

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.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1292

INTRODUCER: Banking and Insurance Committee and Senator Stargel

SUBJECT: Department of Financial Services

DATE: February 5,, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1292 makes various changes to statutes relating to the Department of Financial Services (DFS). The bill addresses issues at the Department of Financial Services within the Divisions of Treasury, Accounting and Auditing, Risk Management, Public Assistance Fraud, Funeral, Cemetery, and Consumer Services, Insurance Agent and Agency Services, Investigative and Forensic Services, and State Fire Marshal. The bill:

- Allows the Division of Treasury to use “electronic images” as a means of producing copies of warrants, vouchers, or checks;
- Requires transition plans of youth aging out of foster care to provide information on the financial literacy curriculum which is offered by the DFS and requires completion of the curriculum with a passing score on order to receive certain services;
- Requires completion of the financial literacy course offered by DFS for a young adult to remain in licensed out-of-home care;
- Requires a young adult who was or is living in licensed out-of-home care to complete with a passing score the financial literacy course in order to be eligible for postsecondary education services and support or aftercare services.
- Begins the process of creating the Florida Open Financial Statement System to allow better access to financial reports filed by local governments and provides a \$500,000 appropriation;
- Amends ch. 284, F.S., directing agencies to provide risk training; report return-to-work data to the DFS; and submit information, when requested by the DFS, regarding internal risk assessments;

- Allows DFS to disclose the personal identifying information of injured employees to its contracted vendors for the purposes of carrying out its statutory responsibilities in administering workers' compensation claims;
- Provides direction to transfer funds in excess of \$2 million from the Preeed Funeral Contract Consumer Protection Trust Fund to the Division of Funeral, Cemetery and Consumer Services' operational trust fund to address major funding issues;
- Provides exemption from the initial application filing fee to qualifying veterans applying for licensure in areas regulated by the Division of Funeral, Cemetery, and Consumer Services;
- Eliminates the licensure requirement for managing general agents and replaces with a process where managing general agents are appointed by insurance companies;
- Extends the validity of fingerprints from 12 to 48 months for currently licensed individuals seeking other licenses within the Division of Insurance Agent and Agency Services;
- Adds arson to the list of offenses for which the DFS may provide rewards for individuals who provide information leading to the arrest and conviction of certain offenses;
- Clarifies the terms of appointment for members of the Florida Fire Safety Board;
- Clarifies the inactive status requirements for a fire equipment dealer license;
- Removes the requirements that proof of insurance for a fire equipment dealer or fire protection system contractor's license must be on a form provided by the Florida State Fire Marshal;
- Specifies roles, responsibilities, and retention requirements of individuals holding a "Special Certificate of Compliance";
- Removes outdated language requiring the Florida State Fire College to develop and implement a staffing formula for the Fire College;
- Limits the number of risks that an exchange of business appointment can write;
- Provides fingerprint exemptions to veterans of the US Armed Forces who were honorably discharged in the last 24 months; and
- Authorizes fire service providers to hire qualifying veterans who received equivalent training while in the military.

II. Present Situation:

The Department of Financial Services

The Department of Financial Services (DFS or department) is created by s. 20.121, F.S. The agency head for the DFS is the Chief Financial Officer (CFO).¹ The DFS has the following divisions and offices:

- Division of Accounting and Auditing;
- Division of Consumer Services;
- Division of Funeral, Cemetery, and Consumer Services;
- Division of Insurance Agent and Agency Services;
- Division of Investigative and Forensic Services;
- Division of Public Assistance Fraud;
- Division of Rehabilitation and Liquidation;
- Division of Risk Management;

¹ Section 20.121(1), F.S.

- Division of State Fire Marshal;
- Division of Treasury;
- Division of Unclaimed Property;
- Division of Workers' Compensation;
- Division of Administration; and
- Office of Insurance Consumer Advocate.²

The bill deals with various divisions and programs within the DFS. The divisions and programs changed by the bill are briefly discussed as follows.

Division of the Treasury

The CFO, or Treasurer, is the state treasurer.³ The Division of the Treasury within the DFS has three bureaus:

- Bureau of Funds Management;
- Bureau of Collateral Management; and
- Bureau of Deferred Compensation.⁴

The Division of the Treasury makes photographs, microphotographs, or reproductions on film of warrants, vouchers, or checks and can destroy the warrants, vouchers, or checks after they have been photographed and filed and an audit has been completed.⁵ The copies of original documents made by the DFS are admissible in court with the same force and effect of original documents.⁶

Current law does not provide for the use of electronic images instead of or along with photographs, microphotographs, or film reproductions.

