

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1874

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Boyd

SUBJECT: Department of Financial Services

DATE: March 2, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1874 amends sections of Florida Statutes relating to the powers and duties of the Department of Financial Services (DFS). The Chief Financial Officer (CFO) is the head of the DFS. The bill, as originally filed, revises service of process requirements by providing the service of process is valid and binding upon the insurer on the date the process served on the CFO is delivered to the insurer, or the insurer has been notified by the DFS that such information has made been made available on the DFS online portal. In addition, the committee substitute provides the following additional changes:

**Division of Insurance Agents and Agencies**

- Adds an exemption to the examination requirements for an all-lines adjuster who has received the designation of a Certified All Lines Adjuster from Kaplan Financial Education;
- Authorizes an adjuster who holds an adjuster license and who is an unaffiliated insurance agent to obtain an adjuster appointment while maintaining his or her unaffiliated agent appointment. This will allow the adjuster to adjust claims and receive compensation;
- Limits the appointment of a public adjuster apprentice to a public adjusting firm who may appoint a public adjuster apprentice. Currently a public adjuster may also appoint an apprentice;
- Revises provisions relating to fingerprinting requirements to comply with federal law;

- Creates notice requirements for agencies that cease doing business, and creates penalties for noncompliance;
- Increases the authority of the DFS to investigate and prosecute violations committed by a licensee while licensed under ch. 626, F.S., even if the license has expired, is not renewed, or is surrendered; and
- Revises compensation for public adjusters by requiring the compensation be based on the recovery allocated to the insured for covered damage, exclusive of attorney fees and costs.

### **Funeral, Cemetery, and Consumer Services**

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

### **State Fire Marshal**

- Authorizes expenditure of funds from the Firefighter Assistance Grant Program for the purchase of other equipment and tools and protective clothing and equipment compliant with certain standards;
- Revises firefighter certification requirements; and
- Revises provisions relating to the inspection of boiler rooms.

### **Division of Workers' Compensation**

- Clarifies the definition of employer;
- Clarifies an employer applying for an exemption from workers' compensation coverage to provide a *valid* driver license or *valid* identification card. An applicant is also required to complete an online the FS coverage and compliance tutorial as a condition for application;
- Revises the formula for calculating coverage penalties to reduce the period subject to a penalty with exceptions;
- Provides a penalty credit for an employer who has been issued a stop-work order or an enforcement action if the employer successfully completes an online coverage and compliance tutorial;
- Extends the deadline for an employer to produce requested business records from 10 business days to 21 days before the DFS can take an administrative action;
- Requires an employer to pay any outstanding assessed payment prior to entering into a new penalty payment program with the DFS;
- Requires the carrier to send an informational brochure to the injured worker within three business days, instead of three days, after the employee or employer notifies the carrier of an injury. A carrier or its third party administrator is authorized to provide the informational brochure to an injured worker or an employer by e-mail or regular mail; and
- Revises onsite audit requirements for construction classes by requiring such annual audits if the estimated annual premium is \$10,000 or more. Currently, there is no minimum threshold.

### **Division of Accounting and Auditing**

- Amends provisions relating to the Planning and Accounting, Ledger Management system (PALM) and local government financial reporting.

**Division of Rehabilitation and Liquidation**

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

**Florida Patient's Compensation Fund (Fund)**

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

The bill may have an insignificant but indeterminate impact on state revenues and expenditures. See Section V. Fiscal Impact Statement.

Except as otherwise expressly provided, this act takes effect July 1, 2022.

**II. Present Situation:**

The Chief Financial Officer (CFO) is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>1</sup> The CFO serves as the head of the Department of Financial Services (DFS or department). Offices and divisions within the DFS include:

- Insurance Consumer Advocate;
- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and
- Workers' Compensation.<sup>2</sup>

**Division of Accounting and Auditing**

Section 215.93, F.S., establishes the Florida Financial Management Information System (FFMIS) for the state. The intent of the FFMIS is to ensure the efficient operation of an integrated financial management information system and to provide necessary information for the effective operation of state government.<sup>3</sup> The Florida Accounting Information Resource

<sup>1</sup> Section 17.001, F.S.

<sup>2</sup> Department of Financial Services, *Divisions and Offices* <https://www.myfloridacfo.com/> (last visited Jan. 17, 2022).

<sup>3</sup> Section 215.93(1), F.S.

Subsystem (FLAIR) is the state's accounting system, and it is a subsystem of the FFMIS.<sup>4</sup> The functions of FLAIR include accounting and reporting of information to producing financial statements for the state and auditing and settling claims against the state.<sup>5</sup> In 2014, DFS created the Florida Planning, Accounting, and Ledger Management (PALM) Project to replace the State of Florida's current accounting and cash management systems with an integrated, enterprise financial management solution that will allow the state to organize, define, and standardize its financial management processes. The Florida PALM Project is a multiyear project.<sup>6</sup>

The Division of Accounting and Auditing, Bureau of Financial Reporting (Bureau), is responsible for the oversight of local government financial reports and the Comprehensive Annual Financial Reports (CAFR). The Chief Financial Officer is required to publish a CAFR in accordance with generally accepted accounting principles (GAAP).<sup>7</sup> The CAFR includes the audited financial statements, other disclosures, and supplementary information, presenting the state's financial condition and results of operations during the fiscal year.<sup>8</sup> The Government Accounting Standards Board (GASB) establishes accounting and financial reporting standards for U.S. state and local governments that follow GAAP and recently changed the term, "Comprehensive Annual Financial Report" (CAFR)<sup>9</sup> to the term, "Annual Comprehensive Financial Report" (ACFR).

Chapter 218, F.S., prescribes financial management and reporting requirements for local governments, which include counties, municipalities, and special districts. The Division of Accounting and Auditing's website provides resources to assist local governments in fulfilling their reporting requirements.<sup>10</sup> Local governments must submit their annual financial reports (AFRs) to the DFS and provide their audited financial statements.<sup>11</sup> The AFR is available to the public in the local government electronic reporting (LOGGER).

In 2018,<sup>12</sup> legislation was enacted to require the DFS to create an interactive repository of financial statement information, known as the Florida Open Financial Statement System.<sup>13</sup> This system must have standardized taxonomies for state, county, municipal, and special district financial filings. The Division of Accounting & Auditing and the Office of Information Technology are designing the Florida Open Financial Statement System.<sup>14</sup>

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<sup>4</sup> Section 215.93(1)(b), F.S. The DFS is the functional owner of FLAIR. Section 215.94(2), F.S.

<sup>5</sup> Section 215.94(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 216.102(3), F.S.

<sup>8</sup> See Florida's Comprehensive Annual Financial Report, Fiscal Year ended June 30, 2020,

<https://www.myfloridacfo.com/division/aa/reports/documents/DeptofFinServ-StateofFLCAFR2020-FINAL-2-26-2021.pdf> (last visited Feb. 7, 2022).

<sup>9</sup> GASB, Statement No. 98, The Annual Comprehensive Financial Report, (Oct. 2021),

[https://www.gasb.org/jsp/GASB/Document\\_C/DocumentPage?cid=1176178723455&acceptedDisclaimer=true](https://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176178723455&acceptedDisclaimer=true) (last visited Feb. 7, 2022).

<sup>10</sup> Department of Financial Services, Division of Accounting and Auditing, Local Governments,

<https://www.myfloridacfo.com/division/aa/localgovernments/> (last visited Feb. 7, 2022).

<sup>11</sup> Section 218.32, F.S.

<sup>12</sup> Ch. 2018-102, s. 4, Laws of Fla.

<sup>13</sup> Section 218.32(1)(h), F.S.

<sup>14</sup> Department of Financial Services, Florida Open Financial Statement Project,

<https://www.myfloridacfo.com/division/aa/projects/flopenfinancialstmtproject.htm> (last visited Feb. 7, 2021).

