

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 959 Department of Financial Services  
**SPONSOR(S):** Commerce Committee; Finance & Facilities Subcommittee; Insurance & Banking Subcommittee; LaMarca  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1874

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**FINAL HOUSE FLOOR ACTION:** 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 959 passed the House on March 4, 2022, as amended, and subsequently passed the Senate on March 4, 2022.

The bill makes changes to programs of the Department of Financial Services (DFS).

- Amends several laws related to a multi-year upgrade to the state's financial systems, known as the PALM Project (Planning, Accounting, and Ledger Management).
- Makes employees of the Division of Rehabilitation and Liquidation part of the State Group Insurance Program.
- Reduces penalties and creates educational tools within the Division of Workers' Compensation:
  - Changes the definition of "employer" used in workers' compensation law;
  - Requires an online tutorial for persons seeking an exemption from the workers' compensation law;
  - Lengthens a deadline for non-compliant employers to submit payroll records for penalty calculation;
  - Reduces penalties for employers with no prior incidents of non-compliance;
  - Provides that a required notice of rights may be sent to employees by mail or email; and
  - Eliminates a requirement for in-person payroll audits of some construction businesses.
- In the Division of State Fire Marshal, the bill updates boiler regulations and deletes a \$50 exam fee; changes the certification requirements for firefighters and fire safety inspectors; permits the use of grant funding to pay for tools and protective clothing; and increases penalties for violations of laws related to fire protection systems.
- Amends licensing requirements for embalmers and funeral directors regulated by the Division of Funeral, Cemetery, and Consumer Services.
- Makes process served upon the Chief Financial Officer (CFO) binding on an insurer when DFS notifies the insurer that process is available on a secure online portal.
- Amends laws of the Division of Insurance Agent and Agency Services to:
  - Add an exemption to the examination requirement for the all-lines adjuster license;
  - Provide additional authority for investigation of licensees;
  - Allow unaffiliated insurance agents to adjust claims without surrendering their appointments;
  - Revise statutes related to the use of fingerprints in background checks, to comply with federal law;
  - Create notice requirements for insurance agencies that stop doing business; and
  - Modifies existing laws for public adjuster compensation, qualifications and bonding requirements.
- Transfers the Florida Patient's Compensation Fund to the CFO until dissolution by December 31, 2023.

The bill has an indeterminate fiscal impact on state and local government and the private sector.

The bill was approved by the Governor on May 25, 2022, ch. 2022-138, L.O.F., and will become effective on July 1, 2022, except as otherwise provided.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Planning, Accounting, and Ledger Management (PALM) Project**

Since 2014, the Department of Financial Services (DFS) has been upgrading its financial systems, known as the Cash Management Subsystem (CMS) and the Florida Accounting Information Resource subsystem (FLAIR), which were developed in the 1970s and implemented in the 1980s.<sup>1</sup>

##### *Effect of the Bill*

Amendments reflect the transition to the new financial system, called Florida PALM (Planning, Accounting, and Ledger Management) which has begun. A task force that developed a business plan for the new financial and cash management system is disbanded. Technical changes are made because agencies will no longer need to post a journal transfer to notify the Chief Financial Officer (CFO) that a charge-back is needed. The term "Cash Management Subsystem" is replaced with "Financial Management Subsystem."<sup>2</sup>

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

The DFS Division of Rehabilitation and Liquidation serves as the receiver whenever an insolvent Florida insurer is ordered into rehabilitation or liquidation. The division has 51 employees and 14 retirees who participate in the Florida Retirement System; these persons have not been part of the State Group Insurance Program (SGI Program), because their salaries and benefits are funded by assets managed by the division rather than state appropriations. To be eligible for participation in the SGI Program, an employee must be paid by a state warrant. The SGI Program includes health and welfare insurance benefits for active and retired state employees and their families, including: health insurance; flexible spending and health savings accounts; life insurance; and dental, vision, and supplemental insurance products.<sup>3</sup>

##### *Effect of the Bill*

The bill makes full- and part-time state employees, retired employees, and surviving spouses of employees of the Division of Rehabilitation and Liquidation eligible for the SGI Program, beginning with the 2023 plan year.

The bill amends the definitions for full- and part-time state employees, retirees, and surviving spouses to make such persons eligible for benefits even though employees of the Division of Rehabilitation and Liquidation are not paid by state warrant. The cost of employee health insurance would continue to be paid by estates that are liquidated by the division; therefore, no state appropriations are needed. The division would no longer have the administrative burden of procuring health insurance on its own in the private market.

The division would be responsible for paying the monthly premiums that currently apply to early retirees, as follows:

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<sup>1</sup> S. 17.0315, F.S.

<sup>2</sup> Florida Department of Financial Services, *Florida PALM*, <https://www.myfloridacfo.com/floridapalm/> (last visited Feb. 14, 2022).

<sup>3</sup> S. 110.123, F.S.

<b>Current Premiums for "Early Retirees"<sup>4</sup></b>	<b>Monthly Cost</b>
High Deductible Plan – Individual	\$736.80
High Deductible Plan – Family	\$1,632.05
Standard Plan – enhance benefits – Individual	\$805.12
Standard Plan – enhance benefits – Family	\$1,801.08

## **Division of Accounting and Auditing**

Every state and local government entity provides its financial information to DFS annually, so DFS can prepare annual financial statements for the state of Florida and provide an online clearinghouse for the financial statements of every county, municipality, and special district in Florida. The Florida Open Financial Statement System is open to public inspection.<sup>5</sup>

### *Effect of the Bill*

The bill changes the name of the state’s annual report from “comprehensive annual financial report<sup>6</sup>” to “annual comprehensive financial report.” The bill also specifies the electronic file format (XBRL) local governments must use to file audits and financial reports with the Florida Open Financial Statement System. This is intended to create efficiencies in local government financial reporting and implement the recommendations of the OPPAGA Local Efficiency Task Force.<sup>7</sup>

## **Division of Workers’ Compensation**

Workers’ compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage, and may do so by purchasing insurance from an authorized carrier or through an employee-leasing agreement, qualifying as a self-insurer, or purchasing coverage from the Florida Workers’ Compensation Joint Underwriting Association, Inc. (FWCJUA)<sup>8</sup>, which is the state-sponsored insurer of last resort. In return for providing compensation, the employer is relieved of liability for workplace injuries and may only be sued for intentional acts that result in injury or death.<sup>9</sup>

### Definition of Employer

Chapter 440, F.S., includes a specific definition of “employer” for the purposes of workers’ compensation, at s. 440.02(16)(a), F.S., which states:

“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. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. [440.105](#), [440.106](#), and [440.107](#).

<sup>4</sup> Ch. 2021-36, Laws of Fla., pp. 425-426.

<sup>5</sup> S. 218.32(1)(h), F.S.

<sup>6</sup> S. 216.102(3)(b), F.S.

<sup>7</sup> Department of Financial Services (DFS), Agency Analysis of 2022 CS/CS/House Bill 959, pg. 6 (Feb. 1, 2022).

<sup>8</sup> S. 627.311(5)(a), F.S.

<sup>9</sup> Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.

The meaning of the words “similar agents” was disputed in a lawsuit brought against the FWCJUA, which refused to issue a policy to an out-of-state talent agency doing business in Florida because the talent agency was not licensed in Florida as an employee leasing company.