Financial Literacy

The DFS website contains a financial literacy program named "Finance Your Future." The website may be found at <http://financeyourfuture.myfloridacfo.com/>. The program contains online lessons on "Budgeting and Saving," "Credit Cards," "Banking," "Your Credit Reports and Your Credit Score," "Debt," "Frauds and Scams," "Insurance and Benefits," and "Life Events." Each lesson contains an online quiz at the end of the lesson and requires a certain passing score. Teachers are able to use the educator platform to assign and assess lessons for use in their classrooms.

Division of Accounting and Auditing

Chapter 218, F.S., prescribes financial management and reporting requirements for local governments, which include counties, municipalities, and special districts. Local governments

² Section 20.121(2), F.S.

³ Section 20.121(1), F.S.

⁴ Department of Financial Services, Division of Treasury, *Annual Report 2017* (available at <https://www.myfloridacfo.com/Division/Treasury/Reports/AnnualReports/docs/2017TreasuryAnnualReport.pdf> last visited January 18, 2018).

⁵ Section 17.64(1) and (2), F.S.

⁶ Section 17.64(1) and (3), F.S.

submit required reports to the department's Division of Accounting and Auditing. Local governments and special districts report their annual financial reports through the Local Government Electronic Reporting (LOGER) system. DFS maintains LOGER as a repository of local government financial statement information and offers several report templates for users to access the information reported in LOGER. The DFS is working to improve the collection and reporting of information to the public by addressing the limitations of LOGER.⁷

Division of Risk Management

The Division of Risk Management is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund known as the "State Risk Management Trust Fund." The division deals with claims involving:

- Workers' Compensation;
- Property;
- Fleet Automobile Liability;
- General Liability;
- Federal Civil Rights/Employment Discrimination; and
- Court Awarded Attorney Fees.

The division also provides loss prevention services and technical assistance to state agencies and universities for managing risk.⁸

Section 440.1851, F.S., provides that the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the DFS is confidential and exempt from disclosure pursuant to Florida's Open Government laws. The DFS can disclose the information only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in the furtherance of the agency's official duties and responsibilities; or
- To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.⁹

⁷ Email from DFS staff to Committee staff dated January 19, 2018 (on file with the Committee on Banking and Insurance).

⁸ <https://www.myfloridacfo.com/division/risk/> (last visited January 19, 2018).

⁹ Section 440.1851(1)(b), F.S.

The division uses outside vendors to help perform its duties relating to the administration of state employee workers' compensation claims. Section 440.1851, F.S., does not contain a provision allowing the division to disclose personal identifying information to its vendors. This has interfered with the division's ability to perform its functions.¹⁰

Division of Public Assistance Fraud

The Division of Public Assistance Fraud aids in enforcing state laws regarding program eligibility and proper use of public assistance benefits. The division works with the Department of Children and Families, the Agency for Health Care Administration, the Department of Health, and the Department of Education's Office of Early Learning to investigate fraud in programs administered by those departments. The division is responsible for investigating allegations of:

- Fraud against the Cash Assistance/Temporary Assistance for Needy Families (TANF) program;
- Fraud and trafficking involving Supplemental Nutritional Assistance Program (SNAP) formerly known as food stamps;
- Medicaid recipient fraud;
- Fraud resulting from Disaster Assistance/Emergency benefits;
- Fraud against the School Readiness and Voluntary Pre-Kindergarten programs; and
- Schemes to defraud Social Security Disability benefits.¹¹

Division of Funeral, Cemetery, and Consumer Services

The DFS licenses and regulates cemeteries, funeral directors, embalmers, burial rights brokers, and others in the death care industry. Fees for initial licensure can be significant. For example, the fee for licensure as a cemetery company is \$5,000.¹²

Section 497.456, F.S., establishes the "Preneed Funeral Contract Consumer Protection Trust Fund." The fund is used to provide restitution to consumers when a preneed licensee fails to provide promised benefits.¹³ For each delinquency proceeding initiated against a preneed licensee, up to 50 percent of the balance of the trust fund not committed to other delinquencies may be used to establish a receivership and provide restitution to preneed contract purchasers and their estates. For each preneed contract written, the licensee pays \$1.00 into the fund.¹⁴ The fund has approximately \$8,800,000. Fees collected for the fund and interest earned have ranged from \$250,000 to \$538,000 over the last 10 fiscal years while expenditures have ranged from \$60,000 to \$202,000 over the same period.¹⁵

¹⁰ Department of Financial Services, *Agency Bill Analysis of SB 1292*, December 29, 2017, at p.3. (on file with the Committee on Banking and Insurance).

¹¹ <https://www.myfloridacfo.com/Division/PAF/> (last visited January 19, 2018).

