

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

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

---

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

---

BILL: CS/CS/SB 1098

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

SUBJECT: Department of Financial Services

DATE: February 15, 2024      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>FP</u>	_____

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 1098 revises provisions of multiple programs within the Department of Financial Services (DFS) to:

- Create the position of Federal Tax Liaison within DFS;
- Rename the Division of Investigative and Forensic Services to the Florida Division of Investigations and repeal the Division of Public Assistance Fraud (DPAF), moving its responsibilities to the renamed division;
- Revise the special risk provision to refer to employees of the DFS rather than the State Fire Marshal and retains the current effective employment date of July 1, 2008;
- Eliminate quarterly reports of the total amount of salary indemnification benefits paid and the total amount of reimbursements from each agency to the State Risk Management Trust Fund;
- Provide for workers' compensation reimbursement for emergency services and care provided when a maximum reimbursement allowance is not available. Provides this provision expires June 30, 2026;
- Require the DFS to engage an actuarial services firm to begin development of maximum reimbursement allowances for emergency services and care;
- Require purchases and contracts of \$100,000 or more entered into by the Florida Self-Insurers Guaranty Association, the Florida Medical Malpractice Joint Underwriting Association, the Florida Insurance Guaranty Association, the Florida Life and Health Guaranty Association, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Workers' Compensation Guaranty Association, entered into after

July 1, 2024, must first be approved by the DFS and that all such contracts must be competitively procured and be awarded to the most responsible and responsive vendor; specifies contracts required by law are exempt from approval by the DFS;

- Revise appointment authority and requirements for the Board of Funeral, Cemetery, and Consumer Services (Board); provides the Board members are subject to the code of ethics under part III of ch. 112, F.S.;
- Amend service requirements for disciplinary and citation procedures to provide for service by e-mail if service by certified mail cannot be made at the last provided address;
- Provide the DFS with the authority, in emergency situations, to access and secure any facility licensed under ch. 497, F.S., and to determine if a facility is abandoned and if there is an emergency situation;
- Provide criminal penalties for violations of s. 497.386, F.S.;
- Provide restrictions on when a preneed licensee may withdraw funds from the amount deposited in trust;
- Amend provisions regarding investigations and prosecutions within the regulatory authority of the DFS;
- Require surplus lines insurers to respond to the DFS' Division of Consumer Services (Division) within 14 days after receipt of a written request from the Division for documents and information concerning a consumer complaint;
- Provide for applicants to submit cellular telephone numbers as part of the application process on a voluntary basis for purposes of two-factor authentication of login credentials;
- Add "Registered Claims Adjuster (RCA) from American Insurance College" to the list of individuals exempted from the examination requirement to become an agent or adjuster;
- Allow the DFS to disclose confidential investigative information to the subject or the subject's representative in order to review the details of the investigation;
- Add the designation of "Chartered Customer Service Representative (CCSR) from American Insurance College" to the list of criteria to qualify as a customer representative;
- Require a licensed adjuster to identify themselves in any advertisements, solicitations or written documents based on the adjuster appointment type held;
- Provide that a general lines agent while licensed as a surplus lines agent may appoint licenses with a single surplus license agent appointment;
- Require that the renewal notice sent to the named insured containing changes in policy terms must be in bold type of not less than 14 points and included as a single page within the written notice;
- Revise provisions under the State Fire Marshal relating to standards on the use of fireworks, the Florida Fire Prevention Code, and uniform fire safety standards for mobile food dispensing vehicles and energy storage systems;
- Allow motor vehicle service agreement companies to utilize multiple contractual liability insurance policies when backing their financial obligations;
- Revise financial requirements for warranty associations and exempt employees and agents of a municipality, county government, or special district from the licensing and appointment requirements;
- Revise provisions relating to bail bond agents and agencies; provide that bail bond agents are not required to be employed with a bail bond agency; Revise provisions of the Florida Disposition of Unclaimed Property Act;

- Remove the exclusion of 20 percent of the asset value from the calculation of assets and liabilities provisions related for Florida Birth-Related Neurological Injury Compensation Association (NICA) claims;
- Require NICA by July 1, 2024, to provide a report of recommendations to address actuarial soundness to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives for ensuring a revenue level to maintain actuarial soundness;
- Direct the Division of Law Revision to prepare a reviser’s bill to implement certain changes within this bill; and
- Authorize the DFS to adopt rules to implement provisions contained within the bill.

The bill has a significant, negative impact on state revenues and expenditures. *See* Section V. Fiscal Impact.

Except as otherwise provided, the bill takes effect upon becoming a law.

## II. Present Situation:

### Internal Revenue Service (IRS)

The IRS is a bureau of the United States Department of Treasury (Treasury) and is organized to carry out the responsibilities of the secretary of the Treasury under s. 7801 of the Internal Revenue Code.<sup>1</sup> The mission of the IRS is to provide the United States of America’s taxpayers with top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.<sup>2</sup> The IRS processes federal tax returns, payments, refunds and correspondence; levies federal tax liens; provides enforcement and compliance operations; enforces collection programs; resolves tax disputes through the IRS Independent Office of Appeals; and litigates tax cases within the U.S. Tax Court.<sup>3</sup>

The IRS offers many tools to assist taxpayers with tax questions and concerns, including online (self-service options), in person or by phone.<sup>4</sup> Taxpayer Assistance Center Offices (IRS Offices) are located throughout the United States and the IRS also provides IRS-certified volunteers and Taxpayer Advocate Services for taxpayers who meet certain criteria.<sup>5</sup> The IRS provides specific toll-free phone numbers and help lines for: individuals and businesses tax filers, overseas callers and callers who are hearing impaired; and persons who have questions regarding non-profit

---

<sup>1</sup> Internal Revenue Service (IRS), *The Agency, its Mission and Statutory Authority*, <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited Feb. 6, 2024). *See* 26 U.S.C. s. 7801 – U.S. Code (Jan. 1, 2018), Internal Revenue Code, Authority of Department of Treasury, available at <https://codes.findlaw.com/us/title-26-internal-revenue-code/26-usc-sect-7801/> (last visited Feb. 6, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> IRS, *IRS operations: Status of mission-critical functions*, <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions> (last visited Feb. 6, 2024).

<sup>4</sup> IRS, *Let Us Help You*, <https://www.irs.gov/help/let-us-help-you> (last visited Feb. 6, 2024).