The question of whether the FWCJUA was required to issue a policy to the talent agency was not resolved, but the First District Court of Appeal held that the use of the words “similar agents” in the definition of employer supported the conclusion that the talent agency was an employer subject to the workers’ compensation law, even though the talent agency was not an employee leasing company subject to licensure in Florida.<sup>10</sup>

### *Effect of the Bill*

The bill deletes the words “similar agents” and rephrases the statutory definition of employer used in the Workers’ Compensation Law.<sup>11</sup> The new definition, in relevant part, states:

The term also includes employee leasing companies, as defined in s. 468.520(4), and employment agencies that provide their own employees to other persons.

### Exemptions

All private sector non-construction businesses with four or more employees must have workers’ compensation coverage for employees, and may provide coverage by purchasing insurance or qualifying as a self-insurer. In the construction industry, coverage is required for every employee, even if a business consists of a sole proprietor.<sup>12</sup>

Corporate officers identified in a charter or articles of incorporation filed with the Division of Corporations of the Department of State may elect an exemption from Florida’s Workers’ Compensation Law<sup>13</sup> by electronically submitting a form and paying a \$50 fee to the DFS Division of Workers’ Compensation (DWC). By doing so, the exempt officer indicates that he or she is not covered by workers’ compensation insurance, and not entitled to benefits in the event of injury. In the construction industry, no more than three corporate officers may elect such exemptions.<sup>14</sup>

If a corporate officer elects an exemption, or DWC revokes an exemption, DWC sends a notice to any carrier the corporate officer identified in his or her application for exemption.<sup>15</sup>

### *Effect of the Bill*

The bill adds an online tutorial to the exemption application process to ensure that business owners receive accurate information and understand the penalties that can result from violations of the coverage and compliance requirements. Corporate officers would have to complete the online tutorial to obtain an exemption. DWC has videos on a variety of topics posted on its website.

Additional changes include:

- Applicants must provide the Federal Employer Identification Number of their business rather than a personal Social Security number;

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<sup>10</sup> *Florida Workers’ Compensation Joint Underwriting Association, Inc. v. American Residuals and Talent, Inc.*, 284 So.3d 1115, 1119 (Fla. 1st DCA 2019).

<sup>11</sup> See ch. 440, F.S.

<sup>12</sup> S. 440.02(17)(b)2, F.S.

<sup>13</sup> Ch. 440, F.S.

<sup>14</sup> Ss. 440.02(15)(a) and 440.05, F.S.

<sup>15</sup> S. 440.05(3), F.S.

- A notice would be added to the Certificate of Election to be Exempt, stating that the certificate is not a license issued by the Department of Business and Professional Regulation.
- A provision that requires exempt corporate officers in the construction industry to maintain business records would be deleted.
- And DWC would send electronic notice that a corporate officer has elected an exemption, or has been issued a notice of revocation only upon the request of an insurance carrier, and thus avoid the cost of mailing notices (which can be retrieved online) to any carrier(s) the corporate officer identified in his or her application for exemption.

The proposed effective date for changes to s. 440.05, F.S., is January 1, 2023.

### Compliance

DWC investigators visit worksites around the state to identify businesses that are required to secure the payment of workers' compensation for their employees but fail to do so.

If an investigator identifies employees who are not covered by workers' compensation insurance and do not have an exemption from the law, the investigator issues a stop-work order and advises the employer that business records reflecting payroll during the two years prior to the stop-work order are due within 10 business days.<sup>16</sup>

If there is reason to believe an employer has materially misrepresented the number of employees on the payroll, concealed information about injuries or accidents that would affect the amount of premium due to the insurer, or misclassified employee duties to avoid paying appropriate premium, the investigator issues a request for business records to determine if a penalty is warranted. If the employer does not produce business records within 10 business days, the investigator serves a stop-work order.<sup>17</sup>

Stop-work orders cannot be released until the employer pays the penalty in full.<sup>18</sup> However, stop-work orders may be conditionally released if the employer secures compensation for all employees and provides proof of insurance to DWC, pays a \$1,000 down-payment toward the assessed penalty, and enters into a payment agreement or pays the penalty in full.<sup>19</sup> DWC will not enter into a payment agreement with an employer that has defaulted on a prior payment agreement; in such cases, DWC reinstates a stop-work order that had been conditionally released.<sup>20</sup> DWC posts information about stop-work orders on its website for five years and is required to update such orders daily.<sup>21</sup>

Penalties must be equal to the greater of: two times the premium the employer would have paid, according to the employer's payroll records, based on the approved manual rates for every non-exempt employee who was not covered by workers' compensation insurance during any period of time within the two years prior to service of the stop-work order; or \$1,000.<sup>22</sup>

If an employer fails to submit business records for the calculation of a penalty, or the employer's business records are not sufficient to determine an employer's payroll during the two years prior to

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<sup>16</sup> S. 440.107(3)(a)(c) and (f), and 440.107(7)(a), F.S.

<sup>17</sup> S. 440.107(3)(a)(b)(c) and (f) and 440.107(7)(a), F.S.

<sup>18</sup> S. 440.107(7)(a), F.S.

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

<sup>20</sup> R. 69L-6.025, F.A.C.

<sup>21</sup> S. 440.107(7)(a), F.S.

<sup>22</sup> S. 440.107(7)(d)1, F.S.

issuance of a stop-work order, the law directs DWC to calculate a penalty for each employee, corporate officer, sole proprietor, or partner based upon the statewide average weekly wage<sup>23</sup> multiplied by 1.5.<sup>24</sup> The law provides two credits that may reduce a penalty assessed by DWC:

- An employer who has not previously been issued a stop-work order or order of penalty assessment, and has purchased insurance to comply with the workers' compensation law, may receive a credit equal to the initial payment of the estimated annual policy premium, so long as proof of coverage and payment of the initial premium is provided to DWC within 28 days of service of the stop-work order or penalty assessment.<sup>25</sup>
- An employer who has not previously been issued a stop-work order or order of penalty assessment may receive a 25 percent reduction in the assessed penalty if the employer provides business records to DWC within 10 business days of receipt of a written request for such records.<sup>26</sup>

DWC must reinstate the stop-work order and make the unpaid penalty immediately due if the employer fails to pay the penalty or enter into a payment agreement with the division within 28 days of the stop-work order.<sup>27</sup> Penalty orders are rarely calculated and served within 28 days of the stop-work order; thus, the law requires the employer to enter into a payment agreement before the employer knows the amount of the penalty.

### *Effect of the Bill*

The bill makes changes to workers' compensation enforcement and compliance laws to increase the likelihood of compliance and make penalties better reflect the type of violation the law addresses.

Specifically, the law makes business records due 21 days after receipt of a written request from DWC (rather than 10 business days), and makes payment of the penalty, or execution of a payment agreement, due within 21 days of service of the penalty assessment (rather than 28 days after service of the stop-work order).

The two-year penalty period used for calculation of penalty would be reduced to one year for employers who have not previously been issued a stop-work order and order of penalty assessment. The penalty period would remain two years for employers that have previously been issued orders for non-compliance with workers' compensation law.

DWC would continue to post stop-work orders on its website for five years, but the requirement that the website be updated daily would be eliminated.

Credits that may reduce a penalty would be adjusted:

- The credit for the initial payment for workers' compensation insurance would be allowed so long as proof of payment is provided within 21 days of service of the penalty assessment, rather than 28 days of service of the stop-work order or penalty assessment.
- And the 25 percent penalty reduction for employers who have not previously been issued a stop-work order or order of penalty assessment would be allowed so long as the employer provides business records within 21 days of receipt of a written request for such records.