## **Division of Rehabilitation and Liquidation**

Federal law provides insurance companies may not file for bankruptcy.<sup>15</sup> The state, through the Division of Rehabilitation (division or receiver), is instead responsible for rehabilitating or liquidating an insurer.<sup>16</sup> States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. The receiver administers insurance companies placed into receivership in Florida.<sup>17</sup>

Insurance companies in receivership fund positions within the division. Since these positions are not appropriated from state funds, the positions are not state employee positions and are not eligible for the state group insurance program.<sup>18</sup> Because the division must purchase health insurance in the small group market, it is unable to leverage the economies of scale, and faces yearly premium increases. The division anticipates these increases will continue to occur in the future, which ultimately affects the claimants in the receivership estates. The division is a participating entity of the Florida Retirement System.<sup>19</sup> The division also participates in the State's Deferred Compensation program.

## **Division 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 DFS. The board acts as the licensing and rulemaking 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.<sup>20</sup>

### ***Fees***

Current law imposes a maximum charge to consumers of \$50 for transference of burial rights from one purchaser to another.<sup>21</sup>

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<sup>15</sup> The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.

<sup>16</sup> Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.

<sup>17</sup> *Id.*

<sup>18</sup> Department of Financial Services, Division of Rehabilitation and Liquidation, <https://myfloridacfo.com/division/receiver/career-opportunities/humanresources-recruitmentandselection> (last visited Feb. 7, 2022).

<sup>19</sup> *Id.*

<sup>20</sup> *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. Section 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. Section 497.141(12)(b)-(c), F.S. sets forth who may apply for which licenses.

<sup>21</sup> Section 497.277(2), F.S.

### ***Licensure***

There are several options available for embalmers or funeral directors to obtain reciprocal licensure in Florida.<sup>22</sup> One method to receive a reciprocal licensure for an embalmer is to hold a valid licensure in a state that has requirements at the time of original licensure that are substantially equivalent to or more stringent than Florida's requirements at the same time.<sup>23</sup>

A funeral director may apply to obtain a reciprocal licensure in Florida if the provisions of s. 497.374, F.S., are met. The applicant must hold a valid license to practice funeral directing in another state, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida.<sup>24</sup>

Current law prescribes the scope of practice of funeral directing a licensed funeral director may perform.<sup>25</sup> These duties include:

- Selling or offering to sell funeral services;
- Planning or arranging the details of the funeral services;
- Embalming, cremation, or other services relating to the final disposition of human remains; including the removals of such remains from the state;
- Setting the time of the service;
- Establishing the type of services to be rendered;
- Acquiring the services of the clergy;
- Obtaining vital information for the filing of death certificates and burial transit permits; or
- Directing any memorial services that is held prior to or within 72 hours of the burial or cremation if such service is old or arranged by the licensee.

### **Division of Insurance Agents and Agencies**

Chapter 626, F.S., governs the regulation of insurance field representatives, navigators, insurance administrators, unauthorized insurers and surplus lines, viatical settlements, structured settlements, and operations.<sup>26</sup> The powers and duties of the CFO and the DFS in part I of ch. 626, F.S., apply only with respect to insurance agents, insurance agencies, managing general agents, insurance adjusters, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.<sup>27</sup> Further, the DFS has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons engaged in actions for which a license issued by the DFS is required.<sup>28</sup> The powers and duties of the

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<sup>22</sup> Section 497.369, F.S.

<sup>23</sup> Section 497.369

<sup>24</sup> Section 497.374(1)(b), F.S.

<sup>25</sup> Section 497.372(1), F.S.

<sup>26</sup> This includes licensing and other requirements (part I), general lines agents (part II), life insurance agents (part III), health insurance agents (part IV), title insurance agents (part V), insurance adjusters (part VI), insurance administrators (part VII), and viatical settlements (part X).

<sup>27</sup> Section 626.016(1), F.S.

<sup>28</sup> Section 626.016(3), F.S.

Financial Service Commission and the Office of Insurance Regulation (OIR)<sup>29</sup> specified in part I apply only with respect to service companies, insurance administrators, and viatical settlement providers and contracts.<sup>30</sup> The OIR has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons who engage in actions for which a license or certificate of authority issued by the OIR is required.<sup>31</sup> However, s. 626.016, F.S., is not intended to limit the authority of the DFS and the Division of Investigative and Forensic Services within the DFS, as specified in s. 626.989, F.S.

The Division of Insurance Agent and Agency Services (division) licenses and appoints individuals and entities authorized to transact insurance in Florida as provided in s. 626.016, F.S. Further, the division receives and reviews applications for insurance licenses and oversees the examination, licensing, and continuing education of licensees. The division also conducts investigations of alleged violations of the Florida Insurance Code and refers suspected criminal violations of the Florida Insurance Code to the Division of Investigative and Forensic Services' Bureau of Insurance Fraud within the DFS or other law enforcement agencies as appropriate.<sup>32</sup>

Section 626.112, F.S., states that no person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, customer representative, service representative, or managing general agent unless he or she is currently licensed by the department and appointed by an appropriate appointing entity or person. All licenses require an appointment with the exception of insurance agency licenses.

#### ***Agents with Unaffiliated appointments***

Unaffiliated insurance agents, are those licensees, except a limited lines agent, who are self-appointed and who practice as an independent consultant in the business of analyzing and abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance in a written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.<sup>33</sup> According to the DFS, unaffiliated appointments were intended to allow a licensee to hold their license in good standing, giving the licensee credentials in the knowledge for holding a license, without soliciting insurance coverage.<sup>34</sup>

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<sup>29</sup> Pursuant to s. 20.121(3), F.S., the Office of Insurance Regulation is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.

<sup>30</sup> Section 626.016(2), F.S.

<sup>31</sup> Sections 626.016(3), F.S.

<sup>32</sup> Sections 624.307, 624.317, and 624.321, F.S.

<sup>33</sup> Section 626.015(20), F.S.

<sup>34</sup> Department of Financial Services, *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

### ***Insurance Adjuster Licensure Examination***

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.<sup>35</sup> An adjuster may be licensed as either an “all-lines adjuster” or a “public adjuster.”<sup>36</sup> An all-lines adjuster “is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.”<sup>37</sup> Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against his or her insurer.<sup>38</sup>

Among other requirements, an applicant must pass an examination to obtain an adjuster’s license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants that obtains certain specified professional designations.<sup>39</sup> The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard the DFS testing for the all-lines adjuster license.<sup>40</sup>

### ***Closure of an Insurance Agency***

Currently an agency is not required to provide notification to a policyholder or premium finance company or follow protocols when an agency is closing for an extended period or closing permanently.

### **Division of State Fire Marshal**

The Division of State Fire Marshal protects people and property throughout Florida and has authority to inspect buildings, structures, equipment, vehicles and chemicals when there is reasonable cause to believe a violation of the Florida Fire Code has occurred.<sup>41</sup> The Division of State Fire Marshal:

- Conducts safety inspections and reviews construction plans for all state-owned buildings, regulates fireworks and the fire sprinkler industry, inspects and licenses boilers, and certifies persons working in the fire suppression industry; and
- Approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards.<sup>42</sup>

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<sup>35</sup> Insurance Information Institute. *III. Glossary* (defining “adjuster”), <https://www.iii.org/resource-center/iii-glossary/A> (last visited Feb. 7, 2022).

<sup>36</sup> Section 626.864, F.S.

<sup>37</sup> Sections 626.015 and 626.8548, F.S.

<sup>38</sup> Section 626.854(1), F.S.

<sup>39</sup> Section 626.221, F.S.

<sup>40</sup> Section 626.221(2)(j), F.S.

<sup>41</sup> Department of Financial Services, Division of State Fire Marshal, <https://www.myfloridacfo.com/division/sfm/> (last visited Feb. 7, 2022).

