

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1077 Department of Financial Services
SPONSOR(S): Insurance & Banking Subcommittee, LaMarca
TIED BILLS: IDEN./SIM. **BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Salter	Cooper
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- **Division of Public Assistance Fraud (DPAF):** Current law does not list DPAF as a criminal justice agency. The bill establishes DPAF as a criminal justice agency, allowing proper execution of fighting public assistance fraud.
- **Board of Funeral, Cemetery, and Consumer Services:** Currently, the Chief Financial Officer of DFS is required to nominate three members per vacant position on the Board, and requires six voting members for a quorum. The bill requires only one nomination per vacancy and changes the definition of a quorum. The bill also removes unnecessary member staggering requirements and provides clarification regarding other board member requirements.
- **Disqualification and Penalties of Applicants and Licensees:** Current law lacks a provision under which a person can be disqualified for licensure based on a criminal record. The bill creates a permanent bar to licensure based on certain crimes and disqualifying periods for various felonies and misdemeanors.
- **Violations by Unlicensed Persons:** Current law does not specify activity prohibited without a license under ch. 497, F.S. The bill prohibits specific unlicensed activity and changes the penalty for unlicensed funeral activity from a second-degree misdemeanor to a third-degree felony.
- **Explosives:** Current law defines a two-component explosive as having a detonator that is a No.6 blasting cap. The bill changes this distinction to “any detonator” to fall in line with current practice.
- **Uniform Fire Alarm Permit Application:** Under current law, contractors are required to apply for, and receive, a permit prior to installing, replacing, or repairing a fire alarm system. The bill expedites repairs of systems that have previously been permitted by the local enforcement agency by allowing repair to begin after filing an application. Contractors would not have to wait to receive the permit, although the permit and approval from the local enforcement agency is still required to ensure compliance.
- **Influencing a Firesafety Inspector:** The bill prohibits any person from influencing a firesafety inspector into violating the Fire Prevention Code or from offering compensation to induce a violation. It also prohibits a firesafety inspector from knowingly accepting an attempt to influence a violation.
- **Volunteer Firefighter Service:** Currently, a volunteer firefighter who is transitioning to become a career firefighter is prohibited from entering immediately dangerous to life and health environments. The bill allows the transitioning firefighter to act in the same capacity as when they were a volunteer firefighter, as long as they are under supervision of a career firefighter and the period of transition does not go beyond one year.
- **False Personation:** Current law prohibits impersonation of an officer of DFS and a subset of a fire or arson investigator of DFS. The bill eliminates the subset and adds broader language, encompassing all officers of DFS, as well as any personnel or representative of the Division of Investigative and Forensic Services.

The bill has no fiscal impact on state or local government revenue or expenditures. It has no known positive or negative economic impacts on the private sector.

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

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1077b.IBS

DATE: 1/28/2020

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services (DIFS);
- Public Assistance Fraud (DPAF);
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Public Assistance Fraud

When DIFS was created in 2016, DPAF was not designated as a criminal justice agency, limiting access to information within criminal records systems. Under current law, "criminal justice agency" means a court,¹ the Department of Law Enforcement,² the Department of Juvenile Justice,³ the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect,⁴ and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.⁵ DPAF currently operates, in part, as a criminal justice agency. However, current statute does not appropriately reflect this.

Effect of the Bill

The bill establishes DPAF as a criminal justice agency, permitting broader access to criminal records. The effect of this change should improve the department's investigation and enforcement capabilities.

Board of Funeral, Cemetery, and Consumer Services

The Board of Funeral, Cemetery, and Consumer Services (The Board) consists of ten members, nine of which are nominated by the Chief Financial Officer (CFO), confirmed by the Senate, and appointed by the Governor.⁶ The tenth member is the State Health Officer or his or her designee.⁷ Currently, the CFO is required to nominate three persons for each vacancy on the board. Often times, the CFO does not receive three or more applications for any given vacancy. Additionally, one Board member must be a Certified Public Accountant (CPA) not affiliated with the death care industry. This position has been vacant since September 2017.⁸

¹ S. 943.045 (11)(a), F.S.

² S. 943.045 (11)(b), F.S.

³ S. 943.045 (11)(c), F.S.

⁴ S. 943.045 (11)(d), F.S.

⁵ S. 943.045 (11)(e), F.S.

⁶ S. 497.101 (1), F.S.

⁷ *Id.*

⁸ Department of Financial Services, Agency Analysis of House Bill 1077, p.2 (Jan. 14, 2020).

