

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1158

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government,  
Banking and Insurance Committee and Senator DiCeglie

SUBJECT: Department of Financial Services

DATE: April 19, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Thomas</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1158 revises provisions of multiple programs within the Department of Financial Services (DFS) to:

- Amend provisions regarding investigations and prosecutions within the regulatory authority of the DFS;
- Add the State College System to the State Deferred Compensation Program;
- Revise provisions relating to the Workers' Compensation Three Member Panel;
- Ratify three DFS rules relating to the Florida Workers' Compensation Law;
- Revises definitions relating to the regulation of funeral, cemetery, and consumer services;
- Establish guidelines for board member requirements where the Chief Financial Officer (CFO) has sole appointment authority;
- Provide that insurers pay for mediation of motor vehicle mediation claims;
- Create a Direct Support Organization to facilitate and promote firefighter safety;
- Revise financial requirements for warranty associations;
- Revise the role of reinsurance intermediaries to an appointment instead of a license; and
- Revise provisions relating to bail bond agents and agencies; remove authority for temporary bail bond agents.

The bill has an indeterminate, yet insignificant impact on state government revenues and expenditures. *See* Section V. Fiscal Impact Statement.

The bill becomes effective upon becoming a law, except as otherwise provided.

## II. Present Situation:

### **Powers and Duties of the Department of Financial Services**

The organizational structure of the Department of Financial Services (DFS) is set forth in s. 20.121, F.S. The DFS is statutorily responsible for:

- Carrying out the state's accounting and auditing functions, including preparing the state's Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures.
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use.
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities.
- Managing the state Treasury and directing safekeeping and the investment of all state funds.
- Managing the deferred compensation program for state employees.
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state.
- Regulating cemeteries and funeral homes.
- Licensing and oversight of insurance agents and agencies.
- Ensuring that Florida employers provide workers' compensation coverage for their employees in a cost effective manner.
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services.
- Collecting and returning unclaimed property belonging to Florida residents.<sup>1</sup>

The DFS is composed of the following thirteen divisions:

- 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

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<sup>1</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/required/agency-org> (last visited March 28, 2023).

- Workers' Compensation.<sup>2</sup>

### **Division of Investigative and Forensic Services**

The Division of Investigative and Forensic Services (DIFS) functions as a criminal justice agency for purposes of ss. 943.045-943.08, F.S., and is authorized to conduct investigations within or outside of Florida, as necessary. The DIFS includes the following office and bureaus:

- The Bureau of Forensic Services;
- The Bureau of Fire, Arson, and Explosives Investigations;
- The Office of Fiscal Integrity;
- The Bureau of Insurance Fraud; and
- The Bureau of Workers' Compensation Fraud.

DIFS encompasses all enforcement and forensic components within the DFS, investigating a wide range of fraudulent and criminal acts including:

- Insurance fraud investigations;
- Workers' compensation fraud investigations;
- Fire, arson, and explosives investigations;
- Theft/misuse of state funds; and
- Fire and explosives sample analysis.<sup>3</sup>

### **Strategic Markets Research and Assessments Unit**

Subsection 20.121(6), F.S., establishes the Strategic Markets Research and Assessments Unit and charges the Chief Financial Officer (CFO), or designee, with reporting quarterly to the Cabinet, President of the Senate, and Speaker of the House of Representatives on the status of the state's financial services markets. The report must include a summary of the issues, trends, and threats that broadly impact the condition of the financial services industries and institutions. The CFO is also responsible for submitting findings and recommendations regarding regulatory and policy changes with the report.

### **Florida Deferred Compensation Program**

Section 112.215, F.S., requires the CFO to create a deferred compensation plan (plan) for employees of state agencies, the State University System, the State Board of Administration, and other special district employers (subject to employer election). The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.<sup>4</sup>

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<sup>2</sup> Florida Department of Financial Services, *Divisions and Offices* <https://www.myfloridacfo.com/> (last visited March 28, 2023).

<sup>3</sup> Department of Financial Services, Investigative and Forensic Services, *About the Division*, <https://myfloridacfo.com/Division/DIFS/> (last visited March 28, 2023).

<sup>4</sup> See <https://www.myfloridacfo.com/DeferredComp/> (last visited March 28, 2023).

The Deferred Compensation Advisory Council (Council) provides assistance and recommendations to the CFO relating to the provisions of the plan, the insurance or investment options to be offered under the plan, and any other contracts or appointments deemed necessary. The Council is composed of seven members.

- One member appointed by the Speaker of the House of Representatives and the President of the Senate jointly, who is an employee of the legislative branch;
- One member appointed by the Chief Justice of the Supreme Court, who is an employee of the judicial branch;
- One member appointed by the chair of the Public Employees Relations Commission, who is a nonexempt public employee;
- One member appointed by the Chancellor of the State University System, who is an employee of the university system;
- One member appointed by the CFO, who is an employee of the CFO;
- One member appointed by the Governor, who is an employee of the executive branch; and
- One member appointed by the Executive Director of the State Board of Administration, who is an employee of the State Board of Administration.

### **Annual Report on Economic Impact of a 1-in-100-Year Hurricane**

In 2008, the Legislature created section 215.55952, F.S., requiring the DFS to provide a report on the economic impact on the state of a 1-in-100-year hurricane to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1 of each year.<sup>5</sup> The report is to include:

- An estimate of the short-term and long-term fiscal impacts of such a storm on Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, the private insurance and reinsurance markets, the state economy, and the state debt;
- An analysis of the average premium increase to fund a 1-in-100-year hurricane event and list the average cost, in both a percentage and dollar amount, impact to consumers on a county-level basis; and
- Recommendations for preparing for such a hurricane and reducing the economic impact of such a hurricane on the state.

In preparing the report, the DFS is charged with coordinating with OIR, Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, the Florida Commission on Hurricane Loss Projection Methodology, the State Board of Administration, the Office of Economic and Demographic Research, and other state agencies.

The DFS has reported difficulty in obtaining the expertise to develop the report and the high cost to prepare the report.

### **Tangible Personal Property Owned by Local Governments**

Chapter 274, F.S., governs tangible personal property owned by local governments. The CFO is charged with establishing by rule the requirements for the recording and periodic review of such property for inventory purposes. Tangible personal property includes all goods of value capable

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<sup>5</sup> Section 21, ch. 2008-66, L.O.F.

of manual possession and whose chief value is intrinsic to the article itself.<sup>6</sup> “Governmental unit” means the governing board, commission or authority of a county or taxing district of the state or the sheriff of the county.<sup>7</sup>

## **Workers’ Compensation**

### ***Workers’ Compensation Maximum Reimbursement Allowances***

The Division of Workers’ Compensation within the DFS provides regulatory oversight of Florida’s workers’ compensation system, which includes the enforcement of coverage requirements,<sup>8</sup> administration of workers’ compensation health care delivery system,<sup>9</sup> data collection,<sup>10</sup> and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.<sup>11</sup> Whether an employer is required to have workers’ compensation insurance depends upon the employer’s industry and the number of employees. Employers may secure coverage by purchasing a workers’ compensation insurance policy or qualifying as a self-insurer.<sup>12</sup> Individuals who elect an exemption are not considered “employees,” for premium calculation purposes, and are not eligible to receive workers’ compensation benefits if they suffer a workplace injury. Florida’s workers’ compensation law provides for medically necessary treatment and care of injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).

A three-member panel (panel), consisting of the CFO or the CFO’s designee and two Governor’s appointees, sets the MRAs.<sup>13</sup> 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 care;<sup>14</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;<sup>15</sup> and the financial impact of the MRAs on healthcare providers and facilities; 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.<sup>16</sup>

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,<sup>17</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>18</sup> The hospital

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<sup>6</sup> Section 192.001(11)(d), F.S.

<sup>7</sup> Section 274.01(1), F.S.

<sup>8</sup> Section 440.107(3), F.S.

<sup>9</sup> Section 440.13, F.S.

<sup>10</sup> Section 440.185 and 440.593, F.S.

<sup>11</sup> Section 440.191, F.S.

<sup>12</sup> Section 440.38, F.S.

<sup>13</sup> Section 440.13(12)(a), F.S.

<sup>14</sup> Section 440.13(12)(d)1., F.S.

<sup>15</sup> Section 440.13(12)(d)2., F.S.

<sup>16</sup> Section 440.13(12)(d)3., F.S.

<sup>17</sup> Section 440.13(12)(b)4., F.S.

<sup>18</sup> Section 440.13(12)(b)5., F.S.

manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>19</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>20</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>21</sup> The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary charge 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.<sup>22</sup> 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.<sup>23</sup> Fees may not exceed the schedules adopted under ch. 440, F.S., and DFS rule.<sup>24</sup>

### ***Rulemaking Authority and Legislative Ratification***

A rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy.”<sup>25</sup> 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.<sup>26</sup> An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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<sup>19</sup> Section 440.13(12)(b)3., F.S.

<sup>20</sup> Section 440.13(12)(a), F.S.

<sup>21</sup> Section 440.13(12)(a), F.S.

<sup>22</sup> Section 440.13(12)(c), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 440.13(13)(b), F.S. The DFS also has broad rulemaking authority under s. 440.591, F.S.

<sup>25</sup> Section 120.52(16), F.S.

<sup>26</sup> Section 120.52(17), F.S.

<sup>27</sup> See ss. 120.52(8) and 120.536, F.S.

