

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/CS/SB 1404 (863198)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Perry

**SUBJECT:** Department of Financial Services

**DATE:** February 26, 2020

**REVISED:** \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2. <u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3. <u>Sanders</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1404 amends sections of Florida Statutes governing the following Department of Financial Services (DFS) Divisions: Investigative and Forensic Services; Public Assistance Fraud; Funeral, Cemetery, and Consumer Services; and State Fire Marshal. The bill:

- Prohibits employees who fall under the State Risk Management Trust Fund from engaging in retaliatory conduct against a sexual harassment victim;
- Provides that willful and knowing dissemination of certain identifying information of a sexual harassment victim is a misdemeanor of the first degree;
- Designates the Division of Public Assistance Fraud a criminal justice agency;
- Amends the composition requirements of the Board of Funeral, Cemetery, and Consumer Services; clarifies member requirements; amends the definition of “quorum” to enable ease of business; removes term staggering requirements; and clarifies rulemaking responsibilities;
- Clarifies and provides grounds for disqualification of death care licensure applicants based on criminal history;
- Amends provisions for criminal background checks for Funeral, Cemetery and Consumer Services applicants;
- Prohibits specific unlicensed funeral activity and increases the penalty to a third-degree felony;
- Increases criminal penalties associated with unlicensed funeral activity;

- Updates the definition of “two-component explosive” to reflect changes in the marketplace;
- Revises the provisions concerning notice to a purchaser of a preneed contract and changes how funds are distributed if the purchaser does not respond to written notice from the licensee;
- Amends continuing education requirements for individuals licensed to solicit, sell, or adjust insurance in the state;
- Allows contractors to begin repairs on a previously permitted fire alarm prior to receiving a permit to do so, yet maintains that such repair will not be compliant until permitted and approved;
- Extends the expiration date for exemptions that allow doorstep refuse and recycling collection containers in apartments with enclosed corridors under certain circumstances;
- Amends the Fire and Emergency Incident Information Reporting Program by replacing “fire protection agencies” with “fire service providers” and defines the term “fire service provider;”
- Eliminates a fire protection sprinkler system contractor designation and increases the number of sprinklers that can be relocated, added or deleted;
- Revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel and the Firefighters Employment, Standards and Training Council;
- Requires those seeking a license to install or maintain a fire protection system, to successfully complete a prescribed training course, to include both written and practical training, and requires such training to be offered at the State Fire College;
- Creates parity between residential and high rise apartment buildings and extends assessment and compliance deadlines by three years with regards to minimum radio signal strength for fire department communications and two-way radio systems;
- Prohibits influencing a firesafety inspector to violate applicable law through threats, coercion, trickery, or compensation, and prohibits a firesafety inspector from knowingly and willingly accepting such an attempt;
- Allows fire service providers to hire volunteer firefighters, and allow them to continue to function in a volunteer firefighter capacity for the first year of employment while they obtain career firefighter certifications;
- Expands the applicability of criminal penalties for impersonation of investigators and personnel of the DFS; and
- Renames the Florida Blockchain Task Force, incorporates financial technology, and extends the report date from March 21, 2020 to January 31, 2021.

The bill does not impact state revenues or expenditures; however, as to the criminal penalties created by the bill, the Criminal Justice Impact Conference (CJIC) has not yet adopted a prison bed impact for this legislation and the fiscal impact relating to those penalties is indeterminate.

The effective date is July 1, 2020.

## **II. Present Situation:**

The Department of Financial Services (DFS) is statutorily responsible for:

- Carrying out the state's accounting and auditing functions; including preparing the state's Comprehensive Annual Financial Report, monitoring state contracts, and making payment for state expenditures;
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use;
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities;
- Managing the state Treasury and directing safekeeping and the investment of all state funds;
- Managing the deferred compensation program for state employees;
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state;
- Regulating cemeteries and funeral homes;
- Licensing and oversight of insurance agents and agencies;
- Ensuring that Florida employers provide workers' compensation coverage for their employees in a cost effective manner;
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services; and
- Collecting and returning unclaimed property belonging to Florida residents.<sup>1</sup>

The DFS is composed of the following divisions:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and
- Workers' Compensation.<sup>2</sup>

### **Division of Public Assistance Fraud**

The Division of Public Assistance Fraud (PAF) is responsible for enforcing state laws regarding program eligibility and proper use of public assistance benefits. PAF is responsible for investigating allegations of fraud related to the Cash Assistance/Temporary Assistance for Needy Families (TANF) program, the Supplemental Nutritional Assistance Program (SNAP); Medicaid

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<sup>1</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx> (last visited January 30, 2020).

<sup>2</sup> Florida Department of Financial Services, *Divisions and Offices* <https://www.myfloridacfo.com/> (last visited January 30, 2019)

recipients; disaster assistance/emergency benefits; the School Readiness and Voluntary Pre-Kindergarten programs; and Social Security Disability benefits.<sup>3</sup>

PAF has operated as a criminal justice agency since its inception in 1972. However, when the Division of Investigative and Forensic Services (DIFS) was created in 2016, under ch. 20, F.S., PAF was not designated as a criminal justice agency<sup>4</sup>, thereby limiting access to information within criminal records systems. Under Florida law, a criminal justice agency is defined, in part, as any governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.<sup>5,6</sup> PAF currently operates, in part, as a criminal justice agency. However, current statute does not appropriately reflect this designation.

### **State Risk Management**

The State Risk Management Trust Fund (Fund) is administered by the DFS and is a self-insurance fund.<sup>7</sup> The Fund provides various types of insurance to all departments of the State of Florida, including their employees, agents, and volunteers.<sup>8</sup> The Fund provides the following insurance coverage:

- Property Claims, to include:<sup>9</sup>
  - Loss from fire, lightning, sinkholes, and hazards customarily insured by extended coverage;
  - Loss from removal of personal property from such properties when endangered by covered perils;
  - Flood insurance to the extent necessary to meet self-insurance requirements under the National Flood Insurance Program;
  - All buildings, whether financed in whole or in part by revenue bonds or certificates, and the contents thereof of any other buildings leased or rented by the state, to include manufactured homes and contents;
  - Rental value insurance is provided to indemnify the state or its agencies for loss of income when such rental income insurance is required to be carried by bonding or revenue certificates or resolutions; and

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<sup>3</sup> Division of Public Assistance, <https://myfloridacfo.com/Division/PAF/> (last visited January 16, 2020).

<sup>4</sup> Department of Financial Services, *Legislative Bill Analysis of SB 1404* (January 14, 2020) (on file with Senate Banking and Insurance Committee).

<sup>5</sup> Section 943.045(11)(e), F.S. *See also*: s. 943.045(2), F.S.; the term “administration of criminal justice” means “performing functions of detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies.”

<sup>6</sup> Section 943.045(11)(a)-(e), F.S., defines a criminal justice agency as a court, the Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, which investigates the crime of crimes of abuse and neglect, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule court and that allocates a substantial part of its annual budget to the administration of criminal justice.

