

Committee on Banking and Insurance

SB 156 — Loss Run Statements

by Senator Broxson

The bill requires admitted and nonadmitted insurers to provide a loss run statement within 15 days after an individual or entity designated by the insurer receives the insured's written request. For personal lines of insurance, the insurer must provide loss run statements within 15 days of an insured's request after first providing information on how to obtain a loss run statement from a consumer reporting agency. For nonadmitted insurers, the insurer is deemed to be in compliance if the surplus lines agent provides the loss run statement on behalf of the nonadmitted insurer.

The bill reduces the number of preceding years of claims history that a group health insurer must include within a loss run statement from 5 years to 3 years. For group health insurers, the loss run statement must include certain information. The bill specifies that only the group policyholder may request and receive a loss run statement for a group health insurance policy, and repeals a conflicting statute related to group health insurance claims data.

The bill also exempts life insurers from the requirement to provide loss run statements.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-1; House 117-0

Committee on Banking and Insurance

CS/HB 273 — Money Services Businesses

by Insurance and Banking Subcommittee and Rep. Aloupis and others (CS/SB 486 by Appropriations Committee and Senator Brodeur)

The bill amends the money services businesses statutes related to cryptocurrency. The bill defines virtual currency as a medium of exchange in electronic or digital format that is not currency; subjects money transmitters to licensing requirements when transacting business involving a virtual currency; and prohibits payment instrument sellers from transacting business involving virtual currency. Mediums of exchange in electronic or digital format that are issued by or on behalf of an online game, game platform, or family of games sold by the same publisher or offered on the same game platform, or used exclusively as part of a consumer affinity or reward program but cannot be converted or redeemed for currency or another medium of exchange, are expressly exempt from the definition of virtual currency.

The bill clarifies that a money transmitter license is only required for a person acting as an intermediary between two parties. The bill also requires a money transmitter, during the period of transmission, to hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission.

The bill makes additional conforming changes under the Financial Technology Sandbox in s. 559.952, F.S. and ch. 560, F.S., to reflect the addition of virtual currency to money transmitter regulations.

If approved by the Governor, these provisions take effect January 1, 2023.

Vote: Senate 35-1; House 112-0

Committee on Banking and Insurance

HB 357 — Pharmacies and Pharmacy Benefit Managers

by Rep. Toledo and others (SB 1476 by Senators Wright and Perry)

The bill revises provisions of the Florida Insurance Code relating to the oversight of pharmacy benefit managers (PBMs) by the Office of Insurance Regulation (OIR). A PBM is a person or entity doing business in Florida, which contracts to administer prescription drug benefits on behalf of a health insurer or a health maintenance organization (HMO) to residents of Florida.

Specifically, the bill:

- Requires a health insurer or HMO, and any entity acting on their behalf, including a PBM, to comply with the pharmacy audit provisions;
- Specifies that a health insurer or HMO that contracts with a PBM is responsible for any violation of the pharmacy audit provisions committed by such PBM;
- Transfers pharmacy audit rights relating to audits by a PBM or an insurer to the Florida Insurance Code and authorizes the OIR to enforce these provisions;
- Authorizes an audited pharmacy to appeal certain final audit findings made by a health insurer or HMO, or PBM acting on their behalf; and
- Provides that a person who fails to register with the OIR while operating a PBM is subject to a \$10,000 fine for each violation.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 36-0; House 106-0

Committee on Banking and Insurance

CS/HB 381 — Breach of Bond Costs

by Judiciary Committee and Rep. Maney (CS/CS/SB 1182 by Rules Committee; Banking and Insurance Committee; and Senator Broxson)

The bill requires a bail bond agent to pay the costs and expenses incurred in returning the defendant to the original court's jurisdiction. The bail bond agent is only responsible for the itemized costs and expenses incurred for the transport of a defendant to whom the bail bond agent has a fiduciary duty and is not liable for the costs and expenses incurred in transporting any other defendant.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 37-0; House 111-0

Committee on Banking and Insurance

CS/CS/HB 389 — Money Services Businesses

by State Administration and Technology Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Zika (CS/CS/SB 1536 by Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Boyd)

The bill revises provisions and definitions regarding the control persons of a money services business (MSB). The purpose of these revisions is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB licensure application. The changes are intended to ensure that the Office of Financial Regulation will retain authorization to submit fingerprints of money services business control persons to the Federal Bureau of Investigation criminal history record information system pursuant to the licensure requirements of ch. 560, F.S.

