

THE FLORIDA SENATE
2024 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/CS/CS/HB 989 — Chief Financial Officer

by Commerce Committee; State Administration & Technology Appropriations Subcommittee; Insurance & Banking Subcommittee; and Rep. LaMarca (CS/CS/CS/SB 1098 by Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator DiCeglie)

The bill revises provisions of multiple programs within the Department of Financial Services (DFS).

Federal Tax Liaison – The bill establishes the position of Federal Tax Liaison (Liaison) within the DFS. The Liaison, to be appointed by the Chief Financial Officer (CFO), reports directly to the CFO but is not otherwise under the authority of the DFS or of any employee of the DFS. In order to assist Florida’s taxpayers, the tax liaison may assist taxpayers by answering taxpayer questions; direct taxpayers to the proper departments or offices within the Internal Revenue Service (IRS) to hasten resolution of taxpayer issues; prepare recommendations for the IRS of any actions that will help resolve problems encountered by taxpayers; provide information about the policies, practices, and procedures that the IRS uses to ensure compliance with the tax laws; and with the consent of the taxpayer, request records from the IRS to assist the liaison in responding to taxpayer inquiries.

Division of Criminal Investigations – The bill renames the Division of Investigative and Forensic Services (DIFS) to the Division of Criminal Investigations (DCI) and deletes provisions relating to the duties of the DIFS and the bureaus and offices in the DIFS. The DCI is designated as a criminal justice agency with the authority to initiate and conduct investigations into matters falling under the jurisdiction of the CFO and the State Fire Marshal. The bill abolishes the Division of Public Assistance Fraud (DPAF). The programs and responsibilities within the DPAF will be moved under the DCI.

Firefighter Cancer Benefits – The bill clarifies that the benefit package that a firefighter diagnosed with cancer meeting certain criteria may elect, as an alternative to workers' compensation, includes “leave time and job retention benefits equivalent to those provided for other injuries or illnesses incurred in the line of duty.”

Special Risk – For purposes of special risk employee classification, the bill replaces references to employees of the Division of State Fire Marshal with employees of the DFS.

Risk Management – The bill repeals a requirement that the Division of Risk Management to prepare quarterly reports of the total amount of salary indemnification benefits paid and the total amount of reimbursements from each agency to the State Risk Management Trust Fund for initial costs each quarter.

Qualified Public Depositories – Regarding qualified public depositories, the bill authorizes the CFO to designate a credit union as a qualified public depository if specified criteria are met,

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including, complying with requirements that are similar to the requirements that must be complied with by banks, savings banks, and savings associations. All of the relevant regulatory provisions for qualified public depositories apply to any such designated credit union. The total combined amount of public deposits that may be held by all credit unions is limited to:

- A total combined amount of not more than seven percent of the total funds held in the state treasury.
- A total combined amount of not more than seven percent of all public deposits of any state university or any state college.

A credit union may not hold public deposits of more than ten percent of its total institution's assets.

Workers Compensation – The bill provides for reimbursement for emergency services and care provided when a maximum reimbursement allowance is not available. In such a case, the maximum allowance must be at 250 percent of the Medicare rate, unless there is a contract, in which case the contract governs reimbursement. The bill requires the DFS to engage an actuarial services firm to begin development of maximum reimbursement provisions contained within this section. This provision expires June 30, 2026.

Purchasing by Guaranty Associations – The bill requires purchases and contracts of \$100,000 or more entered into by the Florida Self-Insurers Guaranty Association, the Florida Medical Malpractice Joint Underwriting Association, the Florida Insurance Guaranty Association, the Florida Life and Health Guaranty Association, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Workers' Compensation Guaranty Association, entered into after July 1, 2024, must first be approved by the DFS and that all such contracts must be competitively procured and be awarded to the most responsible and responsive vendor.