<sup>7</sup> Section 284.30, F.S.

<sup>8</sup> Section 284.31, F.S.

<sup>9</sup> Section 284.01, F.S.

- Rental value insurance is also provided to indemnify the state or its agencies for loss of income from those buildings operated and maintained by the Department of Management Services from the Supervision Trust Fund;
- Casualty Claims, to include: <sup>10</sup>
  - Workers' Compensation;
  - General Liability:
    - Premises and Operations
    - Personal Injury; and
    - Professional Malpractice Liability;<sup>11</sup>
  - Fleet Automotive Liability;
  - Federal Civil Rights Actions under 42 U.S.C. s. 1983 or similar federal statutes; and
  - Court-awarded fees in other proceedings against the state, except for such awards in eminent domain or for inverse condemnation or awards by the Public Employees Relations Commission.

Separate accounts must be kept for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. 1983 or similar federal statutes, and court-awarded attorney's fees barring exceptions.<sup>12</sup>

Each entity covered by the Fund must develop and implement a loss prevention program,<sup>13</sup> provide for regular and periodic facility and equipment inspections,<sup>14</sup> investigate job-related employee accidents,<sup>15</sup> and establish a program to promote increased safety awareness among employees.<sup>16</sup> The Division of Risk Management, within the DFS, provides loss prevention services and technical assistance to state agencies and universities for managing risk.<sup>17</sup>

Premiums, as calculated on all coverages, are billed and charged to each state agency according to coverages obtained from the Fund.<sup>18, 19</sup> All premiums paid into the Fund and all moneys received from the Fund from investment or any other source is held by the DFS for the purpose of paying: losses, expenses incurred in adjustment of losses, premiums for reinsurance, risk and claims management and operating expenses.<sup>20, 21</sup>

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<sup>10</sup> Section 284.30, F.S.

<sup>11</sup> Department of Financial Services, Division of Risk Management, *Insurance Coverage Provided*, <https://www.myfloridacfo.com/Division/Risk/liability/LiabilityInsuranceCoverage.htm> (last visited February 19, 2020).

<sup>12</sup> Section 284.31, F.S.

<sup>13</sup> Section 284.50(1)(a), F.S.

<sup>14</sup> Section 284.50(1)(b), F.S.

<sup>15</sup> Section 284.50(1)(c), F.S.

<sup>16</sup> Section 284.50(1)(d), F.S.

<sup>17</sup> Department of Financial Services, Division of Risk Management, *Welcome to the Division of Risk Management*, <https://www.myfloridacfo.com/Division/Risk/> (last visited February 19, 2020).

<sup>18</sup> Section 284.02(1), F.S.

<sup>19</sup> Section 284.36, F.S.

<sup>20</sup> Section 284.02(2), F.S.

<sup>21</sup> Section 284.37, F.S.

## Funeral, Cemetery, and Consumer Services

### *Composition and Business of Board of Funeral, Cemetery, and Consumer Services*

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (Board) within the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services. The board acts as the licensing authority for the purposes of certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements.<sup>22</sup>

Currently, the board must have 10 members; one member must be the State Health Officer, or their designee, and the remaining nine members must be nominated by the Chief Financial Officer (CFO), appointed by the Governor, and confirmed by the Senate.<sup>23</sup> The composition of the board must be as follows:

- The State Health Officer.
- Two funeral directors who are:
  - Licensed under part III of ch. 497, F.S., as funeral directors, and
  - Associated with a funeral establishment;
- One funeral director who is:
  - Licensed under part III of ch. 497, F.S.,
  - Associated with a funeral establishment licensed under part III of ch. 497, F.S., that has a valid preneed license issued pursuant to ch. 497, F.S., and
  - Operates a incinerator facility that is approved under ch. 403, F.S., and licensed under part IV of ch. 497, F.S.;
- Two persons whose primary occupation is associated with a licensed cemetery;
- Three consumers who:
  - Are residents of Florida;
  - Have never been licensed funeral directors or embalmers;
  - Are not connected with a cemetery or licensed cemetery company;
  - Are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition;
  - At least one of which is at least 60 years of age; and
  - At least one of which is a licensed certified public accountant; and
- One principal of a monument establishment licensed under ch. 497, F.S., as a monument builder.

Members must not be principals or employees of the same company or partnership, or group of companies or partnerships under common control.<sup>24</sup> The DFS reports that the CFO often does not receive a sufficient amount of applications to fill member positions.<sup>25</sup> For example, the

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<sup>22</sup> See s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S.

<sup>23</sup> Section 497.101(1), F.S.

<sup>24</sup> Section 497.101(2), F.S.

<sup>25</sup> See *Supra* note 4.

position that must be filled by a certified public accountant has remained vacant since September 2017.<sup>26</sup>

Board members are appointed for four-year terms, except for the State Health Officer, who serves as long as they hold office.<sup>27</sup> The CFO is authorized to stagger the terms of members after the terms of the initial members expire.<sup>28</sup> The terms have already been staggered at the initiation of the board.<sup>29</sup>

A quorum is necessary to conduct the business of the board. A quorum consists of six members of the board.<sup>30</sup> The DFS indicates that it can be difficult to obtain this number due to board vacancies, absenteeism, and necessary recusal.<sup>31</sup>

The DFS is required to adopt rules regarding application forms and procedures for appointment to the board.<sup>32</sup>

### ***Disqualification of Licensure Applicants***

Section 497.142(10), F.S., requires all licensure and licensure renewal applicants to disclose criminal history. The following crimes must be disclosed:

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

### ***Licensing Background Checks***

Applicants for licensure under ch. 497, F.S., relating to Funeral, Cemetery, and Consumer Services, must provide certified true copies of any crime committed in any jurisdiction, within the 10 years preceding their application, in order to deem the application complete.<sup>33</sup> Currently, regardless of adjudication, disclosure of the following crimes is required:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation;<sup>34</sup>
- Any other felony that was committed within the 20 years immediately preceding the application under this chapter;<sup>35</sup> and

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<sup>26</sup> *Id.*

<sup>27</sup> Section 497.101(3), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *See Supra* note 4.

<sup>30</sup> Section 497.101(6), F.S.

<sup>31</sup> *See Supra* note 4.

<sup>32</sup> *Id.*, s. 497.103(2)(c), F.S.

<sup>33</sup> Section 497.142(9), F.S.

<sup>34</sup> Section 497.142(10)(c)1., F.S.

<sup>35</sup> Section 97.142(10)(c)2., F.S.