The bill amends s. 560.103, F.S., to create an extensive definition of a “control person” for an MSB and simplify the definition of an affiliated party to be a control person, employee, or foreign affiliate of an MSB, or a person who has a controlling interest in an MSB. In addition, the bill updates a change in control notification requirement to conform to the revisions to s. 560.103, F.S., utilizing the newly created "control person" definition. The bill requires the Office of Financial Regulation to evaluate newly added control persons and ensure that such control persons have been fingerprinted—for the purpose of making sure that the addition of the new control person would not cause the MSB to no longer meet licensure requirements. Finally, the bill:

- Relocates the definition of “publicly traded” from s. 560.141, F.S., to s. 560.103, F.S.;
- Deletes no longer needed definitions;
- Makes additional conforming changes; and
- Re-enacts s. 559.952(4)(a), F.S. (relating to the Financial Technology Sandbox), and s. 560.114(2)(c), F.S. (relating to disciplinary actions and penalties), to incorporate the changes made in the bill.

If approved by the Governor, these provisions take effect October 1, 2022.

Vote: Senate 38-0; House 115-0

Committee on Banking and Insurance

HB 459 — Step-therapy Protocols

by Rep. Willhite and others (SB 730 by Senators Harrell, Polsky, and Ausley)

The bill requires a health insurer or health maintenance organization (HMO) to prescribe the manner, form, and timeframe in which an insured or subscriber may request a protocol exception or exemption and publish such information on its website. A step-therapy protocol is a written protocol used by an insurer or an HMO that specifies the order in which certain medical procedures, treatments, or prescription drugs are used to treat a condition. A protocol exemption is a determination by an insurer or HMO to authorize the use of an alternate procedure, treatment, or prescription drug to treat a condition of an insured or subscriber rather than the procedure, treatment, or drug indicated by the step-therapy protocol.

The bill requires the insurer or HMO to authorize or deny a protocol exemption in a reasonable amount of time. If the insurer or HMO denies the protocol exemption, the insurer or HMO must provide the insured or subscriber with a written response that explains the reason and clinical rationale for the denial and the procedure for appealing a denial.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 39-0; House 107-0

Committee on Banking and Insurance

SB 546 — Consumer Finance Loans

by Senator Gruters

The bill prohibits prepayment penalties for consumer finance loans.

The bill also authorizes an applicant for licensure as a consumer finance lender or a licensee to provide a surety bond, certificate of deposit, or letter of credit issued by a financial institution in the amount of \$25,000, in lieu of the current \$25,000 liquid asset requirement. Consumer finance lenders with at least one licensed location must provide a rider, surety bond, certificate of deposit, or letter of credit issued by a financial institution in the amount of \$5,000 for each additional license, not to exceed an aggregate amount of \$100,000. The applicant must file the surety bond, certificate of deposit, or letter of credit with the Office of Financial Regulation (OFR), name the OFR as beneficiary, and ensure instrument is payable on a pro rata basis. The licensee must furnish additional instruments, or an endorsement from the company that issued the original instrument, to restore the required principal amount in the event the licensee's surety bond, certificate of deposit, or letter of credit is reduced below statutory requirements during the licensee's activity.

If approved by the Governor, these provisions take effect October 1, 2022.

Vote: Senate 39-0; House 113-0

Committee on Banking and Insurance

CS/HB 689 — Workers' Compensation Benefits for Posttraumatic Stress Disorder

by State Affairs Committee and Reps. Giallombardo, Fischer, and others (CS/SB 1066 by Banking and Insurance Committee and Senators Burgess, Hooper, and Bradley)

Effective October 1, 2022, the compensability standards for posttraumatic stress disorder (PTSD) benefits for first responders is revised by extending the deadline for filing the notice of injury to 90 days after a qualifying event or a diagnosis, whichever is later. Current law provides the time for notice of injury or death is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. The bill also extends the deadline for a first responder to file a claim to 52 weeks after the qualifying event or the diagnosis, whichever is later. Current law requires a claim be filed within 52 weeks after the qualifying event.