Board of Funeral, Cemetery, and Consumer Services – Relating to the Board of Funeral, Cemetery, and Consumer Services (Board), the bill provides that:

- The CFO is to appoint Board members, rather than the Governor, and such appointments are subject to Senate confirmation;
- One of the funeral director members of the Board no longer must own or operate an approved incinerator facility;
- Board members may be reappointed but may not serve for more than eight consecutive years;
- Specifies the State Health Officer shall serve so long as that person holds office; however, the designee of the State Health Officer shall serve at the pleasure of the CFO;
- Provides the CFO may remove any board member for malfeasance or misfeasance, neglect of duty, incompetence, substantial inability to perform official duties, commission of a crime, or other substantial cause as determined by the CFO to evidence a lack of fitness to sit on the Board. Any vacancy created by a board member's resignation shall be filled by the CFO;
- Members of the Board are subject to the code of ethics under ch. 112, part III, F.S.;

- A Board member may not vote on any measure that would inure to his or her special private gain or loss;
- A Board member may not knowingly accept any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the DFS or Board, which is under consideration for a contract, or is licensed by the DFS;
- Board members who fail to comply with the code of ethics are subject to penalties provided under ss. 112.317 and 112.3173, F.S.
- All meetings of the Board are subject to the open meeting requirements of s. 286.011, F.S., and all books and records of the Board are open to the public for reasonable inspection except as otherwise provided by law; and
- Except for emergency meetings, the DFS must give notice of any Board meeting by publication on the DFS website at least seven days before the meeting. The DFS must publish its agenda at least seven days before the meeting. The agenda must contain the items to be considered in order of presentation. After the agenda has been made available, a change may be made only for good cause.

The bill revises disciplinary procedures and penalties under the Board to provide that if service of an administrative complaint or citation on a licensee by certified mail cannot be obtained at the last address provided to the DFS by the licensee, then service may be made by e-mail, delivery receipt required, sent to the most recent e-mail address provided to the DFS by the licensee in accordance with section 497.146, Florida Statutes. The bill provides for public disclosure of an investigative file if the department issues an emergency order.

Human Remains – Relating to storage, preservation, and transportation of human remains, the bill provides:

- In the event of an emergency situation, including abandonment of any establishments or facilities licensed under ch. 497, F.S., or any medical examiner's facility, morgue or cemetery holding facility, the DFS may enter and secure such establishment, facility, or morgue during or outside normal business hours;
- The DFS may remove human remains and cremated remains from the establishment, facility, or morgue;
- The DFS is authorized to determine if a facility is abandoned and if there is an emergency situation;
- A licensee or licensed facility that accepts transfer of human remains and cremated remains from the DFS pursuant to an emergency situation or determination of abandonment, will not be held liable for their condition at the time of transfer; and
- That it is a third-degree felony to hold a dead human body over 24 hours without refrigeration or otherwise preserving the body until final disposition, or to fail to cover human remains that are being transported or stored and treat the remains with dignity and respect.

Pre-Need Contracts – Relating to fulfillment of pre-need contracts, the bill provides:

Upon delivery of merchandise or performance of services in fulfillment of a preneed contract, either in part or in whole, a preneed licensee may withdraw the amount deposited in trust plus income earned on such amount for the merchandise delivered or services performed, when adequate documentation is submitted to the trustee;

- That certain documentation is proof that a preneed funeral contract has been fulfilled; and
- A preneed licensee shall maintain documentation that supports fulfillment of a particular contract until such time as the records are examined by the DFS.

Division of Consumer Services – The bill requires eligible surplus lines insurers to respond, in writing or electronically, to the Division of Consumer Services within the DFS within 14 days after receipt of a written request from the Division for documents and information concerning a consumer complaint. This section of the bill also requires authorized insurers and eligible surplus lines insurers to file e-mail addresses with the DFS to which requests for response to consumer complaints may be directed. The insurer must designate a contact person for escalated complaint issues and must provide the name, e-mail address, and telephone number of the contact person.

Licensure Requirements – The bill requires the DFS to make provisions for applicants to submit cellular telephone numbers as part of the application process on a voluntary basis for purposes of two-factor authentication of login credentials only. A separate bill, SB 1078 (2024), proposes to exempt these phone numbers from public records requirements.

