

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 1404

INTRODUCER: Banking and Insurance Committee and Senator Perry

SUBJECT: Department of Financial Services

DATE: January 21, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1404 is the 2020 legislative Package for the Department of Financial Services (DFS).

This bill amends sections of Florida Statutes governing the following DFS Divisions:

Investigative and Forensic Services; Public Assistance Fraud; Funeral, Cemetery, and Consumer Services; and State Fire Marshal. The bill:

- Designates the Division of Public Assistance Fraud a criminal justice agency.
- Amends the composition requirements of the Board of Funeral, Cemetery, and Consumer Services; clarifies member requirements, amends the definition of “quorum” to enable ease of business; removes term staggering requirements; and clarifies rulemaking responsibilities.
- Clarifies and provides grounds for disqualification of death care licensure applicants based on criminal history.
- Increases criminal penalties associated with unlicensed funeral activity.
- Updates the definition of “two-component explosive” to reflect changes in the marketplace.
- Allows contractors to begin repairs on a previously permitted fire alarm prior to receiving a permit to do so, yet maintains that such repair will not be compliant until permitted and approved.
- Prohibits influencing a firesafety inspector to violate applicable law through threats, coercion, trickery, or compensation, and prohibits a firesafety inspector from knowingly and willingly accepting such an attempt.
- Allows fire service providers to hire volunteer firefighters, and allow them to continue to function in volunteer firefighter capacity for the first year of employment while they obtain career firefighter certifications.

- Expands the applicability of criminal penalties for impersonation to investigators and personnel of DFS.

The effective date is July 1, 2020.

II. Present Situation:

Division of Public Assistance Fraud

The Division of Public Assistance Fraud (PAF) is responsible for enforcing state laws regarding program eligibility and proper use of public assistance benefits. PAF is responsible for investigating allegations of fraud related to the Cash Assistance/Temporary Assistance for Needy Families (TANF) program, the Supplemental Nutritional Assistance Program (SNAP); Medicaid recipients; disaster assistance/emergency benefits; the School Readiness and Voluntary Pre-Kindergarten programs; and Social Security Disability benefits.¹

PAF has operated as a criminal justice agency since its inception in 1972, however, PAF is currently undefined in regard to its status as a criminal justice agency.² Under Florida law, a criminal justice agency is defined, in part, as any governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.³

Funeral, Cemetery, and Consumer Services

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

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

Currently, the board must have 10 members; one member must be the State Health Officer, or their designee, and the remaining 9 members must be nominated by the Chief Financial Officer

¹ Division of Public Assistance, <https://myfloridacfo.com/Division/PAF/> (last visited January 16, 2020).

² Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

³ Section 943.045(11)(e), F.S. *See also*: s. 943.045(2), F.S.; the term “administration of criminal justice” means “performing functions of detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies.”

⁴ *See* s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. s. 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. s. 497.141(12)(b)-(c), F.S.

(CFO), appointed by the Governor, and confirmed by the Senate.⁵ The composition of the board must be as follows:

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

Members must not be principals or employees of the same company or partnership, or group of companies or partnerships under common control.⁶ DFS reports that the CFO often does not receive a sufficient amount of applications to fill member positions.⁷ For example, the position that must be filled by a certified public accountant has remained open since 2017.⁸

Board members are appointed for 4 year terms, except for the State Health Officer, who serves as long as they hold office.⁹ The CFO is authorized to stagger the terms of members after the terms of the initial members expire.¹⁰ The terms have already been staggered at the initiation of the board.¹¹

⁵ Section 497.101(1), F.S.

⁶ Section 497.101(2), F.S.

⁷ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

⁸ *Id.*

⁹ Section 497.101(3), F.S.

¹⁰ *Id.*

¹¹ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

A quorum is necessary to conduct the business of the board. A quorum consists of six members of the board.¹² DFS indicates that it can be difficult to obtain this number due to board vacancies, absenteeism, and necessary recusal.¹³

DFS is required to adopt rules regarding application forms and procedures for appointment to the board.¹⁴

Disqualification of Licensure Applicants

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

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation;
- Any other felony committed within the 20 years preceding the application; and
- Any other misdemeanor committed within the 5 years preceding the application.