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<sup>23</sup> Pursuant to s. 440.12(2)(b), F.S., the "statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity (DEO) for the four calendar quarters ending each June 30, which average weekly wage shall be determined by DEO on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following.

<sup>24</sup> S. 440.107(7)(e), F.S.

<sup>25</sup> S. 440.107(7)(d)1.a., F.S.

<sup>26</sup> S. 440.107(7)(d)1.b., F.S.

<sup>27</sup> S. 440.107(7)(a), F.S.

The bill creates one new credit: An employer who takes an online tutorial at a DWC worksite, and correctly answers 80 percent of the questions, may receive an additional 15 percent reduction in the penalty assessed by DWC.

The bill adds a requirement that an employer cannot enter into a payment agreement if the employer has previously been assessed a penalty that remains unpaid. This is addressed in rules promulgated by DWC but has not been required by statute.

DWC is funded by quarterly fees applied to net premiums and paid by insurance carriers and employers that self-insure to the Workers' Compensation Administration Trust Fund (WCATF). Fines and penalties levied by DWC are also paid to the WCATF. DWC anticipates minimal fiscal impact, because the collection rate may increase as the cost of assessed penalties decreases. Data provided by DWC shows that less than one-third of penalties issued by DWC between 2015 and 2019 were paid in full.

The proposed effective date for changes to s. 440.107, F.S., is January 1, 2023.

#### Notice of Rights to the Employee

When an employee suffers an injury in the course of employment, the employee must notify the employer of the injury within 30 days, and the employer must report the injury to its insurance carrier within seven days of such notification. The employer also must mail the injured worker an informational brochure explaining the employee's rights, benefits, and obligations, and the process for accessing workers' compensation benefits.

#### *Effect of the Bill*

The bill permits delivery of the brochure by mail or email and changes the mailing deadline from three days to three business days.

#### Payroll Audits

The cost of workers' compensation insurance is based primarily upon an employer's payroll and the types of duties employees perform. Employers pay an estimated premium at the commencement of a workers' compensation policy and receive a refund or a bill for additional premium due at the end of the policy year, based on a payroll audit conducted by the insurance carrier.

The law requires payroll audits every other year for non-construction businesses. Businesses in the construction industry that are large enough to have an experience rating factor applied to their premium (meaning the policy is based on Florida premium of \$5,750 in the prior year or \$11,500 in the prior two years) must be audited annually and the audit must take place at the employer's worksite.<sup>28</sup>

The Office of Insurance Regulation (OIR) promulgates rules for payroll audits that are adopted by the Financial Services Commission. The rules require:

- An annual physical audit for policies with premium of \$10,000 or more, regardless of governing classification;
- A physical audit for all new businesses that have construction classifications, regardless of premium; and
- An annual physical audit for renewal policies that have construction classifications if the estimated annual premium is \$5,000 or more.<sup>29</sup>

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<sup>28</sup> S. 440.381, F.S.

<sup>29</sup> R. 69O-189.003(b)1, F.A.C.

Other audits may be conducted by mail. Audits conducted by telephone are not permitted in lieu of mail or physical audits.<sup>30</sup>

#### *Effect of the Bill*

The bill requires in-person audits for construction businesses only if the construction business has an estimated annual premium of \$10,000 or more. Adoption of the bill would require changes to OIR rules that require physical audits for all new construction businesses and for construction businesses that have an annual premium of \$5,000 or more.

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

The Division of Funeral, Cemetery, and Consumer Services has authority over pre-need burial contracts as well as funerals and burial services. The division licenses funeral directors, embalmers, and sales agents, and also conducts annual inspections of cemeteries and related facilities.<sup>31</sup>

#### Fees for Services

In general, the price charged for burial rights, merchandise, and burial services is left to the marketplace, but Florida law places limits on fees charged for certain related services, including the transfer of burial rights from one purchaser to another, which may not exceed \$50.<sup>32</sup>

#### *Effect of the Bill*

The bill eliminates the \$50 limit for fees paid for transferring burial rights, meaning the parties may agree to a negotiated rate. This change has no impact on DFS revenues.

#### Licensing of Embalmers

To be licensed as an embalmer in Florida, an applicant must:

- Complete coursework in mortuary science;
- Complete coursework in communicable diseases;
- Complete a one-year internship under a licensed embalmer;
- Pass a written exam on the disposal of dead bodies;
- Pass a licensing exam;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.<sup>33</sup>

For persons who are licensed to practice embalming in a state other than Florida and wish to be licensed by DFS, there are two options:

Option One: The applicant must have been licensed in a state where the requirements are substantially equivalent or more stringent than the requirements in Florida, and:

- Provide documentation showing coursework in communicable diseases;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.<sup>34</sup>

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<sup>30</sup> R. 69O-189.003(b)3, F.A.C.

<sup>31</sup> Ch. 497, F.S.

<sup>32</sup> S. 497.277(2), F.S.

<sup>33</sup> S. 497.368, F.S.

<sup>34</sup> S. 497.369(b)1, F.S.



Option Two: The applicant must have:

- Practiced as a licensed embalmer for at least one year;
- Passed a state licensing exam during the 10 years prior to application;
- Provide documentation showing coursework in communicable diseases;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.<sup>35</sup>

### *Effect of the Bill*

The bill simplifies requirements for persons who are licensed embalmers in another state and wish to be licensed in Florida under Option One. Instead of demonstrating current licensure in a state where the requirements are substantially equivalent or more stringent to those in Florida, the applicant must show that he or she has worked full-time as a licensed embalmer in another state for no less than five years.

### Duties of Funeral Directors

Persons who sell and make financial arrangements for funeral services (including the disposition of human remains through embalming, cremation or other means) must be licensed as funeral directors and be affiliated with a licensed funeral establishment.<sup>36</sup>

Certain duties may only be performed by licensed funeral directors, including setting the time of services, acquiring the services of a clergy, obtaining vital information needed to file death certificates, and obtaining burial transit permits. The funeral director must directly or indirectly supervise any memorial service held prior to or within 72 hours of burial or cremation, if such memorial service is sold or arranged by a licensee.

Licensure is not required for persons who perform related services, like ordering flowers, furnishing price lists, and transporting bodies.<sup>37</sup>

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<sup>35</sup> S. 497.369(b)2, F.S.

<sup>36</sup> S. 497.372, F.S.

<sup>37</sup> *Id.*

### *Effect of the Bill*

The bill eliminates the requirement that only licensed funeral directors can set the time of services, acquire the services of a clergy, obtain vital information needed to file death certificates, and obtain burial transit permits. Additionally, the bill requires that the funeral director directly or indirectly supervise all memorial services sold or arranged by a licensee.

