

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1209 Department of Financial Services

SPONSOR(S): Commerce Committee, State Administration & Technology Appropriations Subcommittee, and Insurance & Banking Subcommittee, Fetterhoff and others

TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 119 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1209 passed the House on April 21, 2021, and subsequently passed the Senate on April 26, 2021.

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

- **Division of Public Assistance Fraud (DPAF):** Establishes DPAF as a criminal justice agency.
- **Firefighter Cancer Benefits Under State Risk Management Trust Fund (SRMTF):** Benefits payable for a state firefighter's cancer diagnosis will be paid from the SRMTF rather than the employing state agency.
- **Sexual Harassment Victims Under State Risk Management:** Prohibits employees covered by the SRMTF from engaging in retaliatory conduct against a sexual harassment victim. Criminalizes knowingly disseminating personal identifying information of a sexual harassment victim.
- **Funeral, Cemetery, and Consumer Services (FCCS):** Modifies composition of the FCCS Board and procedures for filling FCCS Board vacancies. Allows virtual FCCS Board meetings. Increases the criminal penalty for unlicensed funeral activity. Allows a cemetery company to sell monuments for use within a cemetery it does not own. Allows funeral director interns and combination funeral director and embalmer interns who meet specified requirements to continue acting as such while an application for full licensure is pending. Clarifies application of deposit requirements for fulfilled preneed contracts. Amends regulations for monument retailers.
- **Explosives:** Broadens the definition of a two-component explosive.
- **Fire Alarm Permit:** Allows contractors to begin repairing certain fire alarm systems before permit approval.
- **Insurance Field Representatives and Operations:** Modifies continuing education requirements for certain insurance licensees, requirements for renewal appointments, and qualifications for insurance agents' customer representatives. Increases the maximum length of suspension for title insurance agents.
- **Surplus Lines:** Removes a notice requirement before exporting policies. Allows exporting of certain policies without meeting due diligence requirements.
- **Protecting Proprietary Business Information:** Prohibits a person from requiring an insurance agent or agency to provide, and prohibits an insurance agent or agency from providing, the replacement cost estimator or other proprietary underwriting information as a condition to extending credit on real property.
- **Fire Prevention and Control:** Modifies requirements for design and alteration of fire sprinkler systems. Aligns membership of two fire related councils. Extends deadlines to comply with minimum radio strength for fire department communications. Prohibits anyone from influencing a firesafety inspector. Prohibits firesafety inspectors from accepting compensation to induce their violation of the Florida Fire Prevention Code. Modifies a course requirement related to fire suppression equipment. Allows a volunteer firefighter to function in the same capacity while transitioning to a career firefighter.
- **Bail Bond Agents:** Criminalizes an agent's aiding or abetting of unlicensed activity.
- **False Personation:** Criminalizes false personation of DFS Investigative and Forensic Services personnel.

The fiscal impact of the bill is indeterminate; however, the cost can likely be absorbed within existing resources. The Criminal Justice Impact Conference determined the bill has a positive insignificant impact on the prison population.

The bill was approved by the Governor on June 16, 2021, ch. 2021-113, L.O.F., and will become effective on July 1, 2021, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Department of Financial Services Organization

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,¹ and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance merged into DFS. DFS consists of 13 divisions and several specialized offices.² DFS is composed of the following divisions and independent office:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;³
- Public Assistance Fraud;
- 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

The Division of Public Assistance Fraud (DPAF) was not established as a criminal justice agency when it was transferred from the Florida Department of Law Enforcement (FDLE) to DFS effective January 2011.⁴ A "criminal justice agency" is defined as: a court⁵; FDLE⁶; the Department of Juvenile Justice⁷; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect⁸; 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.⁹ DPAF currently operates by protecting Florida taxpayers from public assistance fraud and the impact of those crimes by enforcing state laws regarding program eligibility and proper use of public assistance benefits.¹⁰

Effect of the Bill

The bill establishes DPAF as a criminal justice agency and adds DPAF in the definition of "criminal justice agency". The designation allows DPAF to access criminal justice information contained in

¹ Art. IV, s. 4, Fla. Const.

² S. 20.121, F.S.

³ This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.

⁴ Ch. 2010-144, Laws of Fla.

⁵ S. 943.045 (11)(a), F.S.

⁶ S. 943.045 (11)(b), F.S.

⁷ S. 943.045 (11)(c), F.S.

⁸ S. 943.045 (11)(d), F.S.

⁹ S. 943.045 (11)(e), F.S.

¹⁰ Public Assistance Fraud, <https://www.myfloridacfo.com/division/paf/> (last visited Mar. 10, 2021).

Florida Crime Information Center and National Crime Information Center and additional information that will improve DPAF's criminal investigation and law enforcement capabilities.¹¹

Firefighter Cancer Benefits Under the State Risk Management Trust Fund

The State Risk Management Trust Fund (SRMTF) is a self-insurance fund, created and administered by DFS.¹² The SRMTF covers, unless specifically excluded, all departments of the State of Florida and its employees, agents, and volunteers.¹³ The SRMTF provides insurance for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission.¹⁴

DFS must keep separate accounts within the SRMTF for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission.¹⁵

Effective July 1, 2019,¹⁶ a firefighter who has been diagnosed with certain types of cancer and has been employed by his or her employer for at least five continuous years, has not used tobacco products for at least the preceding five years, and has not been employed in any other position in the preceding five years which is proven to create a higher risk for any cancer is entitled to the following benefits in lieu of pursuing workers' compensation benefits under ch. 440, F.S.:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.¹⁷
- A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.¹⁸

The benefits remain available to the firefighter for 10 years following the date on which the firefighter terminates employment if the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund.¹⁹ Currently, the employing agency is responsible for providing these benefits.²⁰

Effect of the Bill

The bill transfers the responsibility for the benefits payable under s. 112.1816(2), F.S., for a state agency firefighter's cancer diagnosis to the SRMTF. The bill also requires a separate account in the SRMTF for benefits payable to state agency firefighters diagnosed with cancer. The bill requires the Department of Management Services to validate and approve the eligibility of claims before benefits are paid from the fund.