<sup>5</sup> *Id.*

taxes, estate and gift taxes and excise taxes.<sup>6</sup> The IRS provides multiple toll free, 24-hour a day, pre-recorded messages covering more than 100 tax topics for tax payers seeking assistance.<sup>7</sup>

As of February 6, 2024, there are 18 IRS Offices in Florida. The IRS has offices in Clearwater, Daytona Beach, Ft. Myers, Gainesville, Jacksonville, Lakeland, Melbourne, Miami, Ocala, Orlando, Panama City, Pensacola, Plantation/Ft. Lauderdale, Port St. Lucie, Sarasota, Tallahassee, Tampa, and West Palm Beach.<sup>8</sup> Each Florida location is open from 8:30 a.m. to 4:30 p.m., Monday through Friday. Some of the Florida IRS Offices offer extended hours on set days. Each Florida IRS Office offer online and local services.<sup>9</sup>

### **Florida Department of Revenue**

The Florida Department of Revenue (DOR) administers three main programs: Child Support Program, General Tax Administration, and Property Tax Oversight.<sup>10</sup> The DOR's primary responsibility lies in administering Florida's state tax law.<sup>11</sup> To encourage tax compliance, the DOR offers taxpayer education through online resources and webinars.<sup>12</sup> In addition, the DOR monitors taxpayer compliance and initiates enforcement actions, including audits and collections, while prioritizing the protection of taxpayer rights.<sup>13</sup>

### ***Taxpayer Rights Advocate***

The Taxpayer Rights Advocate (TRA) is a position established by statute, appointed by, and accountable to the DOR Chief Inspector General, with removal from office authorized only by the Chief Inspector General.<sup>14</sup> The TRA's role is to address taxpayer concerns and ensure adherence to taxpayer rights as defined by Florida constitutional and statutory provisions.<sup>15</sup>

Article I, Section 25 of the Florida Constitution provides for the enactment of a Taxpayers' Bill of Rights by the legislature, outlining taxpayers' rights and responsibilities and the government's obligations to treat taxpayers fairly.<sup>16</sup> The 1992 Florida Legislature created the Taxpayer's Bill of Rights, specified in s. 213.015, F.S., which grants taxpayers the right to request assistance from a DOR Taxpayer Rights Advocate.<sup>17</sup> The TRA facilitates the resolution of taxpayer

---

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

<sup>7</sup> IRS, *IRS Tax Tip 2001-39, Toll-Free Telephone Service*, available at <https://www.irs.gov/pub/irs-news/at-01-39.pdf> (last visited Feb. 6, 2024).

<sup>8</sup> IRS, *Taxpayer Assistance Center Office Locator*, <https://apps.irs.gov/app/office-locator/> (last visited Feb. 6, 2024).

<sup>9</sup> *Id.*

<sup>10</sup> Florida Department of Revenue (DOR), *Quick Facts About the Florida DOR*, [https://floridarevenue.com/opengovt/Pages/quick\\_facts.aspx](https://floridarevenue.com/opengovt/Pages/quick_facts.aspx) (last visited Feb. 6, 2024).

<sup>11</sup> Florida DOR. *Florida's Taxpayers' Rights Advocate Annual Report July 1, 2020 – June 30, 2021*, p.7 <https://floridarevenue.com/Documents/taxpayerrights/4-%20TRA%20Annual%20Report%20%20%28FY%2020-21%29.pdf> (last visited Feb. 6, 2024).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1.

<sup>15</sup> *Id.*

<sup>16</sup> FLA. CONST., Art. I, s. 25

<sup>17</sup> Florida DOR. *Florida's Taxpayers' Rights Advocate Annual Report July 1, 2020 – June 30, 2021*, p.7 <https://floridarevenue.com/Documents/taxpayerrights/4-%20TRA%20Annual%20Report%20%20%28FY%2020-21%29.pdf> (last visited Feb. 6, 2024).

complaints and problems not resolved through regular administrative channels within the DOR.<sup>18</sup> This includes issuing stay actions on behalf of taxpayers facing irreparable loss due to the DOR actions and issuing an annual report.<sup>19</sup> Additionally, the TRA's are required to safeguard and protect taxpayer rights during tax determination and collection processes.<sup>20</sup> While the TRA advocates for taxpayer rights, they do not administer the DOR's general tax processes.<sup>21</sup> The TRA cannot represent taxpayers but works to ensure fair treatment and resolution of taxpayer issues.<sup>22</sup> The TRA does not handle inquiries regarding local property tax matters, instead referring them to the DOR's Property Tax Oversight Program.<sup>23</sup>

### **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>24</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;

<sup>18</sup> *Id.*

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

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*

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

<sup>24</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, Organization of the Department of Financial Services, <https://www.myfloridacfo.com/required/agency-org> (last visited Feb. 6, 2024).

- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and
- Workers' Compensation.<sup>25</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.

The 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>26</sup>

The DIFS investigates various types of insurance fraud including Personal Injury Protection fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.<sup>27</sup> The DIFS is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,<sup>28</sup> false and fraudulent insurance claims,<sup>29</sup> and willful violations of the Florida Insurance Code and rules adopted pursuant to the Code.<sup>30</sup> The DIFS employs sworn law enforcement officers to investigate insurance fraud.

---

<sup>25</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, General Description and Functions of the Department of Financial Services, <https://www.myfloridacfo.com/required/agency-org> (last visited Feb. 6, 2024).

<sup>26</sup> Department of Financial Services, *Investigative and Forensic Services*, *About the Division*, <https://myfloridacfo.com/Division/DIFS/> (last visited Feb. 6, 2024).

<sup>27</sup> *Id.*

<sup>28</sup> Section 626.9541, F.S.

<sup>29</sup> Section 817.234, F.S.

<sup>30</sup> Section 624.15, F.S.

Investigations by the DIFS are conducted as provided in s. 626.989, F.S. These provisions include:

- Authority to administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence;
- Authority to request that an individual who refuses to comply with a request be ordered by the circuit court to provide the testimony or matter;
- Responsibility to report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction;
- The power to make arrests for criminal violations established as a result of investigations; and
- That its investigators be considered state law enforcement officers for all purposes and have the power to execute arrest warrants and search warrants; to serve subpoenas issued for the examination, investigation, and trial of all offenses.

### **Division of Public Assistance Fraud**

The Division of Public Assistance Fraud (DPAF) is created pursuant to s. 20.121(2)(f), F.S. The DPAF is charged with functioning as a criminal justice agency and to conduct investigations of public assistance fraud.<sup>31</sup> The DPAF safeguards against public assistance fraud and the impact of those crimes by enforcing relevant state laws. The DPAF partners with the Department of Children and Families, the Agency for Health Care Administration, the Department of Health, and the Department of Education's Office of Early Learning to investigate fraud in programs administered by those departments.<sup>32</sup> On the federal level, the DPAF partners with the U.S. Department of Agriculture's Food and Nutrition Services, the Social Security Administration, and the Department of Health and Human Services.<sup>33</sup>

### **Special Risk Class**

Chapter 121, F.S., contains provisions relating to the Florida Retirement System (FRS). Persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care are members of the Special Risk Class.<sup>34</sup> In establishing the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, and criminal detention positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity.<sup>35</sup> The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.<sup>36</sup> Forensic professionals employed with the Division of State Fire Marshal in the forensic laboratory are included within the Special Risk Class.