<sup>42</sup> *Id.*



## **Firefighter Certification**

To be certified as a firefighter, a person must complete a minimum standards course and examination established by the State Fire Marshal or show proof of equivalent training in another state, and pass an exam within one year of completing the minimum standards course.<sup>43</sup>

Additionally, the applicant must be in good physical condition, as determined by a medical examination, and have good moral character, as determined by a background investigation that includes the processing of fingerprints for a national criminal background check.<sup>44</sup>

To serve as an administrative and command head of a fire service provider, or to work in a position directing incident outcomes, a certified firefighter must earn a Special Certificate of Compliance.<sup>45</sup> Such person must be active as a firefighter, maintain a valid fire service instructor certificate and teach at least 40 hours of instruction during a four-year period, and complete a Firefighter Retention Refresher Course prior to expiration of the four-year period.<sup>46</sup>

To renew a certification, a firefighter must:

- Be active as a firefighter, meaning the certificate holder was employed as a firefighter or served as a volunteer firefighter for at least six months during a four-year period; or
- Hold a fire service instructor certificate and instruct at least 40 hours during a four-year period, or
- Complete a Firefighter Retention Refresher Course during the six months before the four-year period expires, or
- Retake and pass the Minimum Standards Course examination during the six months before the four-year period expires.<sup>47</sup>

## ***Firefighter Assistance Grant Program***

The Firefighter Assistance Grant was created to improve the emergency response capability of volunteer fire departments and combination fire departments.<sup>48</sup> The program is required to provide financial assistance to improve firefighter safety and to enable such fire departments to provide firefighting, emergency medical, and rescue services to their communities.<sup>49</sup> Funding is available for training, personal protective equipment, self-contained breathing apparatus, and fire engine pumper apparatus.<sup>50</sup> According to the DFS, many of the fire departments that are eligible to participate in this grant program are in rural economically challenged areas of the state and have limited funding opportunities to purchase additional crucially needed tools and equipment.<sup>51</sup>

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<sup>43</sup> Section 633.408(4), F.S.

<sup>44</sup> Sections 633.408 and 633.412, F.S.

<sup>45</sup> Section 633.408(6), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> Section 633.414, F.S.

<sup>48</sup> Section 633.135(1), F.S. Combination fire department is a fire department that is composed of career and volunteer firefighters.

<sup>49</sup> Section 633.135, F.S., and Rule 69A-37-501, F.A.C.

<sup>50</sup> Section 633.135(4), F.S.

<sup>51</sup> The Department of Financial Services, *2022 Legislative Bill Analysis of HB 959* (Similar to SB 1874) (Dec. 22, 2022).

### ***Boiler Safety Act***

Chapter 554, F.S., is the “Boiler Safety Act.”<sup>52</sup> The DFS is authorized to adopt by rule a State Boiler Code for the safe construction, installation, inspection, maintenance, and repair of boilers in Florida.<sup>53</sup> The State Fire Marshall performs inspections to ensure the safety of boilers in public buildings.<sup>54</sup> Boiler inspectors must meet initial and ongoing certification requirements.<sup>55</sup> The DFS may impose various fees, such as, initial and annual certificates of competency, certificate inspections.

According to the DFS, some provisions within ch. 554 are outdated. For example, a requirement for American Society of Mechanical Engineers (ASME)<sup>56</sup> stamping of boilers between 200,000 and 400,000 BTU has been in the statute for several years but did not have a phase in date to allow for utilization of manufacturer’s inventory.<sup>57</sup> Additionally, the carbon monoxide detector requirement of ch. 509, F.S., lacks clarity as to the enforcement ability of authorized third-party inspectors.<sup>58</sup>

### **Division of Workers’ Compensation**

The workers’ compensation law<sup>59</sup> requires an employer<sup>60</sup> to obtain coverage for their “employees” that provides for lost income and all medically necessary remedial treatment, attendance, and care resulting from work related injuries and occupational diseases. The Division of Workers’ Compensation<sup>61</sup> within the DFS provides regulatory oversight of the system.<sup>62</sup> The DFS’ responsibilities include enforcing employer compliance with coverage requirements,<sup>63</sup> administration of the workers’ compensation health care delivery system, collecting system data, educating and assisting employers and injured workers.

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<sup>52</sup> Section 554.1011, F.S.

<sup>53</sup> Section 554.103, F.S.

<sup>54</sup> Department of Financial Services, Division of State Fire Marshal, Boiler Safety Section, <https://www.myfloridacfo.com/Division/sfm/BFP/BoilerSafety/default.htm> (last visited Feb. 7, 2022).

<sup>55</sup> Section 554.104, F.S.

<sup>56</sup> “ASME Code” is the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code published by that Society, which are incorporated by reference in Rule 69A-51.010, F.A.C. See Rule 69A-51.005(6), F.A.C.

<sup>57</sup> The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>58</sup> *Id.*

<sup>59</sup> Ch. 440, F.S.

<sup>60</sup> “Employer” means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. “Employer” also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. s. 440.02(16), F.S. The most common exception to this is non-construction industry employers with fewer than four employees. There are a number of other exceptions, exclusions, and exemptions that affect whether an employer must provide workers’ compensation coverage generally or to a particular individual. See s. 440.02(15)–(17), F.S.

<sup>61</sup> Department of Financial Services, Division of Workers’ Compensation, *About the Division*, <https://www.myfloridacfo.com/Division/WC/contactUs.htm> (last visited Feb. 7, 2022).

<sup>62</sup> Section 440.191, F.S.

<sup>63</sup> Section 440.107, F.S.

### ***Coverage Requirements; Enforcement***

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (i.e., construction, non-construction, or agricultural) and the number of employees.<sup>64</sup> The coverage thresholds are as follows:

- Construction – one or more “employees;”
- Non-construction – four or more “employees;” and
- Agricultural - six or more regular employees and/or 12 or more seasonal employees who work for more than 30 days.<sup>65</sup>

Employers may obtain coverage by purchasing a workers' compensation insurance policy from an insurer; purchasing coverage from the Workers' Compensation Joint Underwriting Association (for employers that are unable to purchase a workers' compensation insurance policy from an authorized insurance company); or qualifying as a self-insurer.<sup>66</sup> In order to apply for or renew an exemption from workers' compensation law, the exemption applicant must complete and submit a Notice of Election to be Exempt application online. The notice must list the name, date of birth, and driver's license number of Florida identification card number, and other specified information.<sup>67</sup>

The DFS has the authority to enter and inspect any place of business for purposes of ensuring employer compliance with workers' compensation law, and the DFS can request an employer's business records.<sup>68</sup> An employer must produce the required business records within ten business days of receiving the written request for records. The failure of an employer to comply with the workers' compensation coverage requirements is considered to pose an immediate danger to public health, safety, and welfare; the DFS must issue a Stop-Work Order within 72 hours of determination of non-compliance, which requires the employer to cease all business operations.<sup>69</sup> The DFS may release a Stop-Work Order when an employer provides proof of compliance and pays \$1,000, as a down payment, and agrees to enter into a penalty payment agreement with the DFS for the full amount.<sup>70</sup> The penalty is a minimum of \$1,000 and is based on the insurance premiums, which should have been paid, but were not, multiplied by two for the prior two years.<sup>71</sup>

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<sup>64</sup> The terms “injured employee” and “injured worker” are used interchangeably throughout ch. 440, F.S., in relation to individuals claiming or receiving workers' compensation benefits. However, neither term is expressly defined in the workers' compensation law. Since the term “injured employee” implies a continuing employment relationship that may not in fact exist following an injury, this analysis will use the term “injured worker” exclusively, but it is intended to mean both “injured employee” and “injured worker” wherever it is used, unless the context or law requires otherwise. The term “injured employee” is not same as “employee.” The former denotes one who is claiming benefits following an injury, while the latter denotes one who may be subject to the coverage requirements of the workers' compensation law, depending upon the circumstances of their employment and nature of their employer.

<sup>65</sup> Department of Financial Services, Division of Workers' Compensation, *Coverage Requirements*, <https://www.myfloridacfo.com/division/wc/employer/coverage.htm> (last visited Feb. 7, 2022).

<sup>66</sup> Sections 440.38 and 627.311(5), F.S.

<sup>67</sup> Section 440.05(3), F.S.

<sup>68</sup> Section 440.107(7)(a), F.S.

<sup>69</sup> *Id.*

<sup>70</sup> Section 440.107(7)(d), F.S.