Unlicensed Practice

Chapter 497, F.S., requires individuals to maintain a license for specified death care industry practices. DFS is authorized to issue administrative complaints against entities believed to be in violation of licensure requirements.¹⁵ Section 497.159, F.S., provides for criminal penalties; unlicensed activity is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹⁶

Explosives

Chapter 552, F.S., sets forth the requirements to lawfully engage in the business of a manufacturer-distributor, or to acquire, sell, possess, store, or engage in the use of explosives in this state. The chapter's current definition of a two-component explosive requires the use of a "No. 6 blasting cap" for detonation.¹⁷ No. 6 blasting caps went out of production several years ago and current blasting caps no longer use the same rating system.¹⁸

Fire Alarm Permits

Contractors are required to file a Uniform Fire Alarm Permit Application with a local law enforcement agency, and must receive the permit before installing, replacing, or repairing an

¹² Section 497.101(6), F.S.

¹³ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

¹⁴ *Id.*, s. 497.103(2)(c), F.S.

¹⁵ Section 497.157(2), F.S.

¹⁶ Section 497.159(6), F.S.

¹⁷ Section 552.081(13), F.S.

¹⁸ Department of Financial Services, *Legislative Bill Analysis of SB 1404, January 14, 2020* (on file with Senate Banking and Insurance Committee).

existing fire alarm that was previously permitted by the local enforcement agency, if the local enforcement agency requires a permit for the repair.¹⁹

Firesafety Inspectors

Section 633.216, F.S., requires each county, municipality, and special district that has firesafety enforcement responsibilities to employ or contract with a firesafety inspector. Subject to certain exceptions²⁰, the firesafety inspector is responsible for conducting all firesafety inspections required by law.²¹ These firesafety inspections include the inspection of buildings and facilities, on a recurring or regular basis, on behalf of the state or any county, municipality, or special district with fire safety responsibilities.²² The Florida Fire Prevention Code²³ governs design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules. These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S., but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.²⁴

The Chief Financial Officer is designated as “State Fire Marshal.”²⁵ In any county, municipality, or special district that does not employ or appoint a firesafety inspector, the State Fire Marshal assumes the duties of the local county, municipality, or independent special fire control district with respect to firesafety inspections of educational property.²⁶

A person who violates any provision of ch. 633, F.S., Fire Prevention and Control, any order or rules of the State Fire Marshal, or any order to cease and desist or to correct conditions constitutes a misdemeanor of the second degree.²⁷

It is illegal to impersonate the State Fire Marshal or firesafety inspector; a person who impersonates either official commits a felony of the third degree, and if the impersonation occurs during the commission of a separate felony, a person commits a felony of the first degree.²⁸ Section 468.629, F.S., makes it illegal for a person to influence a building code enforcement official by coercion or compensation.²⁹ Any person who commits such acts commits a misdemeanor of the first degree, and, if the person was previously convicted of such act, a felony of the third degree.³⁰

¹⁹ Section 553.7921(1)(b), F.S.

²⁰ For example, this requirement does not apply to farm outbuildings or licensed plumbing contractor installed standpipe systems and certain connected items. S. 633.226, F.S.

²¹ Section 633.216(1), F.S.

²² Section 633.102(12), F.S.

²³ Chapter 69A-60, F.A.C. The Florida Fire Prevention Code is adopted by the State Fire Marshal, and contains and incorporates by reference all firesafety laws and rules. S. 633.202(1), F.S.

²⁴ See Rule 69A-60.002, F.A.C.; s. 633.214(4), F.S.

²⁵ Section 633.104(1), F.S.

²⁶ Section 633.104(7), F.S.

²⁷ Section 633.124(1), F.S.

²⁸ Section 633.122, F.S.

²⁹ Section 468.629(1)(f) and (g), F.S.

³⁰ Section 468.629(2), F.S.