<sup>28</sup> 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).

<sup>29</sup> See ss. 120.54(3)(a)1., F.S.

<sup>30</sup> *Id.*

<sup>31</sup> See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

### ***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.<sup>32</sup>

A SERC must include estimates of:

- 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 by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.<sup>33</sup>

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

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,<sup>34</sup> productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>35</sup>

If the economic analysis results in an adverse impact or regulatory costs in excess of one million dollars within five years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.<sup>36</sup>

The Legislature previously ratified Rule 69L-7.020, Florida Administrative Code, which incorporates by reference the 2016 Edition of the Florida Workers' Compensation Health Care Provider Manual, providing for reimbursement of healthcare providers under the increased MRAs approved by the panel.<sup>37</sup> The DFS has subsequently adopted amended versions of the rule, incorporating by reference the manual. The National Council on Compensation Insurance, Inc., (NCCI) estimates that the manual will increase workers' compensation system costs by 0.2 percent (eight million dollars).<sup>38</sup> 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 eight million dollars over the next five years.<sup>39</sup>

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<sup>32</sup> Section 120.541(1)(a), F.S.

<sup>33</sup> 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.

<sup>34</sup> Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>35</sup> Section 120.541(2)(a), F.S.

<sup>36</sup> 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.

<sup>37</sup> Chapter 2019-139, L.O.F.

<sup>38</sup> National Council on Compensation Insurance, Inc., *Analysis of Florida Medical Fee Schedule Changes Proposed to be Effective July 1, 2021* (Nov. 16, 2020) (on file with the Senate Committee on Banking and Insurance).

<sup>39</sup> Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (Nov. 2021) (on file with the Senate Committee on Banking and Insurance).

The DFS has also promulgated two additional rules that meet the threshold for legislative ratification. These are:

- Rule 69L-7.730, Florida Administrative Code, titled “Health Care Provider Medical Billing and Reporting Responsibilities”; and
- Rule 7.740, Florida Administrative Code, titled “Insurer Authorization and Medical Bill Review Responsibilities”.

According to the SERC for these rule, the impact is projected to result in increased costs to the overall compensation system of \$8.6 million over each of the next five years.<sup>40</sup>

Because the SERC for these rules exceeds one million dollars within five years of adoption, legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

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

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the Act), generally regulates funeral and cemetery services.<sup>41</sup> The Act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.<sup>42</sup>

Section 497.005(9), F.S., defines the term “burial service” or “service” to mean “any service offered or provided in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains or cremated remains.

Section 497.005(61), F.S., defines the term “preneed contract” to mean “any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.

The terms “preneed” and “transportation protection agreement” are not defined.

### **Health Care Ministry**

A health care sharing ministry is an alternative to health insurance through which people of similar ethical or religious beliefs assist each other in paying for health care. Some health care sharing ministries act as a clearinghouse to allow one or more members to directly pay the medical expenses of another member. Other health care sharing ministries receive funds from members and use those funds to pay authorized medical expenses when members request payment. The first health care sharing ministry was established in 1981.<sup>43</sup>

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<sup>40</sup> Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.730 and 69L-7.740, F.A.C.* (Feb. 2018) (on file with the Senate Committee on Banking and Insurance).

<sup>41</sup> See Section 497.001, F.S.

<sup>42</sup> Sections 497.101 and 497.103, F.S.

<sup>43</sup> See Benjamin Boyd, *Health Care Sharing Ministries: Scam or Solution*, 26 J.L. & Health 219, 229 (2013).



The Florida Insurance Code exempts such a ministry, referred to as a “nonprofit religious organization,”<sup>44</sup> from the code’s provisions governing health insurers if the ministry meets several criteria set forth in the code. Since 2008, Florida law has expressly exempted health care sharing ministries that meet statutory criteria from being regulated as insurers. Specifically, a health care sharing ministry qualifies as a “nonprofit religious organization” that is exempt from the requirements of Florida’s insurance code if it:

- Qualifies under federal law as tax-exempt;
- Limits its participants to members who share a common set of ethical or religious beliefs;
- Acts as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants who have financial, physical, or medical needs;
- Provides for the financial or medical needs of a participant through payments directly from one participant to another participant; and
- Suggests amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants.<sup>45</sup>

Though the code exempts qualified ministries from its requirements of insurers, it nonetheless regulates these ministries in a limited sense. Particularly, the code requires each ministry to give prospective participants notice that it is not an insurer and that it is not subject to regulation under the insurance code.<sup>46</sup> Moreover, the code expressly states that it “does not prevent” an organization from limiting the financial or medical needs that may be eligible for payment or from canceling the membership of a participant when such participant indicates his or her unwillingness to participate by failing to meet the conditions of membership for a period in excess of 60 days.<sup>47</sup>

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

Chapter 626, F.S., governs the regulation of insurance field representatives, navigators, insurance administrators, unauthorized insurers and surplus lines, viatical settlements, structured settlements, and operations.<sup>48</sup> The powers and duties of the CFO and the DFS in part I of ch. 626, F.S., apply only with respect to insurance agents, insurance agencies, managing general agents, insurance adjusters, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.<sup>49</sup> Further, the DFS has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons engaged in actions for which a license issued by the DFS is required.<sup>50</sup> The powers and duties of the

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<sup>44</sup> The more descriptive and widely used term “health care sharing ministry” will continue to be used generally throughout this analysis for continuity and to avoid confusion.

<sup>45</sup> See s. 624.1265(1), F.S.

<sup>46</sup> Section 624.1265(3), F.S.

<sup>47</sup> Section 624.1265(2), F.S.

<sup>48</sup> This includes licensing and other requirements (part I), general lines agents (part II), life insurance agents (part III), health insurance agents (part IV), title insurance agents (part V), insurance adjusters (part VI), insurance administrators (part VII), and viatical settlements (part X).

<sup>49</sup> Section 626.016(1), F.S.

<sup>50</sup> Section 626.016(3), F.S.

Financial Service Commission and the Office of Insurance Regulation (OIR)<sup>51</sup> specified in part I apply only with respect to service companies, insurance administrators, and viatical settlement providers and contracts.<sup>52</sup> The OIR has jurisdiction to enforce provisions of parts VIII and IX of ch. 626, F.S., with respect to persons who engage in actions for which a license or certificate of authority issued by the OIR is required.<sup>53</sup> However, s. 626.016, F.S., is not intended to limit the authority of the DFS and the Division of Investigative and Forensic Services within the DFS, as specified in s. 626.989, F.S.

The Division of Insurance Agent and Agency Services 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's Bureau of Insurance Fraud within the DFS or other law enforcement agencies as appropriate.<sup>54</sup>

### ***Insurance Field Representatives and Operations***

For purposes of part I of ch. 626, F.S.,<sup>55</sup> “association” is defined to include the Florida Association of Insurance Agents (FAIA), the National Association of Insurance and Financial Advisors (NAIFA), the Florida Association of Health Underwriters (FAHU), the Latin American Association of Insurance Agencies (LAAIA), the Florida Association of Public Insurance Adjusters (FAPIA), the Florida Bail Agents Association (FBAA), or the Professional Bail Agents of the United States (PBUS).<sup>56</sup>

### ***Fingerprints for Background Checks***

The Florida Insurance Code authorizes the DFS to investigate any applicant or licensee, and further states that licensing statutes, which require an evaluation of an applicant’s character or fitness must include the submission of fingerprints for a national criminal records check.<sup>57</sup> Applicants and licensees submit fingerprints to the Florida Department of Law Enforcement (FDLE), which forwards the fingerprints to the Federal Bureau of Investigations (FBI) for a federal background check.<sup>58</sup> The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose of the CHRI system is to assure criminal history record information, wherever it appears, is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.<sup>59</sup>

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<sup>51</sup> Pursuant to s. 20.121(3), F.S., the Office of Insurance Regulation is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.

<sup>52</sup> Section 626.016(2), F.S.

<sup>53</sup> Sections 626.016(3), F.S.

<sup>54</sup> Sections 624.307, 624.317, and 624.321, F.S.

<sup>55</sup> Referred to as the “Licensing Procedures Law.” Section 626.011, F.S.

<sup>56</sup> Section 626.015(5), F.S.

<sup>57</sup> Section 626.201, F.S.

<sup>58</sup> Section 624.34, F.S.

<sup>59</sup> 28 C.F.R. s. 20.1

Federal law authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.<sup>60</sup> However, this access can only be authorized by a state statute, which has been subsequently approved by the Attorney General of the United States. The FBI processes fingerprints only if the criteria established by the U.S. Department of Justice has been satisfied. To satisfy federal law, a state licensing statute must identify the specific categories of licenses that require the submission of fingerprints as part of an application and expressly state the applicant's fingerprints will be submitted to the FBI or submitted for a national criminal records background check.

### ***Insurance Agency Closure***

Section 626.173, F.S., provides for the closure of an insurance agency and related responsibilities of the insurance agency when closing or ceasing to transact business for more than 30 days. Within 35 days after the agency first ceases to transact insurance, the agency owner or an officer listed on the original application for licensure must:

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

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

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<sup>60</sup> Pub. L. 92-544.

### ***Penalties Against Licensees; Rulemaking Authority***

Section 626.207, F.S., provides for the disqualification of applicants and licensees, penalties against licensees, rulemaking authority for the DFS. The DFS must adopt rules that establish specific penalties against licensees for violations of the licensure laws under the DFS. The purpose of any revocation or suspension is to provide a sufficient penalty to deter future violations of the Florida Insurance Code and must be based on the type of conduct and the probability that likelihood to commit further illegal conduct. The length of a suspension may be adjusted based on aggravating or mitigating factors.

