

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1874

INTRODUCER: Banking and Insurance Committee and Senator Boyd

SUBJECT: Department of Financial Services

DATE: January 27, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			AEG	
3.			AP	

I. Summary:

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 DFS. The SB revises service of process requirements by providing that 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 DFS that such information has made been made available on the DFS online portal. In addition, the CS/SB provides the 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 public adjuster apprentice to a public adjusting firm may appoint a public adjuster apprentice. Currently a public adjuster may also appoint an apprentice.
- Revises provisions relating to the 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 DFS to investigate and prosecute violations committed by a licensee while licensed under ch. 626, F.S., even if the license has expired, is not renewed, or is surrendered.
- Revises compensation for public adjusters by requiring that 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.
- Revises provisions relating to the inspection of boiler rooms.

Division of Workers' Compensation

- Exempts the schedules of maximum reimbursement allowances adopted by the three-member panel from rule ratification requirements by the Legislature.
- Requires a carrier to reimburse a physician, hospital, or ambulatory surgical center at the agreed-upon contract price, or if there is no contract price, the lesser of the provider's billed charge or the maximum reimbursement allowance. Currently, the carrier must reimburse at the agreed-upon contract price or the maximum reimbursement allowance.
- Clarifies the definition of employer.
- Clarifies that an employer applying for an exemption from workers' compensation coverage to provide a *valid* driver's license or *valid* identification card. An applicant is also required to complete an online DFS 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 provide submit requested business records from 10 business days to 21 days before 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 DFS.
- Requires the carrier to send an informational brochure to the injured within three business days, instead of three days, after the employee or employer notifies the carrier. A carrier is authorized to provide informational brochure to an injured worker or an employer by e-mail or regular mail.
- 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 that 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 DFS to wind down the fund, and to dissolve the fund on or before December 31, 2023.

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.¹ The CFO serves as the head of the Department of Financial Services (DFS). 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.²

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.³ The Florida Accounting Information Resource Subsystem (FLAIR) is the state's accounting system, and it is a subsystem of the FFMIS.⁴ 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.⁵ 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.⁶

¹ Section 17.001, F.S.

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

³ Section 215.93(1), F.S.

⁴ Section 215.93(10(b)), F.S. The DFS is the functional owner of FLAIR. Section 215.94(2), F.S.

⁵ Section 215.94(2), F.S.

⁶ *Id.*

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).⁷ 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.⁸ 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)⁹ 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.¹⁰ Local governments must submit their annual financial reports (AFRs) to DFS and provide their audited financial statements.¹¹ The AFR is available to the public in the local government electronic reporting (LOGGER).

In 2018,¹² legislation was enacted to require DFS to create an interactive repository of financial statement information, known as the Florida Open Financial Statement System.¹³ 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.¹⁴

Division of Rehabilitation and Liquidation

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

⁷ Section 216.102(3), F.S.

⁸ See Florida's Comprehensive Annual Financial Report, Fiscal Year ended June 30, 2020, available at [Dept. of Fin Serv - State of FL CAFR 2020 \(myfloridacfo.com\)](https://myfloridacfo.com) (last viewed Jan. 17, 2022).

⁹ GASB, Statement No. 98, The Annual Comprehensive Financial Report, (Oct. 2021) available at [GASB Statement No. 98, The Annual Comprehensive Financial Report](https://www.gasb.org/Statement-No-98) (last visited Jan. 18, 2022).

¹⁰ DFS, Division of Accounting and Auditing, Local Governments, available at [Local Governments Home \(myfloridacfo.com\)](https://myfloridacfo.com) (last visited Jan. 17, 2022).

¹¹ Section 218.32, F.S.

¹² Ch. 2018-102, s. 4, Laws of Fla.

¹³ Section 218.32(1)(h), F.S.

¹⁴ DFS, Florida Open Financial Statement Project, available at [Florida Open Financial Statement System Project \(myfloridacfo.com\)](https://myfloridacfo.com) (last visited Jan. 21, 2021).