¹¹ Department of Financial Services (DFS), Agency Analysis of House Bill 1209 (Mar. 19, 2021).

¹² S. 284.30, F.S.

¹³ S. 284.31, F.S.

¹⁴ S. 284.30, F.S.

¹⁵ S. 284.31, F.S.

¹⁶ Ch. 2019-21, Laws of Fla.

¹⁷ S. 112.1816(2)(a), F.S.

¹⁸ S. 112.1816(2)(b), F.S.

¹⁹ *Id.*

²⁰ S. 112.1816, F.S.

The state currently has a total of 616 positions classified as firefighters that would potentially be eligible for cancer-related coverage and benefits payable from the SRMTF.²¹ The Division of Risk Management estimates the total annual benefits paid from the SRMTF in the first few years will be less than \$100,000 if the average number of claims is two per year.²² The cost of the firefighter cancer coverage would likely be passed on to the employing state agency the following year as a part of their respective risk management premiums.

State Agency/Department	Firefighters
Agriculture and Consumer Services	525
Department of Financial Services	26
Department of Military Affairs	25
Agency for Health Care Administration	23
Department of Children and Families	16
Florida School for the Deaf & Blind	1
Total	616

Sexual Harassment Victims Under the SRMTF

The personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from the public records requirements specified in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.²³

Effect of the Bill

The bill provides that any individual working for an entity covered by the SRMTF²⁴ may not engage in any retaliatory conduct against a sexual harassment victim. The bill defines a “sexual harassment victim” as individual employed, or being considered for employment, with an entity participating in the SRMTF who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

The bill creates a first-degree misdemeanor, punishable, as provided by s. 775.082, F.S., for willfully and knowingly disseminating personal identifying information of a sexual harassment victim to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order.

Funeral, Cemetery, and Consumer Services

The Board of Funeral, Cemetery, and Consumer Services

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (Board) within DFS’s Division of Funeral, Cemetery, and Consumer Services.

The Board currently consists of 10 members as follows:

- The State Health Officer or his or her designee.²⁵
- Two funeral directors who are:
 - Licensed under ch. 497, part III, F.S., as funeral directors; and
 - Associated with a funeral establishment.²⁶

²¹ The number of state firefighters is based on data obtained from the Department of Management Services from the state personnel system (People First) on March 26, 2021.

²² DFS, *supra* note 11, at 11.

²³ S. 119.071(2)(n), F.S.

²⁴ The SRMTF covers, unless specifically excluded, all departments of the State of Florida and their employees, agents, and volunteers. S. 284.31, F.S.

²⁵ S. 497.101(1), F.S.

²⁶ S. 497.101(2), F.S.

- One funeral director who is:
 - Licensed under ch. 497, part III, F.S., as a funeral director;
 - Associated with a funeral establishment licensed under ch. 497, part III, F.S., that has a valid preneed license issued pursuant to ch. 497, F.S.; and
 - Owns or operates a cinerator facility that is approved under ch. 403, F.S., and licensed under ch. 497, part IV, F.S.²⁷
- Two persons whose primary occupation is associated with a cemetery company licensed under ch. 497, F.S.²⁸
- Three consumers who:
 - Are Florida residents;
 - Have never been licensed as funeral directors or embalmers;
 - Are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, F.S.;
 - Are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition;
 - At least one of which is at least 60 years old; and
 - At least one of which is a licensed certified public accountant.²⁹
- One member who shall be a principal of a monument establishment licensed under ch. 497, F.S., as a monument builder.³⁰

The Board may not consist of two or more members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.³¹

Nine of the 10 Board members, save only the State Health Officer, are appointed by the Governor from nominations made by the CFO and confirmed by the Senate.³² Currently the CFO must nominate three persons for each vacancy.³³ If the Governor objects to each of the three nominations for a vacancy, the CFO must submit an additional three nominations until the vacancy is filled.³⁴ DFS reports that they often do not receive three or more applications for qualified applicants to the Board.³⁵ In fact, DFS reports that the CPA position has remained vacant since September 2017 for this reason.³⁶

Board members, other than the State Health Officer,³⁷ are appointed for staggered four-year terms.³⁸ The CFO is directed to stagger the terms of members after the terms of the initial members expired³⁹ and such staggering did occur at the initiation of the Board.⁴⁰

The Board acts as the licensing and rulemaking authority under ch. 497, F.S., for a vast array of matters within the death care industry.⁴¹ A quorum is necessary to conduct the business of the Board.⁴²

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² S. 497.101(1), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ DFS, Agency Analysis of 2021 House Bill 1209 (Mar. 9, 2021).

³⁶ *Id.*

³⁷ The State Health Officer serves as long as he or she holds that office. S. 497.101(3), F.S.

³⁸ S. 497.101(3), F.S.

³⁹ *Id.*

⁴⁰ DFS, *supra* note 35.

⁴¹ S. 497.103(1)(a)-(cc), F.S.

⁴² S. 497.101(6), F.S.

A quorum consists of six members of the Board.⁴³ DFS indicates that it can be difficult to obtain this number due to Board vacancies, absenteeism, and necessary recusal.⁴⁴

Effect of the Bill

The bill reduces the number of nominations that the CFO must make per Board vacancy from three to one with the option to nominate up to three. This should alleviate some challenges DFS is facing with filling Board vacancies due to a lack of applications while still maintaining the provision that allows the Governor to reject the nomination(s).