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

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.<sup>61</sup> An adjuster may be licensed as either an “all-lines adjuster” or a “public adjuster.”<sup>62</sup> An all-lines adjuster “is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.”<sup>63</sup> Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against his or her insurer.<sup>64</sup>

Among other requirements, an applicant must pass an examination to obtain an adjuster’s license; however, the examination requirement is waived if the applicant has attained certain professional designations that document their successful completion of professional education coursework. An examination is not required for all-lines adjuster applicants that obtains certain specified professional designations.<sup>65</sup> The DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard the DFS testing for the all-lines adjuster license.<sup>66</sup>

### ***Continuing Education Requirements***

Pursuant to s. 626.2815, F.S., individuals licensed to engage in the sale of insurance or adjustment of insurance claims in Florida are required to fulfill certain continuing education requirements. Currently, licensees, except title insurance agents, are required to complete a four-hour update course every two years, specific to the license they hold.<sup>67</sup> Unless otherwise provided, licensees must also complete 20 hours of elective continuing education courses every two years.<sup>68</sup> If a licensee has been licensed for six years or more, this requirement drops to 16 hours.<sup>69</sup> For a licensee licensed 25 years or more, and is a chartered life underwriter, is a chartered property and casualty underwriter, or has a Bachelor of Science degree in risk

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<sup>61</sup> Insurance Information Institute. *III. Glossary* (defining “adjuster”), <https://www.iii.org/resource-center/iii-glossary/A> (last visited March 28, 2023).

<sup>62</sup> Section 626.864, F.S.

<sup>63</sup> Sections 626.015 and 626.8548, F.S.

<sup>64</sup> Section 626.854(1), F.S.

<sup>65</sup> Section 626.221, F.S.

<sup>66</sup> Section 626.221(2)(j), F.S.

<sup>67</sup> Section 626.2815(3), F.S.

<sup>68</sup> Section 626.2815(3)(a), F.S.

<sup>69</sup> Section 626.2815(3)(b), F.S.

management or insurance with evidence of 18 or more semester hours in insurance-related courses, the elective continuing education course requirement is six hours every two years.<sup>70</sup> For those individuals holding a license as a customer representative, and not a licensed life or health agent, the elective continuing education course requirement is also six hours every two years.<sup>71</sup> An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a four-hour update course and a minimum of ten hours of elective continuing education courses every two years.<sup>72</sup>

If continuing education requirements are not met, the DFS has the authority to immediately terminate or refuse to renew the appointment of an agent or adjuster, following notification from the DFS, unless an extension or waiver has been granted.<sup>73</sup>

### ***Limited Licenses and Registration***

The DFS is charged with issuing a license to a qualified applicant as an agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

- Motor vehicle physical damage and mechanical breakdown insurance.
- Industrial fire insurance 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.
- Portable electronics insurance.

### ***Grounds for Refusal, Suspension, or Revocation***

Section 626.611, F.S., provides grounds for the mandatory denial of an application for, suspension, revocation, or refusal to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent. One of these grounds is for having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of one year or more under the law of another state, country, or territory.

Section 626.621, F.S., provides grounds for the discretionary denial of an application for, suspension, revocation, or refusal to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent. These grounds do not include a finding that the applicant, licensee, or appointee had a resident license cancelled in another state.

### ***Reinsurance Intermediary - Fees***

Section 626.7492, F.S., referred to as the Reinsurance Intermediary Act, provides for the licensure of reinsurance intermediaries. A “reinsurance intermediary” is defined to include a

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<sup>70</sup> Section 626.2815(3)(c), F.S.

<sup>71</sup> Section 626.2815(3)(d), F.S.

<sup>72</sup> Section 626.2815(3)(e), F.S.

<sup>73</sup> Section 626.2815(9), F.S.

reinsurance intermediary broker or a reinsurance intermediary manager.<sup>74</sup> A “reinsurance intermediary broker” is defined to include “any person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.”<sup>75</sup> A “reinsurance intermediary manager” is defined as “any person who has authority to bind, or manages all or part of, the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary manager, manager, or other similar term.”<sup>76</sup> The following persons are excluded from the definition of “reinsurance intermediary manager” with respect to the reinsurer:

- An employee of the reinsurer;
- A manager of the United States branch of an alien reinsurer;
- An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the holding company act, and whose compensation is not based on the volume of premiums written;
- The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance regulatory authority of the state in which the manager’s principal business office is located.<sup>77</sup>

The reinsurer intermediary application and license fee is \$50.<sup>78</sup> A reinsurance intermediary is subject to examination by the DFS. The DFS shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the DFS.<sup>79</sup> A reinsurance intermediary found by the DFS, or an insurer or reinsurer found by the office, to be in violation of any provision of the licensure law must:

- For each separate violation pay a penalty in an amount not to exceed \$5,000;
- Be subject to revocation or suspension of its license; and
- If a violation was committed by the reinsurance intermediary, the reinsurance intermediary must make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.<sup>80</sup>

### **Appointment Requirements for Agents, Adjusters, and Customer Representatives**

Section 626.112(1)(a), F.S., states that a person may not be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the DFS and appointed by an appropriate appointing entity or person to represent an insurer. Section 626.371(1), F.S., requires all initial appointments be submitted to the DFS no later than 45 days after the date of appointment. Where it appears to the DFS that a formerly or currently licensed person has been, or is, actively engaged as an appointee without being appointed as required, the DFS still may issue an appointment submitted upon finding that such failure was an inadvertent error on the part of the insurer. The DFS may

<sup>74</sup> Section 626.7492(2)(e), F.S.

<sup>75</sup> Section 626.7492(2)(f), F.S.

<sup>76</sup> Section 626.7492(2)(g), F.S.

<sup>77</sup> Section 626.7492(2)(g)1.-4., F.S.

<sup>78</sup> Section 624.501(25)(a), F.S.

<sup>79</sup> Section 626.7492(10)(a), F.S.

<sup>80</sup> Section 626.7492(11)(a), F.S.

condition such approval on the payment of all fees and taxes that would have been due, had the person been properly appointed.

### **Title Insurance 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.

Section 626.844, F.S., authorizes the DFS to suspend or revoke the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency, upon certain specified grounds. However, an order may not suspend such license or appointment for more than one year.<sup>81</sup>

Section 626.8473, F.S., provides all funds received by a title insurance agent considered trust funds received in a fiduciary capacity by the title insurance agent and such funds are the property of the person or persons entitled thereto.

### **Insurance Adjusters**

Part VI, ch. 626, F.S., regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters. A “public adjuster” is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.<sup>82</sup> An “independent adjuster” is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract. A “company employee adjuster” is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage, or settles an insurance claim under an insurance contract.

Public adjusters are licensed by the DFS and are required to meet pre-licensing requirements, which include submitting an application, paying required fees, complying with requirements as to knowledge, experience, or instruction, and submitting fingerprints. A policyholder who has sustained an insured loss may hire a public adjuster. The public adjuster will inspect the loss site, analyze the damages, assemble claim support data, review the insured’s coverage, determine current replacement costs, and confer with the insurer’s representatives to adjust the claim. Public adjuster fees are capped at ten to 20 percent of the insurance claim payments.<sup>83</sup>

### **Anti-Fraud Reward Program**

The Anti-Fraud Reward Program was established in October 1999<sup>84</sup> and allows the DFS to award up to \$25,000 to individuals who provide information leading to the arrest and conviction

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<sup>81</sup> Section 626.8443(1), F.S.

<sup>82</sup> Section 626.854(1), F.S.

<sup>83</sup> Section 626.854 (10), F.S.

<sup>84</sup> Department of Financial Services, Fraud Free Florida, *\$25,000 Florida Fraud Fighter Reward Program*, <https://myfloridacfo.com/fraudfreeflorida#:~:text=The%20anti%2Dfraud%20reward%20program,to%20an%20arrest%20and%20conviction> (last visited March 28, 2023).

of persons convicted of certain enumerated crimes investigated by the Division of Insurance Fraud.<sup>85</sup> The awards are funded from the Insurance Regulatory Trust Fund.<sup>86</sup>

### **Navigators**

Part XIII, F.S., provides for the registration of navigators with the DFS. The purpose of registration is to authorize an individual to facilitate the selection of a qualified health plan (QHP) through an Exchange<sup>87</sup> by providing fair, accurate, and impartial information regarding QHPs and the availability of tax credits and cost sharing reductions, and to prohibit specified activities or conduct.<sup>88</sup> To be registered, an individual must certify that he or she has completed all training for a navigator required by the federal government or the Exchange and must submit fingerprints for a criminal background check.<sup>89</sup>

### **Medical Malpractice Risk Apportionment**

Section 627.351(4), F.S., requires the OIR to adopt a joint underwriting plan and creates the Joint Underwriting Association (Association). The Association operates subject to the supervision and approval of a board of governors (Board). The Board consists of representatives of five of the insurers participating in the Joint Underwriting Association, an attorney named by The Florida Bar, a physician named by the Florida Medical Association, a dentist named by the Florida Dental Association, and a hospital representative named by the Florida Hospital Association. The CFO selects the representatives of the five insurers. One insurer representative must be chosen from recommendations of the American Insurance Association; one from recommendations of the Property Casualty Insurers Association of America; one from recommendations of the Florida Insurance Council. Two insurer representatives must be selected to represent insurers that are not affiliated with those associations.<sup>90</sup>

### **Disclosures to Policyholders**

Section 627.4215(1), F.S., requires a health insurer to make the following information available on its website:

- Federal and state requirements for coverage of behavioral health care services; and
- Contact information for the Division of Consumer Services of the DFS, including a hyperlink in order for consumers to submit inquiries or complaints relating to health insurer products or services regulated by the DFS or the OIR.