¹⁵ 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.

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

¹⁷ *Id.*

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.¹⁸ 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.¹⁹ 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.²⁰

Fees

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

Licensure

There are several options for embalmers or funeral directors to obtain reciprocal licensure in Florida.²² One method to receive a reciprocal licensure for an embalmer is to hold an original licensure in a state that has requirements at the time of initial licensure that are substantially equivalent to or more stringent than Florida's requirements at the same time.²³ One of the paths for a funeral director to obtain a reciprocal licensure in Florida includes the requirement that an applicant holds 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.

Current law prescribes the scope of practice of funeral directing that a licensed funeral director may perform.²⁴ These duties include:

¹⁸ DFS, Division of Rehabilitation and Liquidation, [Human Resources Recruitment and Selection Frequently Asked Questions \(myfloridacfo.com\)](https://myfloridacfo.com) (last visited Jan. 17, 2022).

¹⁹ *Id.*

²⁰ 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.

²¹ Section 497.277(2), F.S.

²² Section 497.369, F.S.

²³ Section 497.369

²⁴ Section 497.372(1), F.S.

- 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
- 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.²⁵ The powers and duties of CFO and 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, customer representatives, service representatives, and agencies.²⁶ Further, 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 DFS is required.²⁷ The powers and duties of the Financial Service Commission and the Office of Insurance Regulation (OIR)²⁸ specified in part I apply only with respect to service companies, insurance administrators, and viatical settlement providers and contracts.²⁹ 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.³⁰ 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 DFS, as specified in s. 626.989, F.S.

The Division of Insurance Agent and Agency Services 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 DFS or other law enforcement agencies as appropriate.³¹

²⁵ 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), and insurance adjusters (part VI), insurance administrators (part VII), viatical settlements (part X)

²⁶ Section 626.016(1), F.S.

²⁷ Section 626.016(3), F.S.

²⁸ 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.

²⁹ Section 626.016(2), F.S.

³⁰ Sections 626.016(3), F.S.

³¹ Sections 624.307, 624.317, and 624.321, F.S.

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

According to 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.³² Licensees who do not want or need to maintain an active appointment may want to maintain their license so they can provide insurance consultation, can appoint themselves as an unaffiliated agent under s. 626.015(18), F.S.³³

Insurance Adjuster Licensure Examination

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.³⁴ An adjuster may be licensed as either an “all-lines adjuster” or a “public adjuster.”³⁵ 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.”³⁶ 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.³⁷

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.³⁸ 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 DFS testing for the all-lines adjuster license.³⁹

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.

³² *Supra* at note 50.

³³ DFS, Division of Agent and Agency Services, *Insurance Insights*, (Apr.2015), available at [Insurance Insights - April 2015 - Compliance Corner \(myfloridacfo.com\)](https://www.floridacfo.com/Insurance-Insights-April-2015-Compliance-Corner) (last visited January 17, 2022).

³⁴ INSURANCE INFORMATION INSTITUTE, GLOSSARY (defining “adjuster”), <https://www.iii.org/resource-center/iii-glossary/A> (last visited Jan. 21, 2022).

³⁵ Section 626.864, F.S.

³⁶ Sections 626.015 and 626.8548, F.S.

³⁷ Section 626.854, F.S.

³⁸ Section 626.221, F.S.

³⁹ Section 626.221(2)(j), F.S.

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.⁴⁰ 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.⁴¹

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.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵

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.⁴⁶

⁴⁰ DFS, Division of State Fire Marshal, available at [State Fire Marshal Home \(myfloridacfo.com\)](https://myfloridacfo.com) (last visited Jan. 21, 2022).

⁴¹ *Id.*

⁴² Section 633.408(4), F.S.

⁴³ Sections 633.408 and 633.412, F.S.

⁴⁴ Section 633.408(6), F.S.

⁴⁵ *Id.*

⁴⁶ Section 633.414, F.S.