¹² Section 497.263(1)(r), F.S.

¹³ Section 497.456(6), (7) F.S.

¹⁴ Department of Financial Services, *Agency Bill Analysis of SB 1292*, December 29, 2017, at p.4; ss. 497.456(2), (12), F.S.

¹⁵ Department of Financial Services, *Agency Bill Analysis of SB 1292*, December 29, 2017, at p. 4.

Division of Insurance Agent and Agency Services

The DFS licenses and regulates insurance agents and insurance agencies. There are over 50 different types of licenses. Typically, obtaining a license involves completing education requirements, submitting to a criminal and professional background check, passing an examination, and paying a license fee. Some licensees must act as apprentices supervised by others when performing duties.

One of the licenses changed by this bill is the “managing general agent” (MGA) license. A “managing general agent” is any person managing all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acting as an agent for that insurer, whether known as a managing general agent, manager, or other similar term, who, with or without authority, separately or together with affiliates, produces directly or indirectly, or underwrites an amount of gross direct written premium equal to or more than 5 percent of the policyholder surplus as reported in the last annual statement of the insurer in any single quarter or year.”¹⁶ The MGA also does one or more of the following:

- Adjusts or pays claims.
- Negotiates reinsurance on behalf of the insurer.¹⁷

Currently, managing general agents are licensed by the DFS and appointed by insurance companies to perform MGA services.

Division of Investigative and Forensic Services

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

- Insurance Fraud Investigations;
- Workers' Compensation Fraud Investigations;
- Fire, Arson and Explosives Investigations;
- Theft/Misuse of State Funds; and
- Fire and Explosives Sample Analysis.¹⁸

Division of State Fire Marshal

The CFO serves as the state fire marshal.¹⁹ The Division of State Fire Marshal:

- Conducts fire/life safety inspections and construction plans review on all state-owned buildings;
- Regulates the fireworks and the fire sprinkler industries, inspects and licenses boilers;
- Certifies fire suppression industry workers;
- Approves firefighter training curricula;
- Offers fire service training at the Florida State Fire College; and

¹⁶ Section 626.015(16)(a), F.S.

¹⁷ *Id.*

¹⁸ <https://www.myfloridacfo.com/Division/DIFS/> (last visited January 19, 2018).

¹⁹ Section 633.104, F.S.

- Certifies that fire service members meet industry-based standards.²⁰

Department of Children and Families

The Department of Children and Families (DCF) is created in s. 20.19, F.S. The Secretary of Children and Families is the head of the agency and the secretary must appoint an Assistant Secretary of Child Welfare to lead the department in carrying out its duties and responsibilities for child protection and child welfare. The Department's Child Welfare Program works in partnership with local communities, courts and tribes to ensure the safety, timely permanency and well-being of children and young adults. Specifically, the Child Welfare program oversees services that support:

- The transition to self-sufficiency for older children who continue to be in foster care as adolescents; and
- The preparation of young adults that exit foster care at age 18 to make the transition to self-sufficiency as adults.

Transition Plans

Current federal law requires that during the 90-day period immediately prior to the date the child will attain age 18 – or other age if the state elects – the department must provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.²¹

Florida law requires that During the 180-day period after a child reaches 17 years of age, the department and the community-based care provider, in collaboration with the caregiver and any other individual whom the child would like to include, shall assist the child in developing a transition plan. The required transition plan is in addition to standard case management requirements. The transition plan must address specific options for the child to use in obtaining services, including housing, health insurance, education, a driver license, and workforce support and employment services.²²

The plan must also consider establishing and maintaining naturally occurring mentoring relationships and other personal support services. The transition plan must be coordinated with the independent living provisions in the case plan and, for a child with disabilities, the Individuals with Disabilities Education Act transition plan.²³

Youth Aging Out of Foster Care

The federal government recognizes that older youth in foster care and those aging out are vulnerable to negative outcomes and may ultimately return to the care of the state as adults,

²⁰ <https://www.myfloridacfo.com/division/sfm/> (last visited January 19, 2018).

²¹ The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, October 7, 2008.

²² Section 39.6035, F.S.