- Any other misdemeanor that was committed within the five years preceding the application under this chapter.<sup>36</sup>

### ***Unlicensed Practice***

Chapter 497, F.S., requires individuals to maintain a license for specified death care industry practices. The DFS is authorized to issue administrative complaints against entities believed to be in violation of licensure requirements.<sup>37</sup> Section 497.159, F.S., provides for criminal penalties; unlicensed activity is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>38</sup>

### ***Preneed Contract – Notice to Purchaser***

A preneed contract is any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.<sup>39</sup> To ensure performance of unfulfilled preneed contracts, a preneed licensee must provide written notice to the purchaser or the beneficiary's legally authorized person, with the intent to distribute funds in accordance with the terms of the contract if:

- Fifty years have passed since the date of the preneed contract execution;<sup>40</sup>
- The beneficiary of the preneed contract reaches the age of 105 or older;<sup>41</sup> or
- The social security number of the beneficiary, as shown on the contract, is contained within the United States Social Security Administration Death Master File.<sup>42</sup>

This written notice must be provided by certified mail, registered mail, or permitted delivery service, return receipt requested.<sup>43</sup> Currently, the purchaser or the beneficiary's legally authorized person must respond to such notice within 120 days after delivery, otherwise the funds held in trust will be distributed in accordance with the terms of the preneed contract, the trust agreement, and any applicable provisions of ch. 717, F.S., relating to the disposition of unclaimed property.

### **Continuing Education Requirements**

Individuals licensed to engage in the sale of insurance or adjustment of insurance claims in this state are required to fulfill continuing education requirements, pursuant to s. 626.2815, F.S. Currently, licensees, except title insurance agents, are required to complete a 5-hour update course every two years, specific to the license they hold.<sup>44</sup> Unless otherwise provided, licensees must also complete 19 hours of elective continuing education courses every two years.<sup>45</sup> If a licensee has been licensed for six years or more, this requirement drops to 15 hours.<sup>46</sup> An

<sup>36</sup> Section 497.142(10)(c)3., F.S.

<sup>37</sup> Section 497.157(2), F.S.

<sup>38</sup> Section 497.159(6), F.S.

<sup>39</sup> Section 497.005(61), F.S.

<sup>40</sup> Section 497.459(7)(a)1., F.S.

<sup>41</sup> Section 497.459(7)(a)2., F.S.

<sup>42</sup> Section 497.459(7)(a)3., F.S.

<sup>43</sup> Section 497.459(7)(b)1., F.S.

<sup>44</sup> Section 626.2815(3), F.S.

<sup>45</sup> Section 626.2815(3)(a), F.S.

<sup>46</sup> Section 626.2815(3)(b), F.S.

individual subject to chapter 648, F.S., relating to bail bond agents, is required to complete a 5-hour update course and a minimum of 9 hours of elective continuing education courses every two years.<sup>47</sup>

If continuing education requirements are not met, DFS has the authority to immediately terminate or refuse to renew the appointment of an agent or adjuster, following notification from DFS, unless an extension or waiver has been granted.<sup>48</sup>

## **State Fire Marshal**

### ***Explosives***

Chapter 552, F.S., sets forth the requirements to lawfully engage in the business of a manufacturer-distributor, or to acquire, sell, possess, store, or engage in the use of explosives in this state. The chapter's current definition of a two-component explosive requires the use of a "No. 6 blasting cap" for detonation.<sup>49</sup> No. 6 blasting caps went out of production several years ago and current blasting caps no longer use the same rating system.<sup>50</sup>

### ***Uniform Fire Alarm Permit Application***

Contractors are required to file a Uniform Fire Alarm Permit Application with a local law enforcement agency, and must receive the permit before installing, replacing, or repairing an existing fire alarm that was previously permitted by the local enforcement agency, if the local enforcement agency requires a permit for the repair.<sup>51</sup>

### ***Doorstep Refuse and Recycling Collection***

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.<sup>52</sup> The State Fire Marshal adopts a new edition of the Fire Code every three years.<sup>53</sup> The 6th edition of the Fire Code took effect on January 1, 2018.

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code<sup>54</sup> requirements in s. 633.208, F.S., as long as they do not conflict with ch. 633, F.S., relating to fire prevention and control, or any other state law.<sup>55</sup>

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<sup>47</sup> Section 626.2815(3)(e), F.S.

<sup>48</sup> Section 626.2815(9), F.S.

<sup>49</sup> Section 552.081(13), F.S.

<sup>50</sup> See *Supra* note 4.

<sup>51</sup> Section 553.7921(1)(b), F.S.

<sup>52</sup> Chapter 69A-60, F.A.C.

<sup>53</sup> Section 633.202, F.S.

<sup>54</sup> Sections 633.108 and 633.208, F.S.

<sup>55</sup> Sections 633.208 and 633.214(4), F.S.

Residents of apartment buildings may place combustible waste and refuse in exit access corridors in apartment buildings if the following conditions are met:

- Doorstep refuse and recycling collection containers do not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste, which is in a doorstep refuse and recycling collection container, is not placed in an exit access corridor for a single period greater than five hours;
- Doorstep refuse and recycling collection containers are not in an exit access corridor for a single period greater than 12 hours for apartment buildings with enclosed corridors and interior or exterior stairs;
- Doorstep refuse and recycling collection containers do not reduce the exit access corridor's width below the width required by the Fire Code;
- Doorstep refuse and recycling collection containers are able to stand upright on their own and may not leak fluids when standing upright; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.<sup>56</sup>

Currently, this provision expires on July 1, 2021.

### ***Fire and Emergency Incident Information Reporting Program***

The Florida Fire Incident Reporting System (FFIRS) is located within the Division of State Fire Marshal. The FFIRS was created by rule and is a means for fire protection agencies to report and maintain computerized records of fires and other fire department incidents in a uniform manner.<sup>57</sup> Annual reports are furnished to the Governor, Legislature and fire protection agencies, and upon request, the public.<sup>58</sup>

Established in 2005, the Fire and Emergency Incident Reporting Program (Program), included the creation of the Fire and Emergency Incident Information Technical Advisory Panel (Panel) and codified FFIRS language. The FFIRS is the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS)<sup>59</sup>. The NFIRS provides system resources and an overview of the standard national reporting system used by the United States fire departments to report fires and other incidents to which they respond and to maintain records of such incidents in a uniform manner.<sup>60</sup> The NFIRS provides software and training at no cost to fire departments.<sup>61</sup>

The Panel was created to advise, review and make recommendations to the State Fire Marshal. Currently, the membership is comprised of 15 members:

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<sup>56</sup> Section 633.202(20), F.S.

<sup>57</sup> Department of Financial Services, Division of State Fire Marshal, *Florida Fire and Incident Reporting System*, <https://www.myfloridacfo.com/Division/SFM/FFIRS/> (last visited February 18, 2020).

<sup>58</sup> Section 633.136, F.S.

<sup>59</sup> See *supra* note 57.

<sup>60</sup> U.S. Fire Administration, National Fire Incident Reporting System, <https://www.nfirs.fema.gov/> (last visited February 18, 2020).

<sup>61</sup> See *supra* note 57.