Firefighter Assistance Grant Program

The Firefighter Assistance grant was created to improve the emergency response capability of volunteer fire departments and combination fire departments.⁴⁷ 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.⁴⁸ Funding is available for training, personal protective equipment, self-contained breathing apparatus, and fire engine pumper apparatus.⁴⁹ According to 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.⁵⁰

Boiler Safety Act

Chapter 554, F.S., is the “Boiler Safety Act.”⁵¹ 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.⁵² The State Fire Marshall performs inspections to ensure the safety of boilers in public buildings.⁵³ Boiler inspectors must meet initial and ongoing certification requirements.⁵⁴ The DFS may impose various fees, such as, initial and annual certificates of competency, certificate inspections.

According to DFS, some provisions within ch. 554 are outdated. For example, a requirement for ASME⁵⁵ 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.⁵⁶ Additionally, the carbon monoxide detector requirement of ch. 509, F.S., lacks clarity as to the enforcement ability of authorized third-party inspectors.⁵⁷

Stop Inmate Fraud Program/Division of Public Assistance Fraud

Effective July 1, 2011, the Stop Inmate Fraud Program was transferred from the Florida Department of Law Enforcement to DFS.⁵⁸ The intent of the program is to identify incarcerated persons who are wrongfully receiving public assistance benefits or entitlement benefits.⁵⁹ The Stop Inmate Fraud Program is housed within the Division of Public Assistance Fraud. This

⁴⁷ Section 633.135(1), F.S. Combination fire department is a fire department that is composed of career and volunteer firefighters.

⁴⁸ Section 633.135, F.S., and Rule 69A-37-501, F.A.C.

⁴⁹ Section 633.135(4), F.S..

⁵⁰ Department of Financial Services, *2022 Legislative Bill Analysis of HB 959* (companion to SB 1874) (Dec. 22, 2022).

⁵¹ Section 554.1011, F.S.

⁵² Section 554.103, F.S.

⁵³ Department of Financial Services, Division of State Fire Marshal, Boiler Safety Section, available at [Boiler Safety \(myfloridacfo.com\)](http://myfloridacfo.com) (last visited Jan. 22, 2022).

⁵⁴ Section 554.104, F.S.

⁵⁵ “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.

⁵⁶ Supra at note 50.

⁵⁷ *Id.*

⁵⁸ Section 414.40, F.S. (Ch. 2011-213).

⁵⁹ Section 414.40(2)(a), F.S.

division investigates all public assistance provided to all residents of the state or provided to others by the state.⁶⁰

Division of Workers' Compensation

The workers' compensation law⁶¹ requires an employer⁶² 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 within the DFS provides regulatory oversight of the system.⁶³ The DFS' responsibilities include enforcing employer compliance with coverage requirements,⁶⁴ administration of the workers' compensation health care delivery system, collecting system data, educating and assisting employers and injured workers.

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.⁶⁵ 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.

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.⁶⁶ 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,

⁶⁰ Section 414.411, F.S.

⁶¹ Ch. 440, F.S.

⁶² 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.

⁶³ Section 440.191, F.S.

⁶⁴ Section 440.107, F.S.

⁶⁵ 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.

⁶⁶ Sections 440.38 and 627.311(5), F.S.

date of birth, and driver's license number of Florida identification card number, and other specified information.⁶⁷

The DFS has the authority to enter and inspect any place of business for purposes of ensuring employer compliance with workers' compensation law, and DFS can request an employer's business records.⁶⁸ 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; DFS must issue a Stop-Work Order within 72 hours of determination of non-compliance, which requires the employer to cease all business operations.⁶⁹ 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 DFS for the full amount.⁷⁰ 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 2 for the prior two years.⁷¹

Reporting by Carriers and Audits by Carriers

Within 3 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 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.⁷²

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

Three-member Panel; Guides of Maximum Reimbursement Allowances; Rulemaking

Florida's workers' compensation law provides for medically necessary treatment and care of injured employees. An individual physician, hospital, ambulatory surgical center, pain program, or work-hardening program must be reimbursed at either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.⁷⁴ The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).⁷⁵

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or CFO's designee and two Governor's appointees sets the MRAs.⁷⁶ The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and

⁶⁷ Section 440.05(3), F.S.