<sup>71</sup> *Id.*

### ***Reporting by Carriers and Audits by Carriers***

Within three days after the employer or the employee informs the carrier of an injury, the carrier must mail to the injured worker an informational brochure approved by the DFS that provides an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law.<sup>72</sup>

Further, the carrier or its third-party administrator is required to mail the same brochure annually to employers.<sup>73</sup>

### **The Chief Financial Officer as Agent for Service of Process on Insurers**

Florida's Chief Financial Officer<sup>74</sup> (CFO) is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., any unauthorized insurer under s. 626.906, F.S. or s. 626.937, F.S., domestic reciprocal insurers, fraternal benefit societies under ch. 632, F.S., warranty associations under ch. 634, F.S., prepaid limited health service organizations under ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.<sup>75</sup>

Service of process on the CFO is made by mail, personal service, or internet-based transmission system created by the DFS.<sup>76</sup> Upon receipt of service of process, the CFO retains a record copy in paper or electronic form and promptly forwards one copy of the process documents to the insurer's designated process agent by registered or certified mail.<sup>77</sup> The CFO may also make the process documents available from a secure website created by the DFS and provide notice of availability and retrieval instructions to the insurer's designated process agent under s. 624.307(9), F.S. Under current law, service of process is considered valid and binding service on the insurer when the process documents are served on the CFO and sent or made available to the insurer pursuant to s. 624.307(9), F.S., rather than at such time the insurer receives the process documents.<sup>78</sup>

Recent court cases have addressed similar questions related to whether service of process on an insurer is perfected at the time served on the CFO or at the time received by the insurer. For example, in *Markovits*,<sup>79</sup> an uninsured motorist lawsuit that also involved an award of attorney fees for a rejected proposal for settlement, the court was asked to determine whether a proposal for settlement served on the insurer 91 days after service of the complaint on the CFO but 88 days after the complaint was forwarded by the CFO to the insurer, constituted valid service within a 90-day deadline for proposals for settlement on the insurer. In addition to finding statutory authority under s. 624.423(3), F.S., the court ultimately based its decision on

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<sup>72</sup> Section 440.185(3), F.S.

<sup>73</sup> *Id.*

<sup>74</sup> The CFO's assistant, deputy, or another person in charge of the office may also serve as the agent for service of process.

<sup>75</sup> Section 48.151(3), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> Section 624.423(1), F.S.

<sup>78</sup> Section 624.423(3), F.S.

<sup>79</sup> *Markovits v. Stater Farm Mutual Automobile Insurance*, 235 So. 3d 1018 (Fla. 1<sup>st</sup> DCA 2018).

s. 48.151(1), F.S., relating to service on statutory agents for certain persons, citing in part “[w]hen any law designates a public officer, board, agency, or commission as agent for service of process” and the person or entity so designated is served with process, then “service is valid service for all purposes,” and holding that service of process is considered valid and binding on the insurer when served on the CFO.<sup>80</sup>

### **Fingerprints for Background Checks**

The Florida Insurance Code authorizes the DFS to investigate any applicant or licensee, and further states that licensing statutes, which require an evaluation of an applicant’s character or fitness must include the submission of fingerprints for a national criminal records check.<sup>81</sup> Applicants and licensees submit fingerprints to the Florida Department of Law Enforcement (FDLE), which forwards the fingerprints to the Federal Bureau of Investigations (FBI) for a federal background check.<sup>82</sup> The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose of the CHRI system is to assure criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.<sup>83</sup>

Federal law authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.<sup>84</sup> However, this access can only be authorized by a state statute, which has been subsequently approved by the Attorney General of the United States. The FBI processes fingerprints only if the criteria established by the U.S. Department of Justice has been satisfied. To satisfy federal law, a state licensing statute must identify the specific categories of licenses that require the submission of fingerprints as part of an application and expressly state the applicant’s fingerprints will be submitted to the FBI or submitted for a national criminal records background check.

The DFS has recommended many technical amendments to licensing laws including chs. 626 and 648, F.S., to ensure compliance with federal law and continuation of FBI background checks for applicants seeking licensure with DFS.<sup>85</sup>

### **Florida’s Patient Compensation Fund**

In response to the mid-1970’s medical malpractice crisis, the Florida Legislature enacted comprehensive medical malpractice reforms with the passage of "The Medical Malpractice Reform Act of 1975."<sup>86</sup> One of the main features of the 1975 Medical Malpractice Act was the creation of the Florida Patient's Compensation Fund (Fund), which was designed to provide

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<sup>80</sup> *Markovitz* at 1020.

<sup>81</sup> Section 626.201, F.S.

<sup>82</sup> Section 624.34, F.S.

<sup>83</sup> 28 C.F.R. s. 20.1

<sup>84</sup> Pub. L. 92-544.

<sup>85</sup> Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>86</sup> Ch. 75-9, Laws of Fla.

medical malpractice coverage to doctors, practitioners, hospitals, and health care facilities that were unable to purchase coverage in the commercial market. Participants had to show proof of \$100,000 coverage from an insurer or self-insurance plan and deposit an annual fee into the Fund.<sup>87</sup> The Fund paid the excess over \$100,000 for any judgment or settlement against a member. The Fund was capped at \$25 million and could not pay more than one million dollars on a given claim in any single year.<sup>88</sup> The Fund commenced operations on July 1, 1975, in accordance with s. 766.105, F.S. The Fund is a political subdivision of the state; however, it is not a state agency, board, or commission.<sup>89</sup>

The Fund is subject to the supervision of a Board of Governors (board) consisting of 11 representatives.<sup>90</sup> Seven representatives, one each from the insurance industry, physicians' insurance, physicians' self-insurance, hospital insurance, hospital self-insurance, osteopathic or podiatric physicians' insurance or self-insurance, and the general public, are appointed by the CFO.<sup>91</sup> The Florida Bar appoints one attorney, the Florida Medical Association appoints one physician's representative, and the Florida Hospital Association appoints two hospital representatives.<sup>92</sup>

The Fund attracted providers and ran smoothly for a few years but was not actuarially sound, so substantial losses began to accumulate.<sup>93, 94</sup> In 1982, the Fund assessed its members to cover deficits, hospitals dropped out because most of the claims were against physicians, and the Fund was unable to continue operating.<sup>95</sup> During its short tenure, the Fund received \$72 million in membership fees and \$280 million in assessments; closed 4,595 claims and paid more than \$311 million to victims of medical malpractice.<sup>96</sup>

Initially, the Fund was scheduled for sunset in 1991 and repeal in 1995; however, during a special session in 1991 the Legislature revived and readopted all statutes that had been subject to future repeal, including Section 766.105, F.S.<sup>97</sup> As a result, the law has not been subject to sunset review even though the Fund has not accepted new members since June 30, 1983.<sup>98</sup>

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<sup>87</sup> Section 766.105(2)(d)2, F.S.

<sup>88</sup> Section 765.105, F.S.

<sup>89</sup> Section 766.105(1)(a), F.S.

<sup>90</sup> Section 766.105(3)(b), F.S.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, Section 766.105(3)(h), F.S., provides that the Fund must determine whether it has minimum membership levels to offer coverage one week prior to the beginning of each fiscal year. The minimum membership thresholds of \$5 million for non-hospital providers and \$12.5 million for hospitals could not be met when hospitals stopped participating.

<sup>94</sup> U.S. General Accounting Office, *Medical Malpractice Case Study on Florida, Report to Congressional Requestors*, December 1986, at 8, [www.gao.gov/assets/hrd-87-21s-3.pdf](http://www.gao.gov/assets/hrd-87-21s-3.pdf) (last visited Feb. 8, 2022); and Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, at 1-7 (December 10, 1994).

<sup>95</sup> U.S. General Accounting Office, *Medical Malpractice Case Study on Florida, Report to Congressional Requestors*, December 1986, at 10, [www.gao.gov/assets/hrd-87-21s-3.pdf](http://www.gao.gov/assets/hrd-87-21s-3.pdf) (last visited Feb. 8, 2022)

<sup>96</sup> Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund*, at 17-18 (December 10, 1994).

<sup>97</sup> *Id.*, at 1.

<sup>98</sup> Office of Insurance Regulation, *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, April 25, 2014, at 4, <https://www.florid.com/siteDocuments/FLPatientsCompensationFund04252014.pdf> (last visited Jan. 30, 2022).