The bill adds “Registered Claims Adjuster (RCA) from American Insurance College” to the list of individuals exempted from the examination requirement to become an agent or public adjuster.

The bill allows the DFS to disclose confidential investigative information to the subject of an investigation, or the subject’s representative, in order to review the details of the investigation.

The bill adds the designation of “Chartered Customer Service Representative (CCSR) from American Insurance College” to the list of criteria for applicants to qualify as a customer representative.

The bill requires a licensed public adjuster to identify themselves in any advertisements, solicitations or written documents based on the adjuster appointment type held. The bill also provides that an adjuster who has had his or her license revoked or suspended may not participate in any part of an insurance claim or in the insurance claim adjusting process. A person who provides these services while the person’s license is revoked or suspended acts as an unlicensed adjuster.

The bill provides that a general lines agent, while licensed as a surplus lines agent, may appoint licenses with a single surplus license agent appointment pursuant to s. 624.501, F.S.. Such an appointed agent may only originate surplus lines business and accept surplus lines business from other originating Florida-licensed general lines agents appointed and licensed as to the kinds of

insurance involved and may compensate such agent. Such agent may not be appointed by or transact general lines insurance on behalf of an admitted insurer.

State Fire Marshal – Regarding the State Fire Marshal, the bill:

- Adopts the National Fire Protection Association, Inc., Standard 1126, 2021 Edition, Standard for the Use of Pyrotechnics before a Proximate Audience;
- Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code to provide that the State Fire Marshal may not adopt an accessibility code, since accessibility is provided for under the Florida Building Code Americans with Disabilities Act (ADA) accessibility code; and
- Amends s. 633.206, F.S., to require the DFS to establish uniform fire safety standards for mobile food dispensing vehicles and energy storage systems.

Motor Vehicle Service Agreements – Regarding motor vehicle service agreement companies, the bill:

- Amends s. 634.041, F.S., to allow motor vehicle service agreement companies to utilize multiple contractual liability insurance policies when backing their financial obligations; and
- Amends s. 634.081, F.S., to allow motor vehicle service agreement companies to utilize multiple contractual liability insurance policies when backing their financial obligations.

Home Warranty Associations – Regarding home warranty associations (associations), the bill amends section 634.3077, Florida Statutes, to provide that an association is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to exceed the ratio to net assets limitation if the association complies with the following:

- The association or, if the association is a direct or indirect wholly owned subsidiary of a parent corporation, its parent corporation has, and maintains at all times, a minimum net worth of at least \$100 million and provides the OIR with the following:
 - A copy of the association's annual audited financial statements or the audited consolidated financial statements of the association's parent corporation, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, that clearly demonstrate the net worth of the association or its parent corporation to be \$100 million, and a quarterly written certification to the OIR that the association or its parent corporation continues to maintain the net worth required under this paragraph; and
 - The association's or its parent corporation's Form 10-K, Form 10-Q, or Form 20-F as filed with the United States Securities and Exchange Commission, or such other documents required to be filed with a recognized stock exchange, which shall be provided on a quarterly and annual basis within 10 days after the last date each such report must be filed with the Securities and Exchange Commission, the National Association of Security Dealers Automated Quotation system, or other recognized stock exchange.

- If the net worth of a parent corporation is used in lieu of the establishment of an unearned premium reserve or the maintenance of contractual liability insurance to satisfy the net worth requirements, the following must be met:
 - The parent corporation must guarantee all service warranty obligations of the association, wherever written, on a form approved in advance by the OIR;
 - A cancellation, termination, or modification of the guarantee does not become effective unless the parent corporation provides the OIR written notice at least 90 days before the effective date of the cancellation, termination, or modification and the OIR approves the request in writing;
 - Before the effective date of the cancellation, termination, or modification of the guarantee, the association must demonstrate to the satisfaction of the OIR compliance with all applicable provisions of this part, including whether the association will meet the requirements of this section by the purchase of contractual liability insurance, establishing required reserves, or other method allowed under this section;
 - If the association or parent corporation does not demonstrate to the satisfaction of the OIR compliance with all applicable provisions of this part, the association or parent association shall immediately cease writing new and renewal business upon the effective date of the cancellation, termination, or modification; and
 - The association must maintain at all times net assets of at least \$750,000.