⁶⁸ Section 440.107(7)(a), F.S.

⁶⁹ *Id.*

⁷⁰ Section 440.107(7)(d), F.S.

⁷¹ *Id.*

⁷² Section 440.185(3), F.S.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Section 440.13(12), F.S.

⁷⁶ Section 440.13(12)(a), F.S.

care;⁷⁷ the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.⁷⁸ Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.⁷⁹

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,⁸⁰ while reimbursement for surgical procedures is limited to 140 percent of Medicare.⁸¹ The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,⁸² while other outpatient services are limited to 75 percent of usual and customary charges.⁸³ Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.⁸⁴ The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.⁸⁵ Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.⁸⁶ Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.⁸⁷

Rulemaking Authority and Legislative Ratification

A rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”⁸⁸ Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.⁸⁹ An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.⁹⁰ The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁹¹

⁷⁷ Section 440.13(12)(d)1., F.S.

⁷⁸ Section 440.13(12)(d)(2), F.S.

⁷⁹ Section 440.13(12)(d)3., F.S.

⁸⁰ Section 440.13(12)(b)4., F.S.

⁸¹ Section 440.13(12)(b)5., F.S.

⁸² Section 440.13(12)(b)3., F.S.

⁸³ Section 440.13(12)(a), F.S.

⁸⁴ Section 440.13(12)(a), F.S.

⁸⁵ Section 440.13(12)(c), F.S.

⁸⁶ *Id.*

⁸⁷ Section 440.13(13)(b), F.S. The department also has broad rulemaking authority under s. 440.591, F.S.

⁸⁸ Section 120.52(16), F.S.

⁸⁹ Section 120.52(17), F.S.

⁹⁰ See ss. 120.52(8) and 120.536, F.S.

⁹¹ See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.⁹² The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared.⁹³

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁹⁴

SERC Requirements

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.⁹⁵

A SERC must include estimates of the following:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁹⁶

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,⁹⁷ productivity, or innovation; or
- Regulatory costs, including any transactional costs.⁹⁸

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.⁹⁹

The Legislature previously ratified Rule 69L-7.020, F.A.C., of the DFS, which incorporates by reference the 2016 Edition of the Florida Workers' Compensation Health Care Provider Manual,

⁹² See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁹³ Section 120.54(3)(a)1., F.S.

⁹⁴ See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

⁹⁵ Section 120.541(1)(a), F.S.

⁹⁶ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

⁹⁷ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

⁹⁸ Section 120.541(2)(a), F.S.

⁹⁹ Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. See s. 120.541(4), F.S.

providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. The DFS has subsequently adopted amended versions of the rule, incorporating by referenced the Manual. The updated Manual is estimated to increase workers' compensation system costs by 0.2 percent (\$8 million).¹⁰⁰ According to the SERC, the revisions to the MRAs in the updated manual are projected to result in increased costs to the overall compensation system of \$8 million over the next five years.¹⁰¹

In 2022, SB 1274 was filed, which would ratify Rule 69L-7.020, F.A.C.

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

Florida's Chief Financial Officer¹⁰² (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.¹⁰³

Service of process on the CFO is made by mail, personal service, or internet-based transmission system created by DFS.¹⁰⁴ 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.¹⁰⁵ The CFO may also make the process documents available from a secure website created by 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.¹⁰⁶

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*,¹⁰⁷ 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

¹⁰⁰ National Council on Compensation Insurance, Inc., *Analysis of Florida Medical Fee Schedule Changes Proposed to be Effective July 1, 2021*, November 16, 2020 (on file with the Senate Committee on Banking and Insurance).

¹⁰¹ Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (November 2021)(on file with the Senate Committee on Banking and Insurance).