### Licensing of Funeral Directors

To be licensed as a funeral director, an applicant must:

- Have an associates' degree in mortuary science or an associates' degree in another subject and also have completed an approved course of study in mortuary science;
- Complete a course on communicable diseases;
- Complete a one-year internship under a licensed funeral director;
- Pass an exam on the disposal of dead bodies;
- Pass a licensing exam;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.<sup>38</sup>

For persons who are licensed as a funeral director in a state other than Florida and wish to be licensed by DFS, there are two options:

Option One: The applicant must have been licensed in a state where the requirements are substantially equivalent or more stringent than the requirements in Florida, and:

- Complete coursework in communicable diseases;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check;
- Submit an application and pay an application fee.<sup>39</sup>

Option Two: The applicant must have completed a licensing exam in another state that is substantially equivalent or more stringent than the licensing exam in Florida, and:

- Have an associates' degree in mortuary science or an associates' degree in another subject and also have completed an approved course of study in mortuary science;
- Complete coursework in communicable diseases;
- Complete a one-year internship under a licensed funeral director;
- Pass a written exam on the disposal of dead bodies;
- Submit fingerprints for a background check; and
- Submit an application and pay an application fee.<sup>40</sup>

### *Effect of the Bill*

The bill changes the licensing requirements for persons who are licensed funeral directors in other states and seek licensure in Florida. Applicants seeking licensure under Option One must show that they are in good standing in their state of licensure and that they have practiced as a licensed funeral director for no less than five years. Applicants seeking licensure under Option Two may be licensed if they hold a certificate from an accredited program in mortuary science but have not earned an associate's degree.

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<sup>38</sup> S. 497.373, F.S.

<sup>39</sup> S. 497.374(b)1, F.S.

<sup>40</sup> S. 497.374(b)2, F.S.

## Division of State Fire Marshal

The 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 State Fire Marshal has two bureaus:

- The Bureau of Fire Prevention 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
- The Bureau of Firefighter Standards and Training approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards. Persons may be certified as a volunteer firefighter, firefighter, or administrator of a fire service provider (*i.e.*, fire chief, fire coordinator, fire director, or fire administrator).<sup>42</sup>

### Boiler Inspections

The State Fire Marshal performs inspections to ensure the safety of boilers in public buildings.<sup>43</sup>

### *Effect of the Bill*

The bill updates boiler inspection requirements to reflect current industry standards:

- Requires carbon monoxide detectors in public lodging establishments that use boilers;
- Deletes a \$50 fee for a required exam that is now offered by the National Board of Boiler and Pressure Vessel Inspectors;
- Clarifies the type of information needed to obtain a boiler permit;
- Clarifies that a fee is required if an inspector is required to make a special trip to conduct a testing and verification inspection; and
- Adjusts compliance deadlines if an insurance company authorized to sell boiler and machinery insurance or an inspection agency accredited by the National Board of Boiler and Pressure Vessel Inspectors fails to perform required inspections in a timely manner or fails to correct a violation within 30 days.

### Certification of Fire Inspectors

State and local fire inspectors may enter and inspect any buildings subject to fire safety laws.

To be certified as a fire inspector by the State Fire Marshal, a person must complete a 200-hour fire-safety inspector training program and pass a fire-safety inspector certification examination or demonstrate that he or she has had equivalent education and training in another state.<sup>44</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. The applicant must provide a sworn affidavit stating that he or she does not use tobacco.<sup>45</sup>

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<sup>41</sup> Chs. 554 and 633, F.S.

<sup>42</sup> Department of Financial Services, Division of State Fire Marshal, *What We Do*, <https://myfloridacfo.com/Division/SFM/> (last visited Feb. 14, 2022).

<sup>43</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. 14, 2022).

<sup>44</sup> S. 633.216, F.S.

<sup>45</sup> S. 633.412, F.S.

Certificates are valid for four years; a certified fire safety inspector must complete 54 hours of continuing education during the four-year period or pass an examination to renew the certificate.<sup>46</sup>

#### *Effect of the Bill*

The bill eliminates the option of passing an exam, rather than completing 54 hours of continuing education, to renew a fire safety certificate. Thus, the fire safety inspector certificate could only be renewed if the certificate-holder completes 54 hours of continuing education during the four-year certification period.

#### Certification of Firefighters and Commanders

To be certified as a firefighter, a person must complete a minimum standards course and exam 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. 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. The applicant also must provide a sworn affidavit stating that he or she does not use tobacco.<sup>47</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. 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>48</sup>

A certified firefighter who is employed as a fire chief, fire coordinator, fire director, or fire administrator must obtain a Special Certificate of Compliance within one year of beginning employment.<sup>49</sup>

#### *Effect of the Bill*

The bill deletes specific requirements for the Special Certificate of Compliance and instead provides that the requirements to obtain and renew the Special Certificate of Compliance shall be established by rule.

#### Renewing a Firefighter's Certificate

Firefighter certificates of compliance are valid for four years. 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>50</sup>

#### *Effect of the Bill*

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<sup>46</sup> S. 633.216(4), F.S.

<sup>47</sup> S. 633.408(4), F.S.

<sup>48</sup> S. 633.408(6), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> S. 633.414, F.S.

The bill provides that the special certificate of compliance has the same renewal requirements as a firefighter certificate of compliance. The bill also changes the definition of an active firefighter. Instead of requiring at least six months of active service during a four-year certification period, the bill provides the following definition:

As used in this section, the term “active” means being employed as a firefighter or providing service as a volunteer firefighter as evidenced by the individual’s name appearing on a fire service provider’s employment roster in the Florida State Fire College database or a letter by the fire service provider attesting to dates of employment.

Thus, to renew a certification, a firefighter would have to be included in a fire service provider’s employment roster or provide a letter from a fire service provider attesting to the firefighter’s dates of employment.

Additionally, the bill permits completion of the Firefighter Retention Refresher Course or passage of the Minimum Standards Course examination at any time prior to expiration of the certificate.

#### Firefighter Assistance Grants to Local Fire Departments

The Office of the State Fire Marshal also oversees the Firefighter Assistance Grant Program which awards grants to fire departments based on an annual needs assessment survey and restricts funding to training, personal protective equipment, breathing equipment, and fire engine pumper equipment.<sup>51</sup>

#### *Effect of the Bill*

The bill expands the types of equipment and tools that can be purchased with funds provided by the Firefighter Assistance Grant Program. This allows the use of state grant funds for equipment and tools that improve fire safety and rescue capabilities, and for protective clothing and equipment that complies with standards of the National Fire Protection Association.

#### Fire Protection Contractors

The State Fire Marshal enforces laws related to the installation and maintenance of fire alarms and fire protection systems, and licenses contractors who install, service, and repair such systems.<sup>52</sup> The term “fire protection system” refers to any system designed to protect a structure from fire, and includes things like sprinkler systems, foam extinguishing systems, fire hydrants and mains, hoses connected to sprinkler systems, and tanks that supply water or pump fuel.<sup>53</sup>

Any business engaged in the installation, sale, or service of fire protection systems must have at least one employee who is certified as a contractor and use equipment and procedures that comply with nationally accepted standards.<sup>54</sup>

The State Fire Marshal may order a fire system suppression contractor to correct any violation of the fire prevention and control laws, or suspend or revoke the license of such contractor.<sup>55</sup> The types of activities that may lead to penalty include: failing to supervise or improperly servicing, repairing, testing, or inspecting a fire protection system; rendering a fire protection system or water supply main

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<sup>51</sup> S. 633.135, F.S. and R. 69A-37.502, F.A.C.

<sup>52</sup> Ss. 633.104, 633.316, and 633.318, F.S.

<sup>53</sup> S. 632.102(11), F.S.

<sup>54</sup> Ss. 632.102(11), 633.332 and 633.334, F.S.