Hospitals licensed pursuant to ch. 395, F.S., are mandatory members unless they can demonstrate financial responsibility to pay claims and costs described in s. 766.105(2)(c), F.S. Other health care providers<sup>99</sup> such as physicians, osteopaths, and professional associations are allowed to participate in the Fund. To become members of the Fund, all licensed Florida hospitals and health care providers electing to enroll in the fund must pay an annual membership fee and any applicable assessments based upon past and prospective loss and expense experience; and prior claims experience of the members covered under the fund. Members receive coverage for claims arising from rendering or failure to render medical care or services resulting in injury or death to a patient. Health care providers choose between two coverage limits afforded by the Fund. Coverage may not exceed one million dollars per claim, three million dollars annual aggregate, or two million dollars per claim, four million dollars annual aggregate. Health care providers are responsible for paying claim amounts in excess of the selected limit and the Fund is not responsible for paying punitive damages that may be awarded to plaintiffs. Coverage limits afforded by the Fund to hospitals may not exceed two and one-half million dollars per claim and does not provide an annual aggregate.<sup>100</sup>

The OIR has supervisory authority over the Fund's Plan of Operation and any changes to the Plan of Operation, including repeal.<sup>101</sup>

The law requires the OIR to review any request for assessments of plan participants or refunds of plan participants, and further states the Fund is required to furnish audited financial reports annually, upon request, to any Fund participant and to the OIR and the Joint Legislative Auditing Committee.<sup>102</sup> The board may authorize refunds when revenues exceed known liabilities and expenses.<sup>103</sup> Excesses or unearned fees are refunded to members in proportion to the contributions made in accordance with procedures adopted by the board and approved by the OIR. The Fund has certified to the OIR twelve assessments, and the OIR has approved 11 refunds.<sup>104</sup> The last year the hospitals contributed member fees was in 1982; the last year the physician class contributed member fees was in 1983.<sup>105</sup> The last refund approved by the OIR was in March 2004.<sup>106</sup>

The Fund ceased to offer coverage effective July 1, 1983, because it failed to attain the necessary minimum membership levels to offer coverage.<sup>107</sup> The Fund purchased structured settlement annuities to fulfill the terms and conditions of settlement agreements with claimants in medical

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<sup>99</sup> Section 766.105(1)(b), F.S.

<sup>100</sup> Section 766.105, F.S.

<sup>101</sup> Section 766.105(3)(c)2, F.S.

<sup>102</sup> Section 766.105(3)(e)4, F.S.

<sup>103</sup> Section 766.105(3), F.S.

<sup>104</sup> Office of Insurance Regulation, *Target Market Conduct Examination Report of the Florida Patient's Compensation Fund* (Apr. 25, 2014) <https://www.flair.com/siteDocuments/FLPatientsCompensationFund04252014.pdf> (last visited Feb. 8, 2022).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Section 766.105(3)(h), F.S., provides at least seven days prior to the beginning of each fiscal year, the Florida's Patient Compensation Fund shall determine whether it will attain the minimum membership levels to offer coverage. The minimum membership thresholds are total membership fees of five million dollars for non-hospital health care provider members and \$12.5 million for hospitals members.



malpractice cases.<sup>108</sup> According to the DFS, the Fund has represented that there are no open or active claims that are not being serviced through a structured settlement.<sup>109</sup>

In 2021, an actuarial report conducted for the Fund found the Fund retains an ownership interest in 15 annuities that have an aggregate future value of \$12,680,687. In the event of an insurer insolvency, many of the annuities would be covered by Florida Life and Health Insurance Guaranty Association (FLHIGA); therefore the actuary concluded Fund's exposure to contingent liability is \$2,403,590. About half of the remaining annuitants were children when their parents entered into structured settlements with the Fund; therefore, some of the remaining annuities may continue for another 40 years.<sup>110</sup>

As of December 2020, the Fund reported a reserve for unearned fees of \$15,135,541, which includes \$14,888,634 held in investment accounts.<sup>111</sup>

Operating costs have increased in recent years, because the board approved the general manager's request for an assistant in 2015 and approved four percent annual salary increases for the two Fund employees for 2017, 2018, 2019 and 2020.<sup>112</sup> The Fund contributes to an employee pension plan and pays for legal counsel, accounting and auditing, rent and utilities, travel, and insurance.<sup>113</sup>

The following comes from financial statements the Fund shared with its board and the OIR:

Year	2016	2017	2018	2019	2020
Salaries	\$181,754	\$213,668	\$221,600	\$229,764	\$240,417
Pension Plan	\$59,684	\$52,303	\$55,677	\$54,424	\$45,891
Rent, Utilities & Janitorial	\$20,336	\$16,704	\$16,158	\$16,758	\$12,841
General Counsel	\$3,500	\$42,195	\$36,992	\$35,339	\$37,065
Accounting and Auditing	\$73,513	\$58,294	\$52,578	\$52,821	\$39,126
Travel & Expense (Staff)	\$1,463	\$4,087	\$3,841	\$1,962	\$4,404
Travel & Expense (Board)	\$7,125	\$20,327	\$17,627	\$21,905	\$22,751

<sup>108</sup> Florida House of Representatives Committee on Insurance, *The Florida Patient's Compensation Fund: Status Report on Terminating Activities of the Fund* (December 10, 1994). (On file with the Senate Committee on Banking and Insurance.

<sup>109</sup> Department of Financial Services, *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>110</sup> Jack Swisher, ACAS, MAAA, *Florida Patient's Compensation Fund Annuity Insolvency Analysis* (June 28, 2021) at 4-5; and Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Jane Nelson of the Office of Insurance Regulation (Aug. 4, 2021).

<sup>111</sup> Carr Riggs & Ingram CPAs and Advisors, *Florida Patient's Compensation Fund Financial Statements* (Dec. 31, 2020) at 4.

<sup>112</sup> Memo to the Florida Patient's Compensation Fund Operating Committee from General Manager Charles Portrero, November 19, 2018.

<sup>113</sup> The Office of Insurance Regulation monitors meetings of the Florida Patient's Compensation Fund by telephone and receives copies of meeting materials the Fund provides to its Board of Governors. The OIR provided copies of meeting materials from 2011-2020 to the Florida House of Representatives, Insurance and Banking Subcommittee. House of Representatives *Staff Analysis CS/CS/HB 959* (January 28, 2022), available at <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=75756&SessionId=93> (last visited Feb. 3, 2022).



### **Division of State Group Insurance**

The Division of State Group Insurance within the Department of Management Services administers the state group health insurance program (program) under a cafeteria plan consistent with s. 125 of the Internal Revenue Code for state employees.<sup>114</sup> Eligible Employees of the program include, state officers; state employees paid from “salaries and benefits” appropriation categories, regardless of the number of hours worked; retired state officers and state employees; surviving spouses of deceased state officers and state employees; certain terminated state officers and state employees; and certain state employees paid from “other-personal-services” appropriation categories.<sup>115</sup>

### **III. Effect of Proposed Changes:**

#### **Division of Accounting and Auditing**

**Sections 1 and 5-9** repeals s. 17.0315, and amends ss. 215.34, 215.93, 215.94, 216.102, and 218.32, respectively, relating to financial and cash management programs and local government financial reporting. Section 1 repeals s. 17.0315, F.S., relating to the Chief Financial Officer’s (CFO) financial and cash management task force due to the creation of the Florida Planning, Accounting and Ledger Management (PALM) financial and cash management system and its executive steering committee. Section 6 eliminates the requirement for an agency to post journal entries since PALM records debit memorandums. Sections 7 and 8 remove the term, “cash management subsystem” and replaces it with the term, “financial management system.” Section 9 replaces the term, “comprehensive annual financial report, with the term, “annual comprehensive financial report,” to conform to a change in Governmental Accounting Standards Board (GASB) standards. Section 10 revises the local government reporting system to designate the Florida Open Government Financial Statement System as the primary location for governmental financial reporting.

#### **Service of Process**

**Section 2** amends s. 48.151, F.S., relating to service on statutory agents, to clarify that the CFO is the agent for service of process on all insurers applying for authority to transact insurance and other specified entities licensed under the Florida Insurance Code. The section also requires the Department of Financial Services (DFS or department) to create a secure online portal as the sole means to accept service of process on the CFO under this section.

**Section 23** amends s. 624.307, F.S., to require any regulated person or any unauthorized insurer under s. 626.906, F.S., to appoint the CFO as its agent to receive services of all legal process. Further, the CFO must make the process available through a secure online portal to the person designated by the regulated person or unauthorized insurer to receive the process. The notice must disclose the uniform resource locator (URL) where the process may be obtained.