¹⁰² The CFO's assistant, deputy, or another person in charge of the office may also serve as the agent for service of process.

¹⁰³ Section 48.151(3), F.S.

¹⁰⁴ *Id.*

¹⁰⁵ Section 624.423(1), F.S.

¹⁰⁶ Section 624.423(3), F.S.

¹⁰⁷ *Markovits v. Stater Farm Mutual Automobile Insurance*, 235 So. 3d 1018 (Fla. 1st 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.¹⁰⁸

Fingerprints for Background Checks

The Florida Insurance Code authorizes 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.¹⁰⁹ Applicants and licensees submit fingerprints to the Florida Department of Law Enforcement (FDLE), which forwards the fingerprints to the FBI for a federal background check.¹¹⁰ 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 that 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.¹¹¹

Federal law authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.¹¹² 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 that 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.¹¹³

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."¹¹⁴ 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 medical malpractice coverage to doctors, practitioners, hospitals, and health care facilities that were unable to purchase coverage in the commercial market. The Fund commenced operations

¹⁰⁸ *Markovitz* at 1020.

¹⁰⁹ Section 626.201, F.S.

¹¹⁰ Section 624.34, F.S.

¹¹¹ 28 C.F.R. s. 20.1

¹¹² Pub. L. 92-544.

¹¹³ *Supra* at note 50.

¹¹⁴ Ch. 75-9, Laws of Fla.

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.¹¹⁵

The Fund is subject to the supervision of a board of governors consisting of 11 representatives.¹¹⁶ 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.¹¹⁷ The Florida Bar appoints one attorney, the Florida Medical Association appoints one physician's representative, and the Florida Hospital Association appoints two hospital representatives.¹¹⁸

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 providers¹¹⁹ 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 \$1 million per claim, \$3 million annual aggregate, or \$2 million per claim, \$4 million 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 \$2.5 million per claim and does not provide an annual aggregate.¹²⁰

The board of governors may authorize refunds when revenues exceed known liabilities and expenses.¹²¹ 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 OIR has approved 11 refunds.¹²² The last year the hospitals contributed member fees was in 1982; the last year the physician class contributed member fees was in 1983.¹²³ The last refund approved by OIR was in March 2004.¹²⁴ As of December 31, 2019, the Fund reported a reserve for unearned fees of \$14,790,396.¹²⁵

¹¹⁵ Section 766.105(1)(a), F.S.

¹¹⁶ Section 766.105(3)(b), F.S.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Section 766.105(1)(b), F.S.

¹²⁰ Section 766.105, F.S.

¹²¹ Section 766.105(3), F.S.

¹²² Office of Insurance Regulation, Target Market Conduct Examination Report of the Florida Patient's Compensation Fund (Apr. 25, 2014) available at [2003 TARGET P&C MARKET CONDUCT EXAMINATION OF: \(floir.com\)](https://www.floir.com) (last visited Jan. 8, 2022).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Carr, Riggs, and Ingram CPAs, Florida Patient's Compensation Fund Audit Report, as of Dec. 31, 2019, (May 19, 2021) on file with Senate Banking and Insurance Committee.

The Fund ceased to offer coverage effective July 1, 1983, because it failed to attain the necessary minimum membership levels to offer coverage.¹²⁶ The fund purchased structured settlement annuities to fulfill the terms and conditions of settlement agreements with claimants in medical malpractice cases.¹²⁷ According to DFS, the Fund has represented that there are no open or active claims that are not being serviced through a structured settlement.¹²⁸

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.¹²⁹ 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.¹³⁰

III. Effect of Proposed Changes:

Division of Accounting and Auditing

Sections 1 and 6-10 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 17.0315, F.S., relating to the CFO’s financial and cash management task force due to the creation of the 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 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 DFS to create a secure online portal as the sole means to accept service of process on the CFO under this section.