---

<sup>31</sup> Section 20.121(2)(f), F.S.

<sup>32</sup> Department of Financial Services, Public Assistance Fraud, *About the Division*, <https://www.myfloridacfo.com/Division/PAF/> (last visited Feb. 6, 2024).

<sup>33</sup> *Id.*

<sup>34</sup> Section 121.0515(2), F.S.

<sup>35</sup> Section 121.0515(1), F.S.

<sup>36</sup> *Id.*

## State Risk Management and Safety Programs

The Division of Risk Management (DRM) supports Florida's state agencies and universities by assisting them in managing various risks and ensuring quality coverage for workers' compensation, liability, federal civil rights, automobile liability, and property insurance at reasonable rates<sup>37</sup> through self-insurance, the purchase of insurance, and claims administration.<sup>38</sup> The DRM consists of three bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims.<sup>39</sup>

Chapter 284, F.S., provides for state risk management and safety programs, including workers' compensation for state employees. In 1995, the Legislature created s. 284.44, F.S., in order "to provide state agencies with an increased incentive to become actively involved in the prevention and management of workers' compensation claims involving state employees."<sup>40</sup> This section requires that each agency covered under the program must provide the initial salary indemnification costs for employees entitled to workers' compensation benefits from funds appropriated for salaries and benefits.<sup>41</sup>

The DRM is required to prepare quarterly reports of the total amount of salary indemnification benefits paid and the total amount of reimbursements from each agency to the State Risk Management Trust Fund for initial costs each quarter.<sup>42</sup> These reports also include information indicating the number of cases and any amounts waived by the Executive Office of the Governor.<sup>43</sup> The reports are provided to the Executive Office of the Governor and the chairs of the legislative appropriations committees.<sup>44</sup>

## Workers' Compensation

### *Workers' Compensation Maximum Reimbursement Allowances*

The Division of Workers' Compensation (DWC) within the DFS provides regulatory oversight of Florida's workers' compensation system, which includes the enforcement of coverage requirements,<sup>45</sup> administration of the workers' compensation health care delivery system,<sup>46</sup> data collection,<sup>47</sup> and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.<sup>48</sup> Whether an employer is required to have workers' compensation insurance depends upon the employer's industry and the number of its employees. Employers may secure coverage by purchasing a workers' compensation insurance policy or

---

<sup>37</sup> DFS, Division of Risk Management, *Fiscal Year 2021 Annual Report*, at 2, [https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2021.pdf?sfvrsn=720e7fcb\\_4](https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2021.pdf?sfvrsn=720e7fcb_4) (last visited Feb. 7, 2024).

<sup>38</sup> *Id.* at 2.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> Section 284.44(1), F.S.

<sup>41</sup> Section 284.44(2), F.S.

<sup>42</sup> Section 284.44(6), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Section 440.107(3), F.S.

<sup>46</sup> Section 440.13, F.S.

<sup>47</sup> Section 440.185 and 440.593, F.S.

<sup>48</sup> Section 440.191, F.S.



qualifying as a self-insurer.<sup>49</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>50</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>51</sup> the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;<sup>52</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>53</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>54</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>55</sup> The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>56</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>57</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>58</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>59</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>60</sup> Fees may not exceed the schedules adopted under ch. 440, F.S., and the DFS rule.<sup>61</sup>

---

<sup>49</sup> Section 440.38, F.S.

<sup>50</sup> Section 440.13(12)(a), F.S.

<sup>51</sup> Section 440.13(12)(d)1., F.S.

<sup>52</sup> Section 440.13(12)(d)2., F.S.

<sup>53</sup> Section 440.13(12)(d)3., F.S.

<sup>54</sup> Section 440.13(12)(b)4., F.S.

<sup>55</sup> Section 440.13(12)(b)5., F.S.

<sup>56</sup> Section 440.13(12)(b)3., F.S.

<sup>57</sup> Section 440.13(12)(a), F.S.

<sup>58</sup> Section 440.13(12)(a), F.S.

<sup>59</sup> Section 440.13(12)(c), F.S.

<sup>60</sup> *Id.*

<sup>61</sup> Section 440.13(13)(b), F.S. The DFS also has broad rulemaking authority under s. 440.591, F.S.

### **Florida Self-Insurers Guaranty Association**

An employer may be eligible to self-insure for their workers' compensation coverage.<sup>62</sup> Such an employer must furnish proof to the Florida Self-Insurers Guaranty Association (FSIGA) that the employer has the financial strength necessary to ensure timely payment of all current and future claims.<sup>63</sup> The FSIGA is a nonprofit corporation established pursuant to s. 440.385, F.S., and monitors the financial strength of self-insured entities for the DFS and makes recommendations as to the qualifications to self-insure.<sup>64</sup> All self-insurers other than governmental entities and public utilities are required to be members of the FSIGA.<sup>65</sup>

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

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulation of funeral and cemetery services.<sup>66</sup> The Act authorizes the Board of Funeral, Cemetery, and Consumer Services (Board) within the DFS to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.<sup>67</sup>

Section 20.121(4), F.S., creates the Board within the Division of Funeral, Cemetery, and Consumer Services of the DFS. The Board acts as the licensing and rulemaking authority for certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements;<sup>68</sup>

The Board has broad authority over licensure and examination of applicants for various licenses including:

- Authority to determine any and all criteria for licensure;
- Authority to specify who may conduct practical examination;
- Authority to specify the content of examinations for licensure, both written and practical, and the relative weighting of areas examined, and grading criteria, and determination of what constitutes a passing grade;
- Authority to strike any examination question determined before or after an examination to be inappropriate for any reason;
- Authority to specify which national examinations or parts thereof shall or shall not be required or accepted regarding Florida licensure;
- Authority to determine time limits and substantive requirements regarding reexamination of applicants who fail any portion of a licensing examination; and

---

<sup>62</sup> Section 440.38(1)(b), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Section 440.385(1)(a), F.S.

<sup>66</sup> *See* Section 497.001, F.S.

<sup>67</sup> Sections 497.101 and 497.103, F.S.

<sup>68</sup> *See* s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S.