²³ *Id.*

either through the public welfare, criminal justice, or other systems. Under the federal foster care program, states may seek reimbursement for youth to remain in care up to the age of 21. In addition, the federal foster care program has protections in place to ensure that older youth in care have a written case plan that addresses the programs and services they need in making the transition, among other provisions.²⁴

Extended Foster Care

Passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 allowed states the option of extending eligibility for title IV-E foster care payments to age 21 for young adults who meet certain requirements.²⁵ A young adult must be either be:

- completing secondary education or a program leading to an equivalent credential;
- enrolled in an institution which provides post-secondary or vocational education;
- participating in a program or activity designed to promote, or remove barriers to, employment;
- employed for at least 80 hours per month; or
- incapable of doing any of the above due to a medical condition.^{26,27}

Florida law mirrors those requirements, places some restrictions on living arrangements and level of supervision, provides for ongoing case management, and prescribes procedures for young adults to leave and reenter extended care.²⁸

Independent Living

The John H. Chafee Foster Care Independence Program (CFCIP) was enacted in 1999 to offer assistance to states to provide services and supports to help current and former foster care youth achieve self-sufficiency. Activities and programs include, but are not limited to, help with education, employment, financial management, housing, emotional support and assured connections to caring adults for older youth in foster care. The program is intended to serve youth who are likely to remain in foster care until age 18, youth who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption, and young adults ages 18-21 who have "aged out" of the foster care system.²⁹

²⁴ Congressional Research Service, *Youth Transitioning from Foster Care: Background and Federal Programs*, September 8, 2017, available at: <https://fas.org/sgp/crs/misc/RL34499.pdf>. (last visited February 1, 2018).

²⁵ The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, October 7, 2008.

²⁶ National Conference of State Legislatures, *Extending Foster Care Beyond Age 18*, July 28, 2017, available at: <http://www.ncsl.org/research/human-services/extending-foster-care-to-18.aspx>. (last visited February 2, 2018).

²⁷ Florida law provides more specificity to the term "medical condition" by stating "Unable to participate in programs or activities listed in paragraphs (a)-(d) full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation." Section 39.6251, F.S.

²⁸ Section 39.6251, F.S.

²⁹ 42 U.S. Code s. 677. The Educational and Training Vouchers Program (ETV) for Youths Aging out of Foster Care was added to the CFCIP in 2002. ETV provides resources specifically to meet the education and training needs of youth aging out of foster care.

The Florida Legislature enacted the Road-to-Independence Program (RTI) in 2002 for the purpose of providing young adults who have lived in out-of-home care with skills, supports and services necessary to become self-sufficient.³⁰ Currently, RTI provides:

- ***Postsecondary Educational Supports and Services (PESS)*** — The program provides financial assistance to a young adult who:
 - Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;
 - Spent at least 6 months in licensed care before reaching his or her 18th birthday;
 - Earned a standard high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent pursuant to s. 1003.435;
 - Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term “full-time” means 9 credit hours or the vocational school equivalent. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor;
 - Has reached 18 years of age but is not yet 23 years of age;
 - Has applied, with assistance from the young adult’s caregiver and the community-based lead agency, for any other grants and scholarships for which he or she may qualify;
 - Submitted a Free Application for Federal Student Aid which is complete and error free; and
 - Signed an agreement to allow the department and the community-based care lead agency access to school records.³¹

- ***Aftercare Services*** — Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age and is not in foster care or benefits under PESS. Aftercare services include, but are not limited to:
 - Mentoring and tutoring.
 - Mental health services and substance abuse counseling.
 - Life skills classes, including credit management and preventive health activities.
 - Parenting classes.
 - Job and career skills training.
 - Counselor consultations.
 - Temporary financial assistance for necessities, including, but not limited to, education supplies, transportation expenses, security deposits for rent and utilities, furnishings, household goods, and other basic living expenses.
 - Financial literacy skills training.

³⁰ Section 409.1451, F.S.

³¹ *Id.*

Requirements for a High School Diploma

Florida law currently requires that, beginning with students entering grade 9 in the 2013-2014 school year, receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum. Credit requirements include:

- Four credits in English Language Arts;
- Four credits in mathematics
- Three credits in science;
- Three credits in social studies;
- One credit in fine or performing arts;
- One credit in physical education; and
- Eight credits in electives.

To satisfy the social studies requirement, a student must earn one credit in United States History; one credit in World History; one-half credit in economics, which must include financial literacy; and one-half credit in United States Government.

III. Effect of Proposed Changes:

Division of the Treasury (Section 1)

Section 1 amends s. 17.64, F.S., to allow the Division of Treasury to make electronic images of warrants, vouchers, and checks and provides those electronic images may be used to the same extent original documents can be used in court proceedings.

Organization of the DFS (Section 2)

Section 2 amends s. 20.121, F.S., to create the “Bureau of Insurance Fraud” and the “Bureau of Workers’ Compensation Fraud” within the Division of Investigative and Forensic Services. It also renames the “Bureau of Fire and Arson Investigations” as the “Bureau of Fire, Arson, and Explosives Investigations.”

