basis. The division shall distribute equipment and training in a manner that leads to the greatest reduction in incidences of firefighters being exposed to hazardous post-fire contaminants.

(3) The State Fire Marshal shall adopt rules and procedures for the program, including for the approval of applications and development of need-based criteria. This criteria shall include, but is not limited to, the decontamination equipment and supply needs of the fire department, the financial needs of the fire department, and the level of nonstate matching funds proposed in the application. Grant applications must include a minimum of 25 percent nonstate funding.

(4) Grant recipients must:

(a) Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System created under s. 633.136.

(b) Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536.

(c) Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program.

Section 2. This act shall take effect July 1, 2020.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7003 PCB OTM 20-04 OGSR/Payment Instrument Transaction Information/Office of Financial Regulation
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Andrade
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Oversight, Transparency & Public Management Subcommittee | 12 Y, 0 N | Harrington | Smith |
| 1) Insurance & Banking Subcommittee | | Hinshelwood | Cooper |
| 2) State Affairs Committee | | | |

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) licenses and regulates check cashers. Florida law imposes various requirements on check cashiers, including that such licensees maintain records of certain payment instrument transaction information. As a result of a law passed in 2013, check cashers must enter into OFR's check cashing database specified information related to each payment instrument that exceeds $1,000. A public record exemption created in 2013 provides confidential and exempt status, with specified exceptions, for payment instrument transaction information that is held by OFR within the check cashing database and that identifies a licensee, payor, payee, or conductor.

The Open Government Sunset Review Act (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. In accordance with the Act, the 2013 public record exemption for information in the check cashing database was set for repeal on October 2, 2018.

In 2018, the Legislature amended the exemption to clarify that OFR may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor. The 2018 legislation also extended the repeal date of the public record exemption, moving it from 2018 to 2020.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state 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[1] (Act) 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[5] then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation Check Cashing Regulations

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to chapter 560, F.S. Florida law imposes various requirements on check cashiers, including requiring the licensee to maintain copies of each payment instrument cashed.[6] If the payment instrument exceeds $1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule,[7] on all customers who cash corporate payment instruments that exceed $1,000;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer; and
- A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.[8]

In addition to the information that a licensee must maintain, the following information must be entered into the check cashing database operated by OFR before entering into each check cashing transaction for each payment instrument being cashed if the payment exceeds $1,000:

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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] Section 24(c), Art. I of the State Constitution.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] Section 560.310(1), F.S.
[7] Rule 69V-560.704, F.A.C.
[8] Section 560.310(2)(a)-(c), F.S.

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor[9] name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and the identification number presented by the payee or conductor;
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business; and
- Such additional information as required by rule.[10]

OFR must ensure that the check cashing database provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation and with the Department of Financial Services' (DFS) database for purposes of determining proof of coverage for workers' compensation.[11]

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for payment instrument transaction information (check cashing database information) held by OFR that identifies a licensee, payor, payee, or conductor.[12] OFR may enter into information-sharing agreements with DFS, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order.

The 2013 public necessity statement for the exemption provided that use of the check cashing database is necessary to deter money laundering through these entities and to prevent fraud, including workers' compensation fraud. In addition, it provided that:

> [T]he public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check-cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. Such information is traditionally private and sensitive. Protecting the confidentiality of information that would identify these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. The public release of payment instrument transaction information would also identify licensees or payors and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensee or payors in the marketplace. If such information were publicly available, competitors could determine the amount of business conducted by other licensees or payors.[13]

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[9] "Conductor" is defined as "a natural person who presents himself or herself to a [check casher] for purposes of cashing a payment instrument." S. 560.103(9), F.S. The term is used in the context of the cashing of a corporate payment instrument, which is a payment instrument on which the payee is not a natural person (i.e., the payee is a corporate entity). S. 560.103(10), F.S. A check casher may "accept[] or cash[] a corporate payment instrument from a conductor who is an authorized officer of the corporate payee named on the instrument's face." S. 560.309(4), F.S.

[10] Section 560.310(1)(d), F.S.

[11] Section 560.310(5), F.S.

[12] Chapter 2013-155, L.O.F.; codified as s. 560.312, F.S.

[13] Section 2, ch. 2013-155, L.O.F.

During the 2017 interim, subcommittee staff met with staff from OFR and DFS as part of its review under the Open Government Sunset Review Act. OFR and DFS recommended that the exemption be reenacted noting that the exemption has allowed the agencies to properly regulate licensees and to monitor and prevent fraud while preventing the disclosure of information that would identify the licensee payor, payee, or conductor. In 2018, the Legislature amended the exemption to clarify that OFR may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.[14] The 2018 legislation also extended the repeal date of the public record exemption, moving it from 2018 to 2020.

During the 2019 interim, subcommittee staff discussed the exemption with OFR, and OFR reiterated the importance of maintaining the exemption to protect licensees and the personal financial information of consumers. According to OFR, disclosure of such information could expose such individuals to significant risk for identity theft.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.[15]

**Effect of the Bill**

The bill removes the repeal date, thereby maintaining the public record exemption for payment instrument transaction information held by OFR pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

B. SECTION DIRECTORY:

Section 1 amends s. 560.312, F.S., to save from repeal the public record exemption for payment instrument transaction information held by OFR that reveals a licensee, payor, payee, or conductor.

Section 2 provides an effective date of October 1, 2020.

## 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.

[14] Chapter 2018-116, L.O.F.; codified as s. 560.312(4), F.S.
[15] Section 560.312(3), F.S.

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:

None. 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. 560.312, F.S., which provides an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; 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 (4) of section 560.312, Florida Statutes, is amended to read:

560.312 Database of payment instrument transactions; confidentiality.—

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2020.



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