A health insurer is required to provide a notice directly to insureds that includes a description of the federal and state requirements for coverage of behavioral health care services. The notice

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<sup>85</sup> Section 626.9892, F.S.; the applicable crimes arise from violations of ss. 440.105, 624.15, 626.9541, 626.989, 790.164, 790.165, 790.166, 806.01, 806.031, 806.10, 806.111, 817.233, and 817.234, F.S.

<sup>86</sup> *Id.*

<sup>87</sup> Exchanges are created under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

<sup>88</sup> Section 626.9952(2), F.S.

<sup>89</sup> Section 626.9953, F.S.

<sup>90</sup> Section 627.351(4)(c), F.S.



must include the website address and statewide toll-free telephone number of the Division of Consumer Services of the DFS for receiving complaints.<sup>91</sup>

### **The DFS Property Insurance Mediation Program**

Section 627.7015, F.S., provides for a property insurance mediation program through the DFS. It is available for claims under personal lines and commercial residential policies before commencing the appraisal process or before commencing litigation.<sup>92</sup> An insurer must notify the policyholder of the right to participate in mediation at the time of the claim.<sup>93</sup> Mediation is nonbinding. However, if a written settlement is reached, the policyholder has three business days within which the policyholder may rescind the settlement unless the policyholder has cashed or deposited any check or draft disbursed to the policyholder for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it is binding and acts as a release of all specific claims that were presented in that mediation conference.<sup>94</sup>

### **Alternative Procedure for the Resolution of Disputed Sinkhole Insurance Claims**

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing<sup>95</sup> to determine the cause of the loss if sinkhole loss is covered under the policy.<sup>96</sup> If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.<sup>97</sup>

Neutral evaluation is available to either party if a sinkhole report has been issued.<sup>98</sup> Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.<sup>99</sup> Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.<sup>100</sup>

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.<sup>101</sup> A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues

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<sup>91</sup> Section 627.4215, F.S.

<sup>92</sup> Section 627.7015(1), F.S.

<sup>93</sup> Section 627.7015(2), F.S.

<sup>94</sup> Section 627.7015(6), F.S.

<sup>95</sup> Section 627.7072, F.S., contains testing standards in sinkhole claims.

<sup>96</sup> Section 627.707(2), F.S.

<sup>97</sup> Section 627.707(4)(a), F.S.

<sup>98</sup> Section 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

<sup>99</sup> Section 627.7074(2), F.S.

<sup>100</sup> Section 627.7074(3), F.S.

<sup>101</sup> Section 627.7074(4), F.S.

in dispute at the time of the request.<sup>102</sup> The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.<sup>103</sup> The report is admissible in subsequent court proceedings.<sup>104</sup> Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

### **Mediation of Automobile Insurance Claims**

The DFS administers a mediation program for automobile insurance claims.<sup>105</sup> The claimant or the insurer may demand mediation of a claim in an amount of \$10,000 or less arising out of the ownership, operation, use, or maintenance of a motor vehicle. A request for mediation must be filed with the DFS on an approved form.<sup>106</sup> Costs of the mediation are borne equally by both parties unless the mediator determines that one party has not mediated in good faith.<sup>107</sup> The DFS approves mediators used in the program.<sup>108</sup> To qualify as a mediator for the property or automobile mediation programs, a person must possess an active certification as a Florida Supreme Court certified circuit court mediator or be an approved DFS mediator as of July 1, 2014, and have conducted at least one mediation on behalf of the DFS within four years immediately preceding that date.<sup>109</sup>

### **Insurer Insolvency – Rehabilitation and Liquidation**

#### ***Rehabilitation and Liquidation***

Chapter 631, F.S., provides direction for the handling of insurers that have become insolvent. Part I of the Chapter provides specifically for the rehabilitation and liquidation of insolvent insurers. Receivership is a judicial proceeding in which the DFS is placed in control of the insurer for the purpose of rehabilitating or liquidating the insurer. The DFS may seek to be appointed receiver<sup>110</sup> through a delinquency proceeding in court for the purpose of rehabilitating an impaired insurer or, if appropriate, liquidating the insolvent company. The primary goal of rehabilitation is to restore the financial solvency of the insurer<sup>111</sup> while the primary goal of liquidation is to secure and maximize the assets of the insolvent company for the benefit of its policyholders.<sup>112</sup> Section 631.141, F.S., provides for the conduct of delinquency proceedings.

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<sup>102</sup> Section 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

<sup>103</sup> Sections 627.7074(5), (12), F.S.

<sup>104</sup> Section 627.7074(13), F.S.

<sup>105</sup> Section 626.745, F.S.

<sup>106</sup> Section 627.745(1)(b), F.S.

<sup>107</sup> Section 627.745(1)(f), F.S.

<sup>108</sup> Section 627.745(3)(a), F.S.

<sup>109</sup> Section 627.745(3)(b), F.S.

<sup>110</sup> The DFS Division of Rehabilitation and Liquidation acts as receiver when the DFS is appointed. *See* <http://www.myfloridacfo.com/Division/Receiver/> (last visited March 28, 2023).

<sup>111</sup> The DFS Division of Rehabilitation and Liquidation, *Guide to Receivership Process*, <https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process> (last visited March 28, 2023).

<sup>112</sup> *See* [Overview of Liquidation under Chapter 631, Florida Statutes \(myfloridacfo.com\)](https://www.myfloridacfo.com/Overview-of-Liquidation-under-Chapter-631-Florida-Statutes) (last visited March 28, 2023).

Section 631.252(1), F.S., requires policies of the insolvent insurer be canceled upon the earliest of:

- The date of entry of the liquidation or, if the court so provides in its order, the expiration of 30 days from the date of entry of the liquidation order;
- The normal expiration of the policy or contract coverage;
- The replacement of the coverage by the insured, or the replacement of the policy or contract of coverage, with a policy or contract acceptable to the insured by the receiver with another insurer; or
- The termination of the coverage by the insured.

Other than for certain life or health insurance coverages, claims made during the 30-day period under paragraph (1)(a) are handled as if the claim was made prior to the date of the insurer's liquidation.<sup>113</sup> The 30-day coverage period may not be extended.<sup>114</sup>

### ***Guaranty of Payment***

A guaranty association generally is a nonprofit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. Section 631.55, F.S., provides for the creation of the Florida Insurance Guaranty Association, Inc. (FIGA). When a property and casualty insurance company becomes insolvent, FIGA is required by law to assume the claims of the insurer and pay the claims of the company's policyholders.<sup>115</sup> All insurers licensed to sell property and casualty insurance in the state are required to participate in the FIGA as a condition of transacting business in Florida. The FIGA operates under a board of directors as a nonprofit corporation. The board consists of five to nine members appointed by the DFS to serve four-year terms.<sup>116</sup>

Section 631.715, F.S., provides for the creation of the Florida Life and Health Insurance Guaranty Association (FLHIGA). All insurers licensed to sell direct life insurance policies, health insurance policies, annuity contracts, and supplemental contracts with or without life contingencies in the state are required to participate in the FLHIGA as a condition of transacting business in Florida. The FLHIGA operates under a board of directors as a nonprofit corporation. The board consists of nine to eleven members appointed by member insurers.<sup>117</sup>

Section 631.815, F.S., provides for the creation of the Florida Health Maintenance Organization Consumer Assistance Plan (FHMOCAP). All health maintenance organizations possessing a valid certificate of authority in the state are required to participate in the FHMOCAP as a condition of transacting business in Florida. The FHMOCAP operates under a board of directors as a nonprofit corporation. The board consists of five to nine members appointed by the DFS to serve four-year terms.<sup>118</sup>

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<sup>113</sup> Section 631.252(2), F.S.

<sup>114</sup> Section 631.252(3), F.S.

<sup>115</sup> Section 631.57, F.S.

<sup>116</sup> Section 631.56(1), F.S.

<sup>117</sup> Section 631.716(1), F.S.

<sup>118</sup> Section 631.816(1), F.S.

Section 631.911, F.S., provides the creation of the Florida Workers' Compensation Insurance Guaranty Association, Incorporated (FWCIGA). All insurers authorized to provide workers' compensation insurance in the state are required to participate in the FWCIGA as a condition of transacting business in Florida. The FWCIGA operates under a board of directors as a nonprofit corporation. The board consists of eleven members appointed to serve four-year terms.<sup>119</sup>

### **State Fire Marshal**

The CFO is designated under Florida law as the State Fire Marshal.<sup>120</sup> This law provides "it is the intent of the Legislature that the State Fire Marshal shall have the responsibility to minimize the loss of life and property in this state due to fire."<sup>121</sup> The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (fire code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.<sup>122</sup>

### **Direct-Support Organizations**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

Section 20.058, F.S., establishes the rules and procedures that a CSO or DSO must follow to remain in compliance. By August 1 of each year, a CSO or DSO must submit the following information to the agency it was created, approved, or is administered by:

- The name, mailing address, phone number, and website of the organization;
- The statutory authority or executive order pursuant to which the organization was created;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the plans of the organization for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent tax exemption form.<sup>123</sup>

Each agency receiving such information from a CSO or DSO must make it available to the public through the agency's website. By August 15 of each year, each agency must submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability with the information provided and must include a recommendation to continue, terminate, or modify the agency's association with each CSO or DSO in the report. Furthermore, any contract between an agency and a CSO or DSO must be contingent upon the timely submission and posting of the information listed above. The contract must also provide for the cessation of operations and the

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<sup>119</sup> Section 631.912(1), F.S.