Financial Literacy for Foster Youth (Sections 3, 4, and 9)

Sections 3, 4, and 9 relate to children and young adults in or aging out of foster care and the DFS financial literacy program.

Section 3 of the bill amends s. 39.6035, F.S., relating to transition plans, to require the transition plan to address financial literacy. The bill also requires the Department of Children and Families and the community-based provider to provide information for the financial literacy curriculum offered by the DFS. The child must complete the curriculum with a passing score before receiving aftercare services or continuing care services as attested to by the child’s guardian ad litem (GAL).

Section 4 of the bill amends s. 39.6251(2), F.S., relating to continuing care for young adults, to add a requirement that a young adult must meet in order be eligible to remain in licensed care. The young adult must be completing the financial literacy curriculum for foster youth offered by the DFS.

Section 9 of the bill amends s. 409.1451, F.S., relating to the Road-to-Independence Program, to require young adults³² to complete the financial literacy curriculum for foster youth offered by the DFS as a condition for eligibility to receive postsecondary education services and support or aftercare services under the Road-to-Independence Program.

Division of Accounting and Auditing (Sections 5 and 6)

Section 5 of the bill amends s. 218.32, F.S., to provide that the Legislature intends to create the Florida Open Financial Statement System. The system will be an interactive repository for governmental financial statements. The bill provides that the CFO may consult with stakeholders, including the department, the Auditor General, a representative of a municipality or county, a representative of a special district, a municipal bond investor, and an information technology professional employed in the private sector for input on the design and implementation of the system.

The bill allows the CFO to choose contractors to build one or more eXtensible Business Reporting Language (XBRL) taxonomies suitable for state, county, municipal, and special district financial filings and to create a software tool that enables financial statement filers to easily create XBRL documents consistent with the taxonomy or taxonomies. XBRL is a global standard for exchanging business information. The bill requires the CFO to recruit and select contractors through an open request for proposals process pursuant to ch. 287, F.S., and requires that all work to be completed by December 31, 2021. If the CFO deems the work products adequate, all local governmental financial statements pertaining to fiscal years ending on or after January 1, 2023, must be filed in XBRL format and must meet the validation requirements of the relevant taxonomy.

Section 6 provides a \$500,000 appropriation for development of the XBRL taxonomies.

Division of Risk Management (Sections 7 and 8)

Section 7 amends s. 284.40, F.S., to allow the DFS to disclose personal identifying information of an injured or deceased employee to a department-contracted vendor for the purpose of ascertaining a claimant's claims history to investigate the compensability of a claim or to identify and prevent fraud.

Section 284.50, F.S., requires each department of state government to have a safety coordinator. The safety coordinator is responsible for developing and implementing a loss prevention program and a comprehensive department safety program.³³ **Section 8** amends s. 284.50, F.S., to require each safety coordinator to complete safety coordinator training offered by the DFS within 1 year of appointment. The DFS offers this training to state departments upon request.

Section 284.50, F.S., also requires the DFS and all agencies that are provided workers' compensation insurance coverage by the State Risk Management Trust Fund and employ more

³² Adults who have reached 18 years of age but are not yet 23 years old.

³³ Section 284.50(1), F.S.

than 3,000 full-time employees to establish and maintain return-to-work programs for employees who are receiving workers' compensation benefits. The goal of the programs is to enable injured workers to remain at work or return to work to perform job duties within the physical or mental functional limitations and restrictions established by the workers' treating physicians.³⁴ The bill requires agencies with more than 3,000 full-time employees to report return-to-work information to the DFS. The DFS is required by s. 284.42, F.S., to report on agencies' return-to-work efforts. Obtaining information from agencies will aid the DFS in completing the report each year.

The bill also requires each agency to provide risk management program information to the Division of Risk Management to support the division's mandatory evaluation and reporting requirements. Each agency is required to:

- Review information provided by the Division of Risk Management on claims and losses;
- Identify any discrepancies between the Division of Risk Management's records and the agency's records and report such discrepancies to the Division of Risk Management in writing; and
- Review and respond to communications from the Division of Risk Management identifying unsafe or inappropriate conditions, policies, procedures, trends, equipment, or actions or incidents that have led or may lead to accidents or claims involving the state.