The bill also adjusts the Board composition by:

- Reducing from three to two the number of positions on the Board that must be held by consumers who are Florida residents, 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; and
- Clarifying the requirement of the CPA consumer member by stating that he or she must: be a Florida resident; be licensed as a certified public accountant under ch. 473, F.S.; have never been licensed as a funeral director or an embalmer; not be a principal or an employee of any licensee licensed under this chapter; and not otherwise have control, as defined in s. 497.005, F.S., over any licensee licensed under ch. 497, F.S.

The bill removes the outdated provision involving the staggering of the Board from its initial Board members. Because the Board has been in place since 2003, provisions relating to its initial Board members are irrelevant.

The bill changes the quorum requirements of the Board by allowing participation in meetings through communications media technology. The bill defines “communications media technology” as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

The bill deletes a provision requiring DFS to adopt Board application forms that require Board applicants to disclose information relating to current and past employment by, contracts with, or affiliation with or interests in entities licensed by the Board or otherwise involved in the death care industry.

Violations by Unlicensed Persons

Chapter 497, F.S., requires a license for specific death care industry practices and provides a second-degree misdemeanor for individuals who engage in activity requiring licensure without possessing a license.⁴⁵

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 a person may not be, act as, or advertise himself or herself as a preneed sales agent⁴⁶ unless he or she is licensed by DFS and appointed by a preneed main licensee for which he or she is executing preneed contracts.

⁴³ *Id.*

⁴⁴ DFS, *supra* note 35.

⁴⁵ S. 497.159(6), F.S.

⁴⁶ 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.

The bill increases the penalty for unlicensed activity from a second-degree misdemeanor to a third-degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Cemetery Companies

A cemetery company is a legal entity that owns or controls lands or property dedicated to the permanent interment of human remains or cremated remains.⁴⁷ Currently, Florida law specifies functions that a cemetery company may perform within the boundaries of the cemetery lands that the company owns.⁴⁸ Among such functions, a cemetery company may perform the nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.⁴⁹ In practice, cemetery companies have sold these items to mark graves of those buried on cemetery lands the company owns as well as to be installed in other cemeteries when required, such as when a combination funeral home and cemetery company conducts the funeral service for a person who owns a plot in a cemetery not owned by the funeral home.⁵⁰ In a recent case before the Board, the issue arose as to whether a cemetery company may sell monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within a cemetery other than a cemetery that the company owns.⁵¹ DFS's Division of Funeral, Cemetery, and Consumer Services and the Board had differing opinions as to the correct result.⁵²

Effect of the Bill

The bill clarifies that a cemetery company may perform the nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within a cemetery, regardless of whether the cemetery is within the boundaries of the cemetery lands the company owns.

Funeral Director Interns

Funeral director intern licenses expire after one year.⁵³ Currently, these licenses may not be renewed except:⁵⁴

- For an additional one-year period if the funeral director in charge of the funeral director intern training agency certifies to the licensing authority that the intern has completed at least one-half of the course of study in mortuary science or funeral service arts; or
- By the licensing authority which may adopt rules that allow a funeral director intern to renew her or his funeral director intern license for an additional one-year period if the funeral director intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a funeral director but is awaiting the results of a licensure examination.

Combination funeral director and embalmer intern licenses expire after one year.⁵⁵ Currently, these licenses may not be renewed except by the licensing authority which may adopt rules that allow a combination funeral director and embalmer intern to renew her or his combination funeral director and

⁴⁷ S. 497.005(13) and (14), F.S.

⁴⁸ S. 497.273, F.S.

⁴⁹ S. 497.273(1)(e), F.S.

⁵⁰ Email from Austin Stowers, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 1209 Amendment 4.9.21 (Apr. 9, 2021).

⁵¹ *Id.*

⁵² *Id.*

⁵³ S. 497.375(4)(a), F.S.

⁵⁴ S. 497.375(4)(b) and (c), F.S.

⁵⁵ S. 497.377(2)(d)1., F.S.

embalmer intern license for an additional one year if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.⁵⁶

Effect of the Bill

The bill allows a funeral director intern to continue to perform the tasks, functions, and duties related to funeral directing after the expiration of his or her intern license and until a funeral director license is issued or denied, or for a period of 90 days, whichever occurs sooner, if he or she has completed the educational credentials required for a license as a funeral director and has applied for licensure.

The bill also allows a combination funeral director and embalmer intern to continue to perform the tasks, functions, and duties related to funeral directing and embalming after the expiration of his or her intern license and until a combination funeral director and embalmer license is issued or denied, or for a period of 90 days, whichever occurs sooner, if he or she has completed the educational credentials required for a combination license as both a funeral director and embalmer and has applied for licensure.

Preneed Contracts

A “preneed contract” is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell funeral merchandise or service in advance.⁵⁷ Examples of burial or funeral merchandise are caskets, outer burial containers, urns, monuments, floral arrangements, and register books, and “burial service” includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.⁵⁸

Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for each item of merchandise sold.⁵⁹

Currently, such deposits must be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers.⁶⁰

Effect of the Bill

The bill adds language to clarify that if a preneed contract has been fulfilled, the provision requiring deposits to be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers does not apply.

⁵⁶ S. 497.377(2)(d)2., F.S.

⁵⁷ S. 497.005(61), F.S.

⁵⁸ S. 497.005(7) and (9), F.S.

⁵⁹ S. 497.458(1)(a), F.S.

⁶⁰ S. 497.458(1)(c), F.S.