<sup>55</sup> S. 633.316(1), F.S.

inoperative; violating building codes; or failing to maintain insurance coverage.<sup>56</sup> Additionally, a fire protection contractor may not employ or otherwise permit work that is done by an unlicensed person.<sup>57</sup>

### *Effect of the Bill*

The bill increases penalties for contractors and unlicensed persons who violate laws related to fire protection systems, by authorizing an administrative fine of up to \$10,000 in addition to or in lieu of suspension or revocation of a fire protection contractor certificate. The bill directs the State Fire Marshal to adopt rules that provide for a range of penalties based on the severity and repetition of specific offenses and mitigating and aggravating circumstances.

### **Division of Insurance Agent and Agency Services**

The DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.<sup>58</sup>

### Service of Process

Every insurer licensed to do business in Florida must appoint the Chief Financial Officer (CFO) as agent for service of legal process in any civil action or proceeding in Florida and provide the name and e-mail address of the person to whom process received by the CFO should be forwarded.<sup>59</sup>

The CFO also serves as the agent for service of legal process against any nonresident agent,<sup>60</sup> reinsurance intermediary,<sup>61</sup> nonresident health insurance agent,<sup>62</sup> nonresident independent or public adjuster,<sup>63</sup> surplus lines insurer,<sup>64</sup> unauthorized insurer,<sup>65</sup> and viatical settlement provider.<sup>66</sup>

Florida law requires that process be served upon a state officer, and then forwarded to the regulated entity, to ensure that the regulator is aware of lawsuits served upon regulated entities. This is a standard practice that is recommended by the National Association of Insurance Commissioners and used in many states.<sup>67</sup>

### *Effect of the Bill*

The bill amends existing law, to clearly state that service of process is valid and binding on the insurer on the date the insurer is notified that such information is available on a secure online portal. Additionally, the bill states that service of process submitted through the secure online portal is the sole method of service of process upon an insurer authorized to do business in Florida.

### Unaffiliated Insurance Agents Adjusting Claims

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<sup>56</sup> Ss. 633.338(2), F.S.

<sup>57</sup> S. 633.336(2), F.S.

<sup>58</sup> Ch. 626, parts I, II, III, IV, V, VI, VIII, IX, and XIII, F.S.

<sup>59</sup> S. 624.423(3), F.S.

<sup>60</sup> S. 626.742, F.S.

<sup>61</sup> S. 626.7492, F.S.

<sup>62</sup> S. 626.836, F.S.

<sup>63</sup> S. 626.8736, F.S.

<sup>64</sup> S. 626.937, F.S.

<sup>65</sup> S. 626.909, F.S.

<sup>66</sup> S. 626.9912, F.S.

<sup>67</sup> See National Association of Insurance Commissioners, *Company Licensing Best Practices Handbook 2022*, at 71 <https://content.naic.org/sites/default/files/publication-clh-op-licensing-practices-handbook.pdf> (last visited Feb. 14, 2022); and National Association of Insurance Commissioners, *Uniform Consent to Service of Process/Form 12*, [https://www.naic.org/documents/industry\\_ucaa\\_form12.pdf](https://www.naic.org/documents/industry_ucaa_form12.pdf) (last visited Feb. 14, 2022).

Unaffiliated insurance agents are licensed agents who work as independent consultants, analyzing policies and providing advice or recommendations on insurance products for a fee. Such persons may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agent contracted with or employing insurer-appointed insurance agents.<sup>68</sup>

Insurance agents who are licensed to sell and service insurance must be appointed by an authorized insurer who sells the type of insurance the agent is authorized to sell.<sup>69</sup>

The law was intended to prohibit conflicts of interest that would allow unaffiliated agents to compel payments for referrals from affiliated agents or companies.<sup>70</sup>

### *Effect of the Bill*

The bill permits an insurance professional who holds both unaffiliated insurance agent license and an adjuster license to obtain an adjuster appointment while continuing his or her work as an independent consultant in the insurance industry. After a catastrophic storm, for example, the adjuster could be appointed to adjust claims for an insurer without surrendering his or her unaffiliated agent appointments.

Specifically, the bill amends the definition of unaffiliated insurance agent to state that a licensed adjuster who is also an unaffiliated insurance agent may obtain an adjuster appointment while simultaneously holding an unaffiliated appointment on his or her agent license.

Additionally, the bill amends the scope of the licensing law for insurance agents, to permit unaffiliated agents who also hold an adjuster license to obtain an adjuster appointment and be compensated for adjusting claims while maintaining his or her license as an unaffiliated insurance agent.

### 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.<sup>71</sup> Applicants and licensees submit fingerprints to FDLE, which forwards the fingerprints to the FBI for a national background check.<sup>72</sup>

National background checks conducted for non-criminal purposes are subject to Public Law 92-544, which was enacted by Congress in 1972 and permits states to receive criminal history records from the FBI so long as the state has enacted a law that requires the submission of fingerprints for appropriate licensing and employment purposes.

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.

### *Effect of the Bill*

The bill makes technical amendments to licensing laws to ensure compliance with federal law and continuation of FBI background checks for agents and agencies seeking licensure in Florida.

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<sup>68</sup> S. 626.015(20), F.S.

<sup>69</sup> S. 626.112, F.S.

<sup>70</sup> S. 626.311(6), F.S.

<sup>71</sup> S. 626.201, F.S.

<sup>72</sup> S. 624.34, F.S.

Seven of the laws being amended set forth the application requirements for persons seeking licensure:

- As an insurance agent, customer representative, adjuster, service representative, or reinsurance intermediary;<sup>73</sup>
- For an insurance agency;<sup>74</sup>
- As a limited lines licensee to transact motor vehicle physical damage and mechanical breakdown insurance; industrial fire or burglary insurance; travel insurance; motor vehicle rental insurance; credit insurance; crop hail and multiple-peril crop insurance; in-transit and storage personal property insurance; and portable electronics insurance;<sup>75</sup>
- As a nonresident all-lines adjuster;<sup>76</sup>
- As an insurance navigator;<sup>77</sup>
- As a bail bond agent;<sup>78</sup> or
- For temporary licensure (pending examination) as a limited surety agent or professional bail bond agent.<sup>79</sup>

Four of the laws being amended:

- Provide authority to investigate the character, experience, background, and fitness of licensees and applicants seeking licensure, and to require the submission of fingerprints as part of such investigation;<sup>80</sup>
- Require the submission of fingerprints if DFS has reason to believe a licensee has been convicted of a crime; is the subject of an acquisition; or employs or appoints a new partner, officer, or director;<sup>81</sup>
- Authorize investigations of allegations of improper conduct by licensed persons and entities (adjustors, agents, agencies, insurers) and related professionals (mediators and continuing education providers);<sup>82</sup> and
- Identify portions of the Insurance Code that are applicable to title agents and agencies.<sup>83</sup>

#### Authority to Investigate Licensees

Applicants seeking licensure by DFS as an insurance agent, insurance agency, or bail bond agent are subject to a background investigation to determine the applicant's character, experience, background, and fitness for the desired license.<sup>84</sup>

The application process includes the submission of fingerprints for a national criminal background check and a review of any prior violations of the Insurance Code. DFS may inquire about any matter that is reasonably related to the character and fitness of a licensee upon application for a license, renewal of a license, or reinstatement of a license.<sup>85</sup>

DFS has the power and authority expressly conferred upon it and reasonably implied from the provisions of the Insurance Code.<sup>86</sup> For investigations, the law provides the following express authority:

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<sup>73</sup> S. 626.171, F.S.