The bill exempts a municipality, a county government, a special district, an entity operated by a municipality or county government, or an employee or agent of a municipality, county government, special district, or entity operated by a municipality or county government from home warranty association licensing and appointment requirements.

Bail Bonds – Regarding the regulation of bail bonds, the bill:

Defines “referring bail bond agent” to mean the limited surety agent who is appointed with the surety company issuing the transfer bond that is to be posted in a county where the referring limited surety agent is not registered. The referring bail bond agent is the appointed agent held liable for the transfer bond, along with the issuing surety company; and

- Defines “transfer bond” to mean the appearance bond and power of attorney form posted by a limited surety agent who is registered in the county where the defendant is being held in custody.
- Provides that the papers, documents, reports, or any other records of an investigation (related to bail bond regulation) by the DFS that are made confidential and exempt from the public records law until such investigation is completed or ceases to be active, are not confidential and exempt once the DFS or the OIR files a formal administrative complaint, emergency order, or consent order against the individual or entity.
- Provides that the confidential and exempt investigative records may be disclosed to the subject of the investigation, or the subject’s representative, in order to review the details of the investigation.
- Provides that bail bond agents are not required to be employed with a bail bond agency.

- Removes the requirement of the submission of a full face photograph with a limited surety's or bail bond agent's application for license.

Financial Institution Unsafe and Unsound Practices –Regarding financial institutions, the bill:

- Clarifies the definition of “unsafe and unsound practices” in the financial institutions codes, to include the suspension or termination of a customer's or member's services on a specified basis, such as political opinions, religious beliefs, or non-quantitative standard.
- Provides the process that must be complied with following a complaint for unsafe and unsound practices being submitted by a customer or member of a financial institution, including:
 - Requiring the Office of Financial Regulation (OFR) to notify a financial institution that a complaint has been made;
 - Requiring such financial institution, unless precluded by law, to file a complaint response report with the OFR within 90 calendar days of receiving notice from the OFR;
 - Requiring an investigation to begin within 90 days of receiving notice; and
 - Requiring that OFR must provide an investigation report, unless precluded by law, to the complaining party and the financial institution and, if there is a violation, to the DFS and the proper enforcing authority under the Florida Unfair and Deceptive Trade Practices Act.
- If the complaint response report indicates that the financial institution took action due to suspicious activity, the initial investigation by the OFR must be handled in accordance with s. 655.50, F.S. If the OFR determines that the financial institution's action was taken without any basis under s. 655.50, F.S., the OFR must continue to investigate and determine whether the financial institution engaged in unsafe and unsound practices in violation of s. 655.0323(2), F.S. The Financial Services Commission is authorized to adopt rules to administer the provisions.

Unclaimed Property – The bill substantially revises the Florida Disposition of Unclaimed Property Act (Act). The bill:

- Provides or revises definitions for the following terms: “audit;” “audit agent;” “banking organization;” “business association;” “claimant's representative;” “domicile;” “due diligence;” “electronic;” “financial organization;” “holder;” “intangible property,” to include virtual currency; “owner;” “person;” “record;” “unclaimed property purchase agreement;” “unclaimed property recovery agreement;” and “virtual currency.” The bill repeals the definition of “ultimate equitable owner.”
- Provides that a presumption that property is unclaimed is rebutted by an apparent owner's expression of interest in the property. The bill specifies actions that constitute an owner's expression of interest in property, including any action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.
- Provides that any virtual currency held or owing by a banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity is presumed unclaimed unless the owner, within five years, has communicated in writing

with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity concerning the virtual currency or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity; and