¹²⁶ At least 7 days prior to the beginning of each fiscal year, the Fund determines whether it will attain the minimum membership levels to offer coverage. The minimum membership thresholds are total membership fees of \$5 million for non-hospital health care provider members and \$12.5 million for hospital members.

¹²⁷ The Florida Patient’s Compensation Fund: Status Report on Terminating Activities of the Fund (Dec. 10, 1994) by House of Representatives Committee on Insurance. On file with the Senate Committee on Banking and Insurance.

¹²⁸ *Supra* at note 50.

¹²⁹ Section 110.123, F.S.

¹³⁰ *Id.*

Section 26 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 27 amends s. 624.422, F.S., relating to service of process, to require each licensed insurer to file with DFS designation of the name and e-mail address of the person to whom 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 28 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 Chief Financial Officer and is delivered to the insurer or DFS has notified the insurer that such information has been made available upon a secured online portal.

Section 29 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 55-57 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.

Rule Ratification

Section 5 amends s. 120.541, F.S., to exempt the schedules of maximum reimbursement allowances adopted by the three-member panel within the DFS from the rule ratification requirements.

Stop Inmate Fraud Program/Division of Public Assistance Fraud

Section 12 amends s. 414.40, F.S., to transfer the Stop Inmate Fraud Program within the Division of Public Assistance Fraud from DFS to the Department of Economic Opportunity. Further, the section is amended to authorize the Division of Public Assistance Fraud of DFS to have access to records containing correctional information not exempt from public records on incarcerated persons that have been generated as criminal justice information.

Division of Workers' Compensation

Section 13 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 14 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 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 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 that the exemption is not a license issued by the Department of Business and Professional Regulation (DBPR) and that 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.
- Eliminates the scope of business or trade to disclosure on the notice of election to be exempt.

Section 15 amends s. 440.107, F.S., relating to DFS' powers to enforce employer compliance with coverage requirements. The bill extends the deadline for an employer to submit business records to DFS from 10 business days to 21 days before DFS can take an administrative action. The section eliminates the requirement for DFS to update the Stop-Work Order database on a daily basis. The bill also clarifies that an employer must pay any outstanding assessed penalty prior to entering into a new payment agreement schedule with 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.

Section 16 amends s. 440.13, F.S., relating to maximum reimbursement allowances for medical services by allowing a carrier to reimburse a health care provider the lesser of the billed charge

of a provider or the maximum reimbursement allowance, if an agreed-upon contract price is not in effect. Currently, a carrier must reimburse a provider at the agreed-upon contract or the maximum reimbursement allowance. The section provides rulemaking authority for implementing this section. See also Section 5.

Sections 17 and 18 amend ss. 440.185 and 440.381, F.S., relating to employer and carrier reporting and carrier audits of employers, respectively. **Section 17** 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 18** 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 19 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 20 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 and had engaged in the full-time licensed practice of embalming in that state for at least 5 years.

Section 21 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 22 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 23 amends s. 554.108, F.S., relating to boiler inspections, to clarify that 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 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 24 amends s. 554.111, F.S., relating to fees, clarifies the certification inspection fees and the reporting of the manufacturer's data report.

Section 25 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 Insurance Agents and Agencies

Section 30 amends s. 626.015, F.S., to relating to definitions. The definition of licensing authority is created to mean the department or the office. 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 31 amends s. 626.171, F.S., relating to application for licensure, to provide that the fingerprinting requirements in s. 624.34, F.S., apply to all applicants for licensure under ch. 626, F.S.

Section 32 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, F.S.

Section 33 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 DFS by the submission of completed form prescribed by 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.
- 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., 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, DFS may also suspend or revoke the license of a licensee fined pursuant to this section. The section provides factors for DFS to consider when determining the appropriateness of the penalty.

Section 34 amends s. 626.201, F.S., relating to investigations of an applicants by DFS, provides that submission of an applicant' 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 DFS, the expiration, nonrenewal, or surrender of a license jeopardizes the licensing authority of DFS to continue to investigate or prosecute violations committed while an individual was licensed.¹³¹

Section 35 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.