<sup>74</sup> S. 626.172, F.S.

<sup>75</sup> S. 626.321, F.S.

<sup>76</sup> S. 626.8734, F.S.

<sup>77</sup> S. 626.9953, F.S.

<sup>78</sup> S. 648.34, F.S.

<sup>79</sup> S. 648.355, F.S.

<sup>80</sup> S. 626.201, F.S.

<sup>81</sup> S. 626.202, F.S.

<sup>82</sup> S. 626.601, F.S.

<sup>83</sup> S. 626.8411, F.S.

<sup>84</sup> Ss. 626.201 and 648.27 F.S.

<sup>85</sup> Ss. 626.201, 648.27, 648.34 and 648.355 F.S.

<sup>86</sup> S. 624.307(2), F.S.



- DFS may investigate any matter to determine whether a violation of the Insurance Code has occurred, or to secure information that may be useful in the lawful administration of the Insurance Code.<sup>87</sup> This includes the authority to investigate the accounts, records, documents, and transactions of licensees.<sup>88</sup>
- DFS may investigate the conduct of any licensee, upon its own motion or upon receiving a written complaint signed by an interested person, so long as there is reasonable cause to believe that a licensee has violated a provision of the Insurance Code.<sup>89</sup> A licensee that fails to respond to a written request for documents or other information within 20 days of receipt of such request may be subject to administrative penalties of up to \$2,500.<sup>90</sup>
- Enforcement powers granted to DFS – including authority to issue orders to cease and desist, administrative complaints to suspend or revoke a license and/or remove affiliated parties – apply to licensees and their affiliated parties, and to unlicensed persons who engage in activities for which licensure is required.<sup>91</sup>

### *Effect of the Bill*

The bill provides explicit authority to investigate licensees for violations of the Insurance Code even if a license expires, is not renewed, or is surrendered. The bill also states that the withdrawal of a complaint does not affect DFS's authority to investigate or take administrative action against a licensee or former licensee. An alleged violation must have occurred while the licensee held an active license.

Express authority is added to s. 626.201, F.S., which permits DFS to investigate applicants seeking licensure or appointment in Florida. Identical express authority is added to s. 648.46, F.S., which permits DFS to take disciplinary actions against licensed bail bond agents.

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<sup>87</sup> S. 624.307(3), F.S.

<sup>88</sup> S. 624.317, F.S.

<sup>89</sup> S. 626.601, F.S.

<sup>90</sup> S. 624.307 (10)(b), F.S.

<sup>91</sup> Ss. 624.310(2), 624.319(3)-(4) and (8), and 626.016, F.S.

## Closure of an Insurance Agency

Current law does not address the closure of an insurance agency. Some insurance agencies have abandoned their offices and records, forcing DFS to work with landlords, retrieve records, and complete unfinished work, like remitting checks to insurers and managing applications that were not filed.

### *Effect of the Bill*

The bill provides directions for closure in the event that an insurance agency stops doing business for more than 30 days. Within 35 days of the date the insurance agency stops doing business, the insurance agency must:

- Notify DFS of its closure and cancel its agency license;
- Notify insurers, policyholders, and premium finance companies of the closure and provide information about the agency or agent who has taken over the book of business; and
- Ensure that all funds held in a fiduciary capacity are properly distributed to the rightful owner(s).

Failure to provide the required notifications could result in an administrative fine up to \$10,000 per violation and suspension or revocation of the agency license.

## All-Lines Adjusters

An all-lines adjuster is a person who determines the value of a claim, loss, or damage payable under a property or casualty insurance contract and tries to negotiate a settlement of such claim, loss, or damage.<sup>92</sup>

Such persons must pass a written exam recognized by DFS to be licensed unless they qualify for an exemption.<sup>93</sup> Examination is not required for persons who earn an appropriate designation from a regionally accredited postsecondary institution in Florida; or certification from a recognized professional association whose curriculum has been approved by DFS, like the Insurance Institute of America or the Claims and Litigation Management Alliance.<sup>94</sup>

### *Effect of the Bill*

The bill adds the Certified All Lines Adjuster certificate from Kaplan Financial Education to a list of recognized programs that exempt an applicant from the examination requirement.

## Title Agents and Agencies

Title insurance insures property owners against claims related to the ownership of an insured property, liability for back taxes, and liens or other encumbrances.<sup>95</sup>

### *Effect of the Bill*

The bill includes clarifying amendments in six sections related to the sale of title insurance:

- A title insurer may not sell policies unless both the agent and the agency are appointed by the insurer;<sup>96</sup>
- Pre-licensing classes for title insurance agents may be taught online as well as in a classroom;<sup>97</sup>

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<sup>92</sup> S. 626.8548, F.S.

<sup>93</sup> Ss. 626.211 and 626.292, F.S.

<sup>94</sup> S. 626.221(2)(j), F.S.

<sup>95</sup> Ch. 626, part V, F.S.

<sup>96</sup> S. 626.8412, F.S.

<sup>97</sup> S. 626.8417, F.S.

- Both title agents and title agencies are required to have a separate appointment for each insurer that has appointed the agent or agency;<sup>98</sup>
- Appointments for title agents and title agencies are renewable every two years;<sup>99</sup>
- Notice requirements related to the termination of an appointment apply to both title agents and title agencies;<sup>100</sup>
- Sanctions related to the suspension or revocation of a license apply to both title agents and title agencies.<sup>101</sup>

### Public Adjusters

Public adjusters file and negotiate insurance claims on behalf of a policyholder, for a fee. Florida law limits reimbursement to a public adjuster to no more than 20 percent of a claim payment, or no more than 10 percent of a payment for a claim that arose from an event that was declared a state of emergency. The law additionally prohibits a public adjuster from offering any gratuity worth more than \$25, or any loan or advance to a client in return for representation in an insurance claim. Further, public adjusters may not offer residential property owners any type of gratuity or rebate in return for permitting a roof inspection, or making an insurance claim for roof damage.<sup>102</sup>

Persons seeking licensure as a public adjuster must have been licensed and appointed as a public adjuster apprentice, independent adjuster, or company employee adjuster for at least six months prior to application.<sup>103</sup>

Persons seeking licensure as a public adjuster apprentice must be licensed as an all-lines adjuster and must post a \$50,000 bond during his or her appointment to a public adjusting firm and for a year following termination of such appointment.<sup>104</sup>

Nonresident public adjusters may be licensed to do business in Florida if they satisfy the application requirements, including passing a written exam, and demonstrating that they have been licensed and employed as a public adjuster or insurance company adjuster or independent adjuster in a state other than Florida during the six months prior to application. Additionally, the applicant must post a \$50,000 bond that may not be terminated without 30 days written notice to DFS.<sup>105</sup>

### *Effect of the Bill*

The bill establishes requirements for public adjusting firms and their apprentices, and makes technical changes to related laws:

- Most homeowners, condo, and renter insurance include coverage for additional living expenses a policyholder incurs if the policyholder cannot live in his or her home due to a covered loss. The bill prohibits compensation to a public adjuster based on amounts attributable to additional living expenses unless the public adjuster and the policyholder agree to such compensation in a separate agreement that includes the following disclosure: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

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<sup>98</sup> S. 626.8421, F.S.

<sup>99</sup> S. 626.843, F.S.

<sup>100</sup> S. 626.8433, F.S.

<sup>101</sup> S. 626.8447, F.S.