- Authority to determine substantive requirements and conditions relating to apprenticeships and internships, and temporary licensure pending examination.<sup>69</sup>

The Board must have 10 members; one member must be the State Health Officer, or his or her designee, and the remaining nine members must be nominated by the Chief Financial Officer (CFO), appointed by the Governor, and confirmed by the Senate.<sup>70</sup> The composition of the Board must be as follows:

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

Two or more members may not be principals or employees of the same company or partnership, or group of companies or partnerships under common control.<sup>71</sup> Board members are appointed for four-year terms, except for the State Health Officer, who serves so long as he or she holds the office.<sup>72</sup>

### ***Service of Process***

In general, the law provides for the designation of a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in the state.<sup>73</sup> However, the state CFO is designated as the agent for service of process on insurers and other specific entities or persons licensed by DFS or the Office of Insurance Regulation (OIR). The OIR provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.<sup>74</sup>

<sup>69</sup> Section 497.103(1)(a)-(g), F.S.

<sup>70</sup> Section 497.101(1), F.S.

<sup>71</sup> Section 497.101(2), F.S.

<sup>72</sup> Section 497.101(3), F.S.

<sup>73</sup> Section 48.151, F.S.

<sup>74</sup> Section 20.121(3)(a), F.S.

The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the FSC appoints the commissioner of the Florida Office of Insurance Regulation.<sup>75</sup> Service of process on the CFO is made by mail, personal service, or via DFS's e-portal.<sup>76</sup>

After receiving service of process, the CFO is required to promptly send a copy by registered or certified mail, or by any other verifiable means, to the person designated by an insurer to receive the process.<sup>77</sup> Verifiable means includes making the documents available by electronic transmission from a secure website established by the DFS.<sup>78</sup> If the DFS makes the documents available electronically, the CFO is required to send a notice of receipt of process to the person designated by the insurer being served to receive legal process.<sup>79</sup>

Service is considered perfected on an insurer when the CFO is served with the process.<sup>80</sup> Although an insurer is not required to respond to a lawsuit except until 20 days after the CFO sends or makes a copy of the process available, the triggering date for other legal deadlines is the date the CFO is served with process.<sup>81</sup> This can create problems for an insurer when a delay occurs between the time the CFO is served and the time the CFO notifies the insurer of the service of process.

Service of an administrative complaint in a disciplinary matter, whether against a licensee or an unlicensed person or entity, may be in person by the DFS staff or a person authorized to make service of process under the Florida Rules of Civil Procedure.<sup>82</sup> If the complaint is against a licensee, than service "may in the alternative be made by certified mail, return receipt requested, to the last known address of record provided by the licensee to the department."<sup>83</sup> Service of a citation may be made in person or by certified mail at the subject's last known address.<sup>84</sup>

### ***Disciplinary Grounds and Complaints***

Under current law, certain conduct related to funeral, cemetery and consumer services is prohibited and violation of such can lead to denial of application, imposition of discipline, or other enforcement action against the licensee. Such violations include:<sup>85</sup>

- Fraud, deceit, negligence, incompetency, or misconduct in the practice of any activities regulated under ch. 497, F.S.;
- Any violation of any rules, orders or laws of the Board or the DFS;
- Failing to maintain the proscribed qualifications;

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* See the DFS, General Counsel, *Service Instructions*, <https://myfloridacfo.com/division/generalcounsel/service-of-process> (last visited Feb. 6, 2024).

<sup>77</sup> Section 624.423, F.S.

<sup>78</sup> Section 624.307(9), F.S.

<sup>79</sup> *Id.*

<sup>80</sup> Section 624.423(3), F.S.

<sup>81</sup> Section 624.423(2), F.S.

<sup>82</sup> Section 497.153(4)(a), F.S.

<sup>83</sup> *Id.*

<sup>84</sup> Section 497.155(1)(e), F.S.

<sup>85</sup> Section 497.152, F.S.

- Refusing to sell or issue a contract or provide services based on race, color, creed, marital status, sex or national origin;
- Being convicted of or found guilty of, or entering a guilty plea or nolo contendere to, regardless of adjudication, a crime in any jurisdiction that relates to the practice of, of the ability to practice, a licensee's profession or occupation;
- Having a license or the authority to practice a profession or occupation revoked, suspended, fined, denied, or otherwise acted against or disciplined by the licensing authority of another jurisdiction, including its agencies and subdivisions, for conduct that would constitute a violation of ch. 497, F.S.;
- Improperly interfering with an investigation or inspection authorized by statute or with any disciplinary proceeding;
- Failure to comply with a lawfully issued subpoena of the DFS;
- Refusal to produce records to the DFS or Board in connection with any regulated activity under ch. 497, F.S.;
- Failing to report to the DFS any violation of ch. 497, F.S., by another person, which violation is known to the licensee to have created or be creating a serious and immediate danger to the public health, safety or welfare;
- Knowingly concealing information relative to violations of ch. 497, F.S.;
- Attempting to obtain, obtaining, or renewing a license under ch. 497, F.S., by bribery, false or forged evidence, or misrepresentation or through an error of the DFS or Board know to the applicant;
- Making or filing a report or statement to or with any government entity that the licensee knows or has reason to know to be false, or intentionally or negligently failing to file a report or record required to be filed with any government entity, or willfully impeding or obstructing another person to do so, or inducing another person to impede or obstruct;
- Failing to perform any statutory or legal obligation placed upon licensee;
- Unlicensed practice of any profession licensed under ch. 497, F.S.;
- Failing to comply with educational standards and requirements required under ch. 497, F.S.;
- Violating state law or rule of any municipal or county ordinance or regulation relating to the handling, custody, care or transportation of human dead bodies;
- Refusing to surrender promptly the custody of a dead human body upon the express order of the legally authorized person to such person's custody, subject to state or local laws;
- Taking possession of a dead human body without first having obtained written or oral permission from a legally authorized person;
- Embalming human remains without first having obtained written or oral permission from a legally authorized person;
- Failing to obtain written authorization from a legally authorized person before entombment, interment, disinterment, disentombment, or disinterment of the remains of any human being;
- Making certain misinterpreting statements;
- Violating sales practices;
- Failing to disclose certain requirements;
- Failing to timely honor contract entered into by the licensee or under the licensee's license for funeral and burial merchandise or services;
- Failing to honor preneed contract cancellation requests and make refunds as required;
- Failing to address obligations regarding complaints and claims by customers; and

- Failing to comply with certain financial matters, including remittance of fees, remittance to trust funds or paying or receiving any commission, bonus, kickback or rebate not otherwise allowed under ch. 497, F.S.