**Section 24** amends s. 624.422, F.S., relating to service of process, to require each licensed insurer to file with the DFS designation of the name and e-mail address of the person to whom

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<sup>114</sup> Section 110.123, F.S.

<sup>115</sup> *Id.*

process against it served upon the CFO is to be made through the online portal. The online portal is the sole method for service of process.

**Section 25** amends s. 624.423, F.S., to clarify that service of process is valid and binding upon the insurer on the date the process is served upon the CFO and is delivered to the insurer or the DFS has notified the insurer that such information has been made available upon a secured online portal.

**Section 26** amends s. 624.610, F.S., relating to reinsurance, to provide conforming changes relating to service of process referencing s. 48.151(3), F.S., and to provide service to agents of insurers solely through the department's online portal.

**Sections 52-54** amend ss. 626.906, 626.912, and 626.937, F.S., respectively, to provide conforming changes.

### **Division of Rehabilitation and Liquidation**

**Sections 3 and 4** amend ss. 110.123 and 110.131, F.S., respectively, to allow full-time and part-time employees, retired employees, and surviving spouses of employees of the Division of Rehabilitation and Liquidation to participate in the state group insurance program.

### **Division of Workers' Compensation**

**Section 11** amends s. 440.02, F.S., to revise the definition of the term, "employer," to include employment agencies and employment leasing companies that provide employees to other business entities or persons. Currently, the definition includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. The term, "similar agents," is an undefined term, and is removed.

**Section 12** amends s. 440.05, F.S. relating to the election of exemption from workers' compensation insurance coverage requirements to provide the following changes:

- Requires an applicant for an exemption to provide a valid driver's license number or valid identification card number as a prerequisite for the DFS to process the application. Currently, the statute does not specify such documents must be valid;
- Eliminates the requirement for an applicant for an exemption from coverage to provide a social security number as a requirement for processing the application;
- Requires an applicant for a workers' compensation exemption to certify he or she has completed an online workers' compensation coverage and compliance tutorial developed by the DFS;
- Replaces the mandatory exemption and revocation of exemption notification requirement to carriers with a carrier opt-in via electronic notification process;
- Adds disclosures to the Certificate of Election to be Exempt that provide the exemption is not a license issued by the Department of Business and Professional Regulation (DBPR) and the DBPR's website has information that can be used to verify an exemption holder's licensure status;
- Eliminates a duplicative business records requirement for exemption holders in the construction industry; and

- Eliminates the scope of business or trade to disclosure on the notice of election to be exempt.

**Section 13** amends s. 440.107, F.S., relating to the DFS' powers to enforce employer compliance with coverage requirements. The bill extends the deadline for an employer to submit business records to the DFS from 10 business days to 21 days before the DFS can take an administrative action. The section eliminates the requirement for the DFS to update the Stop-Work Order database on a daily basis. The bill also clarifies an employer must pay any outstanding assessed penalty prior to entering into a new payment agreement schedule with the DFS. In addition, the bill modifies the timeframe for an employer to enter into a payment agreement schedule with the DFS or pay the penalty in full from 28 days after the service of the stop work order to within 21 days after service of the first penalty assessment. For first time employers that do not comply with coverage requirements, the timeframe to calculate a penalty for an employer's penalty formula is reduced from a 24-month period to a 12-month period, thereby reducing the penalty. The 24-month period will remain for employers who were previously issued a stop-work order or materially or understated payroll. The section allows an employer who has not been issued a Stop-Work Order or an enforcement action an opportunity to reduce their penalty by 15 percent by completing and correctly answering 80 percent of the questions from an on-line workers' compensation coverage and compliance tutorial.

**Sections 14 and 15** amend ss. 440.185 and 440.381, F.S., relating to employer and carrier reporting and carrier audits of employers, respectively. **Section 16** extends the amount of time an employer has to notify a carrier of an injury from three days to three business days and authorizes a carrier to send specified information to an injured worker or employer by e-mail as an option to regular mail. **Section 17** provides that a carrier must conduct a physical onsite audit of construction class employers with policies with an estimated annual premium of \$10,000 or more. Currently, there is no minimum premium threshold for physical onsite audits.

### **Division of Funeral, Cemetery, and Consumer Services**

**Section 16** amends s. 497.277, F.S., to eliminate the fee cap of \$50 for the transference of burial rights from the purchaser to another.

**Section 17** amends s. 497.369, F.S., to revise the requirements for obtaining an embalmer's license in Florida. The changes would allow an applicant to obtain a reciprocal licensure in Florida if they held a valid license in another state and had engaged in the full-time licensed practice of embalming in that state for at least five years.

**Section 18** amends s. 497.372, F.S., to revise the duties that only a licensed funeral director may perform. The changes will result in non-licensed individuals being able to handle more clerical responsibilities, including obtaining information from families for the filing of death certificates and setting a time for services. Further, the section removes the current period during which funeral directors must direct memorial services. As a result, a funeral director would be responsible for directing any memorial service arranged by the funeral establishment following burial or cremation, regardless of when the memorial service takes place.

**Section 19** amends s. 497.374, F.S. to revise the requirements for a funeral director to obtain a reciprocal license by allowing individuals licensed in another state to obtain licensure in Florida

if they have a current license in that state and have practiced funeral directing for at least five years. As an alternative, a funeral directors may obtain a reciprocal license if the applicant has a diploma or certificate from an accredited program of mortuary science instead of an associate degree or higher, and meets other current requirements.

### **Division of State Fire Marshal**

**Section 20** amends s. 554.108, F.S., relating to boiler inspections, to clarify a boiler with an input of 200,000 British thermal units (Btu) per hour and above, up to an input of 400,000 Btu per hour, is exempt from inspection. However, such an exempt boiler, if manufactured after July 1, 2022, must be stamped with the American Society of Mechanical Engineers (ASME) code symbol. A requirement for ASME stamping of boilers between 200,000 and 400,000 Btu has been in the statute for several years but did not have a phase in date to allow for utilization of a manufacturer's inventory. The addition of the carbon monoxide detector requirements currently found in ch. 509, F.S., clarifies the authority of authorized third party inspectors to enforce this safety feature.

**Section 21** amends s. 554.111, F.S., relating to fees, clarifies an additional amount equal to the certification inspection fees may be charged when it is necessary to make a special trip for testing and verification. In addition, this section requires an application for boiler permit to include the manufacturer's data report.

**Section 22** amends s. 554.114, F.S., relating to prohibited acts and penalties, to revise compliance deadlines and penalties for an insurer authorized to sell boiler insurance that fails to inspect a boiler pursuant to the requirements of this section.

### **Division of Insurance Agents and Agencies**

**Section 27** amends s. 626.015, F.S., to relating to definitions. The definition of licensing authority is created to mean the department or the office.<sup>116</sup> The definition of unaffiliated appointment is revised to provide an exception to the current prohibition that an unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. This change would allow a licensed adjuster to obtain an adjuster appointment in order to adjust claims on behalf of an insurer while holding an unaffiliated appointment on an agent license.

**Section 28** amends s. 626.171, F.S., relating to application for licensure, to provide the fingerprinting requirements in s. 624.34, F.S., apply to all applicants for licensure under ch. 626, F.S.

**Section 29** amends s. 626.172, F.S., relating to insurance agency licensure, to clarify fingerprinting must be processed in accordance with the requirements of s. 626.171(4), F.S.

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<sup>116</sup> In this instance department means Department of Financial Services and office refers to the Office of Insurance Regulation.

**Section 30** creates s. 626.173, F.S., relating to insurance agency closure, to specify an insurance agency's responsibilities, when closing or ceasing to transact business for more than 30 days. Within 35 days after the agency first ceases to transact insurance, the agency owner or an officer listed on the original application for licensure must:

- Cancel the insurance agency's license by notifying the DFS by the submission of completed form prescribed by the DFS;
- Notify all insurers with whom the agency or agent in charge are appointed, that the agency operations have ceased, the date operations ceased, the identity of any agent or agency to whom the agency's current book of business has been transferred, and the method by which the agency records may be obtained during the time stipulated in sections 626.748 and 626.561, F.S.;
- Notify all policyholders currently insured by a policy written, produced, or serviced by the agency that the agency has ceased operations, the date the operations ceased and the identity of the agency or agent to whom the agency's current book of business was transferred. If no transfer has occurred, notification should direct the policyholder to contact the insurance company that will assist the policyholder in locating a licensed agent to service the policy;
- Notify all premium finance companies through which active policies are financed, that the agency has ceased operations, the date operations ceased and the identity of the agent or agency to whom the agency's current book of business has been transferred; and
- Ensure all funds held in a fiduciary capacity are distributed to the rightful owners.