Investigation of Public Assistance Fraud (Section 10)

Section 10 amends s. 414.411, F.S., to provide that all public assistance recipients must give to the Department of Education, rather than the Department of Economic Opportunity, written consent to make inquiry of past or present employers and records. In 2011, the Office of Early Learning housed within the Department of Education took over the school readiness functions of the Department of Economic Opportunity³⁵ so it is appropriate for recipients to give consent to the Department of Education. In 2016-2017, the Office of Early Learning referred 344 cases to the DFS for public assistance fraud investigation.³⁶

Division of Funeral, Cemetery, and Consumer Services (Sections 11 and 12)

Section 11 of the bill amends s. 497.168(3), F.S., to exempt members of the United States Armed Forces or veterans of the United States Armed Forces who were honorably discharged within 24 months before the date of application for licensure from the following initial licensure application fees:

- Burial Rights Broker
- Embalmer
- Temporary Embalmer
- Embalmer Intern
- Embalmer Apprentice
- Funeral Director
- Provisional or Temporary Funeral Director

³⁴ Section 284.50(3), F.S.

³⁵ Chapter 2011-142, Laws of Florida.

³⁶ http://www.floridaearlylearning.com/sites/www/Uploads/files/Oel%20Resources/Publications/2016-17%20OEL%20Annual%20Report_ADA.pdf (last visited on January 18, 2018).

- Funeral Director Intern

Section 12 amends s. 497.168, F.S., to allow the DFS to use some of the money from the Preneed Funeral Contract Consumer Protection Trust Fund to upgrade the Division of Funeral, Cemetery, and Consumer Services computer systems. The division currently operates with eight standalone database systems that are not supported by the DFS's Office of Information Technology. These systems do not permit any application process to occur online. The DFS is currently working on a business analysis that will address the replacement of all standalone systems.³⁷

The bill allows the DFS on or before August 31, 2018, transfer up to \$2 million from the Preneed Funeral Contract Consumer Protection Trust Fund to the Regulatory Trust Fund for the purpose of acquiring information technology infrastructure and payment of related expenses. The bill also allows the department to transfer any interest accrued or earned from investment of the funds in the Preneed Funeral Contract Consumer Protection Trust Fund during the prior fiscal year to the Regulatory Trust Fund. The amount of interest earned in the Preneed Funeral Contract Consumer Protection Trust Fund has varied between \$93,000 and \$398,000 over the past 10 fiscal years.³⁸ The transfer of \$2 million would leave approximately \$6,800,000 in the Preneed Funeral Contract Consumer Protection Trust Fund to pay consumer claims. The fund would also lose the interest that would be transferred to the regulatory trust fund.

This provision of the bill expires on August 31, 2022.

Division of Insurance Agent and Agency Services (Sections 13-40, 48 and 49)

Section 13 amends s. 624.317, F.S., to remove references to specific types of insurance agents and uses the term "agent" to designate the types of insurance agents the department can investigate. This clarifies that the DFS investigates all agents of whom licensure is required.

The bill eliminates the managing general agent (MGA) license. Instead, **Section 20** amends s. 626.112, F.S., to provide that no one may act as a MGA without a producer license³⁹ and a MGA appointment. Currently, there are no prelicensing requirements for the MGA license. There is no formal examination to determine eligibility. The qualification requirements are to complete the application, be eligible to work in the United States, and submit fingerprints for a background evaluation. In contrast, other agent licenses require coursework and an examination.⁴⁰ Requiring a MGA to have a producer license will align Florida more closely with the National Association of Insurance Commissioners' Managing General Agents Act, which requires MGAs to have a producer license.⁴¹ **Sections 14, 16, 18, 19, 21, 23, 28, 29, 30, 31, 32, 38, and 48** remove references to the MGA license from law, where appropriate, add references to an "appointed" MGA, and make conforming changes.

³⁷ Department of Financial Services, *Agency Bill Analysis of SB 1292*, December 29, 2017, at p.4.

³⁸ *Id.*

³⁹ A producer is a licensed agent who sells insurance products.

⁴⁰ Department of Financial Services, *Agency Bill Analysis of SB 1292*, December 29, 2017, at p. 5.

⁴¹ <http://www.naic.org/store/free/MDL-225.pdf> (last visited January 21, 2018).

Section 15 amends s. 624, 4073, F.S., to provide that an officer or director of an insurer who served in that capacity within a 2-year period before prior to the date the insurer became insolvent may not thereafter serve as an officer or director of an insurer or have direct or indirect control over the selection or appointment of an officer or director unless the officer or director demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 22 amends s. 626.202, F.S., to provide that fingerprints are valid for a 4-year period for persons currently licensed by the DFS and who are seeking additional licensure. The bill also allows veterans and active duty military members allowing them to be exempt from fingerprinting during their service and for 2 years after being honorably discharged. They will still be required to disclose criminal history as part of the application process.

Section 626.221, F.S., provides if an applicant for licensure as an all-lines adjuster has certain educational designations, he or she is not required to take the examination. **Section 24** provides that an applicant certified as a Claims Adjuster Certified Professional from WebCE, Inc.⁴² does not have to take the examination.