- Provides that a holder may not deduct from the amount of any virtual currency held subject to the Act any charges imposed by reason of the failure to present the instrument for encashment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges and does not regularly reverse or otherwise cancel those charges with respect to the instrument.
- Provides that stock or other equity interest in a business association is presumed unclaimed on the date of the earliest of the following:
 - Three years after the most recent of any owner-generated activity or communication related to the account, as recorded and maintained in the holder's database and records systems sufficient enough to demonstrate the owner's continued awareness or interest in the property;
 - Three years after the date of the death of the owner, as proven by certain evidence; or
 - One year after the date on which the holder receives notice of the owner's death, if the notice is received two years or less after the owner's death and the holder lacked knowledge of the owner's death during that period of two years or less.
- Provides that intangible property held in a fiduciary capacity for the benefit of another person is presumed unclaimed unless the owner has within five years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated, in writing, concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary; provides that the provisions in that section do not relieve a fiduciary of its duties under the Florida Trust Code.
- Effective January 1, 2025, requires holders to report owner or account information for unclaimed property valued at \$10 or more to the DFS, rather than the current threshold of \$50, and that such reporting be made electronically.
- Provides that the required written notice to the apparent owner of unclaimed property must identify the property and any fixed value of the property, that the property will be turned over to the DFS if no response is received within 30 days of the notice, that such property (if not United States legal tender) may be sold or liquidated by the DFS, and what the apparent owner must do to obtain the property from the holder or, once the property is turned over to the DFS, from the DFS.
- Provides that virtual currency reported on the annual report must be remitted to the DFS with the report. The holder must liquidate the virtual currency within 30 days before the filing of the report and remit the proceeds to the DFS. Upon delivery of the proceeds, the holder is relieved of all liability for any losses or damages resulting by the delivery of the virtual currency proceeds.
- Provides a holder may not assign or otherwise transfer its obligation to report, pay, or deliver property or to comply with the provisions of this chapter, other than to a parent,

subsidiary, or affiliate of the holder. Unless otherwise agreed to by the parties to a transaction, the holder's successor by merger or consolidation, or any person or entity that acquires all or substantially all of the holder's capital stock or assets, is responsible for fulfilling the holder's obligations under the chapter. A holder is not prohibited from contracting with a third party for the reporting of unclaimed property, but the holder remains responsible for the complete, accurate, and timely reporting of the property.

- Provides that a holder's substantial compliance with the written notice requirements of s. 717.117(6), F.S., and good faith payment or delivery of property terminates any legal relationship between the holder and the owner and releases the holder from liability that may arise from such payment or delivery, and such delivery and payment may be pled as a defense in any suit or action brought by reason of such delivery or payment. This provision does not relieve a fiduciary of duties under the Florida Trust Code or Florida Probate Code. If the holder delivers property to the DFS in good faith and thereafter any other person or state claims the property, the DFS must defend the holder against the claim and indemnify the holder against any liability on the claim, except that a holder may not be indemnified against penalties imposed by another state. The bill provides a payment or delivery of property is made in good faith if:
 - The payment or delivery was made in conjunction with an accurate and acceptable report;
 - The payment or delivery was made in a reasonable attempt to comply with the chapter and other applicable Florida law;
 - The holder had a reasonable basis for believing, based on the facts then known, that the property was unclaimed and subject to this chapter; and
 - There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.
- If it appears to the DFS that, because of mistake of fact or error, a person has delivered to the DFS any property not required to be so delivered, the DFS may, within five years after such erroneous payment or delivery, refund or redeliver such money or other property to the person, provided that such money or property has not been paid or delivered to a claimant or otherwise disposed of in accordance with the chapter.
- Includes devisee, heir, personal representative, or other interested person of an estate among those persons who must file a claim with the DFS for any interest in unclaimed property.
- Increases the threshold for small estate accounts to be accompanied with a signed affidavit from \$10,000 to \$20,000.
- Provides that the ten-year period of limitation on the DFS to enforce the provisions of the chapter is tolled by the earlier of the DFS's or audit agent's delivery of a notice that a holder is subject to an audit or examination or the holder's written election to enter into an unclaimed property voluntary disclosure agreement.
- Revises the enforcement powers of the DFS to include the authority to:
 - Investigate, examine, inspect, request, or otherwise gather information or evidence on claim documents from a claimant or a claimant's representative during its review of a claim;