In January 2024, the DFS responded to complaints against a Jacksonville funeral home. These complaints included “mishandling of cremated remains” and alleged “abandonment” of the funeral business.<sup>86</sup> In the course of its investigation, the DFS and law enforcement were able to execute a warrant issued by the 4<sup>th</sup> Circuit Court.<sup>87</sup> In addition, the DFS and law enforcement were able to secure the mortuary premises, take proper care of the remains of three human bodies, and work to reunite the bodies with their loved ones.<sup>88</sup> Multiple charges, including one felony count of Grand Theft and one misdemeanor count of Improper Preservation of a Human Body were included in the arrest warrant.<sup>89</sup>

### **The DFS - Division of Consumer Services**

The Division of Consumer Services (DCS) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the FSC.<sup>90</sup> The DCS’s duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.<sup>91</sup>

Section 624.307(10)(b), F.S., permits the DCS to impose an administrative penalty on a person who holds a license or certificate of authority from the DFS if that person fails to respond to the DCS’s request for information within 20 days. A licensed individual must produce any requested documents not subject to attorney-client or work product privilege.

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

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>92</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

---

<sup>86</sup> News4Jax, *Arrest warrant issued for Jacksonville funeral home director accused of theft, mishandling remains*, <https://www.news4jax.com/news/local/2024/01/31/jacksonville-funeral-home-director-at-center-of-investigation-after-florida-cfo-says-he-allegedly-abandoned-mortuary/> (last visited Feb. 13, 2024).

<sup>87</sup> The DFS, Press Release, *DFS Secures Felony Arrest Warrant for Jacksonville Funeral Home Director* (Jan. 31, 2024), [DFS Secures Felony Arrest Warrant for Jacksonville Funeral Home Director \(myfloridacfo.com\)](https://www.myfloridacfo.com/press-releases/dfs-secures-felony-arrest-warrant-for-jacksonville-funeral-home-director) (last visited Feb. 13, 2024).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> The DFS, *Department of Financial Services Long Range Program Plan: Fiscal Years 2023-24 through 2027-28*, 15 (Oct. 17, 2022), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24407&DocType=PDF> (last visited Feb. 6, 2024). See also, DFS, *Consumer Guides*, <https://www.myfloridacfo.com/division/consumers/understanding-insurance/guides> (last visited Feb. 6, 2024).

<sup>91</sup> Section 624.307(10)(a), F.S.

<sup>92</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).

agents, insurance adjusters, reinsurance intermediaries, viatical settlement brokers, customer representatives, service representatives, and agencies.<sup>93</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>94</sup> The powers and duties of the FSC and the OIR<sup>95</sup> specified in part I apply only with respect to service companies, insurance administrators, and viatical settlement providers and contracts.<sup>96</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>97</sup> However, s. 626.016(4), F.S., provides that it is not intended to limit the authority of the DFS and the Division of Investigative and Forensic Services (DIFS) within the DFS, as authorized in s. 626.989, F.S.

The Division of Insurance Agent and Agency Services (Division) licenses and appoints individuals and entities authorized to transact insurance in Florida as provided in s. 626.016, F.S. Further, the Division receives and reviews applications for insurance licenses and oversees the examination, licensing, and continuing education of licensees. The Division also conducts investigations of alleged violations of the Florida Insurance Code and refers suspected criminal violations of the Florida Insurance Code to the Division's Bureau of Insurance Fraud within the DFS or other law enforcement agencies as appropriate.<sup>98</sup>

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

An adjuster is an individual employed by an insurer to evaluate losses and settle policyholder claims.<sup>99</sup> An adjuster may be licensed as either an “all-lines adjuster” or a “public adjuster.”<sup>100</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>101</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>102</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

---

<sup>93</sup> Section 626.016(1), F.S.

<sup>94</sup> Section 626.016(3), F.S.

<sup>95</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>96</sup> Section 626.016(2), F.S.

<sup>97</sup> Section 626.016(3), F.S.

<sup>98</sup> Sections 624.307, 624.317, and 624.321, F.S.

<sup>99</sup> Insurance Information Institute. *III Glossary* (defining “adjuster”), <https://www.iii.org/resource-center/iii-glossary/A> (last visited Feb. 6, 2024).

<sup>100</sup> Section 626.864, F.S.

<sup>101</sup> Sections 626.015 and 626.8548, F.S.

<sup>102</sup> Section 626.854(1), F.S.

specified professional designations.<sup>103</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>104</sup>

### **Public Adjusters**

A public adjuster is any person, except a duly licensed attorney-at-law, who, for money, commission, or any other things of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract, or who, advertises for employment as an adjuster of such claims.<sup>105</sup> The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of the public adjuster, an insured, or a third-party claimant.<sup>106</sup>

### **Surplus Lines Insurer**

Surplus lines insurance is coverage for specific risks that the standard or admitted market is either unable or unwilling to cover.<sup>107</sup> While the admitted market is where most consumers find coverage, the surplus lines market is a supplement for those individuals and businesses that cannot find coverage otherwise.<sup>108</sup> Florida law defines “eligible surplus lines insurer” as an unauthorized insurer which has been made eligible by the OIR to issue insurance coverage under the Surplus Lines Law.<sup>109</sup>

### **Unauthorized Insurers and Surplus Lines**

#### ***General Lines Agent***

A general lines agent<sup>110</sup> is one who sells the following lines of insurance: property;<sup>111</sup> casualty,<sup>112</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,<sup>113</sup> or a Workers’ Compensation self-insurance fund;<sup>114</sup> surety;<sup>115</sup> health;<sup>116</sup> and, marine.<sup>117</sup> The general lines agent may only transact health insurance for an insurer that the

<sup>103</sup> Section 626.221, F.S.

<sup>104</sup> Section 626.221(2)(j), F.S.

<sup>105</sup> Section 626.854(1), F.S.

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

<sup>107</sup> Florida Surplus Lines Service Office, *Surplus Lines Insurance*, <https://www.fslso.com/about/surplus-lines-insurance#:~:text=Surplus%20lines%20insurance%20is%20coverage,that%20cannot%20find%20coverage%20otherwise> (last visited Feb. 6, 2024).

<sup>108</sup> *Id.*

<sup>109</sup> Section 626.915, F.S.

<sup>110</sup> Section 626.015(5), F.S.

<sup>111</sup> Section 624.604, F.S.

<sup>112</sup> Section 624.605, F.S.

<sup>113</sup> As defined in s. 624.462, F.S.

<sup>114</sup> Pursuant to s. 624.4621, F.S.

<sup>115</sup> Section 626.606, F.S.

<sup>116</sup> Sections 624.603 and 627.6482, F.S.

<sup>117</sup> Section 624.607, F.S.



general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not property and casualty insurers, they must be licensed as a health insurance agent.<sup>118</sup>

A general lines agent while licensed and appointed as a surplus lines agent may originate surplus lines business and may accept surplus lines business from any other originating Florida-licensed general lines agent appointed and licensed as to the kinds of insurance involved and may compensate that agent.<sup>119</sup> A managing general agent while licensed and appointed as a surplus lines agent may accept and place such surplus lines business as is originated by a Florida-licensed general lines agent appointed and licensed as to the kinds of insurance involved and may compensate that agent.<sup>120</sup> Such general lines agent may not knowingly misrepresent to the surplus lines agent any material fact involved in any such insurance or in the eligibility thereof for placement with a surplus lines insurer.<sup>121</sup>

### **Florida Medical Malpractice Joint Underwriting Association**

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is an insurance risk apportionment plan created by law for the purpose of assuring the availability of medical liability (malpractice) insurance to Florida health care providers (physicians, surgeons, dentists, nurses, physician partnerships or corporations, hospitals, medical facilities and other health care providers).<sup>122</sup> The FMMJUA provides liability insurance for those medical providers who are unable to obtain coverage from the private market.