<sup>120</sup> Section 633.104(1).

<sup>121</sup> Section 633.104(2).

<sup>122</sup> Section 633.208(1); ch. 69A-60, F.A.C.

<sup>123</sup> Section 20.058(1)(a)-(f), F.S.

reversion of state funds held by the CSO or DSO in the event that the statute authorizing the creation of the CSO or DSO is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.<sup>124</sup>

Additionally, each CSO or DSO with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant. The audit must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency responsible for the creation, administration, or approval of the CSO or DSO.<sup>125</sup>

Laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature.<sup>126</sup>

### **Warranty Associations**

Chapter 634, F.S., provides for the regulation of warranty associations. There are three parts to the chapter; Part I for motor vehicle service agreement companies; Part II for home warranty associations; and Part III for service warranty associations.

#### ***Motor Vehicle Service Agreement Companies***

A motor vehicle service agreement includes any agreement indemnifying the agreement holder against loss caused by failure of any mechanical or other component of the covered motor vehicle that does not operate as originally intended.<sup>127</sup> It does not include or prohibit the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of a motor vehicle.<sup>128</sup> The regulation is administered by the OIR.<sup>129</sup>

#### ***Home Warranty Associations***

A home warranty association is any business other than an authorized insurer that issues home warranties.<sup>130</sup> A home warranty includes any agreement whereby a business indemnifies the warranty holder against the cost of repair or replacement of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance.<sup>131</sup> It does not include or prohibit the giving, at no charge, of usual performance guarantees by either the builder of a home or the manufacturer or seller.<sup>132</sup> The regulation is administered by the OIR.<sup>133</sup>

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<sup>124</sup> Section 20.058(2)-(4), F.S.

<sup>125</sup> Section 215.981(1), F.S.

<sup>126</sup> Section 20.058(5), F.S.

<sup>127</sup> Section 634.011(8), F.S.

<sup>128</sup> *Id.*

<sup>129</sup> Section 634.021, F.S.

<sup>130</sup> Section 634.301(3), F.S.

<sup>131</sup> Section 634.301(2), F.S.

<sup>132</sup> *Id.*

<sup>133</sup> Section 634.302, F.S.

### ***Service Warranty Associations***

A service warranty association is any business other than an authorized insurer that issues service warranties.<sup>134</sup> A service warranty includes, in return for the payment of a segregated charge by the consumer, any warranty, guaranty, or maintenance service contract equal to or greater than one year in length; an agreement for a specific duration to perform the repair, replacement, or maintenance of a consumer product; for indemnification for repair, replacement, or maintenance, for failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling.<sup>135</sup> The regulation of the association and the warranties is administered by the OIR; the regulation of the sales representatives is by the DFS.<sup>136</sup>

### **Bail Bonds**

A bail bond is a guarantee by a third-party that a defendant in a criminal case will appear in court at all scheduled proceedings. A bail bond agent posts a surety bond to secure the defendant's release from custody; the defendant provides money or other collateral to secure the bail bond and forfeits the premium (10 percent of the amount of bail set by the court) if he or she fails to appear in court or comply with other conditions of the bond. Bail bond agents must be licensed by the DFS and appointed by insurance carriers to execute bail bonds. If a defendant fails to appear in court, the bail bond agent may apprehend and detain the defendant until the defendant is surrendered to the authorities.<sup>137</sup>

Bail bond agents may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or insurer that employs the bail bond agent.<sup>138</sup>

### ***Licensure as a Bail Bond Agent***

The DFS issues a temporary license effective for 18 months and permits a licensee to work under the direct supervision of a licensed and appointed bail bond agent; a limited surety license that allows a bail bond agent to execute bail bonds; and a professional bail bond agent that allows the agent to obtain collateral from a criminal defendant in return for the execution of a bail bond with the court.

To become a temporary bail bond agent, an applicant must have completed a 120-hour basic certification course during the four years prior to application and have an offer of employment from a supervising bail bond agent. A temporary bail bond agent must be accompanied by a supervising bail bond agent when apprehending, arresting, or surrendering defendants to the authorities. After one year of work under a temporary license (which must include at least 1,540 hours of paid employment under the supervision of a supervising bail bond agent), the

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<sup>134</sup> Section 634.401(14), F.S.

<sup>135</sup> Section 634.401(13), F.S.

<sup>136</sup> Section 634.402, F.S.

<sup>137</sup> Sections 648.24 and 624.26, F.S. *Also see* Department of Financial Services, Division of Consumer Services, *Bail Bonds Overview*, <https://www.myfloridacfo.com/division/consumers/understanding-insurance/bail-bonds-overview> (last visited March 28, 2023).

<sup>138</sup> Section 648.355, F.S.

temporary licensee may apply for a regular bail bond agent's license and take the required licensing examination.<sup>139</sup>

After completing the one-year apprenticeship, a temporary licensee who passes a licensing exam and criminal background check may become a:

- Bail bond agent (also known as limited surety agent) who may execute or countersign bail bonds in connection with judicial proceedings; or
- Professional Bail Bond Agent, who may pledge U.S. currency, postal money orders, or cashier's check as security for a bail bond in connection with a judicial proceeding and receives or is promised money or things of value in return.<sup>140</sup>

All applicants for bail bond licenses must submit fingerprints for a national criminal background check and pay an application fee. Bail bond agents may not have been convicted of a felony, must be age 18 or older, and must be eligible to work in the United States. A bail bond agent must be appointed by a licensed insurer and the insurer must report the appointment to the DFS. A bail bond agent may not charge a premium other than the rate that has been approved by the OIR, and must retain records related to any bail bonds the agent has executed or countersigned for at least three years after the liability of the surety has been terminated. Additionally, bail bond agents must register with the sheriff and the clerk of the circuit court in the county where the bail bond agent resides. Bail bond agents may not solicit clients at a jail, prison, or courthouse, and may not pay fees for referrals from any person working in the law enforcement community.<sup>141</sup>

### ***Ownership of a Bail Bond Agency***

The owner of a bail bond agency must be a licensed and appointed bail bond agent.<sup>142</sup> The owner or operator of a bail bond agency must designate a primary bail bond agent who is responsible for the overall operation and management of a bail bond agency location and file the name and license number of the primary bail bond agent and the address of the bail bond agency with the DFS. A primary bail bond agent may supervise only one location, is responsible for hiring employees and may not employ or contract with any person who has been found guilty of a felony.<sup>143</sup>

### ***Continuing Education***

Bail bond agents must complete at least 14 hours of continuing education every two years.<sup>144</sup> Schools that offer continuing education must be approved and certified by the DFS, and must offer a minimum of three classroom-instruction continuing education classes per calendar year. Continuing education classes must consist of at least two hours of approved coursework and be taught by a supervising instructor who is approved by the DFS.<sup>145</sup>

<sup>139</sup> *Id.* and Rule 69B-221.051, F.A.C.

<sup>140</sup> Section 648.25, F.S.

<sup>141</sup> Sections 648.355, 648.33, 648.34, 648.35, 648.36, 648.382, 648.42, and 648.44, F.S.

<sup>142</sup> Section 648.285, F.S.

<sup>143</sup> Sections 648.25(6) and 648.387, F.S.

<sup>144</sup> Section 648.385, F.S.

<sup>145</sup> Section 648.386, F.S.

## **Florida Disposition of Unclaimed Property Act**

As part of the DFS' statutory responsibilities, the DFS is to collect and return unclaimed property belonging to Florida residents.<sup>146</sup> Chapter 717, F.S., is entitled the Florida Disposition of Unclaimed Property Act, over which the DFS is responsible to administer. Unclaimed property is any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.<sup>147</sup> Until claimed, unclaimed money is deposited into the state school fund to be used for public education.

Pursuant to s. 717.124, F.S. a claimant representative must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under ch. 493, F.S. A claimant representative must register with the DFS on a form designated by the DFS and provide certain documentation (including tax identification number, identification, electronic funds transfer information, business address, and employees and agents) and credentials as to their status as an attorney, CPA, or private investigator.<sup>148</sup> In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization.

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

#### **Powers and Duties of the Department of Financial Services**

**Section 1** amends s. 20.121, F.S., to clarify and expand the powers and duties of the Division of Investigative and Forensic Services (DIFS) relating to investigations including the authority to initiate investigations if it has reason to believe any criminal law of Florida or the United States has or may have been violated. The bill allows the Department of Financial Services to initiate, not just conduct, investigations under the jurisdiction of the Chief Financial Officer (CFO), including the CFO's role as State Fire Marshal. This section also expands DIFS authority to refer suspected criminal violations for prosecution to include criminal violation of federal law, in addition to state law criminal violations.