Section 36 amends s. 626.221, F.S., to exempt an all-lines adjuster applicant who has holds a designation as a Certified All Lines Adjuster (CALA) from Kaplan Financial Education from the statutory examination requirements.

Section 37 amends s. 626.311, F.S., to provide that 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.

Section 38 amends s. 626.321, F.S., to provide a conforming change regarding fingerprint requirements in s. 626.171(4), F.S.

Section 39 amends s. 626.601, F.S., to provide conforming amendment regarding fingerprint requirements provided in s. 626.171(4), F.S.

Section 40 amends s. 626.7845, F.S., to provide technical conforming cross reference.

Section 41 amends 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.

¹³¹ *Supra* at note 50.

Section 42 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 43 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 44 amends s. 626.8421, F.S., to specify that a title agent and a title agency must have a separate appointment as to each insurer by which they are appointed as agents.

Section 45 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 46 amends s. 626.8433, F.S., relating to termination of appointments, to subject title insurance agencies to reporting terminations to DFS.

Section 47 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 48 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 that 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 49 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 also appoint an apprentice.

Section 50 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 6 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 1 year after the expiration or termination of the license.

Section 51 amends s. 626.8651, F.S., relating to public adjuster apprentice appointment and qualifications, to require that only a public adjusting firm that has a designated primary adjuster, as required in section 626.8695, F.S., may appoint the public adjuster apprentice, while eliminating a public all-lines adjuster's ability to appoint a public adjuster apprentice.

Section 52 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 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 53 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 1 year following the expiration or termination of the license.

Section 54 amends s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications, to revise the fingerprinting requirements.

Section 58 amends s. 626.9953, F.S., relating to qualifications for registration, to provide conforming fingerprinting requirements.

Division of State Fire Marshal

Section 59 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 firesafety and fire rescue capabilities for firefighters.
- Protective clothing and equipment compliant with NFPA 1977, “Standard on Protective Clothing Equipment for Wildland Fire Fighting and Urban Interface Fire Fighting.”

Section 60 amends s. 633.216, F.S., relating to inspections of buildings and equipment; training and certification requirements, to eliminate the requirement that a previously certified firesafety inspector with a certification that has lapsed for 8 years or more to repeat the fire safety inspector training required by the division. Current law requires that a certificate is valid for 4 years and renewal is contingent upon the completion of continuing education. An exception allowing a licensee to pass successfully the examination in lieu of the training is deleted.

Section 61 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 62 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 63 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 64 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 65 amends s. 648.46, F.S., relating to disciplinary action against bail bond licensees, to provide that 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 66 amends s. 766.105, F.S., relating to the Florida Patient's Compensation 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 DFS until 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 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.
- Transfer any remaining money or assets of the fund to the CFO for deposit in the General Revenue Fund.

The section also provides that s. 766.105, F.S., is repealed effective January 1, 2024.

Section 11 creates ss. 395.1061 and **section 67 and 68** amend s.945.6041, F.S., and 985.6441, F.S., 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 766.105, F.S..

Section 69 transfers all powers, duties, functions, records, offices, positions, property, pending issues, existing contracts, and administrative authority relating to the Stop Inmate Fraud Program within the DFS to the Department of Economic Opportunity.

Section 70 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.

C. Government Sector Impact:

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

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

VI. Technical Deficiencies:

Section 30 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 34 and 64 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 34 and 64, and the removal of the definition of “licensing authority” in Section 30 would provide greater clarity and consistency with the use of the term, “licensing authority,” in current law.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.123, 110.131, 120.541, 215.34, 215.93, 215.94, 216.102, 218.32, 414.40, 440.02, 440.05, 440.107, 440.13, 440.185, 440.381, 497.277, 497.369, 497.372, 497.374, 554.108, 554.111, 554.114, 624.307, 624.422, 624.423, 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 sections 395.1061 and 626.173 of the Florida Statutes:

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 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