Monument Establishment Licensure

A monument establishment is a facility that operates independently of a cemetery or funeral establishment and that offers to sell monuments (i.e., grave site markers) or monument services to the public for placement in a cemetery.⁶¹ A person must be licensed in order to conduct, maintain, manage, or operate in this state a monument establishment, of which there are two types: monument builder and monument retailer.⁶² Each monument establishment must be a physical structure that is located at a specific street address, in compliance with zoning regulations of the appropriate local government, and not located on property that is exempt from taxation.⁶³ Currently, a monument builder is subject to the following requirements relating to its place of business and operations, but a monument retailer is not: Maintain a full-service place of business that includes an office for the conduct of its business; display a selection of monuments, markers, and related products for inspection by customers prior to sale; and have its office and display area normally open to the public weekdays during normal business hours.⁶⁴ Additionally, unlike a monument builder, a monument retailer is not subject to inspection under ch. 497, F.S., relating to funeral, cemetery, and consumer services.⁶⁵

Effect of the Bill

The bill requires a monument retailer, like a monument builder, to maintain a full-service place of business that includes an office for the conduct of its business; display a selection of monuments, markers, and related products for inspection by customers prior to sale; and have its office and display area normally open to the public weekdays during normal business hours. The bill also makes a monument retailer, like a monument builder, subject to inspection under ch. 497, 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.⁶⁶ DFS asserts that No. 6 blasting caps went out of production several years ago, and current blasting caps no longer use the same rating system.⁶⁷

Effect of the Bill

The bill removes reference to the No. 6 blasting cap within the definition of “two-component explosives” and broadens the definition to encompass any detonator. The amendment to this subsection brings the language in line with current practices.

Fire Alarm Permit

All fire alarm system equipment in Florida is installed in accordance with the applicable standards of the National Fire Protection Association and procedures approved by a nationally recognized testing laboratory.⁶⁸ All fire alarm systems required by the State Fire Marshal's rules shall be installed, serviced, tested, repaired, inspected, and improved in compliance with the provisions of the applicable standards of the National Fire Protection Association.⁶⁹

⁶¹ S. 497.005(48) and (49), F.S.

⁶² S. 497.550(1), F.S.

⁶³ S. 497.550(1)(d), F.S.

⁶⁴ *Id.*; s. 497.552, F.S.

⁶⁵ S. 497.550(1)(d), F.S.

⁶⁶ S. 552.081(13), F.S.

⁶⁷ DFS, *supra* note 35.

⁶⁸ S. 633.348(1)-(2), F.S.

⁶⁹ S. 633.348(5), F.S.

Currently, contractors can only repair a fire alarm system that was previously permitted by the local enforcement agency after filing a Uniform Fire Alarm Permit application and receiving the permit.⁷⁰

Effect of the Bill

The bill allows for contractors to begin repairing fire alarm systems that were previously permitted by the local enforcement agency after filing a Uniform Fire Alarm Permit application but *before* receiving the permit. The bill provides that a fire alarm repaired under this new subsection will not be considered compliant until the permit is issued and the local enforcement agency approves the repair.

Insurance Field Representatives and Operations

Continuing Education Requirements

Individuals licensed to engage in the sale of insurance or adjustment of insurance claims in this state are required to fulfill continuing education requirements, pursuant to s. 626.2815, F.S. Some of the current continuing education requirements are as follows:

- Licensees, except title insurance agents, are required to complete a five-hour update course every two years which is specific to the license held by the licensee;⁷¹
- All licensees must also complete 19 hours of elective continuing education every two years;⁷²
- If a licensee has been licensed for six years or more, the above elective continuing education drops to 15 hours every two years;⁷³
- A licensee who has been licensed for 25 years or more and is a chartered life underwriter (CLU) or a chartered property and casualty underwriter (CPCU) or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of five hours of elective continuing education courses every two years;⁷⁴
- An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of five hours of continuing education courses every two years;⁷⁵
- An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a five-hour update course and a minimum of nine hours of elective continuing education courses every two years.⁷⁶

If an individual fails to certify their continuing education requirements, DFS may immediately terminate or refuse to renew the appointment of an agent or adjuster after notice.⁷⁷

Effect of the Bill

The bill adjusts the continuing education requirements to state the following:

- Licensees, except title insurance agents, are required to complete a four-hour update course every two years which is specific to the license held by the licensee;
- All licensees must also complete 20 hours of elective continuing education every two years
- If a licensee has been licensed for six years or more, the above elective continuing education drops to 16 hours every two years;

⁷⁰ S. 553.7921(1)(b), F.S.

⁷¹ S. 626.2815(3), F.S.

⁷² S. 626.2815(3)(a), F.S.

⁷³ S. 626.2815(3)(b), F.S.

⁷⁴ S. 626.2815(3)(c), F.S.

⁷⁵ S. 626.2815(3)(d), F.S.

⁷⁶ S. 626.2815(3)(e), F.S.

⁷⁷ S. 626.2815(9), F.S.

- A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of six hours of elective continuing education courses every two years;
- An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of six hours of continuing education courses every two years;
- An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a four-hour update course and a minimum of 10 hours of elective continuing education courses every two years.

Therefore, the bill lowers the requirement for update courses by one hour and increases the requirement for elective continuing education by one hour. The total continuing education hourly requirement remains the same.

Payment of Fees

No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person.⁷⁸

Currently, all initial appointments shall be submitted to DFS on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.⁷⁹ If a DFS investigation into the application and qualification for an initial or renewal appointment of an individual uncovers that the individual is improperly appointed to represent an insurer or employer due to an inadvertent error by the insurer or employer represented, DFS may still issue the appointment subject to a condition that all fees and taxes pursuant to ch. 624.501, F.S.,⁸⁰ have been paid.⁸¹

Effect of the Bill

The bill adds that all appointments, *including renewal appointments*, shall be submitted to DFS on a monthly basis no later than 45 days after the date of appointment. The bill specifies that if DFS determines that an individual was improperly appointed due to an inadvertent error, DFS will notify the insurer or employer of its finding and obligation to pay all fees and taxes within 21 days. If the insurer or employer does not pay the fees and taxes within 21 days after notice, DFS shall suspend the insurer's or employer's authority to appoint licensees until the fees have been paid.