- Audit the records of a person or the records in the possession of an agent, representative, subsidiary, or affiliate of the person subject to the chapter to determine whether the person complied with the chapter. Such records may include information to verify the completeness or accuracy of the records provided, even if such records may not identify property reportable to the DFS;
- Take testimony of a person, including the person's employee, agent, representative, subsidiary, or affiliate, to determine whether the person complied with the chapter;
- Issue an administrative subpoena to require that certain records be made available for examination or audit and that certain testimony be provided;
- Bring an action in a court of competent jurisdiction seeking enforcement of an administrative subpoena issued under the enforcement authority of the DFS; and
- Bring an administrative action or an action in a court of competent jurisdiction to enforce the Act.
- If a person is subject to reporting property under the Act, the DFS may require the person to file a verified report that:
 - States whether the person is holding property reportable under the Act;
 - Describes the property not previously reported, the property about which the DFS has inquired, or the property that is in dispute as to whether it is reportable under; and
 - States the amount or value of the property.
- The DFS may authorize a compliance review of a report for a specified reporting year that is limited to the contents of the report filed and all supporting documents. If the review results in a finding of a deficiency in unclaimed property due and payable, the DFS must notify the holder in writing of the amount of deficiency within one year after the authorization of the compliance review. If the holder fails to pay the deficiency within 90 days, the DFS may seek to enforce the assessment under subsection (1). The DFS is not required to conduct a review under this section before initiating an audit.
- Clarifies in a contract providing for the location or collection of unclaimed property, the DFS may authorize the contractor to deduct its fees and expenses for services provided under the contract from the unclaimed property that the contractor has recovered or collected under the contract. The DFS must annually report to the CFO the total amount collected or recovered by each contractor during the previous fiscal year and the total fees and expenses deducted by each contractor.
- Provides if any material obtained during an investigation or examination contains a holder's financial or proprietary information, such information may not be disclosed or made public after the investigation or audit is completed, except as required by a court of competent jurisdiction in the course of a judicial proceeding in which the state is a party, or pursuant to an agreement with another state allowing joint audits. Any such material may be considered a trade secret and exempt from the public records law.
- Provides the fee for the costs of the investigation or audit shall be remitted to the DFS within 30 days after the date of notification the fee is due and owing and allows the DFS to charge interest at the rate of 12 percent per annum.

- Increases the duration holders must retain records of unclaimed property from five to 10 years.
- Removes the requirement that a person must be registered with the DFS in order to purchase unclaimed property.
- Provide the penalties only apply to willful violations the Act.
- Removes the threshold of \$2,000 or less for agreements that may be signed electronically, allowing all such agreements to be signed electronically.
- Provides that the recovery agreements provisions do not apply to the sale and purchase of Florida-held unclaimed property accounts through a bankruptcy estate representative or other person or entity authorized pursuant to Title 11 of the United States Code or an order of a bankruptcy court to act on behalf of or for the benefit of the debtor, its creditors, and its bankruptcy estate.

Florida Birth-Related Neurological Injury Compensation Association – Regarding the Florida Birth-Related Neurological Injury Compensation Association (NICA), the bill:

- Revises the definition of “Family residential or custodial care” to remove an exclusion that the award of family residential or custodial care is not to be included in current estimates for purposes of assessments;
- Removes the exclusion of 20 percent of the asset value from the calculation of assets and liabilities to provide that if the total of all current estimates equals or exceeds 100 percent (presently, it is 80 percent) of the funds on hand and the funds that will become available within the next 12 months, the association may not accept any new claims without express authority from the Legislature; and
- Requires NICA, in consultation with the Office of Insurance Regulation and the Agency for Health Care Administration, to provide a report to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives by September 1, 2024. The report must include recommendations for:
 - Defining actuarial soundness for the association, including options for phase-in, if appropriate;
 - Timing of reporting actuarial soundness and to whom it should be reported; and
 - Ensuring a revenue level to maintain actuarial soundness, including options for phase-in, if appropriate.

If approved by the Governor, or allowed to become law without the Governor’s signature, these provisions take effect upon becoming law.

Vote: Senate 35-3; House 92-9