- The thirteen members of Firefighters Employment, Standards, and Training Council;<sup>62</sup>
- One member from the Florida Forest Service, Department of Agriculture and Consumer Services; and
- One member from the Department of Health, appointed by the State Surgeon General.<sup>63</sup>

### ***Fire Sprinkler Systems***

A licensed fire protection engineer or architect, with fire protection design experience, may design any type of fire protection system.<sup>64</sup> A person certified as a Contractor I,<sup>65</sup> Contractor II,<sup>66</sup> or Contractor IV,<sup>67</sup> under ch. 633, F.S., relating to fire prevention and control, may design fire protection systems of 49 or fewer sprinklers. These designated contractors may also design the alteration of an existing fire sprinkler system, as long as no more than 49 sprinklers are relocated, added, or deleted.<sup>68</sup>

### ***Firesafety Inspectors***

Section 633.216, F.S., requires each county, municipality, and special district that has firesafety enforcement responsibilities to employ or contract with a firesafety inspector. Subject to certain exceptions<sup>69</sup>, the firesafety inspector is responsible for conducting all firesafety inspections required by law.<sup>70</sup> These firesafety inspections include the inspection of buildings and facilities, on a recurring or regular basis, on behalf of the state or any county, municipality, or special district with fire safety responsibilities.<sup>71</sup> The Florida Fire Prevention Code<sup>72</sup> governs design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules. These local enforcing authorities may adopt more stringent firesafety standards, subject to certain

<sup>62</sup> See *infra* note 92 and accompanying text.

<sup>63</sup> Section 633.136(2), F.S.

<sup>64</sup> Section 633.102(3), F.S. A fire protection system is defined as “a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire.” Section 633.102(11), F.S.

<sup>65</sup> “A contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.” Section 633.102(3)(a), F.S.

<sup>66</sup> “A contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.” Section 633.102(3)(b), F.S.

<sup>67</sup> “A contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings.” Section 633.102(3)(d), F.S.

<sup>68</sup> s. 633.102(3), F.S.

<sup>69</sup> For example, this requirement does not apply to farm outbuildings or licensed plumbing contractor installed standpipe systems and certain connected items. Section 633.226, F.S.

<sup>70</sup> Section 633.216(1), F.S.

<sup>71</sup> Section 633.102(12), F.S.

<sup>72</sup> Chapter 69A-60, F.A.C. The Florida Fire Prevention Code is adopted by the State Fire Marshal, and contains and incorporates by reference all firesafety laws and rules. s. 633.202(1), F.S.

requirements in s. 633.208, F.S., but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.<sup>73</sup>

The Chief Financial Officer is designated as the “State Fire Marshal.”<sup>74</sup> In any county, municipality, or special district that does not employ or appoint a firesafety inspector, the State Fire Marshal assumes the duties of the local county, municipality, or independent special fire control district with respect to firesafety inspections of educational property.<sup>75</sup>

A person who violates any provision of ch. 633, F.S., Fire Prevention and Control, any order or rules of the State Fire Marshal, or any order to cease and desist or to correct conditions commits a misdemeanor of the second degree.<sup>76</sup>

It is illegal to impersonate the State Fire Marshal or a firesafety inspector. A person who impersonates either official commits a felony of the third degree, and if the impersonation occurs during the commission of a separate felony, a person commits a felony of the first degree.<sup>77</sup> Section 468.629, F.S., makes it illegal for a person to influence a building code enforcement official by coercion or compensation.<sup>78</sup> Any person who commits such acts commits a misdemeanor of the first degree, and, if the person was previously convicted of such act, a felony of the third degree.<sup>79</sup>

### ***Volunteer Firefighter Employment***

The National Fire Prevention Association estimates that there were approximately 1,056,200 local firefighters in the United States as of 2017.<sup>80</sup> Of the total number of firefighters, 35 percent were career firefighters, and 65 percent were volunteer firefighters.<sup>81</sup> Florida has 528 fire departments.<sup>82</sup> At least 315 Florida fire departments utilize volunteers to sustain operations.<sup>83</sup> Approximately 12 million Florida residents depend on volunteer firefighters to protect their communities.<sup>84</sup> The Firefighter Assistance Grant Program, created in 2016 to improve the emergency response capability of fire departments reliant on volunteer firefighters, provides grant money to such fire departments to provide volunteer firefighter training and procure equipment. In 2018, 29 fire departments were awarded such grants.<sup>85</sup>

<sup>73</sup> See Rule 69A-60.002, F.A.C.; s. 633.214(4), F.S.

<sup>74</sup> Section 633.104(1), F.S.

<sup>75</sup> Section 633.104(7), F.S.

<sup>76</sup> Section 633.124(1), F.S.

<sup>77</sup> Section 633.122, F.S.

<sup>78</sup> Section 468.629(1)(f) and (g), F.S.

<sup>79</sup> Section 468.629(2), F.S.

<sup>80</sup> National Fire Prevention Association, U.S. Fire Department Profile, <https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/US-fire-department-profile> (last visited January 16, 2020).

<sup>81</sup> *Id.*

<sup>82</sup> National Fire Prevention Association, *Number of U.S. Fire Departments by State*, <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osNumberOfFireDeptInUS.ashx?la=en> (last visited January 16, 2020).

<sup>83</sup> Division of State Fire Marshal, *Florida Volunteer Firefighter Information*, <https://myfloridacfo.com/Division/SFM/VOLFF/default.htm> (last visited January 16, 2020).

<sup>84</sup> *Id.*

<sup>85</sup> Division of State Fire Marshal, *FY2018 Florida Firefighter Assistance Grant Award Outcomes*, [https://myfloridacfo.com/Division/SFM/VOLFF/FY2018\\_GrantOutcomes.pdf](https://myfloridacfo.com/Division/SFM/VOLFF/FY2018_GrantOutcomes.pdf) (last visited January 16, 2020).

Florida fire service providers are currently prohibited from employing an individual to extinguish fires or to supervise those who do unless the individual holds a current and valid Firefighter Certificate of Compliance.<sup>86</sup> Thus, fire service providers are currently prohibited from employing volunteer firefighters, who hold a Volunteer Firefighter Certificate of Completion.<sup>87</sup> Volunteer firefighters can enter immediately dangerous to life and health (IDLH) environments. However, if employed by the same department prior to achieving a Firefighter Certificate of Compliance they would not be allowed to enter the IDLH environments they were authorized to enter the day before beginning career employment.<sup>88</sup>

### ***False Personation***

Pursuant to s. 843.08, F.S., any person who falsely assumes or pretends to be an officer of a specified type commits a felony of the third degree, a felony of the second degree when committed with another felony, and a felony in the first degree if the felony is the cause of death or personal injury of another individual.<sup>89</sup> A person who impersonates an officer of the DFS is subject to these criminal penalties.<sup>90</sup> However, there is no criminal penalty for impersonating an investigator or personnel of the DFS. The DFS employs personnel who are not officers but have access to active criminal cases and conduct criminal investigations.<sup>91</sup>

### ***Firefighters Employment, Standards and Training Council (Council)***

The Council is comprised of fifteen members and are appointed as follows:

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;
- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.<sup>92</sup>

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<sup>86</sup> Section 633.416(1)(a), F.S.