The bill provides wage replacement benefits to a correctional officer who suffers PTSD, in certain circumstances, without the correctional officer having also sustained a physical injury in the course and scope of employment. PTSD is deemed an occupational disease, thereby providing wage replacement benefits, as well as the current medical benefits for the correctional officer. The correctional officer will qualify for PTSD disability benefits if the correctional officer was acting within the course and scope of employment; and the correctional officer is diagnosed with PTSD due to experiencing a qualifying event. A correctional officer must file a notice of injury within 90 days of a qualifying event or a diagnosis of the disorder, whichever is later. A claim must be noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

If approved by the Governor, these provisions take effect July 1, 2022, except as otherwise provided.

Vote: Senate 39-0; House 115-0

Committee on Banking and Insurance

CS/CS/CS/HB 749 — Fraud Prevention

by Commerce Committee; State Administration and Technology Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Clemons and others (CS/CS/SB 1292 by Appropriations Committee; Banking and Insurance Committee; and Senators Gruters and Bradley)

Electronic Insurance Verification

The bill requires that, in addition to driver licenses and identification cards, the Department of Highway Safety and Motor Vehicle's (DHSMV) electronic credentialing system display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage, and allow the driver to update policy information in the system. The bill requires DHSMV to provide the legislature with recommendations by October 1, 2023, regarding electronic verification of drivers' compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

The bill also appropriates \$1,413,270 to implement the electronic credentialing system administered by DHSMV.

Service Contracts and Agreements

The bill provides that a seller of a service contract that includes an automatic renewal provision must allow a consumer to cancel the contract in the same manner, and by the same means, as the consumer accepted the contract.

The bill expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties; requires that a service agreement company's or salesperson's disclosures in written advertisements meet certain requirements; requires such company or salesperson disclose the company's or salesperson's full name in radio or television advertisements; and requires that a service agreement salesperson provide his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending a call.

Public Adjusters and Public Adjuster Apprentices

The bill creates a new maximum fine amount, not to exceed \$20,000 per act, for a public adjuster or public adjuster apprentice who commits certain prohibited acts during a state of emergency declared by the Governor. Unlicensed persons who engage in these prohibited acts are subject to the same penalties as licensed persons.

Investigations by the Division of Investigative and Forensic Services (DIFS) or the State Fire Marshal (SFM)

The bill authorizes the Department of Financial Services (DFS) to fine insurers up to \$2,000 per day if the insurer fails or refuses to comply with the investigation of a fire or explosion by DIFS or the SFM.

Prosecution of False and Fraudulent Insurance Claims

The bill authorizes an insurer damaged as a result of insurance fraud to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty. The bill clarifies that prosecutions of workers' compensation fraud or false and fraudulent insurance claims must be commenced within five years of a violation.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 115-0

Committee on Banking and Insurance

CS/CS/HB 837 — Hurricane Loss Mitigation Program

by Infrastructure and Tourism Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Willhite (CS/CS/CS/SB 578 by Appropriations Committee; Community Affairs Committee; Banking and Insurance Committee; and Senator Hooper)

The bill extends the Hurricane Loss Mitigation Program (HLMP) within Florida's Division of Emergency Management (DEM) until June 30, 2032. The HLMP operations are funded through an annual appropriation of \$10 million from Florida Hurricane Catastrophe Fund to DEM. The bill expands the type of projects eligible for the Shelter Retrofit Program within the HLMP for retrofitting existing public facilities used as hurricane shelters to include construction of new public facilities to be used as hurricane shelters.

The bill also transfers administration of the Mobile Home Mitigation and Enhancement Program within the HLMP from Tallahassee Community College to Gulf Coast State College.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 37-0; House 117-0

Committee on Banking and Insurance

CS/SB 838 — Fire Investigators

by Appropriations Committee and Senators Wright, Polsky, and Hooper

The bill makes a fire investigator eligible for certain benefits under s. 112.1816, F.S., upon diagnosis of one of 21 enumerated cancers. The benefits are an alternative to pursuing a workers' compensation claim, and entitle the fire investigator to a one-time cash payout of \$25,000; cancer treatment with the employer reimbursing the fire investigator for any out-of-pocket deductible, copayment, or coinsurance related to the cancer treatment; enhanced disability benefits under an employer-sponsored retirement plan or employer-sponsored disability retirement plan if fire investigator is totally or permanently disabled due to the cancer; and a higher death benefit for the beneficiary of a fire investigator who dies from the cancer or circumstances that arise from the cancer treatment.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 37-0; House 112-0