<sup>102</sup> S. 626.854, F.S.

<sup>103</sup> S. 626.865(1)(e), F.S.

<sup>104</sup> S. 626.8651(1), F.S.

<sup>105</sup> S. 626.8732, F.S.

- Creates a new provision which states that the rate of compensation paid to a public adjuster may not be increased based solely on the fact that the claim is litigated, and amends existing law related to public adjuster compensation to exclude attorney fees and costs;
- Requires that adjusting firms seeking licensure include the name and license number of the designated primary adjuster who is responsible for adjusters at each business location, and requires fingerprints for background checks of the owner(s) as well as corporate officers and directors;
- Requires that an applicant for licensure as a public adjuster must have been licensed and appointed in Florida as a non-resident public adjuster, or as an all-lines adjuster, on a continual basis, during the six months prior to application;
- Amends the definition of “public adjuster apprentice” to state that such apprentice must be employed by a public adjusting firm, rather than employed by a public adjuster;
- Requires that a \$50,000 bond posted by each public adjuster apprentice remain in effect for one year after termination of the public adjuster apprentice license, and requires that the public adjusting firm provide DFS with notice of the primary adjuster who responsible for the supervision of all adjusters at the firm’s location;
- Requires that the \$50,000 bond posted by each nonresident public adjuster must remain in effect for one year following the expiration or termination of the public adjuster license, and also makes changes to comply with federal law related to the use of fingerprints in national background checks, discussed above.

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

Florida experienced a medical malpractice insurance crisis in the mid-1970s when 20 professional liability insurers responded to rising medical malpractice awards and settlements by cancelling coverage of Florida physicians and withdrawing from the market. Companies remaining in the market increased rates dramatically, with the leading insurer at the time requesting and receiving approval for a 100 percent increase in premium rates paid by doctors.<sup>106</sup>

The Legislature responded by enacting The Medical Malpractice Reform Act of 1975, which, among other things, created the Florida Patient’s Compensation Fund (Fund) to limit the risk exposure of participating health care providers. Participants had to show proof of \$100,000 coverage from an insurer or self-insurance plan and deposit an annual fee into the Fund. 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 \$1 million on a given claim in any single year.<sup>107</sup>

The Fund attracted providers and ran smoothly for a few years but was not actuarially sound, so substantial losses began to accumulate.<sup>108</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>109</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>110</sup>

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<sup>106</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. 14, 2022); and Florida House of Representatives Committee on Insurance, *The Florida Patient’s Compensation Fund: Status Report on Terminating Activities of the Fund*, December 10, 1994, at 1-7.

<sup>107</sup> S. 765, 105, F.S.

<sup>108</sup> *The Florida Patient’s Compensation Fund: Status Report on Terminating Activities of the Fund*, supra note 106, at 7. 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>109</sup> *Medical Malpractice Case Study on Florida, Report to Congressional Requestors*, supra note 106, at 10.

<sup>110</sup> *The Florida Patient’s Compensation Fund: Status Report on Terminating Activities of the Fund*, supra note 106, at 17-18.

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 s. 766.105, F.S.<sup>111</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>112</sup>

All private hospitals were required to join the Fund or demonstrate financial responsibility of at least \$10,000 per bed through self-insurance, by posting a bond or establishing an escrow account, or by purchasing professional liability insurance. Compliance was delegated to the Agency for Health Care Administration (AHCA), which required proof of membership or exemption for licensing and license renewal. The requirement that AHCA determine compliance with s. 766.105(2)(d)2, F.S., remains, so hospitals must demonstrate that they are exempt from participation in the Fund by providing proof of financial responsibility through one of the following:

- A bond posted in the amount equivalent to \$10,000 per claim for each hospital bed, not to exceed a \$2,500,000 annual aggregate.
- An escrow account in an amount equivalent to \$10,000 per claim for each hospital bed, not to exceed a \$2,500,000 annual aggregate to the satisfaction of AHCA.
- Professional liability coverage in an amount equivalent to \$10,000 or more per claim for each hospital bed, from a private insurer, the Joint Underwriting Association; or through a plan of self-insurance as provided in s. 627.357, F.S., not to exceed a \$2,500,000 annual aggregate. Include proof of funding any self-insurance retention.
- Sovereign immunity. State Agencies, subdivisions or instrumentalities of the state. No additional documentation necessary if previously documented.<sup>113</sup>

The Fund is an independent, tax-exempt entity created by the state, but OIR has supervisory authority over the Fund's Plan of Operation and any changes to the Plan of Operation, including repeal.<sup>114</sup>

The law requires that OIR review any request for assessments of plan participants or refunds of plan participants, and further states that the Fund is required to furnish audited financial reports annually, upon request, to any fund participant and to OIR and the Joint Legislative Auditing Committee.<sup>115</sup>

The following provides a short history of interactions between the Fund and OIR:

- OIR Approved the Fund's Plan of Operations in 1979;<sup>116</sup>
- OIR approved member fees in 1981, 1985, 1986 and 1989;<sup>117</sup>
- OIR ordered 12 assessments of Fund members and approved 11 refunds between 1982 and 2004;<sup>118</sup>
- In 1994, the Fund's general manager advised the House of Representatives that it would take about six or seven years to wind down the Fund's operations, which, at that time, included 69 open claims that were the subject of litigation;<sup>119</sup>

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<sup>111</sup> *Id.*, at 1.

<sup>112</sup> Office of Insurance Regulation, *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, April 25, 2014, at 4, [lamainrouge.net/siteDocuments/FLPatientsCompensationFund\\_04252014.pdf](http://lamainrouge.net/siteDocuments/FLPatientsCompensationFund_04252014.pdf) (last visited Feb. 14, 2022).

<sup>113</sup> Agency for Health Care Administration, *Health Quality Assurance Licensure Form 3130-8001s, Hospital*, at 11, <https://ahca.myflorida.com/MCHQ/HQALicensureForms> (last visited Feb. 14, 2022).

<sup>114</sup> S. 766.105(3)(c), F.S.

<sup>115</sup> S. 766.105(3)(e)4, F.S.

<sup>116</sup> Email from Grant Phillips, Director of Legislative Affairs for the Office of Insurance Regulation, *FPCF Order Timeline*, at 26 (Nov. 16, 2021).

<sup>117</sup> *Id.*

<sup>118</sup> *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, *supra* note 112, at 7.

<sup>119</sup> *Id.*, at 20-21.