In order for the Board to conduct business, a quorum must be present. A quorum currently means the presence of six board members. A quorum has proved difficult to meet due to vacant positions, member absences, and member recusals. Current law requires staggered appointments of initial Board members. DFS is required to adopt rules establishing forms and procedures for application for membership on the Board.

Effect of the Bill

The bill amends the requirement of three nominees per vacancy to an option of one to three nominations. Two members, instead of three, would still be required to be residents of the state, to have never been licensed as funeral directors or embalmers, and to have no connection to the death care industry. The CPA qualification of having never been licensed as a funeral director or embalmer remains, while the CPA would be allowed to be associated with the death care industry.

The bill also removes the provision requiring staggered appointments following expiration of the terms of initial board members. Because successor members have since been staggered, the provision no longer is necessary. The bill eliminates the delegated rulemaking authority to DFS for establishing forms by which persons can apply for membership. Because the Governor makes the appointments, that delegation is unnecessary.

Disqualification and Penalties of Applicants and Licensees

Individuals, or the individual on behalf of an entity, applying for licensure or relicensure under ch. 497, F.S., must disclose their criminal records in accordance with s. 497.412, F.S. Applicants must disclose any felony or misdemeanor directly or indirectly relating to the death care industry, no matter when it was committed.⁹ Felonies unrelated to the death care industry and committed within the 20 years immediately preceding the application under ch. 497, F.S., must be disclosed.¹⁰ Misdemeanors unrelated to the death care industry and committed within the five years immediately preceding the application under ch. 497, F.S., must also be disclosed.¹¹ Chapter 497, F.S., currently lacks any ability to disqualify an application for licensure on the basis of an applicant's criminal record.

Effect of the Bill

The bill creates a permanent bar from licensure under certain circumstances. An applicant can be permanently barred from licensure under ch. 497, F.S., if the applicant has been found guilty of or has pleaded guilty or nolo contendere¹² to any of the following, regardless of adjudication:

- (a) A felony of the first degree,
- (b) A capital felony,
- (c) A felony money laundering offense, or
- (d) A felony embezzlement.

The bill also creates disqualification periods for various felonies and misdemeanors. All felonies involving moral turpitude¹³ that do not fall under the permanent bar are subject to a ten-year disqualifying period. All felonies that do not fall under the permanent bar and that do not involve moral turpitude are subject to a five-year disqualifying period. All misdemeanors directly related to the financial services business¹⁴ are subject to a five-year disqualifying period. A disqualifying period begins upon an applicant's final release from criminal supervision or upon completion of a criminal

⁹ S. 497.412(10)(c)1., F.S.

¹⁰ S. 497.412(10)(c)2., F.S.

¹¹ S. 497.412(10)(c)3., F.S.

¹² A nolo contendere plea is a plea by which a defendant in a criminal prosecution accepts conviction as though a guilty plea had been entered but does not admit guilt.

¹³ "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a person owes to others and to society in general." 16 Fla. Jur. 2d Criminal Law – Substantive Principles/Offenses §6.

¹⁴ The bill defines financial services business as "any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation."

sentence. A license may not be issued until all related fines, court costs & fees, and court-ordered restitution have been paid.

Once a disqualifying period has elapsed, the applicant carries the burden of showing that they have been rehabilitated, they do not pose a risk to the public, they are fit and trustworthy to engage in business regulated by ch. 497, F.S., and they are otherwise qualified. A grant of a pardon or the restoration of civil rights pursuant to ch. 940, F.S., and s. 8 Art. IV of the State Constitution, with respect to a finding of guilt or a plea does not bar an applicant from licensure.¹⁵

The bill gives rulemaking authority to the DFS for purposes of implementation. The rules must include additional disqualifying periods upon a finding of the commitment of multiple crimes, and may include other factors reasonably related to the applicant's criminal history.¹⁶ The rules must provide for mitigating and aggravating factors. Mitigating factors must not result in a disqualifying period of less than five years. Mitigating factors will not apply to the five year disqualifying period for all felonies unrelated to both the death care industry and moral turpitude or the five year disqualifying period for all misdemeanors directly related to the financial services business.

The Board may grant an exemption from disqualification due to an applicant's criminal record if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of a judgment and sentence relating to the disqualifying offense. Additionally, five years must have elapsed since the applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for the disqualifying offense. In order for the Board to grant an exemption, an applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if granted a license under ch. 497, F.S.