The bill repeals subsection (6) which establishes the Strategic Markets Research and Assessments Unit and charges the CFO, or designee, with reporting quarterly on the status of the state's financial services markets.

#### **Florida Deferred Compensation Program**

**Section 2** amends s. 112.215, F.S., to redefine the term "employee" as "government employee" and revise eligibility for plans of deferred compensation to include employees of municipalities,

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<sup>146</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx> (last visited March 26, 2021).

<sup>147</sup> Sections 717.104-717.116, F.S.

<sup>148</sup> Section 717.1400, F.S.



special districts, water management districts, and the Florida College System. Revises membership of the Deferred Compensation Advisory Council from seven members to eight members to include an employee of the Florida College System appointed by the Chancellor of the Florida College System.

### **Annual Report on Economic Impact of a 1-in-100 Year Hurricane**

**Section 3** amends s. 215.55952, F.S., to require the Department of Financial Services (DFS) to report on the economic impact of a 1-in-100 year hurricane once every three years.

### **Tangible Personal Property Owned by Local Governments**

**Section 4** amends s. 274.01, F.S., to revise the definition of the term “governmental unit” for purposes of ch. 274, F.S., to include a county agency, a municipality, and a special district.

### **Workers’ Compensation**

**Section 5** amends s. 440.13, F.S., to:

- Provide if there is disagreement in the opinions of health care providers, the judge of compensation claims may, rather than shall, order the injured employee to be evaluated by an expert medical advisor.
- Remove determination of statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, work-hardening programs, pain programs, and durable medical equipment from the three-member panel.
- Provide that a hospital or ambulatory surgical center will be reimbursed the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.
- Remove obsolete implementing language and obsolete language relating to practice parameters.
- Provide by July 1 of each year, the DFS must notify carriers and self-insurers of the physician and nonhospital services schedule of maximum reimbursement allowances. The notice must include publication of the schedule on the division’s website. The schedule is not subject to approval by the three-member panel and does not include reimbursement for prescription medication.

**Section 6** amends s. 440.385, F.S., to provide the CFO may appoint directors to the Florida Self-Insurers Guaranty Association from recommendations of members of the association or from other persons with experience in self-insurance. Provides the CFO may remove a director for misconduct, malfeasance, misfeasance, or neglect of duty. Provides directors are subject to the code of ethics under part III of ch. 112, F.S.

**Section 75** ratifies Rule 69L-7.020, Florida Administrative Code, relating to the Florida Workers’ Compensation Health Care Provider Reimbursement Manual, Rule 69L-7.730, Florida Administrative Code, titled “Health Care Provider Medical Billing and Reporting Responsibilities”; and Rule 7.740, Florida Administrative Code, titled “Insurer Authorization and Medical Bill Review Responsibilities”. The bill meets the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the

rule. The bill provides this section will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

### **Funeral and Cemetery Services**

**Section 7** amends s. 497.005, F.S., to revise definitions relating to funeral, cemetery, and consumer services. Specifically, the bill defines “Preneed contract” to mean any arrangement or method for which the provider of funeral merchandise or services receives any payment in advance for funeral or burial merchandise and services after the death of a contract beneficiary. The term excludes a transportation protection agreement and any payments received on a transportation protection agreement.

Section 7 also defines “transportation protection agreement” to mean an agreement that exclusively provides or arranges for services related to the preparation for the purpose of transportation and subsequent transportation of human remains or cremated remains. The bill expressly states the Florida Insurance Code, as defined in s. 624.01, F.S., does not apply to any transportation protection agreement sold by any licensee under this chapter.

### **Health Care Ministry**

**Section 8** amends s. 624.1265, F.S., to provide a nonprofit religious organization may not market or sell health plans by agents licensed by the DFS.

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

**Section 9** amends s. 624.501, F.S., to delete the application filing and license fee for reinsurance intermediaries.

**Section 10** amends s. 626.015, F.S., to revise the definition of the term “association” for purposes of part I of ch. 626, F.S. Reference to the “Florida Association of Health Underwriters” is changed to the “National Association of Benefits and Insurance Professionals Florida Chapter.”

**Section 11** amends s. 626.171, F.S., to delete the authority of designated examination centers to take fingerprints of applicants for a license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.

**Section 12** amends s. 626.173, F.S., to provide an insurance agency closure notice requirement provision does not apply to title insurance, life insurance, or annuity contracts.

**Section 13** amends s. 626.207, F.S., to authorize the DFS to adopt rules establishing specific penalties against licensees for violations of:

- Section 626.112(7) or (9), F.S., regarding trade names of insurance agencies and adjusting firms;
- Section 626.6115, F.S., regarding compulsory refusal, suspension or revocation of insurance agency licensure;

- Section 626.6215, F.S., regarding discretionary refusal, suspension, or revocation of insurance agency licensure;
- Section 626.7451, F.S., regarding managing general agent contract provisions;
- Section 626.8695, F.S., regarding designation of primary adjusters at each business location;
- Section 626.8697, F.S., regarding mandatory refusal, suspension, or revocation of an adjusting firm license; and
- Section 626.8698, F.S., regarding disciplinary guidelines for public adjusters and public adjuster apprentices.

**Section 14** amends s. 626.221, F.S., to add a certification from Professional in Claims (PIC) from 2021 Training, LLC, exempts an applicant for license as an all-lines adjuster from an examination requirement.

**Section 15** amends s. 626.2815, F.S., to provide any course related to commercial and residential property coverages, claim adjusting practices, and any other adjuster elective courses approved by the DFS, qualify as elective continuing education for certain insurance representatives.

**Section 16** amends s. 626.321, F.S., to delete requirements prohibiting limited lines agents from holding a license as an agent for any other or additional kind or class of insurance coverage and creates a limited license for preneed funeral agreement insurance coverage.

**Section 17** amends s. 626.611, F.S., to add having been found guilty of or having pleaded guilty or nolo contendere to a misdemeanor directly related to the financial services business as grounds for compulsory disciplinary actions taken by the DFS against insurance representatives.

**Section 18** amends s. 626.621, F.S., to add having had the cancellation of the applicant's, licensee's or appointee's resident license in a state other than Florida as grounds for discretionary disciplinary actions taken by the DFS against insurance representatives.

**Section 19** amends s. 626.7492, F.S., to revise the definitions of the terms "producer" and "reinsurance intermediary manager" in order to change the Reinsurance Intermediary Manager and Reinsurance Intermediary Broker licenses to an appointment.

**Section 20** amends s. 626.752, F.S., to require the DFS to suspend the insurer's or employer's ability to appoint licensees if the insurer fails to pay the exchange of business fee within 21 days after notice by the DFS.

**Section 21** amends s. 626.785, F.S., to authorize a funeral director, a direct disposer, or an employee of a funeral establishment that holds a preneed license to obtain a limited license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise.

**Sections 22 and 23** amend ss. 626.793 and 626.837, F.S., respectively, to require the DFS to suspend the authority of an insurer or employer to appoint licensees if the insurer or employer does not pay the fees and taxes due within 21 days after notice by the DFS.

## **Title Insurance Agents and Agencies**

**Section 24** amends s. 626.8411, F.S., to provide the notice requirements of s. 626.173(1)(c), F.S., relating to notifying policyholders of the agency closure, do not apply to title insurance agents or title insurance agencies.

**Section 25** amends s. 626.8437, F.S., to add grounds for compulsory disciplinary actions taken by the DFS against a title insurance agent or agency to include misappropriation, conversion, or improper withholding of funds received in a fiduciary capacity and held as part of an escrow agreement, real estate sales contract, or as provided on a settlement statement in a real estate transaction and revocation or cancellation of a licensee's resident license in a jurisdiction other Florida.

**Section 26** amends s. 626.844, F.S., to add grounds for discretionary disciplinary actions taken by the DFS against a title insurance agent or agency for having been the subject of a violation of any federal or state securities or commodities law or having a licensee's resident license in a jurisdiction other than Florida revoked or cancelled.

**Section 27** amends s. 626.8473, F.S., to transfer the duties as an escrow agent from the title agent to the title agency.

**Section 28** amends s. 626.854, F.S., to provide the applicability of the prohibition of taking a thing of value for certain prohibited acts applies to a licensed "and appointed" public insurance adjuster.

**Section 29** amends s. 626.874, F.S., to provide a catastrophe or emergency adjuster must adjust claims, losses, or damages under policies or contracts of insurance issued by an authorized insurer or by a licensed independent adjusting firm contracted with an authorized insurer.

## **Anti-Fraud Reward Program**

**Section 30** amends s. 626.9892, F.S., to add violations for which the DFS may pay up to \$25,000 in reward under the Anti-Fraud Reward Program. The list of investigable insurance fraud violations under the Anti-Fraud Reward Program is expanded to include, but is not limited to, nursing home and related health care facilities noncompliance; forgery and counterfeiting public records; racketeering and illegal debts; burning to defraud an insurer; theft, robbery and related crimes; false and fraudulent insurance claims; patient brokering; criminal use of personal identification; and money laundering,

The bill removes the requirement for a conviction in order for the person providing information leading to an arrest of a person committing crimes to receive a reward under the Anti-Fraud Reward Program.

## **Navigators**

**Section 31** amends s. 626.9957, F.S., to provide for the expiration of a health coverage navigator's registration if the navigator fails to maintain an active, valid navigator's registration

status with the Federal Government or an exchange. Furthermore, a navigator with an expired registration may be not granted subsequent registration until the navigator qualifies as a first-time applicant.