The section provides that in a proceeding initiated pursuant to ch. 120, F.S., the DFS may, impose an administrative fine against the agent in charge or director or officer found in the proceeding to have violated any provision of this section. A proceeding may not be initiated and fine may not accrue until after the person has been notified in writing of the nature of the violation, has been afforded 10 business days to correct the violation, and has failed to do so. Fines imposed pursuant to this section may not exceed the amounts specified in s. 626.681, F.S., per violation. Further, the DFS may also suspend or revoke the license of a licensee fined pursuant to this section. The section provides factors for the DFS to consider when determining the appropriateness of the penalty.

**Section 31** amends s. 626.201, F.S., relating to investigations of applicants by the DFS, provides that submission of an applicant's fingerprints must be in accordance with s. 626.171(4), F.S. Further, the section provides that the expiration, nonrenewal, or surrender of a license under ch. 626, F.S., does not eliminate jurisdiction of the licensing authority to investigate and prosecute for a violation committed by the licensee while licensed under ch. 626, F.S. Further, the section provides that notwithstanding the withdrawal of a complaint, the prosecution of any matter may be initiated or continued. According to the DFS, the expiration, nonrenewal, or surrender of a license jeopardizes the licensing authority of the DFS to continue to investigate or prosecute violations committed while an individual was licensed.<sup>117</sup>

**Section 32** amends s. 626.202, F.S., relating to fingerprinting requirements, to require that the submission of fingerprints must be in accordance with s. 626.171(4), F.S.

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<sup>117</sup> The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

**Section 33** amends s. 626.221, F.S., to exempt an all-lines adjuster applicant who holds a designation as a Certified All Lines Adjuster (CALA) from Kaplan Financial Education from the statutory examination requirements.

**Section 34** amends s. 626.311, F.S., to provide a licensed adjuster may obtain an adjuster appointment in order to adjust claims on behalf of an insurer while holding an unaffiliated appointment on an agent license and may adjust claims and receive compensation as authorized.

**Section 35** amends s. 626.321, F.S., to provide a conforming change regarding fingerprint requirements in s. 626.171(4), F.S.

**Section 36** amends s. 626.601, F.S., to provide conforming amendment regarding fingerprint requirements provided in s. 626.171(4), F.S.

**Section 37** amends s. 626.7845, F.S., to provide technical conforming cross reference.

**Section 38** amends s. 626.8411, F.S., relating to application provisions applicable to general lines agents or agencies, to require compliance with fingerprint requirements in s. 626.172(2)(f), F.S. Subsection (2) of the section is amended to clarify that paragraph (2)(f) of s. 626.172, F.S., applies to the agent in full charge.

**Section 39** amends s. 626.8412, F.S., to clarify that in addition to the agent, the insurance agency must also hold an appointment issued by an insurer in order to sell a title insurance policy.

**Section 40** amends s. 626.8417, F.S., to allow an applicant for a title insurance license to fulfill the 40-hour course requirement in person or online by removing the requirement that it be a classroom course.

**Section 41** amends s. 626.8421, F.S., to specify a title agent and a title agency must have a separate appointment as to each insurer by which they are appointed as agents.

**Section 42** amends s. 626.843, F.S., relating to the renewal, continuation, reinstatement, or termination of a title insurance agent's or title agency's appointment, to require a title insurance agency to be appointed, as prescribed by section 624.501, F.S., until suspended, revoked, or otherwise terminated. Further, the section requires that title insurance agency appointments must be renewed pursuant to s. 626.381, F.S.

**Section 43** amends s. 626.8433, F.S., relating to termination of appointments, to subject title insurance agencies to reporting terminations to the DFS.

**Section 44** amends s. 626.8447, F.S., relating to effect of suspension or revocation upon other licensees and appointees, to subject title insurance agencies to the same provisions.

**Section 45** amends s. 626.854, F.S., to prohibit compensation of a public adjuster being based on amounts attributable to additional living expenses, unless the insured agrees to a separate agreement with a prescribed disclosure. In addition, the section provides compensation of a public adjuster must be based on the recovery allocated to the insured for covered damages,

exclusive of attorney fees and costs. The bill also prohibits increasing public adjuster compensation based on a claim being resolved by litigation.

**Section 46** amends s. 626.8561, F.S., relating to the definition of the term, “public adjuster apprentice,” to allow an adjusting firm to appoint, employ, or contract with a public adjuster apprentice. Currently, a public adjuster may only appoint an apprentice.

**Section 47** amends s. 626.865, F.S., relating to public adjuster qualifications, to provide that a nonresident public adjuster who has been licensed and appointed on a continual basis for the previous six months to the list of licensed categories considered qualified for the public adjuster license. The section also requires that the \$50,000 bond required as a condition for licensure must remain in effect for one year after the expiration or termination of the license.

**Section 48** amends s. 626.8651, F.S., relating to public adjuster apprentice appointment and qualifications, to require only a public adjusting firm that has a designated primary adjuster, as required in s. 626.8695, F.S., to appoint the public adjuster apprentice, while eliminating a public all-lines adjuster’s ability to appoint a public adjuster apprentice.

Further, this section requires an all lines adjuster to maintain bond coverage throughout existence of the license and for one full year after expiration or termination of the license.

**Section 49** amends s. 626.8696, F.S., relating to requirements of an application for an adjusting firm license, to require the name and license number of the designated primary adjuster for each adjusting firm location as required in s. 626.8695, F.S. Further, fingerprints of each individual to be disclosed in the application (each majority owner, partner, officer, and director of the adjusting firm) must be filed with the DFS in accordance with s. 626.171(4), F.S., unless an individual is currently licensed and appointed under ch. 626, F.S. Only one of the individuals required to be listed on the application must sign the application. Currently, each owner of the firm must sign the application.

**Section 50** amends s. 626.8732, F.S., relating to bond requirements for a nonresident public adjuster, to provide that the mandated bond must be maintained unimpaired throughout the existence of the license and for a period of one year following the expiration or termination of the license.

**Section 51** amends s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications, to revise the fingerprinting requirements in accordance with s. 626.17(4), F.S.

**Section 55** amends s. 626.9953, F.S., relating to qualifications for registration, to provide conforming fingerprinting requirements.

### **Division of State Fire Marshal**

**Section 56** amends s. 633.135, F.S., relating to the Firefighter Assistance Grant Program, to expand the list of purchases eligible for the grant program to include:

- Other equipment and tools that improve fire safety and fire rescue capabilities for firefighters; and

- Protective clothing and equipment compliant with NFPA 1977, “Standard on Protective Clothing Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting.”

**Section 57** amends s. 633.216, F.S., relating to inspections of buildings and equipment; training and certification requirements, to eliminate the requirement a previously certified fire safety inspector with a lapsed certification that has lapsed for eight years or more to repeat the fire safety inspector training required by the Division of State Fire Marshal. Current law requires a certificate is valid for four years and renewal is contingent upon the completion of continuing education. An exception allowing a licensee to successfully pass the examination in lieu of the training is deleted.

**Section 58** amends s. 633.408, F.S., relating to training and certification, to authorize the Division of Fire Marshal to establish the requirements of the minimum standards course by rule. The section also provides technical changes.

**Section 59** amends s. 633.414, F.S., relating to retention of firefighter and volunteer firefighter certifications, to provide that the renewal requirements for the special certificate of compliance is the same as a firefighter certificate of compliance. The bill also changes the definition of an active firefighter.

**Section 60** amends s. 648.34, F.S., relating to qualification of bail bond agents, to revise the fingerprinting process to be in accordance with s. 626.171(4), F.S.