- The Fund rejected a proposal to merge with the Florida Medical Malpractice Joint Underwriting Association in 2008, but promised to reduce its budget by 20 percent in 2009 and an additional 10 percent in 2010.<sup>120</sup>
  - In response, OIR noted that operating expenses of \$325,950 (including \$111,000 salary to the general manager, at that time the Fund's only employee) were not prudent because the Fund had not written any new policies in 20 years. OIR suggested that the Fund meet once per year, via conference call, and outsource the duties of the general manager.<sup>121</sup>
  - In reply, the Fund provided a legal opinion stating that its Articles of Association require a general manager and that the Fund benefited from the general manager's knowledge of the Fund's history and activities.<sup>122</sup>
- A 2014 market conduct exam conducted by OIR noted that the Fund's operating expenses were \$330,950 in 2010, \$338,700 in 2011, and \$359,700 in 2012.
  - The increase in operating costs was attributed to a "catastrophic computer failure" that caused the Fund to lose all digital records related to refunds. A vendor used microfilm records to restore the Fund's digital system and the Fund installed automated backup programs on its one desktop and two laptop computers.<sup>123</sup>
- By spring 2016, the Fund had negotiated a \$3,334,000 deal with Berkshire Hathaway, which was willing to accept liability for 10 annuities that were owned by the Fund and did not have a unified qualified assignment that would have released the Fund from liability in the event an insurer paying annuitants through a structured settlement became insolvent. A transfer to Berkshire Hathaway would have allowed the Fund to issue refunds to former members and wind down its activities. The Fund rejected the deal when final contract language gave OIR contractual control over most of the Fund's activities.<sup>124</sup>
- In the fall of 2016, the Fund submitted a request to OIR to issue refunds and wind the Fund down, but was unable to persuade OIR that it did not have any contingent liability for some of the annuities that were issued by insurance companies, and continue to be serviced by those insurance companies, as part of structured settlements negotiated by the Fund decades earlier.<sup>125</sup>
- In 2019, the Fund obtained releases of contingent liability from five annuitants whose remaining payments exceed the \$300,000 limit of the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which would be responsible for claims in the event an insurer servicing the annuities became insolvent.<sup>126</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 FLAHIGA, therefore the actuary concluded that the Fund's exposure to contingent liability is \$2,403,590. About half of the

<sup>120</sup> Correspondence from Stanley Marguilies, M.D., chairman of the Board of Governors of the Florida Patient's Compensation Fund to Insurance Commissioner Kevin McCarty, June 13, 2008.

<sup>121</sup> Correspondence from Insurance Commissioner Kevin McCarty to Stanley Marguilies, M.D., chairman of the Board of Governors of the Florida Patient's Compensation Fund, Aug. 14, 2008.

<sup>122</sup> Legal opinion of Zollie M. Maynard, Esq., general counsel for Florida Patient's Compensation Fund, Sept. 18, 2008.

<sup>123</sup> *Target Market Conduct Final Examination Report of the Florida Patient's Compensation Fund*, *supra* note 112, at 6-8.

<sup>124</sup> Correspondence from OIR Assistant General Counsel Alyssa S. Lathrop to General Manager of the Florida Patient's Compensation Fund Charles J. Portrero, Nov. 17, 2016; and Minutes of the May 18, 2017, meeting of the Florida Patient's Compensation Fund Operations Committee.

<sup>125</sup> Correspondence from OIR Assistant General Counsel Alyssa S. Lathrop to General Manager of the Florida Patient's Compensation Fund Charles J. Portrero, Nov. 17, 2016; and Correspondence from David Yon, Esq., on behalf of the Florida Patient's Compensation Fund, to Susan Herendeen, Esq., of the Insurance and Banking Subcommittee of the Florida House of Representatives, Dec. 22, 2021.

<sup>126</sup> 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.

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>127</sup>

Audited financial reports state that the Fund had total assets of \$15,135,541 at the close of 2020; this includes \$14,888,634 held in investment accounts.<sup>128</sup> Thus, it appears that the Fund has enough assets to cover its liabilities.

Operating costs have increased in recent years, because the Board of Governors approved the general manager's request for an assistant in 2015 and approved 4 percent annual salary increases for the two Fund employees for 2017, 2018, 2019 and 2020.<sup>129</sup> The Fund contributes to an employee pension plan and pays for legal counsel, accounting and auditing, rent and utilities, travel, and insurance.<sup>130</sup>

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

	2016	2017	2018	2019	2020
Salaries	\$181,754.00	\$213,668.00	\$221,600.00	\$229,764.00	\$240,417.00
Pension Plan	\$59,684.00	\$52,303.00	\$55,677.00	\$54,424.00	\$45,891.00
Rent, Utilities, and Janitorial	\$20,336.00	\$16,704.00	\$16,158.00	\$16,758.00	\$12,841.00
General Counsel	\$3,500.00	\$42,195.00	\$36,992.00	\$35,339.00	\$37,065.00
Accounting and Audit	\$73,513.00	\$58,294.00	\$52,578.00	\$52,821.00	\$39,126.00
Travel & Expenses (staff)	\$1,463.00	\$4,087.00	\$3,841.00	\$1,962.00	\$4,404.00
Travel & Expenses (board)	\$7,124.00	\$20,327.00	\$17,627.00	\$21,905.00	\$22,751.00

#### *Effect of the Bill*

The bill provides for a two-year wind down of the Fund that will be supervised by the Chief Financial Officer through the DFS Division of Rehabilitation and Liquidation. DFS must dissolve the Fund on or before December 31, 2023; ensure that the Fund has met its obligations to former members and creditors; and make a final accounting for the finances of the Fund. DFS must attempt to return any property held by the Fund to its owners; property that cannot be returned to the owner will be transferred to DFS's Division of Unclaimed Property. Any remaining money or assets of the Fund will be transferred to the General Revenue Fund.

The bill also moves financial responsibility requirements for hospitals, which are part of s. 766.105, F.S., to a new section within ch. 395, F.S., and makes conforming changes to retain the definition of "health care provider" in laws that are cross referenced with s. 766.105, F.S.

The law<sup>131</sup> that created the Fund will be repealed on January 1, 2024.

#### **Effective Date**

The bill shall be effective upon becoming a law, except as otherwise provided. The effective date for the educational tutorial that will be part of the workers' compensation exemption application process is

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<sup>127</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>128</sup> Carr Riggs & Ingram CPAs and Advisors, *Florida Patient's Compensation Fund Financial Statements*, Dec. 31, 2020, at 4.

<sup>129</sup> Memo to the Florida Patient's Compensation Fund Operating Committee from General Manager Charles Portrero, Nov. 19, 2018.

<sup>130</sup> OIR 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. OIR provided copies of meeting materials from 2011-2020 to the Insurance and Banking Subcommittee.

<sup>131</sup> S. 766.105, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There is an indeterminate, but likely insignificant, fiscal impact on state revenues. DWC anticipates a minimal impact from changes to the workers' compensation fines and penalties assessed, because the collection rate may increase as the cost of assessed penalties decreases.<sup>132</sup> The bill also deletes a \$50 exam fee for boiler inspectors, but no loss of revenue is expected, as the exam is not conducted by the State Fire Marshal.<sup>133</sup>

#### 2. Expenditures:

The bill will have an indeterminate, but likely insignificant, negative fiscal impact on state expenditures. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 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.

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 could result in refunds to doctors and hospitals that were members of the Fund in the late 1970s and early 1980s.

### D. FISCAL COMMENTS:

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<sup>132</sup> Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: CS/CS/HB 959 Information Requested (Feb. 8, 2022).

<sup>133</sup> *Id.* The exam is conducted by the National Board of Boiler and Pressure Vessel Inspectors.



The cost of adding employees of the Division of Rehabilitation and Liquidation to the State Group Insurance Program is indeterminate. Premiums to be paid by the Division of Rehabilitation and Liquidation are the same as early retirees.

Before the dissolution of the Florida Patient's Compensation Fund, DFS must attempt to return property held by the Fund to its owners. Any property that cannot be returned to the owner will be transferred to DFS's Division of Unclaimed Property. Any remaining money or assets after the termination of the Fund will be deposited by DFS in the General Revenue Fund. The Fund currently has a balance of \$14.9 million and has not paid a claim since the 1980s.<sup>134</sup>

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<sup>134</sup> *Id.*