### **Medical Malpractice Risk Apportionment**

**Section 32** amends s. 627.351, F.S., to provide the CFO may select the representatives of the Joint Underwriting Association from persons with experience in medical malpractice insurance. The bill also provides the CFO may remove a member for misconduct, malfeasance, misfeasance, or neglect of duty; and provide that members are subject to the code of ethics under part III of ch. 112, F.S. The bill specifies vacancies on the board of governors shall be filled for the remaining period of the term in the same manner as the initial appointments.

### **Disclosures to Policyholders**

**Section 33** amends s. 627.4215, F.S., to provide the disclosure requirement to policyholders applies only to health insurers that offer mental health benefits.

### **DFS Property Insurance Mediation Program**

**Section 34** amends s. 627.7015, F.S., to provide a disputed property insurance claim is not eligible for mediation until an insurer has made a claim determination or elected to repair pursuant to s. 627.70131, F.S. The bill provides fees for a rescheduled mediation conference can be assessed by the DFS and authorizes the DFS to suspend an insurer's authority to appoint licensees if the insurer does not timely pay the required fees.

### **Alternative Procedure for the Resolution of Disputed Sinkhole Insurance Claims**

**Section 35** amends s. 627.7074, F.S., to allow the DFS to designate an administrator to carry out the alternative procedure for resolution of disputed sinkhole insurance claims.

### **Mediation of Automobile Insurance Claims**

**Section 36** amends s. 627.745, F.S., to revise the requirements and procedures for the mediation of personal injury claims under a motor vehicle insurance policy; require the costs of mediation to be reasonable and paid by the insurer; provide for consequences of failure to appear; authorize the DFS to designate an administrator by means of a written contract or agreement; and allow for mediation to litigants referred to the DFS by a county or circuit court. This section requires the DFS to adopt, by rules, a motor vehicle claims insurance mediation program to be administered by the DFS or its designee, rules applicable in cases of an emergency within the state and modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court to include:

- Reasonable requirements for processing and scheduling of requests for mediation;
- Provisions governing who may attend mediation conferences;
- Selection of mediators;
- Criteria for this conduct of mediation conferences;
- Right to legal counsel; and

- Controls of costs and expenses of mediation.

### **Insurer Insolvency – Rehabilitation and Liquidation**

**Section 37** amends s. 631.141, F.S., to authorize the DFS in receivership proceedings to use the property of the estate of the insolvent insurer to transfer the insurer's book of business to a solvent assuming insurer or insurers and to share records of the insolvent insurer with the prospective assuming insurer.

**Section 38** amends s. 631.252, F.S., to provide policies of the insolvent insurer do not have to be cancelled if there is a carrier willing to take on policies of an insolvent company.

**Section 39** amends s. 631.56, F.S., to provide the CFO with the authority to appoint three representative from domestic insurers to the board of directors for the Florida Guaranty Association.

**Sections 39 through 42** amend ss. 631.56, 631.716, 631.816, and 631.912, F.S., respectively, to revise membership eligibility requirements for the Florida Insurance Guaranty Association, the Florida Life and Health Insurance Guaranty Association, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Workers' Compensation Insurance Guaranty Association, Incorporated. These sections provide the CFO may remove a member for misconduct, malfeasance, misfeasance, or neglect of duty; and provide that members are subject to the code of ethics under part III of ch. 112, F.S., and as such, provides for penalties for failure to comply with provisions within ch. 112, F.S. The bill specifies board members of the Florida Life and Health Insurance Guaranty Association serve four-year term and may be reappointed, which is current law for board members of the other associations and plans affected by these sections.

Furthermore, **Sections 39 through 42** broaden the recommendation of appointees to the various boards to include recommendations from other persons with experience in property and casualty insurance or motor vehicle insurance, life and annuity or accident and health insurance, health insurance, or workers' compensation insurance, as determined by the CFO.

### **State Fire Marshal**

**Section 43** creates s. 633.1423, F.S., to create a direct support organization (DSO) for the State Fire Marshal to be known as the "State Fire Marshal Safety and Training Force," whose purpose is to support the safety and training of firefighters and to recognize exemplary service. The bill provides the DSO must be a non-for-profit corporation incorporated under ch. 617, F.S., and approved by the Department of State; be organized to raise funds; request and receive grants; gifts and bequests of money; conduct program and activities; acquire, receive, hold, invest and administer, in its own name, securities, funds or property; and make grants and expenditures to or for the direct or indirect benefit of the division. The bill provides funds may include the cost of education and training of firefighters, or the recognition of exemplary service of firefighters. Under the bill, the DSO must operate under a written contract with the Division of State Fire Marshal (division).

The section provides for a board of directors; provides requirements for the use of property, annual budgets and reports, an annual audit, and the division's receipt of proceeds; and authorizes moneys received to be held in a depository account.

The bill provides a repeal date of October 1, 2028.

### **Warranty Associations**

**Section 44** amends s. 634.181, F.S., to add grounds for compulsory disciplinary actions against motor vehicle service agreement salespersons; provide for the immediate temporarily suspension of a license if the licensee is charged with certain felonies; and authorize the DFS to adopt rules.

**Section 45** amends s. 634.191, F.S., to add an additional discretionary ground for refusal, suspension, or revocation of a license or appointment of a motor vehicle service agreement salesperson for failure to report the final disposition of an action taken against the salesperson by a regulatory agency relating to the business of insurance, the sale of securities, or an activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty.

**Section 46** amends s. 634.320, F.S., to add grounds for discretionary disciplinary actions taken against a home warranty association sales representative for having been the subject of a violation of any federal or state securities or commodities law; provide for the immediate temporarily suspension of a license if the licensee is charged with certain felonies; and authorize the DFS to adopt rules.

**Section 47** amends s. 634.321, F.S., to add grounds for discretionary disciplinary actions against a home warranty association sales representative; require a sales representative to report any action taken against the sales representative relating to the business of insurance; and authorize the DFS to adopt rules.

**Section 48** amends s. 634.419, F.S., to provide that specified home solicitation sale requirements, ss. 501.021-501.055, F.S., do not apply to persons or entities licensed and appointed, or their affiliates, which solicit the sale of a service warranty or related service or product in connection with a prearranged appointment at the request of the consumer.

**Section 49** amends s. 634.422, F.S., to revise grounds for compulsory disciplinary actions by the DFS against service warranty association sales representatives; require the DFS to immediately temporarily suspend a license or appointment under certain circumstances; prohibit a person from transacting insurance business after such suspension; and authorize the DFS to adopt rules.

**Section 50** amends s. 634.423, F.S., to add grounds for discretionary disciplinary actions taken against a service warranty association sales representative for having been the subject of a violation of any federal or state securities or commodities law; provide for the immediate temporarily suspension of a license if the licensee is charged with certain felonies; and authorize the DFS to adopt rules.

## **Bail Bonds**

**Section 51** amends and reorders s. 648.25, F.S., to provide a definition of “Appointment”; provides that a “Temporary bail bond agent” means a person licensed before January 1, 2024; provides that a temporary bail bond agent license expires 18 months after issuance and is no longer valid on or after June 30, 2025.

**Section 52** amends s. 648.26, F.S., to provide DFS has the authority to disclose the nature of a complaint to a licensee if the investigating officer deems such disclosure necessary to conduct the investigation. Additionally, the bill permits the DFS to update the complainant about the status and outcome of a complaint, and to share information with law enforcement and regulatory agencies, as needed.

**Section 53** amends s. 648.27, F.S., to delete a provision relating to the continuance of a temporary bail bond agent license.

**Section 54** amends s. 648.285, F.S., to provide bail bond agencies be licensed rather than registered; a person may not control or manage a bail bond agency unless the person has been engaged as a bail bond agent for the preceding 24 months; provides application requirements for bail bond agency licenses; a bail bond agency that holds a current valid registration will have its registration automatically converted to a license on July 1, 2024; and provides s. 112.011, F.S., relating to disqualification from licensing and public employment based on criminal conviction, does not apply to bail bond agencies or to applicants for licensure as bail bond agencies.

**Section 55** amends s. 648.30, F.S., to provide a bail bond agent may not sell a bail bond issued by an insurer for which the agent and the agent’s bail bond agency do not hold a current appointment. The bill prohibits the performance of any of the functions of a bail bond agency without a bail bond agency license.

**Section 56** amends s. 648.31, F.S., to conform to changes made by the bill and to provide there is no fee for the issuance of any appointment to a bail bond agency.

**Section 57** amends s. 648.34, F.S., to conform to changes made by the bill and to revise qualifications for a bail bond agent license to require, within two years immediately before applying for the license, the completion of a basic criminal justice certification course which consists of at least 120 hours of classroom instruction with a passing grade of at least 80 percent and has successfully completed a correspondence course for bail bond agents approved by the DFS.

**Section 58** amends s. 648.355, F.S., to delete provisions relating to temporary bail bond agents and preserve the rights of persons who currently hold the temporary bail bond agent license; effective July 1, 2023, such persons would be eligible to take the bail bond agent’s licensure exam and apply for licensure as a bail bond agent or professional bail bond agent. A temporary bail bond agent license that expires, or is terminated or suspended or revoked, would not be renewed or reinstated.