Evidence presented to the Board by an applicant for a potential exemption must include the following:

1. Facts and circumstances surrounding the disqualifying offense,
2. The time that has elapsed since the offense,
3. The nature of the offense and the harm caused to the victim(s),
4. The applicant's history before and after the offense, and
5. Any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

The Board holds discretion whether to grant or deny an exemption. The Board's decision is subject to ch. 120, F.S., the Administrative Procedure Act. A formal proceeding under s. 120.57(1)¹⁷ is available to an applicant only if the applicant disputes material facts that the DLE relied upon in order to reach a decision.

Violations by Unlicensed Persons

Chapter 497, F.S., requires a license for specific death care industry practices, although it does not include specific examples of what is considered a licensed or unlicensed practice. Current law provides a penalty of a second-degree misdemeanor for individuals who engage in activity requiring licensure without possessing a license.¹⁸

Effect of the Bill

The bill specifies that a person may not be, act as, or advertise himself or herself to be a funeral director, embalmer, or direct disposer unless he or she is licensed by DFS. The bill also specifies that

¹⁵ See drafting comments.

¹⁶ See drafting comments.

¹⁷ This section lays out additional procedures applicable to hearings involving disputed issues of material fact under the Administrative Procedure Act.

¹⁸ S. 497.159(6), F.S.

a person may not be, act as, or advertise himself or herself as a preneed¹⁹ sales agent unless currently licensed by DFS and is appointed by a preneed main licensee, for whom they are executing preneed contracts. Any violation of these newly created subsections would result in a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Explosives

Chapter 552, F.S., addresses the manufacture, distribution, and use of explosives, which are regulated by the State Fire Marshal. The current definition of a two-component explosive requires detonation to be triggered by a No. 6 blasting cap. This specific blasting cap has gone out of production and current blasting caps do not fall under the same rating system. Current blasting caps fall outside of this definition and therefore are not effectively regulated.

Effect of the Bill

The bill removes the No. 6 blasting cap specification and changes it to any detonator. The amendment to this subsection brings the language in line with current practices.

Uniform Fire Alarm Permit Application

Contractors can work on installing or repairing a fire alarm system only after receiving a permit. Local enforcement agencies often require a plan review for installation or replacement. If a plan review is required, a contractor must file a Uniform Fire Alarm Permit Application with the local enforcement agency and receive the permit prior to installing or replacing a fire alarm. If the local enforcement agency requires a fire alarm permit for a repair to an existing alarm system previously permitted by the local enforcement agency, a contractor must receive the permit prior to repairing the system.

Effect of the Bill

The bill allows a contractor to begin a repair after filing the application instead of waiting for the permit to be received. However, this change only applies if the local enforcement agency requires a permit to repair an existing alarm system that was previously permitted by the agency. If a contractor begins the repair prior to receiving the permit, the repaired fire alarm will not be compliant with the local enforcement agency until the permit is issued and the agency has approved the repair. This allows repairs to be completed in a more efficient manner.

Influencing a Firesafety Inspector

If the State Fire Marshal (SFM) finds a violation of ch. 633, F.S., or a violation of any rule or order of the SFM, the SFM has the authority to deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector.²⁰ In addition, any person who violates a provision of ch. 633, F.S., or any order or rule of the SFM commits a misdemeanor of the second degree.²¹

Effect of the Bill

The bill prohibits any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick a firesafety inspector into violating the Florida Fire Prevention Code, rules adopted by the SFM, or any provision of ch. 633, F.S. It also prohibits any person from offering compensation to a firesafety inspector to induce a violation. Additionally, the bill prohibits a firesafety inspector from knowingly and willfully accepting an attempt by a person to influence a violation of the Florida Fire Prevention Code, any rule adopted by the SFM, or any

¹⁹ Preneed contract means “any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.” S. 497.005 (61), F.S.

²⁰ S. 633.216 (6)(b), F.S.

²¹ S. 633.124 (1), F.S.

provision of ch. 633, F.S. A violation by a firesafety inspector of this new provision allows the SFM to deny, refuse to renew, suspend, or revoke a firesafety inspector's certificate.²² Moreover, any person who violates the bill's provisions commits a misdemeanor of the second degree.²³

Volunteer Firefighter Service

Volunteer firefighters are required to obtain a Firefighter Certificate of Completion through training. With this certificate, they can enter into immediately dangerous to life and health (IDLH) environments, just as career firefighters can. Volunteer firefighters can become career firefighters, if they complete a Certificate of Compliance. Currently, if a volunteer firefighter chooses to become a career firefighter, he or she is no longer able to enter an IDLH environment while completing the Certificate of Compliance.