Section 25 removes from s. 626.451, F.S., a requirement that law enforcement agencies and state attorney's offices report to the DFS when insurance licensees are convicted or enter pleas in felony cases. This reporting is no longer necessary because the DFS works closely with clerks of the court to obtain this information.

Section 26 amends s. 626.521, F.S., relating to character and credit reports. The bill requires an "employer" to maintain credit and character reports rather than requiring specific licensees to maintain the reports. The bill also removes statutory provisions that are no longer useful.

Section 27 amends s. 626.731, F.S., to remove references to "special agent" because the license type does not exist, remove references to "managing general agents," and remove language relating to "service representatives" that could expand the scope of that license.

Sections 33 and 34 amend ss. 626.752 and 626.793, F.S., to require an insurer to report to the DFS when it receives more than four risks during a calendar year from a personal lines or life agent. Currently, the insurers must report when they receive more than 24 risks from an agent during the year. **Section 35** amends s. 626.837, F.S., to make a similar change relating to health insurance agents. This will allow the DFS and public to more easily track agent-insurer relationships. A conforming change is made in **Section 17** of the bill.

Section 36 amends s. 626.8732, F.S., and **Section 37** amends s. 626.8734, F.S., to remove requirements that public adjusters and nonresident all-lines adjusters submit annual affidavits certifying that they understand the insurance code. Current law provides for discipline against licensees if they violate the law so the annual affidavit is not necessary.

⁴²https://www.webce.com/catalog/courses/?_id=5374c17qML4PsK3Tp1Jm2saSs9sZcL6U7J65rqN970s5ZTKHK4ag2s6Z7sKfMqZzZnVz (last visited January 20, 2018).

Section 39 amends s. 626.927, F.S., to remove licensure as a managing general agent or a service representative as a qualification for a surplus lines agent license. The MGA license is being removed by other sections of the bill and a service representative does not require significant training. The section also removes obsolete language relating to an examination that is no longer offered.

Section 40 amends s. 626.930(3), F.S., to allow a surplus lines agent to keep surplus lines business records in his or her general lines agency office or MGA office.

Section 49 amends s. 648.34, F.S., to provide that fingerprints for persons seeking licensure as a bail bond agent are valid for a 4-year period.

Division of Investigative and Forensic Services (Section 41)

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS. The program is funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud. **Section 41** amends s. 626.9892(2), F.S., to add arson to the list of crimes for which the DFS can pay rewards to persons who provides appropriate information.

Division of State Fire Marshal (Sections 42-47)

Section 42 amends s. 633.302, F.S., to clarify that once the initial terms of members of the Florida Fire Safety Board are completed, subsequent appointments are for 4 years.

Section 43 amends s. 633.304, F.S., to require an inactive status license of a fire equipment dealer must be reactivated before December 31 of each odd-numbered year. It also allows a fire equipment dealer to have franchisees that work under the dealer's license.

Section 44 amends s. 633.318(7), F.S., to allow fire protector system contractors to submit proof of insurance on forms provided by the insurer rather than requiring forms from the DFS.

Section 45 amends s. 633.408, F.S., relating to the firefighter Special Certificate of Compliance. The certificate authorizes the individual to serve as an administrative and command head of a fire service provider. The bill provides:

- An individual employed as a fire chief, fire coordinator, fire director, or fire administrator must obtain a Special Certificate of Compliance within 1 year after beginning employment; and
- Before beginning employment as a command officer or in a position directing incident outcomes, an individual must obtain a Certificate of Compliance or a Special Certificate of Compliance.

Current law does not contain requirements to retain a Special Certificate of Compliance. The bill creates requirements similar to those required to retain certification as a firefighter. In order to retain a Special Certificate of Compliance, every 4 years an individual must:

- Be active as a firefighter;

- Maintain a current and valid Fire Service Instructor Certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division; or
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training as prescribed by rule.

Section 46 amends s. 633.416, F.S., to allow a fire service provider to employ individuals who have received equivalent training while active in the United States Department of Defense. The standard of equivalency of training must be verified by the division before such individual's employment begins. Such individual must obtain a Firefighter Certificate of Compliance within 24 months after employment.

Section 47 amends s. 633.444(1), F.S., to remove obsolete language relating to the Florida State Fire College.

Other Provisions (Sections 50 and 51)

Section 50 of the bill reenacts s. 626.8734, F.S., for purposes of incorporating the amendment made by the bill to s. 626.221, F.S.