<sup>87</sup> Section 633.408, F.S.

<sup>88</sup> See *Supra* note 4.

<sup>89</sup> Section 843.08, F.S., contains a list specifying which types of officers it is unlawful to impersonate. This list includes, but is not limited to, firefighters, sheriffs, officers of agencies, and school guardians.

<sup>90</sup> Section 843.08, F.S.

<sup>91</sup> See *Supra* note 4.

<sup>92</sup> Section 633.402(1), F.S.

There are certain eligibility requirements set forth for membership. Members shall serve only as long as they continue to meet the criteria under which they were appointed or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.<sup>93</sup> Members are appointed for four year terms and are not eligible to serve more than two consecutive terms<sup>94</sup> and serve without compensation<sup>95</sup> but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.<sup>96</sup>

The Council has special powers in connection with the employment and training of firefighters<sup>97</sup> to recommend for adoption by the Division of State Fire Marshal:

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters;<sup>98</sup>
- Minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters;<sup>99</sup>
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter;<sup>100</sup>

In addition, the Council may make or support studies on any aspect of firefighting employment, education, and training or recruitment<sup>101</sup> or may make recommendations concerning any matter within its purview pursuant to this section.<sup>102</sup>

### **Florida Blockchain Task Force**

In 2019, the Florida Blockchain Task Force was established within DFS,<sup>103</sup> to explore and develop a master plan for fostering the expansion of the blockchain industry in the state. Consisting of 13 appointed members, the task force's master plan must do the following: Identify the economic growth and development opportunities presented by blockchain technology;

- Assess the existing blockchain industry in the state;
- Identify innovative and successful blockchain applications currently used by industry and other governments to determine viability for state applications;
- Review workforce needs and academic programs required to build blockchain technology expertise across all relevant industries; and

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<sup>93</sup> Section 633.402(1)(b), F.S.

<sup>94</sup> Section 633.402(2), F.S.

<sup>95</sup> Section 633.402(7), F.S.

<sup>96</sup> *Id.*

<sup>97</sup> Section 633.402(9), F.S.

<sup>98</sup> Section 633.402(9)(a), F.S.

<sup>99</sup> Section 633.402(9)(b), F.S.

<sup>100</sup> Section 633.402(9)(c), F.S.

<sup>101</sup> Section 633.402(9)(d), F.S.

<sup>102</sup> Section 633.402(9)(e), F.S.

<sup>103</sup> Chapter 2019-140, Laws of Fla.

- Make recommendations to the Governor and the Legislature that will promote innovation and economic growth by reducing barriers to and expediting the expansion of the state's blockchain industry.<sup>104</sup>

The task force is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, as well as present its findings to the appropriate legislative committees in each house of the Florida Legislature. The report must include the following:

- A general description of the costs and benefits of state and local government agencies using blockchain technology;
- Recommendations concerning the feasibility of implementing blockchain technology in the state and the best approach to finance the cost of implementation;
- Recommendations for specific implementations to be developed by relevant state agencies;
- Any draft legislation the task force deems appropriate to implement such blockchain technologies;
- Identification of one pilot project that may be implemented in the state; and
- Any other information deemed relevant by the task force.

The report is to be submitted within 180 days after the initial meeting. The task force's initial meeting was September 23, 2019, making the current due date for the report March 21, 2020.

## **Public Records Law**

### *Overview*

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>105</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>106</sup>

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>107</sup> The Public Records Act states:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>108</sup>

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

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<sup>104</sup> Chapter 2019-140, Laws of Fla.

<sup>105</sup> FLA. CONST., art. I, s. 24(a).

<sup>106</sup> *Id.*

<sup>107</sup> Public records laws are found throughout the Florida Statutes.

<sup>108</sup> Section 119.01(1), F.S.

### ***Legislative and Judicial Records***

The Public Records Act does not apply to legislative or judicial records.<sup>109</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

### ***Definition***

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>110</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>111</sup>

### ***Access***

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>112</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>113</sup>

### ***Exemptions***

The Legislature has the sole authority to create an exemption to public records requirements.<sup>114</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>115</sup> An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, and the purpose cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>116</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>117</sup> or

<sup>109</sup> *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995)

<sup>110</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>111</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>112</sup> Section 119.07(1)(a), F.S.

<sup>113</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>114</sup> FLA. CONST., art. I, s. 24(c).

<sup>115</sup> *Id.*

<sup>116</sup> Section 119.15(6)(b)1., F.S.

<sup>117</sup> Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.<sup>118</sup>

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions<sup>119</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>120</sup>

### ***“Confidential and Exempt” or “Exempt” Designations***

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>121</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>122</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>123</sup> with specified exceptions.<sup>124</sup> It requires the automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>125</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>126</sup>

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<sup>118</sup> Section 119.15(6)(b)3., F.S.

<sup>119</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>120</sup> FLA. CONST., art. I, s. 24(c) and FLA. CONST., art. X, s. 12(e).

<sup>121</sup> If the Legislature designates a record as confidential, the record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004)

<sup>122</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>123</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>124</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>125</sup> Section 119.15(3), F.S.

<sup>126</sup> Section 119.15(6)(b), F.S. Section 119.15(6)(a), F.S., asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

## **General Public Records Exemptions for State Agency Personnel**

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.<sup>127</sup>

### ***(1) Social Security Numbers***

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.<sup>128</sup> An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.<sup>129</sup>

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.<sup>130</sup> This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.<sup>131</sup>

### ***(2) Medical Information***

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.<sup>132</sup>

### ***(3) Personal Identifying Information***

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.<sup>133</sup>

## ***Public Records Exemptions for Enumerated Personnel***

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.<sup>134</sup> Additionally, all of these exemptions have retroactive application.<sup>135</sup> In order to have such exemption applied to a

<sup>127</sup> Section 119.071(4)(a) and (b), F.S.

<sup>128</sup> Section 119.071(4)(a)1., F.S.

<sup>129</sup> Section 119.071(4)(a), F.S.

<sup>130</sup> Section 119.071(5)(a)5., F.S.

<sup>131</sup> Section 119.071(5)(a)5.f. and g., F.S.

<sup>132</sup> Section 119.071(4)(b)1., F.S.

<sup>133</sup> Section 119.071(4)(b)2., F.S.

<sup>134</sup> Section 119.071(4)(d)3., F.S.

<sup>135</sup> Section 119.071(4)(d)5., F.S.

court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.<sup>136</sup> Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.<sup>137</sup>

### ***Confidential and Exempt –Alleged Sexual Harassment Victim***

Section 119.071(2)(n), F.S., provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt.<sup>138</sup> Such information may be disclosed to another governmental entity in the furtherance of its official duties.<sup>139</sup>

Section 119.10(2)(a), F.S. provides that any person who willfully and knowingly violates any provisions of chapter 119 commits a first degree misdemeanor punishable by imprisonment up to one year or a fine up to \$1,000.