Volunteer Firefighter Employment

The National Fire Prevention Association estimates that there were approximately 1,056,200 local firefighters in the United States as of 2017.³¹ Of the total number of firefighters, 35 percent were career firefighters, and 65 percent were volunteer firefighters.³² Florida has 528 fire departments.³³ More than 315 Florida fire departments utilize volunteers to sustain operations.³⁴ Approximately 12 million Florida residents depend on volunteer firefighters to protect their communities.³⁵ The Firefighter Assistance Grant Program, created in 2016 to improve the emergency response capability of fire departments reliant on volunteer firefighters, provides grant money to such fire departments to provide volunteer firefighter training and procure equipment. In 2018, 29 fire departments were awarded such grants.³⁶

Florida fire service providers are currently prohibited from employing an individual to extinguish fires or to supervise those who do unless the individual holds a current and valid Firefighter Certificate of Compliance.³⁷ Thus, fire service providers are currently prohibited from employing volunteer firefighters, who hold a Volunteer Firefighter Certificate of Completion.³⁸ Volunteer firefighters can enter immediately dangerous to life and health (IDLH) environments. However, if employed by the same department prior to achieving a Firefighter Certificate of Compliance they would not be allowed to enter the IDLH environments they were authorized to enter the day before beginning career employment.³⁹

False Personation

Pursuant to s. 843.08, F.S., any person who falsely assumes or pretends to be an officer of a specified type commits a felony of the third degree, a felony of the second degree when committed with another felony, and a felony in the first degree if the felony is the cause of death or personal injury of another individual.⁴⁰ A person who impersonates an officer of the DFS is subject to these criminal penalties.⁴¹ However, there is no criminal penalty for impersonating an

³¹ National Fire Prevention Association, U.S. Fire Department Profile, <https://www.nfpa.org/News-and-Research/Data-research-and-tools/Emergency-Responders/US-fire-department-profile> (Last visited January 16, 2020).

³² *Id.*

³³ National Fire Prevention Association, *Number of U.S. Fire Departments by State*, <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osNumberOfFireDeptInUS.ashx?la=en> (Last visited January 16, 2020).

³⁴ Division of State Fire Marshal, *Florida Volunteer Firefighter Information*, <https://myfloridacfo.com/Division/SFM/VOLFF/default.htm> (Last visited January 16, 2020).

³⁵ *Id.*

³⁶ Division of State Fire Marshal, *FY2018 Florida Firefighter Assistance Grant Award Outcomes*, https://myfloridacfo.com/Division/SFM/VOLFF/FY2018_GrantOutcomes.pdf (Last visited January 16, 2020).

³⁷ Section 633.416(1)(a), F.S.

³⁸ Section 633.408, F.S.

³⁹ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

⁴⁰ Section 843.08, F.S., contains a list specifying which types of officers it is unlawful to impersonate. This list includes, but is not limited to, firefighters, sheriffs, officers of agencies, and school guardians.

⁴¹ Section 843.08, F.S.

investigator or personnel of DFS. DFS employs personnel who are not officers but have access to active criminal cases and conduct criminal investigations.⁴²

III. Effect of Proposed Changes:

Division of Public Assistance Fraud (Sections 1 and 9)

Section 1 amends s. 20.121(2)(f), F.S., to designate the Division of Public Assistance Fraud as a criminal justice agency for the purposes of ss. 943.045-943.08, F.S. The designation allows the division to continue having access to criminal justice information contained in FCIC and NCIC systems of criminal records when conducting criminal investigations and other law enforcement support functions.⁴³

Section 10 amends s. 943.045, F.S., to include the Division of Public Assistance Fraud in the definition of “criminal justice agency.”

Funeral, Cemetery, and Consumer Services

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

Section 2 amends s. 497.101, F.S., to reduce the minimum number of nominations the CFO must make for nine board member positions from three nominations to one. The bill also reduces from three to two the number of positions on the board that must be filled by consumers who are residents of Florida, have never been licensed funeral directors or embalmers, are not connected with a cemetery or licensed cemetery company, nor connected to the death care industry or the practice of embalming, funeral directing, or direct disposition. The board must also now have a consumer member who is a resident, a licensed certified public accountant, who has never been licensed as a funeral director or embalmer, is not a principal or employee of any ch. 497, F.S., licensee, and does not otherwise have control (as defined in s. 497.005, F.S.) over any ch. 497, F.S., licensee. This change requires the appointment of a licensed CPA who has some knowledge of and association with, but not a controlling interest in, licensees in the death care industry.