The FMMJUA is administered through its Board of Governors (Board). The Board is comprised of representatives from the Florida Medical Association, Florida Hospital Association, The Florida Bar, Florida Dental Association, and the insurance industry. Subject to the final approval of the OIR, the Board approves insurance rates, rate classifications, policy forms, and otherwise sets the FMMJUA policy under the framework of the FMMJUA Plan of Operation. Operational and administrative functions are provided by a general manager and staff located in Tallahassee. The general manager is responsible for implementing policy and conducting the daily activities of the FMMJUA.

### **Guaranty Associations**

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.

---

<sup>118</sup> Section 626.829, F.S.

<sup>119</sup> Section 626.929(1), F.S.

<sup>120</sup> Section 626.929(2), F.S.

<sup>121</sup> Section 626.929(3), F.S.

<sup>122</sup> Section 627.351, F.S. *See also* Florida Medical Malpractice Joint Underwriting Association, *Welcome to the FMMJUA Web Site*, [www.fmmjua.com](http://www.fmmjua.com) (last visited Feb. 6, 2024). *See* DFS, Division of Rehabilitation and Liquidation, *Florida Guaranty Funds and Associations*, <https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/floridainsuranceguarantyassociations> (last visited Feb. 7, 2024).

***Florida Self-Insurers Guaranty Association, Inc.***

The Florida Self-Insurers Guaranty Association, Inc. (FSIGA), is a private, nonprofit corporation established in s. 440.385, F.S. The FSIGA is responsible for guaranteeing injured workers of insolvent self-insurers continue to receive workers' compensation benefits. Other than governmental entities, all self-insurers are required to be a member of FSIGA.<sup>123</sup>

***Florida Insurance Guaranty Association***

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>124</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>125</sup>

***Florida Life and Health Insurance Guaranty Association***

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>126</sup>

***Florida Health Maintenance Organization Consumer Assistance Plan***

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>127</sup>

***Florida Workers' Compensation Insurance Guaranty Association***

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>128</sup>

---

<sup>123</sup> Florida Self-Insurers Guaranty Association, Inc., *What Is the FSIGA, Inc.?*, <https://fsiga.org/> (last visited Feb. 7, 2024).

<sup>124</sup> Section 631.57, F.S.

<sup>125</sup> Section 631.56(1), F.S.

<sup>126</sup> Section 631.716(1), F.S.

<sup>127</sup> Section 631.816(1), F.S.

<sup>128</sup> Section 631.912(1), F.S.

## **State Fire Marshal**

State law on fire prevention and control is provided in Chapter 633, F.S. Section 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal within the DFS. 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>129</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; develops fire safety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The State Fire Marshal is charged with adopting the current edition of the National Fire Protection Association’s Standard 1, Fire Prevention Code, but is prohibited from adopting a building, mechanical, or plumbing code.<sup>130</sup> Criminal penalties for violation of the Florida Fire Prevention Code, any order or rule of the State Fire Marshal, or any order to cease and desist or to correct conditions, are set forth in s. 633.124, F.S.

### ***Uniform Fire Safety Standards***

The DFS is required to establish uniform firesafety standards that apply to:

- All new, existing, and proposed state-owned and state-leased buildings; and
- All new, existing, and proposed hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, transient public lodging establishments, public food service establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, tunnels, and self-service gasoline stations.<sup>131</sup>

The uniform fire safety standards must be reasonably prudent with respect to protecting life, safety, and property and which take into consideration the characteristics of the people utilizing the subject buildings and structures and other hazards associated with the subject buildings and structures throughout the state.<sup>132</sup> A local authority may not require more stringent uniform fire safety standards with respect to buildings or structures subject to such standards except in limited circumstances.<sup>133</sup>

---

<sup>129</sup> Section 633.104(2), F.S.

<sup>130</sup> Section 633.202(2), F.S.

<sup>131</sup> Section 633.206(1), F.S.

<sup>132</sup> Section 633.206(2)(a), F.S.

<sup>133</sup> Section 633.206(2)(b), F.S.

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

A person may not transact, administer, market, or attempt any of these activities with respect to a service agreement<sup>134</sup> business in Florida without a license.<sup>135</sup> To qualify for and maintain a license, a service agreement company (“company”) must comply with applicable Florida laws (including the Florida Insurance Code), rules and charter powers, and comply with specified requirements, including, in part:

- Being a solvent corporation;
- Furnishing the OIR with evidence that the management of the company is competent and trustworthy, and can successfully and lawfully manage its affairs;
- Making a deposit required under s. 634.052, F.S.;
- Maintaining the required reserves and the required ratio of liquid assets to the required reserves;
- Having and maintaining net assets of \$500,000, which all of such assets maintained in the United States; and
- Establishing and maintaining an unearned premium reserve that meets certain requirements, including:
  - The unearned premium reserve consists of unencumbered assets equal to a minimum of 50 percent of the unearned gross written premium of each service agreement and must amortize this reserve pro rata over the duration of the service agreement;
  - A company utilizing the 50-percent reserve must not allow its ratio of gross written premium to net assets to exceed 10 to one; and
  - The company must deposit with the DFS securities of the type eligible for deposit by insurers under s. 625.52, F.S., equal to 15 percent of the unearned premium reserve; or
- Is not required to establish and maintain an unearned premium reserve if the company secures and maintains contractual liability insurance in accordance with the following:
  - Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the OIR which meets certain criteria;
  - The contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds if the company does not meet its contractual obligations;
  - If the issuer of the contractual liability policy is fulfilling the service agreements covered by contractual liability policy and the holder cancel the service agreement, the issuer must make a full refund of the unearned premium to the consumer in certain circumstances;

---

<sup>134</sup> Section 634.011(8), F.S., defines “motor vehicle service agreement” or “service agreement” as a contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125, F.S., are expressly excluded from this definition and are exempt from the provisions of this part. The term “motor vehicle service agreement” includes any contract or agreement that provides: (a) for the coverage or protection and which is issued or provided in conjunction with an additive produce applied to the motor vehicle that is the subject of such contract or agreement; (b) For payment of vehicle protection expenses as defined in s. 634.011(8)(b)1.a., F.S.