After the individual is properly appointed and has paid all fees and taxes, DFS may no longer consider the inadvertent failure to appoint to be a violation of the Florida Insurance Code. The bill clarifies other language in this subsection.

Qualifications for Customer Representative's License

DFS shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet specified qualifications.⁸²

One of the qualifications provides that within 4 years preceding the date that the application for license was filed with the department, the applicant must earn one of the following designations:⁸³

⁷⁸ S. 626.112(1)(a), F.S.

⁷⁹ S. 626.371(1), F.S.

⁸⁰ Appointment and renewal fees and taxes range from \$60 for most agents to \$150 for surplus lines agents.

⁸¹ S. 626.371(2), F.S.

⁸² S. 626.7351, F.S.

⁸³ S. 626.7351(3), F.S.

- Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America;
- Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative (CPSR) from the National Foundation for CPSR;
- Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative (CIR) from All-Lines Training;
- Professional Customer Service Representative (PCSR) from the Professional Career Institute;
- Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by DFS and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by DFS when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

Effect of the Bill

The bill adds the designation of “Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC” to the list of designations that will qualify a person for licensure as an insurance agent’s customer representative.

Suspension of Title Insurance Agents

DFS may currently suspend a title insurance agent’s or agency’s license or appointment for a period not to exceed one year.⁸⁴ Under Florida’s Insurance Code, DFS may suspend most other insurance agent licensees for a period not to exceed two years.⁸⁵

Effect of the Bill

The bill extends the maximum length of suspension for title insurance agents to two years. This change matches the treatment of other insurance agents under Florida’s Insurance Code. DFS asserts that the longer suspension period is important to protect consumers from bad actors.⁸⁶

Surplus Lines

Eligibility for Export to Surplus Lines Insurance

Surplus lines insurance is an alternative type of insurance coverage for consumers who cannot get coverage in the standard/admitted market due to unusual or high risks.⁸⁷ Exporting an insurance policy means to place a policy with a surplus lines insurer who is not part of the standard/admitted insurance market.⁸⁸

Currently, for personal residential property risks to be exported to the surplus lines marketplace, the retail or producing agent must advise the insured by notice in writing that they may obtain less

⁸⁴ S. 626.8443(1), F.S.

⁸⁵ S. 626.641(1), F.S.

⁸⁶ DFS, *supra* note 35.

⁸⁷ Department of Financial Services, Florida Surplus Lines Office, *Understanding Florida’s Excess and Surplus Market*, <https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/SurplusLinesConsumerBrochure.pdf> (last visited Mar. 12, 2021).

⁸⁸ *Id.*; s. 626.914(3), F.S.

expensive coverage from Citizens Property Insurance Corporation (Citizens).⁸⁹ The notice must include other information that states that assessments by Citizens are higher and the coverage provided by Citizens may be less than the property's existing coverage.⁹⁰ If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens may be less expensive, may provide less coverage, and will be accompanied by higher assessments.⁹¹

Residential property owners have the option to purchase insurance coverage for the deductibles required by their residential property insurance policies. Currently, this coverage is only available on the surplus lines market. Therefore, current law requires that before this coverage may be sold the insurer must comply with the requirement that a diligent effort be made to place the insurance with an admitted insurance carrier.⁹²

Effect of the Bill

The bill removes the provision requiring retail or producing agents to advise insureds by notice that they may obtain less expensive coverage from Citizens prior to exporting coverage to the surplus lines market. The bill removes the notice requirements and the insured's informed presumption. The bill also establishes that insurance which provides coverage for deductibles for property insurance may be written on the surplus lines market without first meeting due diligence requirements typically necessary before coverage may be written on that market, as long as the coverage is placed through a licensed surplus lines agent, the insurer issuing the coverage is an eligible surplus lines insurer, and the insured signs a disclosure acknowledging that he or she is receiving coverage on the surplus lines market and has received information regarding the surplus lines market.

Exporting Flood Insurance Coverage

As a condition for exporting insurance coverage to the surplus lines marketplace, the full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.⁹³

In 2014, the Legislature created s. 627.715, F.S., which provided a regulatory framework for admitted insurers to write personal lines residential flood coverage. The bill also allowed a surplus lines agent to export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek coverage from three or more authorized insurers.⁹⁴ The bill provided that the exemption to the diligent effort requirement expired on July 1, 2017. In 2017, the Legislature extended the exemption until July 1, 2019, or earlier if the Office of Insurance Regulation determined there was an adequate flood insurance market among admitted insurers.⁹⁵ The exemption expired on July 1, 2019.

Effect of the Bill

The bill reinstates the exemption to provide that a surplus lines agent is able to export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek coverage from three or more authorized insurers. The bill does not include an expiration date for the exemption.

⁸⁹ S. 626.916(1)(e), F.S.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² S. 626.916, F.S.

⁹³ S. 626.916(1)(a), F.S.

⁹⁴ Ch. 2014-80, Laws of Fla.

⁹⁵ Ch. 2017-142, Laws of Fla.