Committee on Banking and Insurance

CS/HB 925 — Benchmark Replacements for London Interbank Offered Rate by Insurance and Banking Subcommittee and Rep. Stevenson and others (CS/SB 1246 by Commerce and Tourism Committee and Senator Gruters)

The bill provides for a transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for the London Interbank Offered Rate (LIBOR) for all contracts and instruments lacking transition provisions. The Federal Reserve Board and the Federal Reserve Bank of New York identified SOFR as its recommended alternative to the U.S. Dollar LIBOR, which expires at the end of June 2023. The bill provides for conforming changes to be made to contracts or instruments, voids fallback provisions based on LIBOR, and provides for construction of rights and duties under contracts affected by the expiration of LIBOR. The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change.

The bill provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity. The bill also contains a statement of legislative intent indicating that the provisions are remedial in nature and apply retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligation, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-0; House 114-0

Committee on Banking and Insurance

CS/CS/CS/HB 959 — Department of Financial Services

by Commerce Committee; Finance and Facilities Subcommittee; Insurance and Banking Subcommittee; and Rep. LaMarca (CS/CS/SB 1874 by Appropriations Committee; Banking and Insurance Committee; and Senator Boyd)

The bill amends sections of Florida Statutes relating to the powers and duties of the Department of Financial Services (DFS) and the head of DFS, the Chief Financial Officer (CFO). The bill provides the following changes:

Service of Process

- Requires the DFS to create a secure online portal as the sole means for the Chief Financial Officer to accept service of process as the agent for service of process on insurers, insurance agents, and other specified persons regulated under the Florida Insurance Code.
- Provides that service of process is valid and binding upon the insurer on the date the process served on the CFO is delivered to the insurer, or the insurer has been notified by the DFS that such information has been made available on the DFS online portal.

Division of Insurance Agents and Agencies

- Adds an exemption to the examination requirements for an all-lines adjuster.
- Authorizes an adjuster who holds an adjuster license and who is an unaffiliated insurance agent to obtain an adjuster appointment while maintaining his or her unaffiliated agent appointment.
- Revises provisions relating to fingerprinting requirements to comply with federal law.
- Creates notice requirements for agencies that cease doing business, and creates penalties for noncompliance.
- Increases the authority of the DFS to investigate and prosecute violations committed by a licensee while licensed under ch. 626, F.S., even if the license has expired, is not renewed, or is surrendered.
- Revises provisions relating to the qualifications and bond requirements of public adjusters.
- Specifies that public adjuster compensation may not be:
 - Based on attorney fees and costs paid to the insured;
 - Increased solely because the claim is litigated;
 - Based on amounts attributable to additional living expenses coverage, unless a specified disclosure is made.
 - Clarifies that in addition to the agent, the insurance agency must also hold an appointment issued by an insurer in order to sell a title insurance policy.

Funeral, Cemetery, and Consumer Services

- Eliminates the fee cap of \$50 for a consumer transferring the burial rights from one purchaser to another and revises the licensure requirements for embalmers and funeral directors.

- Allows funeral directors and embalmers licensed in other states to obtain reciprocal licensure in Florida if they have engaged in full-time licensed practice in that state for at least five years. A funeral director may also obtain reciprocal licensure if the applicant meets certain educational requirements.

State Fire Marshal

- Authorizes expenditure of funds from the Firefighter Assistance Grant Program for the purchase of other equipment and tools and protective clothing and equipment compliant with certain standards;
- Revises firefighter certification requirements by eliminating the option of passing an exam, rather than completing 54 hours of continuing education, to renew a fire safety certificate;
- Increases penalties the State Fire Marshal may impose on contractors and unlicensed persons by authorizing the State Fire Marshal to impose an administrative fine of up to \$10,000, in addition to or in lieu of revocation or suspension of a fire protection contractor's certificate; and
- Updates provisions relating to the inspection of boiler rooms to reflect current industry standards and clarifies that a fee is required if an inspector is required to make a special trip to conduct a testing and verification inspection.

Division of Workers' Compensation

- Specifies an employer applying for an exemption from workers' compensation coverage to provide a *valid* driver license or *valid* identification card and complete an online tutorial as a condition for application;
- Revises the formula for calculating coverage penalties to reduce the period subject to a penalty, with exceptions;
- Provides a penalty credit for an employer who has been issued a stop-work order or an enforcement action if the employer successfully completes an online tutorial;
- Extends the deadline for an employer to produce requested business records from 10 business days to 21 days before the DFS can take an administrative action;
- Requires the carrier to send an informational brochure to the injured worker within three business days, instead of three days, after the employee or employer notifies the carrier of an injury; and
- Revises onsite audit requirements of construction classes by requiring such annual audits if the estimated annual premium is \$10,000 or more.