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

The section eliminates unnecessary statutory provisions regarding the staggered terms of Board members, which have already been established. The statutory change will also eliminate DFS rulemaking responsibilities concerning the application process, which DFS asserts is unnecessary, as the Governor makes the appointments.⁴⁴

⁴² Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

⁴³ *Id.*

⁴⁴ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

Disqualification of Licensure Applicants

Section 3 of the bill creates s. 497.1411, F.S., to provide and clarify grounds for disqualification of licensure applicants based on criminal history. Subsection (1) provides definitions of “applicant,” “felony of the first degree” and “capital felony,” and “financial services business.” Subsection (2) provides an enumerated list of crimes for which, if an applicant is found guilty of or pleads nolo contendere to, regardless of adjudication, are a permanent bar from licensure under ch. 497, F.S. These crimes are a first degree felony, a capital felony, a felony money laundering offense, or a felony embezzlement.

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

- A 10-year disqualifying period for all felonies involving moral turpitude not subject to a permanent bar on licensure.
- A 5-year disqualifying period for all other felonies and for all misdemeanors directly related to the financial services business, defined as any financial activity regulated by DFS, the Office of Insurance Regulation, or the Office of Financial Regulation.

These specifications are intended to provide clarity beyond the current statutory scheme, which provides no guidelines to determine whether a specific crime is considered “directly or indirectly related to or involving any aspect of the practice or business” of death care industry functions. DFS suggests that the lack of clarity and guidance in current statute has led to inconsistencies in recommendations and Board rulings on applications.⁴⁵

Subsection (4) requires DFS to adopt rules to administer the section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant’s criminal history. The rules must also provide mitigating and aggravating factors, except that mitigation may not result in a disqualification period of less than 5 years.

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

Subsection (7) allows, but does not require, DFS to award a license, despite a conviction, upon a grant of a pardon or restoration of civil rights. Subsection (8) authorizes the board to grant an exemption from a criminal record related disqualification, and provides standards for mitigating factors. Chapter 120, F.S., administrative remedies are available to applicants for whom the board has granted or denied an exemption.

Unlicensed Practice

Section 4 of the bill amends s. 497.157, F.S., to increase penalties for unlicensed activity from a misdemeanor to a felony of the third degree, and expands unlicensed activity to include acting,

⁴⁵ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

advertising, or otherwise holding oneself out to be a funeral director, embalmer, direct disposer, or preneed sales agent, unless currently licensed as such, or, in the case of a preneed sales agent, otherwise appointed by a licensee.

Explosives

Section 5 updates the definition of “two-component explosives” in s. 552.081, F.S., by removing the requirement of a “No. 6 cap,” which is no longer manufactured.

Fire Alarm Permits

Section 6 amends s. 553.7921, F.S., to authorize contractors to begin repairs on existing, permitted fire alarms upon filing a Uniform Fire Alarm Permit Application, but prior to receiving the permit for the repair. Fire alarms repaired under such circumstances are not considered compliant until the permit is issued and the local law enforcement agency approves the repair.

Influencing a Firesafety Inspector

Section 7 creates s. 633.217, F.S., to prohibit influencing or attempting to influence a firesafety inspector by threatening, coercing, tricking, or offering compensation for the purpose of inducing the firesafety inspector to violate any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. Subsection (2) prohibits a firesafety inspector from knowingly and willingly accepting an attempt by a person to influence them into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. As s. 633.124(1), F.S., provides that any person who violates any provision of ch. 633, F.S., commits a misdemeanor of the second degree, violations of s. 633.217, F.S., relating to influencing a firesafety inspector carry the criminal penalty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Volunteer Firefighter Employment

Section 8 amends s. 633.416, F.S., to authorize fire service providers to employ volunteer firefighters, and allow them to act in volunteer firefighter capacity for up to 1 year under the direct supervision of an individual holding a valid firefighter certificate of compliance, while they obtain career firefighter certifications. This will increase the availability of firefighters capable of entering immediately dangerous to life and health (IDLH) environments and protecting their communities. The DFS anticipates that this change will improve rural and small agency recruitment and retention efforts by facilitating the hiring of local candidates who are more inclined to remain in the area instead of hiring candidates.⁴⁶

⁴⁶ Department of Financial Services, *Legislative Bill Analysis of SB 1404*, January 14, 2020 (on file with Senate Banking and Insurance Committee).

False Personation

Section 9 of the bill amends s. 843.08, F.S., to expand the applicability of criminal penalties associated with false personation to include false impersonation of DFS investigators and personnel.

Section 11 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.121, 497.101, 497.157, 552.081, 553.7921, 633.416, 843.08 and 943.045.

This bill creates section 497.1411 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on January 21, 2020:

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

- B. **Amendments:**

None.