Protecting Proprietary Business Information

The replacement cost value for a home is the cost to rebuild the home or repair damages using materials of a like kind and quality; it is different from the home's market value, which includes the price of land and depends on the real estate market.⁹⁶ In order to calculate the replacement cost value of a home, insurers use a replacement cost estimator. Such estimators range in sophistication from considering only a few questions about the home and then providing a bare-bones estimate to a more in-depth approach that considers various components the way a contractor builds a home, from the ground up, taking into account all the individual characteristics of each unique home.⁹⁷

DFS asserts that many lenders require the replacement cost estimator or other proprietary business information belonging to the insurer underwriting the insurance policy as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by the real property.⁹⁸ DFS also asserts that this has caused issues between the insurance, lending, and real estate industries where the proprietary business information of the insurers is used by lenders for reasons outside the scope of the insurance policy.⁹⁹

Effect of the Bill

The bill prohibits a person from requiring an insurance agent or agency to provide the replacement cost estimator or other proprietary underwriting information of an insurer as a condition precedent or condition subsequent to lending money or extending credit secured by real property, nor may an insurance agent or agency provide this information.

Fire Prevention and Control

The CFO is designated as the State Fire Marshal.¹⁰⁰ The State Fire Marshal has authority to adopt rules which must be in substantial conformity with generally accepted standards of firesafety; must take into consideration the direct supervision of children in nonresidential child care facilities; and must balance and temper the need of the State Fire Marshal to protect all Floridians from fire hazards with the social and economic inconveniences that may be caused or created by the rules.¹⁰¹

The State Fire Marshal enforces all laws of ch. 633, F.S. and any rules relating to:¹⁰²

- The prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, the spread of fire, and panic resulting therefrom;
- Installation and maintenance of fire alarm systems and fire protection systems, including fire suppression systems, fire-extinguishing equipment, and fire sprinkler systems;
- Servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The training and licensing of persons engaged in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The maintenance of fire cause and loss records; and

⁹⁶ National Association of Insurance Coverage, *A Shopping Tool for Homeowners Insurance*, https://www.naic.org/documents/committees_c_trans_read_wg_related_shopping_tool_singles.pdf (last visited Apr. 12, 2021).

⁹⁷ International Risk Management Institute, *Personal Lines Insurance Coverage Gaps: Analysis and Resolution*, <https://www.irmi.com/docs/default-source/authoritative-reports/insights/personal-lines-insurance-coverage-gaps.pdf?sfvrsn=10> (last visited Apr. 12, 2021).

⁹⁸ DFS, *supra* note 35.

⁹⁹ *Id.*

¹⁰⁰ S. 633.104(1), F.S.

¹⁰¹ *Id.*

¹⁰² S. 633.104(2), F.S.

- The suppression of arson and the investigation of the cause, origin, and circumstances of fire.

The Division of State Fire Marshal (Division) is comprised of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training. Among other duties, the Division must establish by rule, uniform minimum standards for the training of firefighters and volunteer firefighters.¹⁰³

Fire Sprinkler Systems

Chapter 633, F.S., defines five different classifications of contractors for purposes of fire prevention and control:

- “Contractor I” means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.¹⁰⁴
- “Contractor II” means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.¹⁰⁵
- “Contractor III” means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.¹⁰⁶
- “Contractor IV” means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in National Fire Protection Association (NFPA) 13D, “Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes”.¹⁰⁷
- “Contractor V” means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than one foot above the finished floor.¹⁰⁸

Currently, a person certified as a Contractor I, Contractor II, or Contractor IV may design fire protection systems of 49 or fewer sprinklers and may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation, addition, or deletion of not more than 49 sprinklers, notwithstanding the size of the existing fire sprinkler system.¹⁰⁹ A person certified as a Contractor I, Contractor II, or Contractor IV may only design a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.¹¹⁰

¹⁰³ S. 633.128(1)(a), F.S.

¹⁰⁴ S. 633.102(3)(a), F.S.

¹⁰⁵ S. 633.102(3)(b), F.S.

¹⁰⁶ S. 633.102(3)(c), F.S.

¹⁰⁷ S. 633.102(3)(d), F.S.

¹⁰⁸ S. 633.102(3)(e), F.S.

¹⁰⁹ S. 633.102, F.S.

¹¹⁰ *Id.*

Effect of the Bill

The bill removes a Contractor IV from being able to design fire protection systems of 49 or fewer sprinklers and from being able to design the alteration of an existing fire sprinkler system where the alteration consists of the relocation, addition, or deletion of 49 or fewer sprinklers.

The bill allows a Contractor I or Contractor II to design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system, if:

- There is no change of occupancy, as defined in the Florida Building Code and the Florida Fire Prevention Code, of the affected areas;
- There is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems"; and
- The occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration.

The bill provides that any conflicts between the Florida Building Code and the Florida Fire Prevention Code will be resolved by agreement between the Florida Building Commission and the State Fire Marshal in favor of the requirement that offers the greatest degree of lifesafety or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.¹¹¹ If the Florida Building Commission and State Fire Marshal are unable to agree on a resolution, the question will be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest lifesafety, or alternatives that would provide an equivalent degree of lifesafety and an equivalent method of construction.¹¹²

The bill allows a Contractor I, Contractor II, or Contractor IV to not only design but also alter a fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers.

The Fire and Emergency Incident Information Reporting Program

In 2005, the Florida Legislature created s. 633.115, F.S.¹¹³ to establish the Fire and Emergency Incident Information Reporting Program (FEIIRP).¹¹⁴ The statute also created the Fire and Emergency Incident Information Technical Advisory Panel (Panel) to advise, review, and recommend to the State Fire Marshal with respect to the statute's requirements.¹¹⁵ This statute also includes codifying language for the Florida Fire Incident Reporting System (FFIRS), which is and has been the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS).¹¹⁶ FFIRS is a means for fire departments to report and maintain computerized records of fires and other fire department incidents in a uniform manner.¹¹⁷

The Panel currently consists of 15 members:¹¹⁸

- The 13 members of the Firefighters Employment, Standards, and Training Council (Council);
- One member from the Florida Forest Service of the Department of Agriculture and Consumer Services; and

¹¹¹ S. 553.73(1)(d), F.S.