Division of Accounting and Auditing

Updates the state's cash management and financial system provisions to reflect the transition to the Planning and Accounting, Ledger Management (PALM) system and specifies the electronic file format local governments must use to file financial reports.

Division of Rehabilitation and Liquidation

Provides employees and retired employees of the Division of Rehabilitation and Liquidation or their surviving spouses are enrollees of the state group insurance program.

Florida Patient's Compensation Fund (Fund)

- Revises the structure and authority of the Fund by eliminating the board of governors of the Fund and transferring the supervision of the Fund to the CFO or his or her designee; and
- Prescribes duties of the CFO and the DFS to wind down the Fund, and to dissolve the Fund on or before December 31, 2023.

If approved by the Governor, these provisions take effect July 1, 2022, except as otherwise provided.

Vote: Senate 39-0; House 113-0

Committee on Banking and Insurance

SB 968 — Individual Retirement Accounts

by Senator Polsky

The bill clarifies that any interest in an individual retirement account (IRA) or individual retirement annuity received in a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. As the bill clarifies, but does not modify, existing law or practice, the bill is remedial in nature and applies retroactively to all transfers made incident to divorce.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 35-0; House 118-0

Committee on Banking and Insurance

CS/HB 1023 — Insolvent Insurers

by Commerce Committee and Rep. Fabricio (CS/CS/SB 1430 by Appropriations Committee; Banking and Insurance Committee; and Senator Burgess)

The bill makes several technical changes to the assessment mechanisms for the Florida Insurance Guaranty Association (FIGA) and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FIGA provides a mechanism for the payment of covered claims under certain lines of property and casual insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. The FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss due to the insolvency of a workers' compensation insurer.

The bill makes the following changes to FIGA's assessment mechanism:

- Allows FIGA to request that the Office of Insurance Regulation, in its order levying an assessment, authorize insurers to make advance assessment payments to the FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of FIGA assessments;
- Requires an insurer electing to not recoup advances of assessment to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism; and
- Requires insurers making assessment payments to the FIGA to file reconciliation reports on a form and schedule adopted by the FIGA regardless of assessment payment method.

The bill makes the following changes to FWCIGA's assessment mechanism:

- Authorizes FWCIGA to allow an insurer to make assessment payments in a single payment or on a quarterly basis based on cash-flow needs; and
- Reduces the frequency of annual reconciliation reports subsequently filed with the FWCIGA after the assessment year from a period of three years to a period of two years.

The bill also amends Florida's Rating Law to require that past loss experience and prospective loss experience for insolvent insurers be used in the determination and fixing of workers' compensation rates, and provides that data previously reported by insolvent insurers may be used to assess the impact on rates.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 36-0; House 116-0

Committee on Banking and Insurance

SB 1058 — Property Insurer Reimbursements

by Senator Hutson

The bill authorizes the State Board of Administration to provide Florida Hurricane Catastrophe Fund (Cat Fund) coverage to authorized insurers or Citizens Property Insurance Corporation (Citizens) for the policies of unsound insurers that the authorized insurer or Citizens assumes or otherwise provides coverage. The authorized insurer or Citizens may obtain Cat Fund coverage for such policies either through the authorized insurer's or Citizens' reimbursement contract with the Cat Fund or by accepting an assignment of the unsound insurer's contract with the Cat Fund.

Effective June 1, 2023, the bill also requires that the Cat Fund provide reimbursement for a loss under collateral protection insurance when the coverage amount differs from the coverage amount under the lapsed policy if the homeowner received notice of the collateral protection insurance coverage amount, or the homeowner requested a different coverage amount from the collateral protection insurer.

If approved by the Governor, these provisions take effect July 1, 2022, except where otherwise provided.