Section 51 provides the bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 12 authorizes the transfer of up to \$2 million from the Preeed Funeral Contract Consumer Protection Trust Fund for the purpose of updating the technology infrastructure of the Division of Funeral, Cemetery, and Consumer Services. The transfer

will benefit licensees that interact with the Division, but reduce the monies available to provide restitution to preneed contract purchasers in the event a delinquency proceeding is initiated against a preneed licensee.

C. Government Sector Impact:

Section 3 of the bill would require that the Florida Safe Families Network (FSFN) would need to be updated to capture data elements for reporting and to denote attestation of financial literacy successful completion to be included in eligibility determinations. The expected cost to update FSFN is \$201,190.⁴³

Section 6 of the bill provides a \$500,000 appropriation for development of the XBRL taxonomies.

Section 12 of the bill will allow the DFS to obtain funding for the Division of Funeral, Cemetery, and Consumer Services from the trust fund by shifting \$2 million from the Preneed Funeral Contract Consumer Protection Trust Fund to the Regulatory Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 of the bill appears to have the following issues:

- Lines 286-291 are inappropriately placed in a section relating to a planning process rather than a section providing eligibility requirements for specific services;
- Section 39.6035, F.S., applies to all children who are in out-of-home care who are 17 years of age. These 17 year olds are attending high school unless they are unable to attend due to a condition that limits participation. High school graduation requirements already include students to complete one-half credit in economics, which must include financial literacy. Requiring completing and passing the DFS financial literacy course would be redundant for most of these students.
- Requiring the guardian ad litem (GAL) to attest to the completion and passing of the financial literacy course may not be appropriate. Not all children in the dependency system have been appointed a GAL and there is no exception in the bill.
- On line 290 of the bill, it is unclear what is meant by the term “continuing care services.”
- If “continuing care services” means PESS benefits the requirement to complete and pass the DFS literacy course is redundant. Students must have completed their secondary education before being eligible for PESS benefits and high school graduates have completed the one-half credit in economics.

Section 4 of the bill also appears to have the following issues:

- The requirements for a young adult to be eligible to remain in extended foster care are federal. The proposed language in s.39.6251, F.S. substantially changes eligibility

⁴³ Department of Children and Families, 2018 Agency Legislative Bill Analysis, HB 1073, January 2, 2018.

requirements for young adults in extended foster care (EFC) by requiring an additional qualifying activity. These changes could make the program out of Title IV-E compliance if Florida exercises the option to utilize that funding stream. Additionally, changes to s.39.6035 could impact federal funding associated with PESS and Aftercare Services. The impact is indeterminate at this time as the Children's Bureau of the Administration for Children would need to review and approve any substantial changes to eligibility and the implementation of services not already addressed in Florida's state plans.

- The newly added requirement for eligibility for extended foster care is unnecessarily broad since it would include students who have completed high school.

Section 9 of the bill appears to have the following issues:

- Lines 602-604 of the bill appear to be unnecessary because PESS benefits are only available to young adults who have earned a high school diploma. Those young adults will have completed economic including financial literacy in high school.
- Lines 620-621 of the bill reference back to the newly created provision in section 3 of the bill which is inappropriately placed in a planning section of statute.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.64, 20.121, 39.6035, 39.6251, 218.32, 284.40, 284.50, 409.1451, 414.411, 497.168, 497.456, 624.317, 624.34, 624.4073, 624.4094, 624.501, 624.509, 625.071, 626.112, 626.171, 626.202, 626.207, 626.221, 626.451, 626.521, 626.731, 626.7351, 626.744, 626.745, 626.7451, 626.7455, 626.752, 626.793, 626.837, 626.8732, 626.8734, 626.88, 626.927, 626.930, 626.9892, 633.302, 633.304, 633.318, 633.408, 633.416, 633.444, 648.27, and 648.34.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 23, 2018:

The CS:

- Expresses the intent of the Legislature to create the Florida Open Financial Statement System and allow the CFO to consult with stakeholders for input on the design and implementation of the system;
- Requires the CFO to recruit and select contractors to build suitable XBRL taxonomies for the state through an open process pursuant to ch. 287, F.S.;
- Provides a \$500,000 appropriation;
- Allows the DFS to transfer up to \$2 million from the Preneed Funeral Contract Consumer Protection Trust Fund to the Regulatory Trust Fund for the purpose of acquiring information technology infrastructure and payment of related expenses;
- Allows the department to transfer any interest accrued or earned from investment of the funds in the Preneed Funeral Contract Consumer Protection Trust Fund during the prior fiscal year to the Regulatory Trust Fund;
- Creates retention requirements in order for a firefighter to retain a Special Certificate of Compliance; and

- Makes technical changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