<sup>135</sup> Section 634.031(1), F.S.

- The policy's cancellation, termination, or nonrenewal is subject to 90 days written notice by the insurer to the OIR; and
- The company must provide the OIR with the claims statistics.<sup>136</sup>

A policy issued in compliance with this provision may either pay 100 percent of claims as they are incurred, or pay 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.<sup>137</sup>

### **Home 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.

A home warranty association is any business other than an authorized insurer that issues home warranties.<sup>138</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>139</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>140</sup> The regulation is administered by the OIR.<sup>141</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>142</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>143</sup>

---

<sup>136</sup> Section 634.041, F.S.

<sup>137</sup> Section 634.041(8)(b)6., F.S.

<sup>138</sup> Section 634.301(3), F.S.

<sup>139</sup> Section 634.301(2), F.S.

<sup>140</sup> *Id.*

<sup>141</sup> Section 634.302, F.S.

<sup>142</sup> Sections 648.24 and 624.26, F.S. *See also* Department of Financial Services, Division of Consumer Services, *Bail Bonds Overview*, <https://www.myfloridacfo.com/division/consumers/understanding-insurance/bail-bonds-overview> (last visited Feb. 6, 2024).

<sup>143</sup> Section 648.355, F.S.

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

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>144</sup>

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

The owner of a bail bond agency must be a licensed and appointed bail bond agent.<sup>145</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>146</sup>

### ***Continuing Education***

Bail bond agents must complete at least 14 hours of continuing education every two years.<sup>147</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>148</sup>

### **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. 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

---

<sup>144</sup> Sections 648.355, 648.33, 648.34, 648.35, 648.36, 648.382, 648.42, and 648.44, F.S.

<sup>145</sup> Section 648.285, F.S.

<sup>146</sup> Sections 648.25(6) and 648.387, F.S.

<sup>147</sup> Section 648.385, F.S.

<sup>148</sup> Section 648.386, F.S.

deposit boxes.<sup>149</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>150</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.

Chapter 717, F.S., details how to determine whether property held by a person belonging to another is unclaimed and how to dispose of it. Any intangible property or income held in the possession of a "holder"<sup>151</sup> for the benefit of another is presumed unclaimed if the owner fails to claim such property for more than five years after the property becomes payable or distributable.<sup>152</sup>

Once the five year period elapses, the holder may file a petition with the DFS and request that the DFS accept custody of the property.<sup>153</sup> Upon delivery of property to the DFS, the state assumes custody and responsibility for the safekeeping of the property. So long as the person who delivers the property to the DFS has done so in good faith, he or she is relieved of any liability to manage the property.<sup>154</sup> While the DFS serves as the custodian for the State of Florida, it does not assume legal ownership of the property.<sup>155</sup>

To notify owners of their unclaimed property, the DFS employs various methods, including database searches.<sup>156</sup> Citizens have the right to claim their property at any time, irrespective of the amount, without incurring any costs.<sup>157</sup> Unclaimed funds are deposited into the State School Fund to support public schools.<sup>158</sup> Importantly, the original amount reported as unclaimed can always be claimed by the owner or their heirs at no cost.<sup>159</sup>

A claimant representative, who must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under Chapter 493, F.S., is required

---

<sup>149</sup> Sections 717.104-717.116, F.S.

<sup>150</sup> Section 717.1400, F.S.

<sup>151</sup> Section 717.101(12), F.S., defines "holder" as a person, wherever organized or domiciled, who is:

- In possession of property belonging to another;
- A trustee in case of a trust; or
- Indebted to another on an obligation.

<sup>152</sup> Section 717.102(1), F.S.

<sup>153</sup> Section 717.117(5), F.S.

<sup>154</sup> Section 717.1201(5), F.S.

<sup>155</sup> Sections 717.104-717.116, F.S.

<sup>156</sup> Florida Department of Financial Services, *Agency Analysis of Senate Bill 1434*, p. 1 (Feb. 9, 2021) (on file with the Senate Committee on Agriculture, Environment, and General Government).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

to register with the DFS.<sup>160</sup> A claimant representative must register with 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>161</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.

## **Florida Birth-Related Neurological Injury Compensation Association**

### ***History***

In the 1970's and 1980's, Florida obstetric malpractice claims sharply rose and medical liability insurance skyrocketed.<sup>162</sup> A special task force was created to study Florida's medical malpractice crisis. The task force evaluated the rising cost of insurance, litigation costs and attorney's fees and noted no substantive change in law accounted for the increases.<sup>163</sup> In 1985, the national average for obstetricians-gynecologist (OB-GYNs) medical malpractice liability premium was \$23,300. In Florida, the average for the same insurance was \$185,460.<sup>164</sup>

In 1988, the Legislature enacted the Florida Birth-Related Neurological Injury Compensation Plan<sup>165</sup> (Plan) to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries.<sup>166</sup> If an infant suffers such an injury, and the physician participates in NICA and delivers obstetrical services in connection with the birth, then an administrative award for a compensable injury is the infant's sole and exclusive remedy for the injury, with exceptions.<sup>167</sup> Although the benefits paid under the Plan are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing process to resolve the claim.<sup>168</sup>

A "birth-related neurological injury" is an injury to the brain or spinal cord of a live infant who weighs at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant who weighs at least 2,000 grams at birth caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.<sup>169</sup> Such an injury addressed by this statute renders the infant permanently and substantially mentally and physically impaired.<sup>170</sup>

---

<sup>160</sup> Section 717.124, F.S.

<sup>161</sup> Section 717.1400, F.S.

<sup>162</sup> The Florida Birth-Related Neurological Injury Compensation Association, *About NICA*, <https://www.nica.com/about-nica/> (last visited Feb. 13, 2024).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Section 766.303(1), F.S.

<sup>166</sup> Chapter 88-1, ss. 60-75, Laws of Fla., was enacted by the Legislature to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics. The intent of the Legislature is to provide compensation, on a no-fault basis, for a limited class of high costs catastrophic injuries, specifically birth-related neurological injuries, that result in unusually high costs for custodial care and rehabilitation. Section 766.301 F.S.

<sup>167</sup> Section 766.31(1), F.S.

<sup>168</sup> See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

<sup>169</sup> Section 766.302(2), F.S.