Vote: Senate 37-1; House 110-0

Committee on Banking and Insurance

CS/HB 1099 — Living Organ Donors in Insurance Policies

by Finance and Facilities Subcommittee and Reps. Latvala, Barnaby, and others (CS/SB 1026 by Banking and Insurance Committee and Senators Cruz and Harrell)

The bill creates s. 626.97075, F.S., within Florida’s Unfair Trade Practices law (ch. 626, part IX, F.S.). The section creates a definition of “policy” as a life insurance policy, including those for individual life insurance, industrial life insurance, and group life insurance; a credit life insurance and credit disability insurance policy; and a long-term care insurance policy. The section specifies that an insurer may not, in a policy, as defined by the section:

- Decline or limit coverage of a person solely due to that person’s status as a living organ donor;
- Preclude an insured person from donating all, or part of, an organ as a condition to continuing to receive coverage under that person’s insurance policy; or
- Otherwise discriminate in the offering, issuance, cancellation, coverage, premium, or any other condition of a person’s policy without any additional actuarial risk, and based solely on that person’s status as a living organ donor.

Finally, the bill states that the Financial Services Commission may adopt rules and take actions necessary to enforce these prohibitions.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 38-1; House 113-0

Committee on Banking and Insurance

CS/SB 1502 — Estates and Trusts

by Banking and Insurance Committee and Senator Powell

The bill codifies an existing procedure presently used in Florida courts regarding a creditor's pending action against a decedent at the time of the decedent's death. Specifically, the bill provides that if an action or proceeding by the claimant is pending against a decedent at the time of the decedent's death, the requirement to bring an independent action under present s. 733.705(5), F.S., is satisfied if, within 30 days after the filing of an objection to the claim, one of the following conditions are met:

- A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party (i.e. the decedent's estate instead of the decedent).
- An order substituting the proper party is entered.

The bill also provides a similar procedure for circumstances where the decedent entered into a binding arbitration agreement relating to the claim during that person's lifetime, or if arbitration is required under s. 731.401, F.S., (regarding arbitration of disputes when arbitration provisions are included in the will or trust instrument). The bill, in this circumstance, requires a motion to compel arbitration against the decedent's estate (instead of the decedent). If voluntary arbitration had already commenced at the time of the decedent's death, the bill requires notice of the substitution consistent with the arbitration agreement. If the arbitration was court ordered, a motion for substitution is required.

The bill amends current law regarding creditor claims against settlors. Currently, if a settlor-spouse creates a lifetime trust for a beneficiary-spouse and names themselves as a subsequent beneficiary if the beneficiary-spouse dies, assets in the trust may be available to the settlor-spouse's creditors, during the lifetime of beneficiary-spouse. Under the bill, creditors of a settlor may not attach assets that the settlor previously transferred to an irrevocable trust where the beneficiary of the trust is the settlor's spouse for that spouse's lifetime and the transfers to the trust are completed gifts pursuant to s. 2511 of the Internal Revenue Code of 1986.

Finally, the bill provides a trustee may resign pursuant to whatever procedure is set forth in the terms of the trust. In part, this allows a trustee to resign with less than 30 days' notice if the trust instrument allows. A trustee resigning under the terms of a trust must give notice of the resignation to cotrustees. If there are no cotrustees, notice must be given to the successor trustee who has accepted the appointment. If there are no cotrustees or successor trustee, notice must be given to whomever has the authority to appoint a successor trustee. These notice provisions are mandatory.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 39-0; House 113-0

Committee on Banking and Insurance

CS/SB 1526 — Public Records/Annuity Contract Payees

by Banking and Insurance Committee and Senator Boyd

The bill amends s. 119.0714(1), F.S., to make exempt from public records disclosure requirements, if not already closed by order of a court, the following information in a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights:

- Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2), F.S.; and
- The names of family members, dependents, and beneficiaries of such a payee.

The bill limits this exemption to the pendency of the transfer proceeding and for six months after the final order approving, or not approving, the transfer is entered. The section also provides that this new exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will be repealed, unless saved from repeal by the Legislature, on October 2, 2027.