**Section 59** amends s. 648.382, F.S., to provide, effective July 1, 2025, each insurer or managing general agent appointing a bail bond agency in this state must file the appointment with the DFS; an appointed entity must hold a valid bail bond agency's license. The bill requires the appointing entity to certify it obtained a sworn attestation of compliance from the appointed agency.

**Section 60** amends s. 648.386, F.S., to add the words "classroom instruction" to the continuing education requirements, to ensure bail bond agents are taking the required hours of continuing education in the presence of a supervising instructor. Instruction must be provided in real time, but the bill states that students may attend continuing education classes through video, webcast, or other virtual means. Revises schools and curriculum for continuing education schools to require three classroom-instruction continuing education classes per calendar year.

**Section 61** amends s. 648.387, F.S., to rename primary bail bond agents as bail bond agents in charge; requires the bail bond agency to designate another bail bond agent in charge within 10 days of a vacancy.

**Section 62** creates s. 648.3875, F.S., to provide requirements for applying for designation as a bail bond agent in charge.

**Sections 63, 65, 66, 67, 69, 70 and 71**, amend ss. 648.39, 648.42, 648.44, 648.441, 648.50, and 843.021, F.S., respectively, to make conforming and technical changes relating to bail bonds.

**Section 64** repeals s. 648.41, F.S., relating to the termination of appointment of temporary bail bond agents.

**Section 68** amends s. 648.46(3), F.S., to provide the subsection does not prevent the DFS or the OIR from disclosing the complaint or such information as it deems necessary to conduct the investigation or to update the complainant or to share such information with any law enforcement agency or other regulatory body.

**Section 76** amends s. 903.28, F.S., relating to the conditions for remission of forfeiture to provide within two years after the date of forfeiture, if the state is unwilling to seek extradition of the defendant after a request by the surety agent or the surety company, and provided the agent or company consents to pay all costs incurred in returning the defendant to the jurisdiction of the court up to the penal amount of the bond, the court shall direct remission of 100 percent of the forfeiture.

### **Florida Disposition of Unclaimed Property Act**

**Section 70** amends s. 717.135, F.S., within the Florida Disposition of Unclaimed Property Act, relating to recovery agreements and purchase agreements for claims filed by a claimant's representative to provide that the section does not prohibit lawful nonagreement, noncontractual, or advertising communications between or among the parties.

### **Conforming Provisions**

**Sections 72 through 74** amend ss. 631.152, 631.398, and 903.09, F.S., respectively, to make conforming and technical changes.

### **Rule Ratification**

**Section 75** ratifies Rule 69L-7.020, Florida Administrative Code, relating to the Florida Workers' Compensation Health Care Provider Reimbursement Manual, Rule 69L-7.730, Florida Administrative Code, titled "Health Care Provider Medical Billing and Reporting Responsibilities"; and Rule 7.740, Florida Administrative Code, titled "Insurer Authorization and Medical Bill Review Responsibilities". The bill meets the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rule. The bill provides this section will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

### **Effective Date**

**Section 76** provides except as otherwise expressed in the bill, the bill takes effect upon becoming a law.

## **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:**

The bill eliminates certain fees related to application and license fees, which may reduce revenues an indeterminate, but likely insignificant, amount.

**B. Private Sector Impact:**

The rule ratification of the Florida Workers' Compensation Health Care Provider Manual is estimated to increase workers' compensation system costs by 0.2 percent (eight million dollars).<sup>149</sup> However, these monies will be in the form of higher reimbursements to health care providers.<sup>150</sup>

The bill requires motor vehicle insurers to bear the entire cost of mediation. It makes various other changes that have an indeterminate, negative fiscal impact.

**C. Government Sector Impact:**

The bill makes numerous changes that will require systems and process changes in the Department of Financial Services (DFS) and other agencies.

The bill eliminates certain application and license fees that may reduce revenues an indeterminate, but likely insignificant, amount.

In its analysis of SB 1274 (2022), relating to ratification of Rule 69L-7.020, F.A.C., "Florida Workers' Compensation Health Care Provider Reimbursement Manual" (Manual), the DFS estimates the adoption of the Manual will have the following recurring financial impact on the workers' compensation expenses of the Division of Risk Management:

- \$232,400 in Fiscal Year 2022-2023;
- \$235,000 in Fiscal Year 2023-2024; and
- \$235,800 in Fiscal Year 2024-2025.<sup>151</sup>

Inasmuch as the DFS expands the scope of reportable and investigable acts under the Anti-Fraud Reward Program, the DFS may see an increase in reward payouts; particularly with the removal of the provision requiring a conviction in order for the informant to receive a reward.

In order to carry out the provisions of **Section 36**, the DFS may designate an entity or person to serve as an administrator by means of a written contract or agreement. In the event the DFS contracts with a private sector provider, the DFS may incur expenses related to administration of the Motor Vehicle Mediation Claims Insurance Program.

**VI. Technical Deficiencies:**

None.

<sup>149</sup> Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (Nov. 2021) (on file with the Senate Committee on Agriculture, Environment, and General Government).

<sup>150</sup> *Id.*

<sup>151</sup> Department of Financial Services, *Bill Analysis for SB 1274* (Jan. 11, 2022) (on file with Senate Appropriations Committee on Agriculture, Environment, and General Government).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.121, 112.215, 215.55952, 274.01, 440.13, 440.385, 497.005, 624.1265, 624.501, 626.015, 626.171, 626.173, 626.207, 626.221, 626.2815, 626.321, 626.611, 626.621, 626.7492, 626.752, 626.785, 626.793, 626.837, 626.8411, 626.8437, 626.844, 626.8473, 626.854, 626.874, 626.9892, 626.9957, 627.351, 627.4215, 627.7015, 627.7074, 627.745, 631.141, 631.252, 631.56, 631.716, 631.816, 631.912, 634.181, 634.191, 634.320, 634.321, 634.419, 634.422, 634.423, 648.25, 648.26, 648.27, 648.285, 648.30, 648.31, 648.34, 648.355, 648.382, 648.386, 648.387, 648.39, 648.42, 648.44, 648.441, 648.46, 648.50, 717.135, 843.021, 631.152, 631.398, and 903.09.

This bill creates the following sections of the Florida Statutes: 633.1423 and 648.3875.

This bill repeals section 648.41 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 Appropriations Committee on Agriculture, Environment, and General Government on April 12, 2023:**

The committee substitute:

- Removes the following sections from the bill:
  - Section 2 – Financial Literacy, s. 39.6035, F.S.;
  - Section 4 – Prompt Pay, s. 215.422, F.S.;
  - Section 6 – Financial Literacy, s. 409.1451, F.S.;
  - Section 8 – Certificate of Insurance change, s. 440.38, F.S.;
  - Section 36 – Loss Assessment, s. 627.70132, F.S.;
  - Section 39 – Loss Assessment, s. 627.714, F.S.;
  - Section 76 – Bail Bonds two years/deceased, s. 903.28, F.S.;
  - Section 77 – cross-reference update, s. 28.2221, F.S.; and
  - Section 78 – cross-reference update, s. 119.071, F.S.
- Repeals s. 215.55952, F.S., relating to a required annual report on the economic impact of a 1-in-100-year hurricane;
- Provides the appointments made by the Chief Financial Officer are deemed to be within the scope of the exemption provided in s. 112.313(7)(b), F.S., which allows a public officer or employee to practice in a particular profession or occupation when such practice is required or permitted by law;
- Revises definitions relating to the regulation of funeral, cemetery, and consumer services; and
- Adds two rules for ratification:
  - Rule 69L-7.730, Florida Administrative Code, titled “Health Care Provider Medical Billing and Reporting Responsibilities”; and

- Rule 7.740, Florida Administrative Code, titled “Insurer Authorization and Medical Bill Review Responsibilities”.

**CS by Banking and Insurance Committee on March 22, 2023:**

The committee substitute makes the following changes:

- Provides that in Workers’ Compensation cases, if there is disagreement in the opinions of health care providers, the judge of compensation claims may, rather than shall, order the injured employee to be evaluated by an expert medical advisor.
- Provides that any form used by the DFS to show proof of Workers’ Compensation coverage must contain:
  - The governing class code or codes;
  - Payroll information; and
  - The total number of employees covered by the workers’ compensation insurance policy.
- Removes provisions from the bill limiting members of various appointed entities to terms of no more than eight consecutive years.
- Removes section 25 of the bill defining the term “real estate closing transaction” for title agents.
- Removes the requirement for a conviction in order to receive a reward under the Anti-Fraud Reward Program.
- Allows the Department of Financial Services (DFS) to designate an administrator to carry out the alternative procedure for resolution of disputed sinkhole insurance claims.
- Adds a Sunset repeal date to the State Fire Marshall Direct Support Organization created in the bill.
- Removes provisions authorizing the DFS to issue a home warranty sales representative license or a service warranty sales representative license to a nonresident applicant if the applicant is licensed as such in the applicant’s home state.
- Removes provisions relating to a service warranty association’s outstanding debt obligation.
- Removes the proposed revision to the definition of the term “manufacturer” for service warranty associations.
- Provides there is no fee for the issuance of any appointment to a bail bond agency.
- Provides that the provisions restricting recovery agreements and purchase agreements for claims filed by a claimant’s representative do not prohibit lawful nonagreement, noncontractual, or advertising communications between or among the parties.
- Revises remission of forfeiture provisions.
- Revises wording in several sections of the bill for greater clarity.

**B. Amendments:**

None.