**Section 61** amends s. 648.355, F.S., relating to temporary limited license as limited surety agent or professional bail bond agent, to revise fingerprinting requirements to conform to s. 626.171(4), F.S.

**Section 62** amends s. 648.46, F.S., relating to disciplinary action against bail bond licensees, to provide the expiration, nonrenewal, or surrender of licensure under ch. 648, F.S., does not eliminate the jurisdiction of the licensing authority to investigate and prosecute for a violation committed by a licensee while licensed under this chapter. Notwithstanding the withdrawal of a complaint, the prosecution of any matter may be initiated or continued.

### **Florida Patient Compensation Fund**

**Section 63** amends s. 766.105, F.S., relating to the Florida Patient’s Compensation Fund (fund), to revise operations and duties of the board of governors of the fund and the Agency for Health Care Administration (agency) relating to financial responsibility or coverage requirements and certification of such coverage. The section provides that the agency would receive and review the documents and determine compliance. The supervision of the fund is transferred from the board of governors to the Chief Financial Officer or his or her designee.

Currently, the agency must review documentation submitted by hospitals demonstrating financial responsibility to pay claims and costs arising out of the rendering or failure to render medical services and for bodily injury or property damage to a person or property arising out of the activities of the hospital, as provided in s. 766.105(2), F.S. Once the agency completes the review, the agency delivers the documents to the board of governors. At least 60 days prior to the



issuance or renewal of a hospital's license, the agency must request that the board of governors certify that each hospital complies with coverage requirements. Currently, the board of governors of the Fund are responsible for the supervision and operation of the fund.

The section provides that the fund must operate subject to the supervision of the CFO or his or her designee, subject to the policies and procedures and under the auspices of the Division of Rehabilitation and Liquidation within the DFS until the DFS executes a legal dissolution of the fund on or before December 31, 2023. Prior to the legal dissolution of the fund, DFS must:

- Obtain all existing records and retain necessary records of the fund pursuant to law;
- Identify all remaining property held by the fund and attempt to return such property to its owners and, for property that cannot be returned to the owner, transfer such property to the Division of Unclaimed Property within the DFS;
- Make a final accounting of the finances of the fund;
- Ensure that the fund has met all its obligations pursuant to structured settlements, annuities, or other instruments established to pay covered claims, and, if the fund has not done so, attempt to meet such obligations before final and complete dissolution of the fund;
- Sell or otherwise dispose of all physical assets of the fund;
- Execute a legal dissolution of the fund; and
- Transfer any remaining money or assets of the fund to the CFO for deposit in the General Revenue Fund.

The section also provides s. 766.105, F.S., is repealed effective January 1, 2024, thereby terminating the Florida Patient's Compensation Fund.

**Section 10** creates ss. 395.1061 and **section 64 and 65** amend s. 945.6041, F.S., and 985.6441, F.S., respectively, to provide conforming changes relating to the repeal of s. 766.105, F.S., and transferring a provision relating to health care providers and their financial responsibility in complying with professional liability requirements. The provision is being transferred to s. 395.1061, F.S., because the bill repeals the current provision in s. 766.105, F.S., effective January 1, 2024.

**Section 66** provides that, except as otherwise expressly provided in this act, this act takes effect July 1, 2022.

#### **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:

The bill eliminates the current maximum fee of \$50 to consumers for the transference of burial rights.

Reducing the penalty calculation period and increasing credits for businesses that fail to comply with the workers' compensation law, so long as the business has not previously failed to provide workers' compensation coverage for its employees, should reduce the cost of non-compliance for small businesses, particularly those in the construction industry.

Permitting carriers to conduct offsite payroll audits by mail, rather than in person, for employers in the construction industry that have an estimated annual workers' compensation premium of less than \$10,000 could result in modest cost savings for insurance carriers, that potentially could be passed through to employers.

Permitting unaffiliated insurance agents to adjust claims, so long as the agent is also a licensed adjuster, could create employment opportunities for persons who hold both licenses and increase the pool of adjusters who can respond in the aftermath of a large storm or catastrophic event.

Terminating the Florida Patient's Compensation Fund (fund) could result in refunds to doctors and hospitals that were members of the fund in the late 1970s and early 1980s.

C. Government Sector Impact:

The bill may have insignificant but indeterminate impact on state revenues and expenditures.

**Service of Process**

The Department of Financial Services (DFS) is required to create a secure online portal as the sole means to accept service of process on the CFO under **Section 2** and **Sections 23-26**. The current online portal will meet this requirement. The DFS has

indicated any information technology impact can be absorbed within existing resources.<sup>118</sup>

### **Workers' Compensation Insurance**

The implementation of CS/SB 1874 will reduce penalties imposed on employers that do not comply with the workers' compensation insurance coverage requirements. The fiscal impact is unknown.

### **Firefighter Cancer Assistance Grant**

The changes made to the Firefighter Assistance Grant program will allow the program to fund additional necessary tools and equipment to firefighters.

### **Florida Patients' Compensation Fund**

Terminating the Florida Patient's Compensation Fund could result in refunds to doctors and hospitals that were members of the Fund in the late 1970s and early 1980s. In addition, the bill allows for the transfer of any remaining money or assets, after all obligations have been met, to be deposited in the General Revenue Fund.

## **VI. Technical Deficiencies:**

**Section 8** amends local governmental entities annual financial reports. The Chief Financial Officer required all work product on the Florida Open Financial Statement System to be completed by December 31, 2021, including the recruitment and selection of contractors to build the eXtensible Business Reporting Language (XBRL) taxonomies and software tools. The section may need to be updated to reflect and conform to the completion of such deadlines.

**Section 27** creates a definition for the term, "licensing authority." The term means the respective jurisdiction of the department or the office, as provided by law. **Sections 31 and 61** of the bill amends s. 626.201, F.S., and uses the term, "licensing authority." Other existing provisions in the Florida Insurance Code use the term, "department or office." Currently, the term licensing authority is used in ss. 626.8732 and 626.8734, F.S., in the context of a licensing authority of another state. The replacement of the term, "licensing authority," with "department or office" in **Sections 31 and 63**, and the removal of the definition of "licensing authority" in **Section 27** would provide greater clarity and consistency with the use of the term, "licensing authority," in current law.

## **VII. Related Issues:**

None.

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<sup>118</sup> The Department of Financial Services (DFS), *2022 Legislative Bill Analysis of SB 1874* (January 18, 2022) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.123, 110.131, 215.34, 215.93, 215.94, 216.102, 218.32, 440.02, 440.05, 440.107, 440.185, 440.381, 497.277, 497.369, 497.372, 497.374, 554.108, 554.111, 554.114, 624.307, 624.422, 624.423, 624.610, 626.015, 626.171, 626.172, 626.201, 626.202, 626.221, 626.311, 626.321, 626.601, 626.7845, 626.8411, 626.8412, 626.8417, 626.8421, 626.843, 626.8433, 626.8447, 626.854, 626.8561, 626.865, 626.8651, 626.8696, 626.8732, 626.8734, 626.906, 626.912, 626.937, 626.9953, 633.135, 633.216, 633.408, 633.414, 648.34, 648.355, 648.46, 766.105, 945.6041, and 985.6441.

This bill creates the following sections of the Florida Statutes: 395.1061 and 626.173.

This bill repeals section 17.035 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on February 28, 2022:**

The committee substitute:

- Retains the Stop Inmate Fraud Program within the Department of Financial Services (DFS);
- Removes the exemption of maximum reimbursement allowances schedule from the rule ratification requirements;
- Removes requirements relating to maximum reimbursement allowances for medical services when there is no agreed upon price; and Removes authority of the DFS to adopt rules to determine schedules of maximum reimbursement allowances.

**CS by Banking and Insurance on January 25, 2022:**

- Revises compensation for public adjuster by requiring that the compensation must be based on the recovery allocated to the insured for covered damage, exclusive of attorney fee and costs.
- Revises service of process requirements and provides conforming changes relating to service of process.
- Transfers responsibilities of the Florida Patient's Compensation Fund relating to hospitals demonstrating financial responsibility for maintaining professional liability coverage to the Agency for Health Care Administration.
- Revising requirements for closing an insurance agency.
- Provides technical changes.

**B. Amendments:**

None.