The bill also provides the public necessity statement, required pursuant to Art. 1, s. 24(c), State Constitution, for the public records exemption. It states, in part, that recipients of structured settlements have been targets of criminal and fraudulent acts based upon publicly available identifying information. Further, it states that protecting the personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee outweighs any public benefit that may be derived from the disclosure of such information during the period specified in the exemption.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 38-0; House 108-3

Committee on Banking and Insurance

CS/SB 1680 — Financial Institutions

by Rules Committee and Senator Gruters

The bill makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the public hearing considering approval of the application;
- Revises the required scheduling dates for examination of financial institutions;
- Allows the Office of Financial Regulation (OFR) 90 additional days to meet its statutory obligation to periodically examine a financial institution when a federal agency suspends or cancels a previously scheduled examination;
- Changes from “all or substantially all” assets to 50 percent of assets, liabilities, or a combination of assets and liabilities, the limit of assets that a mutual financial institution may sell to a stock financial institution, absent first converting to a capital stock financial institution;
- Revises the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to notify the OFR;
- Revises the scope of the OFR’s investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of the target market to support the proposed bank or trust company;
- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years to allow the OFR to waive the five-year requirement after considering specified factors;
- Requires persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the OFR within 90 days after acquiring such interest;
- Defines a “de novo branch” for the purposes of an existing de novo interstate branching provision;
- Authorizes a family trust company, licensed family trust company, or foreign licensed family trust company to maintain the deposit account, required under current law, with any bank that is insured by the Federal Deposit Insurance Corporation, or with any credit union insured by the National Credit Union Administration, either of which must be located within the United States;
- Revises when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allows international bank agencies and international branches to maintain a required deposit in banks outside of Florida, provided the deposit is in a bank within the United States; and

- Requires qualified limited service affiliates to suspend otherwise permissible activities if the jurisdiction of an international trust entity served by the qualified limited service affiliate is identified on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action (black list) or on the list of Jurisdictions Under Increased Monitoring (grey list).

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 38-0; House 112-0

Committee on Banking and Insurance

SB 7016 — OGSR/Information Submitted by Insurers/Department of Financial Services

by Banking and Insurance Committee

The bill removes the scheduled repeal of a public records exemption for certain information submitted to the Department of Financial Services (DFS) related to an insurer's anti-fraud plan or annual fraud report pursuant to s. 626.9891, F.S. The exemption is subject to review pursuant to the Open Government Sunset Review Act five years after enactment. The bill saves the public record exemption from repeal, thereby continuing the confidential and exempt status of the information.

The public records exemption for insurer's anti-fraud plans and annual fraud reports applies to:

- A description of the required anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including the position titles and descriptions of staffing;
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services of the DFS or other agencies.

If approved by the Governor, these provisions take effect October 1, 2022.

Vote: Senate 35-0; House 111-0

Committee on Banking and Insurance

SB 7018 — OGSR/Injured or Deceased Employee/Department of Financial Services

by Banking and Insurance Committee

The Open Government Sunset Review Act requires the Legislature to review each public record five years after enactment. Section 440.1851, F.S., was originally passed and signed into law in 2017. Pursuant to the Act, the section is set to stand repealed on October 2, 2022, unless saved from repeal through reenactment.

SB 7018 saves from repeal the current public records exemption for personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services pursuant to the Workers' Compensation Law (ch. 440, F.S.). "Personal identifying information," means the injured or deceased employee's name, date of birth, home mailing, or e-mail address, or telephone number. This information will continue to be confidential and exempt from public disclosure, subject to the disclosures permitted pursuant to s. 440.1851(1)(b), F.S.

These provisions were approved by the Governor and take effect October 1, 2022.

Vote: Senate 35-0; House 116-0

Committee on Banking and Insurance

SB 7020 — OGSR/Office of Financial Regulation

by Banking and Insurance Committee

The bill removes the scheduled repeal of two public records exemptions. The first relates to international trust entities and qualified limited service affiliates. The second public records exemption relates to financial institutions generally. Both exemptions were subject to review pursuant to the Open Government Sunset Review Act, five years after enactment. The exemptions are contained in ss. 663.416, 663.540, and portions of s. 655.057, F.S. The bill saves the public records exemptions from repeal, thereby continuing the confidential and exempt status of the information. The Office of Financial Regulation (OFR) regulates these entities.

The public records exemption for international trust entities and qualified limited service affiliates applies to:

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

The public records exemption for financial institutions, generally, applies to:

- Certain information held by OFR relating to investigations, reports of examinations, operations, or condition, including working papers, prepared by, or for the use of, OFR, or any state or federal agency responsible for the regulation or supervision of financial institutions in this state.
- Any confidential information supplied to OFR or to employees of any financial institution by other state or federal governmental agencies.

If approved by the Governor, these provisions take effect October 1, 2022.

Vote: Senate 33-2; House 113-0