## **III. Effect of Proposed Changes:**

### **Division of Public Assistance Fraud (Sections 1 and 20)**

**Section 1** amends s. 20.121(2)(f), F.S., to designate the Division of Public Assistance Fraud (PAF) as a criminal justice agency for the purposes of ss. 943.045-943.08, F.S. The designation allows the PAF to continue having access to criminal justice information contained in Florida Crime Information Center (FCIC) and National Crime Center Information Center (NCIC) systems of criminal records when conducting criminal investigations and other law enforcement support functions.<sup>140</sup>

**Section 20** amends s. 943.045, F.S., to include the PAF in the definition of “criminal justice agency.”

### **State Risk Management**

**Section 2** creates s. 284.45, F.S., to define a sexual harassment victim as an individual employed with or being considered for employment with an entity participating in the State Risk Management Trust Fund (FUND), who becomes a victim of workplace sexual harassment within the entity. The bill prohibits individuals working for an entity covered by the Fund from engaging in retaliatory conduct, of any kind, toward a sexual harassment victim. The PCS also prohibits the willful and knowing distribution of personal identifying information of a sexual harassment victim, and specifically provides that personal identifying information includes the victim’s name and his or her:

- Home address;
- Home phone number;
- Cellular phone number;

<sup>136</sup> Section 119.0714(2)(f) and (3)(f), F.S.

<sup>137</sup> Section 119.071(4)(d)4., F.S.

<sup>138</sup> Section 119(2)n, F.S., and s. 24(a), Art. 1 of the State Constitution

<sup>139</sup> Subject to the Open Government Sunset Review Act and stands repeal on October 2, 2022 unless reviewed and saved from repeal through reenactment by the Legislature.

<sup>140</sup> See *supra* note 4.

- E-mail address;
- Social media account username or uniform resource locator (URL); or
- Any other information that could reasonably be used to identify the alleged sexual harassment victim.

Personal identifying information of a victim may not be distributed to any party other than a government entity, in furtherance of its official duties, or pursuant to a court order. Any violation results in a first degree misdemeanor, punishable as provided in s. 775.082, F.S.

## **Funeral, Cemetery, and Consumer Services**

### ***Composition and Business of Board of Funeral, Cemetery, and Consumer Services (Board)***

**Section 3** amends s. 497.101, F.S., to reduce the minimum number of nominations the Chief Financial Officer (CFO) must make for nine board member positions from three nominations to one. The bill also reduces from three to two the number of positions on the Board that must be filled by consumers who are residents of Florida; have never been licensed funeral directors or embalmers; are not connected with a cemetery or licensed cemetery company nor connected to the death care industry or the practice of embalming, funeral directing, or direct disposition. The Board must also now have a consumer member who is: a resident; a licensed certified public accountant who has never been licensed as a funeral director or embalmer; not a principal or employee of any ch. 497, F.S., licensee; and not otherwise in control (as defined in s. 497.005, F.S.) over any ch. 497, F.S., licensee. This change requires the appointment of a licensed CPA who has some knowledge of and association with, but not a controlling interest in, licensees in the death care industry.

The definition of a “quorum” for the purposes of conducting Board business is amended to constitute a simple majority of eligible members instead of six members.

The section eliminates unnecessary statutory provisions regarding the staggered terms of board members, which have already been established. The statutory change will also eliminate the Department of Financial Services’ (DFS) rulemaking responsibilities concerning the application process, which the DFS asserts is unnecessary, as the Governor makes the appointments.<sup>141</sup>

### ***Disqualification of Licensure Applicants***

**Section 4** of the bill creates s. 497.1411, F.S., to provide and clarify grounds for disqualification of licensure applicants based on criminal history. Subsection (1) provides definitions of “applicant,” “felony of the first degree,” “capital felony,” and “financial services business.” Subsection (2) provides an enumerated list of crimes which, if an applicant is found guilty of or pleads nolo contendere to, regardless of adjudication, permanently bars the applicant from licensure under ch. 497, F.S. These crimes are a first degree felony, a capital felony, a felony money laundering offense, or a felony embezzlement.

Subsection (3) provides the following disqualifying periods for other specified crimes:

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<sup>141</sup> *Id.*

- A 10-year disqualifying period for all felonies involving moral turpitude not subject to a permanent bar on licensure; and
- A five-year disqualifying period for all other felonies and for all misdemeanors directly related to the financial services business, defined as any financial activity regulated by the DFS, the Office of Insurance Regulation, or the Office of Financial Regulation.

These specifications are intended to provide clarity beyond the current statutory scheme, which provides no guidelines to determine whether a specific crime is considered “directly or indirectly related to or involving any aspect of the practice or business” of death care industry functions. The DFS suggests that the lack of clarity and guidance in current statute has led to inconsistencies in recommendations and Board rulings on applications.<sup>142</sup>

Subsection (4) requires the DFS to adopt rules to administer the section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant’s criminal history. The rules must also provide mitigating and aggravating factors, except that mitigation may not result in a disqualification period of less than five years.

Subsection (5) specifies that a disqualifying period begins upon an applicant’s final release from supervision or upon completion of the applicant’s criminal sentence. The subsection further prohibits the DFS from issuing a license unless all related fines, court costs and fees, and court-ordered restitutions have been paid. Subsection (6) places the burden of proof for rehabilitation on the applicant.

Subsection (7) allows the DFS to award a license, despite a conviction, upon a grant of a pardon or restoration of civil rights. Subsection (8) authorizes the Board to grant an exemption from a criminal record related disqualification, and provides standards for mitigating factors. Chapter 120, F.S., provides administrative remedies available to applicants for whom the Board has granted or denied an exemption. Subsection (9) clarifies the disqualification periods provided in this section do not apply to the renewal of a license or to a new licensure application if the applicant has an active license as of July 1, 2020 and the applicable criminal history was considered by the Board on the prior active license approval.

### ***Licensing Background Checks***

Section 5 amends s. 497.142, F.S., to require certified true copies of any crime committed in any jurisdiction in order to deem an application complete, regardless of how many years have passed. The bill requires disclosure of all felonies, regardless of when committed and regardless of adjudication. It also requires disclosure of any misdemeanor directly or indirectly related to the financial services business,<sup>143</sup> no matter when committed.

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<sup>142</sup> *Id.*

<sup>143</sup> The bill defines financial services business as “any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.”

### ***Unlicensed Practice***

**Section 6** of the bill amends s. 497.157, F.S., to increase penalties for unlicensed activity from a misdemeanor to a felony of the third degree. Section 6 also expands unlicensed activity to include acting, advertising, or otherwise holding oneself out to be a funeral director, embalmer, direct disposer, or preneed sales agent, unless currently licensed or appointed as such.

**Section 7** of the bill amends s. 497.159, F.S., by removing the second-degree misdemeanor penalty for unlicensed activity under ch. 497, F.S.