¹¹² *Id.*

¹¹³ S. 633.115, F.S., was transferred and renumbered as s. 633.136, F.S., in 2013. Ch. 2013-183, Laws of Fla.

¹¹⁴ Ch. 2005-117, Laws of Fla.; see also Department of Financial Services, Division of State Fire Marshal, Florida Fire and Incident Reporting System, <https://www.myfloridacfo.com/Division/SFM/FFIRS/> (last visited Mar. 12, 2021).

¹¹⁵ *Id.*; s. 633.136(2), F.S.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ S. 633.136(2), F.S.

- One member from the Department of Health, appointed by the State Surgeon General.

The Firefighters Employment, Standards, and Training Council is currently composed of the following 14 members:¹¹⁹

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;
- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.

The Panel and the Council have nearly the same membership and meet at the same time and place.¹²⁰

Effect of the Bill

The bill replaces the term “fire protection agencies” with “fire service providers” to match the definition in s. 633.102, F.S. “Fire service provider” is defined as a municipality or county, the state, the Division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property.¹²¹ The term includes any organization under contract or other agreement with such entity to provide such services.¹²²

The bill makes the membership of the Panel and the Council identical by:

- Adding one member to the Council, an individual from the Department of Health, appointed by the Surgeon General; and
- Deleting from the Panel’s membership one member from the Florida Forest Service and one member from the Department of Health, leaving the Panel membership to include only the newly revised 15 member Council.

Florida Fire Prevention Code

The Florida Fire Prevention Code (FFPC) is administered by the State Fire Marshal under DFS.¹²³ FFPC is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities.¹²⁴ State law requires each municipality, county, and special district with firesafety responsibilities to adopt the FFPC.¹²⁵

¹¹⁹ S. 633.402(1)(a), F.S.

¹²⁰ DFS, *supra* note 35.

¹²¹ S. 633.102(13), F.S.

¹²² *Id.*

¹²³ R. 69A, F.A.C.

¹²⁴ R. 69A-60.002(1), F.A.C.

¹²⁵ S. 633.208, F.S.

The authority having jurisdiction (local fire authorities) shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings.¹²⁶

Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2022.¹²⁷ By December 31, 2019, an existing high-rise building that was not in compliance with the requirements for minimum radio strength for fire department communications must have applied for an appropriate permit for the required installation with the local government agency having jurisdiction and must have demonstrated that the building will have become compliant by January 1, 2022.¹²⁸ Existing apartment buildings are required to apply for the appropriate permit for the required communications installation by December 31, 2022.¹²⁹

Effect of the Bill

The bill extends the deadline by which existing high-rise buildings are required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2025.

The bill also reinstates the expired provision and modifies it so that by January 1, 2024, an existing high-rise building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025.

The bill also modifies the provision for existing apartment buildings such that they are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

Influencing a Firesafety Inspector

Each county, municipality, and special district that has firesafety enforcement responsibilities is required to employ or contract with a firesafety inspector.¹³⁰ However, the State Fire Marshal (SFM) shall assume the duties of a firesafety inspector in any county, municipality, or special district that does not employ or appoint a firesafety inspector.¹³¹ Subject to certain exceptions, the firesafety inspector is responsible for conducting all firesafety inspections required by law.¹³² Some of the responsibilities of the firesafety inspector include conducting firesafety inspections 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.¹³³

Current law provides that a person who violates any provision of ch. 633, F.S., any order or rule of the SFM, or any order to cease and desist or to correct conditions issued under this chapter commits a misdemeanor of the second degree.¹³⁴ However, ch. 633, F.S., does not have any provision prohibiting a person from influencing a firesafety inspector to violate any provision of the Florida Fire Prevention Code nor from a firesafety inspector accepting such influence.

¹²⁶ S. 633.202(18), F.S.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ S. 633.216(1), F.S.

¹³¹ S. 633.104(7), F.S.

¹³² *Id.*

¹³³ S. 633.102(12), F.S.

¹³⁴ S. 633.124(1), F.S.

Effect of the Bill

The bill creates a new section of law that 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 related to committing such violations.

Additionally, the bill prohibits a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept compensation to induce the inspector to violate the Florida Fire Prevention Code rules adopted by the SFM, or any 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.¹³⁵ Moreover, any person who violates this new provision commits a misdemeanor of the second degree.¹³⁶

Fire Equipment Dealers

It is unlawful for any organization or individual to engage in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, or hydrotesting any fire extinguisher or preengineered system in this state except in conformity with ch. 633, F.S.¹³⁷ Each organization or individual that engages in such activity must possess a valid and subsisting license issued by the Division.¹³⁸

Currently, a license of any class may not be issued or renewed by the Division and a license of any class does not remain operative unless the applicant successfully completes a prescribed training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal.¹³⁹

Effect of the Bill

The bill provides that the prescribed training course must include both written and practical training approved by the State Fire Marshal. This adds specificity to the type of course that the applicant must complete. The State Fire College may offer, but is not required to offer, such training courses.

Volunteer Firefighter Service

The National Fire Prevention Association estimates that there were 1,115,000 career and volunteer firefighters in the United States in 2018.¹⁴⁰ Of the total number of firefighters, 370,000 (33 percent) were career firefighters and 745,000 (67 percent) were volunteer firefighters.¹⁴¹

Florida has 465 registered fire departments.¹⁴² Approximately 46 percent of Florida firefighters are identified as volunteer or mostly volunteer, while the remainder are identified as career or mostly career.¹⁴³

¹³⁵ S. 633.216(6)(b), F.S.