Effect of the Bill

The bill allows volunteer firefighters who are in transition to become career firefighters to function in the same capacity in which they acted as volunteer firefighters. The period for which they remain volunteers cannot extend beyond one year, collectively or consecutively. A volunteer firefighter in transition must hold a Certificate of Completion with a fire service provider and subsequently be employed as a regular or permanent firefighter. The volunteer firefighter in transition must be under the direct supervision of an individual holding a valid firefighter Certificate of Compliance. This allows Fire Service Providers to transition qualified personnel from volunteer to career status without stripping their ability to perform.

False Personation

Section 843.08, F.S., lays out the penalties for false personation, which is treated as an obstruction of justice, a third-degree felony. If the false personation is committed with another felony, it is considered a second-degree felony. If it is committed and causes death or personal injury to another individual, it is considered a first-degree felony. Current law prohibits impersonation of a fire or arson investigator of DFS and any officer of DFS but does not address officers of DIFS.

Effect of the Bill

The bill would take out the specificity of a fire or arson investigator of DFS and instead add "any personnel or representative of the Division of Investigative and Forensic Services," making the specific protection broader. This change makes it a felony to impersonate any DIFS personnel and any DFS officer.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S., relating to the Department of Financial Services.

Section 2: Amends s. 497.101, F.S., relating to the Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.

Section 3: Creates s. 497.1411, F.S., relating to disqualification of applicants and licensees; penalties against licensees; rulemaking.

Section 4: Amends s. 497.157, F.S., relating to unlicensed practice; remedies concerning violations by unlicensed persons.

Section 5: Amends s. 552.081, F.S., relating to definitions.

²² S. 633.216 (6)(b), F.S.

²³ S. 633.124 (1), F.S.

Section 6: Amends s. 553.7921, F.S., relating to fire alarm permit application to local enforcement agency.

Section 7: Creates s. 633.217, F.S., relating to influencing a firesafety inspector; prohibited acts.

Section 8: Amends s. 633.416, F.S., relating to firefighter employment and volunteer firefighter service; saving clause.

Section 9: Amends s. 843.08, F.S., relating to false personation.

Section 10: Amends s. 943.045, F.S., relating to definitions.

Section 11: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DFS is directed to adopt rules to:²⁴

- Administer s. 497.1411, F.S.;
- Provide for additional disqualifying periods due to commitment of multiple crimes, which may include other factors reasonably related to the applicant's criminal history; and
- Provide for mitigating and aggravation factors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pardon (lines 218–220): The language of the bill makes it seem as if a pardon is currently a reason for a permanent bar or a period of disqualification. However, the DFS analysis points out that a grant, pardon, or restoration of civil rights for a crime delineated by the section results in the crime not being a bar to licensure.²⁵ It is recommended that an amendment be added to reconcile this gap in the language and the analysis.

Rulemaking Authority (lines 193–200): The bill allocates rulemaking authority to DFS in relation to barring or disqualifying licensure. Current law vests sole authority in the Board to determine any and all criteria for licensure,²⁶ and to renew and decline to renew licenses under ch. 497, F.S.²⁷ Both paragraphs include rulemaking authority, therefore there appears to be a conflict with the delegation to DFS.²⁸

Administrative Procedures Act (lines 246–250): Chapter 120, F.S., the Administrative Procedures Act, allows for a formal proceeding when an applicant disputes the material facts that an agency or board relies upon to make a licensure decision. This chapter already applies to licensure decisions by the Board. Therefore, the bill language establishing the right to a formal hearing appears unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment created s. 633.217, F.S., relating to firesafety inspectors, to prohibit:

- Any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick, a firesafety inspector into violating, or offering to compensate the firesafety inspector to induce a violation of, any provision of the Florida Fire Prevention Code, a rule adopted by the State Fire Marshal, or ch. 633, F.S.
- A firesafety inspector from knowingly and willfully accepting an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

The staff analysis has been updated to reflect the committee substitute.

²⁴ See drafting comments.

²⁵ Department of Financial Services, Agency Analysis of House Bill 1077, p.4 (Jan. 14, 2020).

²⁶ S. 497.103 (1)(a), F.S.

²⁷ S. 497.103 (1)(k), F.S.,

²⁸ While the Board is housed in DFS, they have independent authority.