### ***Preneed Contract and Notice to Purchaser***

**Section 8** amends s. 497.459, F.S., to require a preneed licensee to conduct an analysis of his or her preneed contracts at least every three years. The three year period will begin when the first analysis pursuant to this section is conducted, which must occur at least by July 1, 2021. If an analysis finds the contract was executed at least 50 years ago or the beneficiary has reached 105 years of age, the preneed licensee must provide written notice with intent to distribute funds in accordance with the contract. The bill removes the written notice requirement when the social security number of the beneficiary of the contract is contained within the United States Social Security Administration Death Master File. The bill clarifies that such notice is to be provided by the preneed licensee, instead of the trustee.

The bill allows the purchaser or the beneficiary's legally authorized person three years to respond to the written notice. If the purchaser or the beneficiary's legally authorized person fails to respond, the funds held in trust will be distributed within 60 days of the end of the three year period as follows:

- The principle deposited into trust will be remitted to the Unclaimed Property Trust Fund; and
- Any additional funds in trust will be remitted to the preneed licensee.

If funds are distributed from trust, the preneed licensee is absolved of all liability associated with the preneed contract for which the funds were distributed, including any obligation to refund any monies paid by a purchaser. At the time funds are remitted to the Unclaimed Property Trust Fund, the names of the purchaser and beneficiary will be provided to the Division of Unclaimed Property.

The bill clarifies that any purchaser and beneficiary, or legally authorized persons of such, who receives written notice from a preneed licensee, retains all rights to both cancellation and fulfillment between the time of written notice and the distribution of funds. Fulfillment may include identifying a new beneficiary on the preneed contract, which makes the contract effective as of the date of the identification of the new beneficiary.

### **Explosives**

**Section 9** updates the definition of "two-component explosives" in s. 552.081, F.S., by removing the requirement of a "No. 6 cap," which is no longer manufactured.

## **Fire Alarm Permits**

**Section 10** amends s. 553.7921, F.S., to authorize contractors to begin repairs on existing permitted fire alarms upon filing a Uniform Fire Alarm Permit Application but prior to receiving the permit for the repair. Fire alarms repaired under such circumstances are not considered compliant until the permit is issued and the local law enforcement agency approves the repair.

## **Continuing Education Requirements**

**Section 11** amends s. 626.2815, F.S., by lowering the update course requirement to four hours for individuals licensed to solicit, sell, or adjust insurance in the state, barring title insurance agents. The update course is raised to six hours for an individual who holds a license as a customer representative, and who is not a licensed life or health agent. Licensees must complete 20 hours of elective continuing education every two years, and if a licensee has been licensed for six years or more, he or she must complete 16 hours of continuing education every two years. Lastly, individuals who fall under chapter 648, F.S., relating to bail bond agents, are required to complete a four hour update course and a minimum of ten hours of continuing education every two years.

## **Florida Fire Marshal - Florida Fire Prevention and Control**

### ***Fire Sprinkler Systems***

**Section 12** amends s. 633.102, F.S., to allow a person certified as a Contractor I or a Contractor II to design new fire protection systems of 49 or fewer sprinklers, and to design the alteration of an existing system if it adds 49 or fewer sprinklers. A person certified as a Contractor IV can no longer design or alter fire protection systems. Additionally, the bill allows a Contractor I or II to alter an existing fire sprinkler system, as long as it entails the relocation or deletion of 249 or fewer sprinklers, and such alteration requires no change in occupancy as defined in the Florida Building Code, no change in water demand as defined in National Fire Protection Association Publication (NFPA) No. 13, and the occupancy hazard classification, as defined in NFPA No. 13, is either reduced or remains the same following the alteration.

### ***Fire and Emergency Incident Information Reporting Program***

**Section 13** amends s. 633.136, F.S., by replacing “fire protection agencies” with “fire service providers” and defines the term “fire service provider.” This section also revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel (Panel) to:

- Retain 15 members on the Panel;
- Remove one member from the Florida Forest Service, Department of Agriculture and Consumer Services; and
- Remove one member from the Department of Health.

Fire services provider is defined as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention

services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.<sup>144</sup>

### ***Florida Fire Prevention Code***

**Section 14** amends s. 633.202(18), F.S., to extend the deadlines for certain buildings to comply with requirements for minimum radio strength for fire department communications by three years.

The bill also amends s. 633.202(20), F.S., to extend, by three years, the current expiration of exemptions that allow doorstep refuse and recycling collection containers in apartments with enclosed corridors under certain circumstances.

### ***Influencing a Firesafety Inspector***

**Section 15** creates s. 633.217, F.S., to prohibit influencing or attempting to influence a firesafety inspector by threatening, coercing, tricking, or offering compensation for the purpose of inducing the firesafety inspector to violate any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. Subsection (2) prohibits a firesafety inspector from knowingly and willingly accepting an attempt by a person to influence them into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. Section 633.124(1), F.S., provides that any person who violates any provision of ch. 633, F.S., commits a misdemeanor of the second degree. Violations of s. 633.217, F.S., relating to influencing a firesafety inspector carry the criminal penalty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

### ***State Fire College Training***

**Section 16** amends s. 633.304, F.S., to require any organization or individual engaging in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, or hydrotesting any fire extinguisher or preengineered system seeking licensure in this state to complete a prescribed training course that:

- Includes both written and practical training;
- Is offered at the State Fire College; and
- Is approved by the State Fire Marshal, as applicable to the class of license being sought.

### ***Firefighters Employment, Standards and Training Council***

**Section 17** amends s. 633.402, F.S., to revise the composition of the Firefighters Employment, Standards, and Training Council to include:

- One member appointed by the State Fire Marshal, who may not be a representative of the firefighting profession or of any local government; and
- One individual from the Department of Health, appointed by the Surgeon General.

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<sup>144</sup> Fire service provider is defined in s. 633.102, F.S.

### ***Volunteer Firefighter Employment***

**Section 18** amends s. 633.416, F.S., to authorize fire service providers to employ volunteer firefighters and allow them to act in volunteer firefighter capacity for up to one year under the direct supervision of an individual holding a valid firefighter certificate of compliance while they obtain career firefighter certifications. This will increase the availability of firefighters capable of entering immediately dangerous to life and health (IDLH) environments and protecting their communities. The DFS anticipates that this change will improve rural and small agency recruitment and retention efforts by facilitating the hiring of local candidates who are more inclined to remain in the area instead of hiring candidates from other parts of the state who are inclined to return to their home communities once gaining some experience.<sup>145</sup>

### **False Personation**

**Section 19** of the bill amends s. 843.08, F.S., to expand the applicability of criminal penalties associated with false personation of a fire or arson investigator of the DFS to any personnel or representative of the Division of Investigative and Forensic Services.