¹³⁶ S. 633.124(1), F.S.

¹³⁷ S. 633.304(1), F.S.

¹³⁸ *Id.*

¹³⁹ S. 633.304(4)(d)(4), F.S.

¹⁴⁰ National Fire Prevention Association, *US Fire Department Profile 2018*, <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osfdprofile.pdf> (last visited Mar. 12, 2021).

¹⁴¹ *Id.*

¹⁴² U.S. Fire Administration, *National Fire Department Registry Quick Facts*, <https://apps.usfa.fema.gov/registry/summary> (last visited Mar. 12, 2021).

¹⁴³ *Id.*

Volunteer firefighters are required to obtain a Firefighter Certificate of Completion through training.¹⁴⁴ With this certificate, they may enter into immediately dangerous to life and health (IDLH) environments along with career firefighters. Volunteer firefighters may become career firefighters if they complete a Certificate of Compliance.¹⁴⁵ 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 for a period of up to 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 by such fire service provider. The volunteer firefighter in transition must be under the direct supervision of an individual holding a valid firefighter Certificate of Compliance.

DFS asserts that this change would improve rural and small agency recruitment of firefighters by allowing them to focus on hiring from local candidates who are more inclined to remain in the area instead of hiring candidates from elsewhere in the state who are inclined to return to their home communities once gaining some experience.¹⁴⁶

Bail Bond Agents

Currently, a person may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed; and a person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title.¹⁴⁷ Additionally, a person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond unless the person is qualified, licensed, and appointed; is licensed as a bail bond agent or bail bond enforcement agent; or holds an equivalent license by the state where the bond was written.¹⁴⁸

Any person who acts as a bail bond agent or as otherwise described above, commits a felony of the third degree.¹⁴⁹ However, the law, does not currently provide a penalty for a licensee aiding or abetting an unlicensed person who acts as a bail bond agent or as otherwise described above.

Effect of the Bill

The bill provides that any licensee who knowingly aids or abets an unlicensed person in acting as a bail bond agent or otherwise violating s. 648.30, F.S., commits a third-degree felony.

False Personation

Section 843.08, F.S., provides that a person who falsely assumes or pretends to be a specified officer, such as a firefighter, police officer, or beverage enforcement agent, commits a felony of the third degree. A person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, and if the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree.¹⁵⁰

¹⁴⁴ S. 633.408, F.S.

¹⁴⁵ S. 633.102(9), F.S.

¹⁴⁶ DFS, *supra* note 35.

¹⁴⁷ S. 648.30(1) and (2), F.S.

¹⁴⁸ S. 648.30(3), F.S.

¹⁴⁹ S. 648.30(4), F.S.

¹⁵⁰ S. 843.08, F.S.

Current law prohibits personation of a fire or arson investigator of DFS and any officer of DFS but does not prohibit personation of other DFS investigators or personnel.

Effect of the Bill

The bill removes from the specified list of officers a DFS fire or arson investigator and, instead, makes it a felony offense to falsely assume or pretend to be any personnel or representative of DFS's Division of Investigative and Forensic Services.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The changes to s. 284.30, F.S., have an indeterminate fiscal impact on the SRMTF administered by DFS. Cancer-related benefits entitled to state firefighters through their employing agency under s. 112.1816(2), F.S., would be paid from the SRMTF rather than the employing state agency. The Division of Risk Management estimates the total annual cost will not exceed \$100,000 if the number of claims averages two per year.¹⁵¹ Although the number and cost of annual claims is unknown, any fiscal impact on the SRMTF can be absorbed within existing resources. The cost of the firefighter cancer coverage would likely be passed on to the employing state agency the following year as a part of their respective risk management premiums.

Since the enactment of s. 112.1816, F.S., in 2019, the Department of Agriculture and Consumer Services, which houses the majority of state-employed firefighters, has received two claims for these firefighter cancer benefits.¹⁵² The long-term fiscal impact on the SRMTF is indeterminate until additional claims data is collected.

Changes in the bill would require the Division of Insurance Agent and Agency Services to make minor modifications to its systems to create a tool for enabling or disabling the ability of a party to appoint licensees. The costs of these changes can be absorbed within existing appropriations.¹⁵³

The Criminal Justice Impact Conference considered the bill on March 24, 2021, and determined the changes related to bail bond agents and false personation would have a positive insignificant¹⁵⁴ impact on the prison population.¹⁵⁵ Per the Florida Department of Law Enforcement, there were no arrests for providing funeral services without a license in either fiscal year 2018-19 or 2019-20. Per the Department of Corrections, there were no new commitments to prison for unlicensed bail bond agent violations in either fiscal year 2018-19 or 2019-20. There were three new commitments in fiscal year 2018-19 and one new commitment in fiscal year 2019-20 for false personation violations under s. 843.08, F.S.¹⁵⁶

¹⁵¹ DFS, *supra* note 11, at 11.

¹⁵² DFS, *supra* note 11, at 6.

¹⁵³ *Id.*

¹⁵⁴ Positive insignificant impact indicates a potential increase of 10 or fewer prison beds.

¹⁵⁵ Criminal Justice Impact Conference, *CS/HB 1209 – Department of Financial Services*, Mar. 24, 2021, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/Agenda.pdf> (last visited Apr. 1, 2021).

¹⁵⁶ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive, but indeterminate, fiscal impact on the private sector.

D. FISCAL COMMENTS:

DFS indicated that establishing DPAF as a criminal justice agency has no fiscal impact. All DPAF staff are currently non-sworn positions; the criminal justice agency designation will not affect personnel or staffing.¹⁵⁷ Therefore, this section of the bill has no fiscal impact on DPAF.

¹⁵⁷ Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, RE: CS/HB 1209 (Mar. 25, 2021).