### **Florida Blockchain Task Force**

**Section 21** amends ch. 2019-140, L.O.F., to rename the Florida Blockchain Task Force to the “Florida Financial Technology and Blockchain Task Force.” The bill incorporates financial technology throughout the duties of the task force, including a requirement that the task force consider financial technology innovations related to money transmitters<sup>146</sup> and payment instrument sellers.<sup>147</sup> Specifically, this requirement includes consideration of mediums of exchange that are in electronic or digital form, and identifying new products and services that could lead to business growth in the state.

The bill extends the due date for the task force’s report from March 21, 2020, to January 21, 2021. All other aspects of the task force remain unchanged.

**Section 22** provides an effective date of July 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>145</sup> See *supra* note 4.

<sup>146</sup> “Money transmitter” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.” s. 560.103(23), F.S.

<sup>147</sup> “Payment instrument seller” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.” s. 560.103(30), F.S.

**B. Public Records/Open Meetings Issues:**

To the extent that an email address or social media account username or uniform resource locator may not actually identify a person, this provision may constitute an expansion of the public records exemption which requires a standalone bill and a two-thirds vote to pass.

***Vote Requirement***

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of each house for final passage of a bill creating an exemption to the public records requirements.<sup>148</sup> This bill may create an exemption for certain information relating to alleged sexual harassment victims, if it does, the bill requires a two-thirds vote of each house to be enacted.

***Public Necessity Statement***

Article I, s. 24(c), of the State Constitution requires a bill that creates an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill, in its current form, does not address public necessity for an exemption.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

Article 1, s. 24(a) of the State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business. This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government. Public records laws are codified in Chapter 119, F.S., the Public Records Act. Section 119.071(2)(n), F.S., makes confidential and exempt from the public disclosure personal identifying information of an alleged victim of sexual harassment. For the purposes of this public records exemption, “personal identifying information” is undefined.

Section 2 of the bill prohibits an individual working for certain agencies from disseminating “personal identifying information” of a sexual harassment victim to any party other than a governmental entity or pursuant to a court order, under threat of criminal punishment. Section 2 of the bill defines “personal identifying information” for

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<sup>148</sup> Article X, s. 12(e), of the State Constitution, Rules of Construction, states that a “Vote or other action of a legislative house . . . means the vote or action of a majority or other specified percentage of those members voting on the matter.” Accordingly, this two-thirds vote requirement means a favorable two-thirds vote of the members present and voting for final passage.

the purposes of s. 284.45, F.S., to include the victim's name, home address, home and cellular phone numbers, E-mail address, social media account username or URL, or any other information that could reasonably be used to identify the victim.

In some instances, an e-mail address or social media account information may not, in reality, be personally identifying information under the public records exemption codified in s. 119.071(2)(n), F.S. If that is the case, then the language contained in section 2 of the bill may be viewed as an expansion of the public records exemption. If that is the legislative intent, the Legislature should consider the expanded exemption in a separate bill that otherwise meets the constitutional requirements of an exemption to Art. I, s. 24(a) of the State Constitution – namely a public necessity statement and a two-thirds vote of each chamber of the legislature to be enacting.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The bill does not impact state revenues or expenditures. However, in section 6 of the PCS, s. 497.157, F.S., is amended to increase the criminal penalty to a third degree felony for impersonating a funeral director, embalmer, direct disposer, or a preneed sales agent. Also, in section 19 of the PCS, s. 843.08, F.S., relating to false impersonation is amended by expanding the subjects of false impersonation from fire or arson investigators within the Department of Financial Services to all personnel or representatives of the Division of Investigative and Forensic Services. These changes could increase the number of people subject to a felony penalty, but would seem to be insignificant. The Criminal Justice Impact Conference (CJIC) has not adopted a prison bed impact for this legislation.

#### **VI. Technical Deficiencies:**

Section 119.071(2)(n), F.S., provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt. The bill creates s. 284.45, F.S., which defines "personal identifying information" for sexual harassment victims to include the victim's name, home address, home and cellular phone numbers, E-mail address, social media account username or URL, or any other information that could reasonably be used to identify the victim.

In some instances, an e-mail address or social media account information may not, in reality, be personally identifying information under the public records exemption codified in s. 119.071(2)(n), F.S. If that is the case, then the language contained in the newly created s. 284.45, F.S., may be viewed as an expansion of the public records exemption. If that is the

legislative intent, the Legislature should consider the expanded exemption in a separate bill that otherwise meets the constitutional requirements of an exemption to Art. I, sec. 24(a) of the State Constitution – namely a public necessity statement and a 2/3 vote of each chamber of the legislature to be enacting.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.121, 497.101, 497.142, 497.157, 497.159, 497.459, 552.081, 553.7921, 626.2815, 633.102, 633.136, 633.202, 633.217, 633.304, 633.402, 633.416, 843.08, and 943.045.

The bill substantially amends chapter 2019-140, Laws of Florida.

This bill creates sections 284.45, 497.1411, and 633.217 of the Florida Statutes.

## IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on February 18, 2020:**

The committee substitute:

- Prohibits retaliatory conduct against a sexual harassment victim;
- Prohibits willful and knowledgeable distribution of a victim's personal identifying information and provides criminal penalties for violations;
- Revises the crimes which must be disclosed in order to apply for a license, and deleted conflicting penalties, under ch. 497, F.S., related to Funeral, Cemetery, and Consumer Services;
- Revises provisions concerning notice to purchasers of preneed contracts;
- Adds the ability for a Contractor I or II licensee to alter an existing fire sprinkler system involving 249 or fewer sprinkler heads if there is no change in occupancy of the affected areas, no change in the water demand, and the occupancy hazard classification is reduced or remains the same;
- Extends the current expiration date of July 1, 2021 to July 1, 2024, for provisions that allow residents in apartment buildings to place garbage cans containing combustible waste and refuse in exit access corridors during certain hours;
- Creates parity between residential and high rise apartments for compliance with minimum radio strength for fire department communications and two-way radio system enhancements under the Florida Fire Prevention Code and extended the requirement for assessment and compliance by three years;
- Specifies that training courses offered by the State Fire College must include a written and a practical element and be approved by the State Fire Marshal;

- Revises the Fire and Emergency Incident Information Reporting Program to include a reference to fire service providers; defined the term “fire service providers” and revised the membership of the Fire and Emergency Incident Information System Technical Advisory Panel to delete two state agency members;
- Increases by one the membership of the Firefighters Employment, Standards, and Training Council;
- Revises the continued education hours required for individuals licensed to solicit, sell, or adjust insurance in the state;
- Renames the Florida Blockchain Task Force to the “Florida Financial Technology and Blockchain Task Force;” required the task force to consider financial technology innovations related to money transmitters and payment instrument sellers; and extended the expiration date of the task force to January 31, 2021.

**CS by Banking and Insurance on January 21, 2020:**

Creates s. 633.217, F.S., prohibiting the act of threatening, coercing, tricking, or attempting to threaten, coerce, or trick, or bribe a firesafety inspector for the purpose of influencing or inducing the firesafety officer to violate any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any other provision of ch. 633, F.S., which governs Fire Prevention and Control.

**B. Amendments:**

None.