<sup>170</sup> *Id.*



NICA is an independent association. Although it is not a state agency, NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on NICA's board are appointed by the Chief Financial Officer.<sup>171</sup> The five-member board of directors of the Florida Birth-Related NICA administers the Plan.<sup>172</sup>

Duties of the NICA include:

- Administering the plan;
- Administering the funds collected;
- Reviewing and paying claims;
- Directing the investment and reinvestment of any surplus funds over losses and expenses;
- Reinsuring the risks of the plan in whole or in part;
- Suing and being sued, appearing and defending, in all actions and proceedings in its name; and
- Taking such legal action as may be necessary to avoid payment of improper claims.<sup>173</sup>

### ***Filing a Claim for Benefits under NICA***

A claim for compensation under the Plan must be filed within five years of the birth of the infant alleged to be injured.<sup>174</sup> First, the parents or guardians of the infant must file a petition with the Division of Administrative Hearings (DOAH).<sup>175</sup> Then, the DOAH serves a copy of the petition upon NICA, the physician(s) and hospital named in the petition, the Division of Medical Quality Assurance, and the Agency for Health Care Administration.<sup>176</sup> Within 10 days of filing the petition, the parents or guardian must provide to NICA all medical records, assessments, evaluations and prognoses, documentation of expenses, and documentation of any private or governmental source of services or reimbursement relative to the impairments.<sup>177</sup>

Within 45 days from the date of service of a complete claim, NICA must file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury.<sup>178</sup> An ALJ from the DOAH will set a hearing on the claim to be conducted 60-120 days from the petition filing date.<sup>179</sup>

The issue of whether the claim for compensation is covered by the Plan is determined exclusively in an administrative proceeding.<sup>180</sup> The ALJ presiding over the hearing makes the following determinations:

- Whether the injury claimed is a birth-related neurological injury;
- Whether obstetrical services were delivered by a participating physician;

---

<sup>171</sup> Section 766.315, F.S. and section 74 of ch. 88-1 Laws of Fla.

<sup>172</sup> Section 766.315(1) and (2), F.S.

<sup>173</sup> Section 766.315(4), F.S.

<sup>174</sup> Section 766.313, F.S.

<sup>175</sup> Section 766.305, F.S.

<sup>176</sup> Section 766.305(2), F.S.

<sup>177</sup> Section 766.305(3), F.S.

<sup>178</sup> Section 766.305(4), F.S.

<sup>179</sup> Section 766.307(1), F.S.

<sup>180</sup> Section 766.301(1)(d), F.S.

- How much compensation, if any, is awardable under s. 766.31, F.S.; and
- Whether, if raised by the claimant or other party, the factual determination regarding the notice requirement in s. 766.316, F.S.<sup>181</sup>

If the ALJ determines that an injury meets the definition of a birth-related neurological injury, compensation from the plan is the exclusive legal remedy.<sup>182</sup> If the ALJ determines that, the injury alleged is not a birth-related neurological injury or that a participating physician did not deliver the obstetrical services, the ALJ will enter an order to that effect.<sup>183</sup> The ALJ may also bifurcate the proceeding and address compensability and notice first, and address an award, if any, in a separate proceeding.<sup>184</sup> If any party chooses to appeal the ALJ's order under s. 766.309, F.S., the appeal must be filed in the District Court of Appeal.<sup>185</sup>

### ***NICA Appropriations, Assessments, Reserves and Actuarial Soundness***

NICA is a no-fault alternative to medical malpractice lawsuits for injuries which have a high cost and system impact.<sup>186</sup> The funding for the Plan is derived from an initial appropriation of \$20 million by the Legislature at the time the Plan was created<sup>187</sup> and annual assessments paid by physicians and hospitals.<sup>188</sup> In the last five years, NICA collected the following amounts in hospital and physician assessments:

- In 2019, \$26,989,960;<sup>189</sup>
- In 2020, \$27,765,802;<sup>190</sup>
- In 2021, \$31,799,087;<sup>191</sup>
- In 2022, \$35,830,483;<sup>192</sup> and
- In 2023, \$35,076,996.<sup>193</sup>

<sup>181</sup> Section 766.309(1), F.S.

<sup>182</sup> Section 766.303(2), F.S., only allows a civil action in place of a claim under the Plan where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property.

<sup>183</sup> Section 766.309(2), F.S.

<sup>184</sup> Section 766.309(4), F.S.

<sup>185</sup> Section 766.311(1), F.S.

<sup>186</sup> The Florida Birth-Related Neurological Injury Compensation Association, *About NICA*, <https://www.nica.com/about-nica/> (last visited Feb. 13, 2024).

<sup>187</sup> Section 766.314(5)(b), F.S.

<sup>188</sup> Section 766.314(4) – (5)(a), F.S., requires non-participating physicians to pay \$250 per year, participating physicians to pay \$5,000 per year, and hospitals to pay \$50 per infant delivered during the prior year.

<sup>189</sup> Turner Consulting, Inc., *Proposed Increase in Parental Award – Section 766.31 (1) (b) (1), Florida Statutes* (Jan. 14, 2020) See also, Thomas, Howell Ferguson, P.A., *NICA Financial Statements and Other Financial Information, Years Ended June 30, 2019 and 2018 with Report of Independent Auditors*, available at <https://www.nica.com/wp-content/uploads/2021/04/2019-NICA-Audited-Financial-Statements.pdf> (last visited Feb. 13, 2024).

<sup>190</sup> *Id.* See also, Thomas, Howell Ferguson, P.A., *NICA Financial Statements and Other Financial Information, Years Ended June 30, 2020 and 2019 with Report of Independent Auditors*, available at <https://www.nica.com/wp-content/uploads/2021/04/2020-NICA-Audited-Financial-Statements.pdf> (last visited Feb. 13, 2024).

<sup>191</sup> Thomas, Howell Ferguson, P.A., *NICA Financial Statements and Other Financial Information, Years Ended June 30, 2021 and 2020 with Report of Independent Auditors*, available at <https://www.nica.com/wp-content/uploads/2021/12/2021-NICA-Audited-Financial-Statements.pdf> (last visited Feb. 13, 2024).

<sup>192</sup> Thomas, Howell Ferguson, P.A., *NICA Financial Statements and Other Financial Information, Years Ended June 30, 2022 and 2021 with Report of Independent Auditors*, available at <https://www.nica.com/wp-content/uploads/2023/03/2022-NICA-Audited-Financial-Statements-1.pdf> (last visited Feb. 13, 2024).

<sup>193</sup> Thomas, Howell Ferguson, P.A., *NICA Financial Statements and Other Financial Information, Years Ended June 30, 2023 and 2022 with Report of Independent Auditors*, available at <https://www.nica.com/wp-content/uploads/2023/10/06-30-2023-NICA-Audited-Financial-Statements.pdf> (last visited Feb. 13, 2024).

The NICA may invest Plan funds, subject to limitations described in s. 215.47, F.S. All income derived from investments will be credited to the Plan. The State Board of Administration (SBA) may invest and reinvest funds held on behalf of the Plan in accordance with the trust agreement approved by NICA and the SBA and within the provisions of s. 215.44-215.53, F.S.<sup>194</sup>

Section 766.314, F.S., requires the OIR to maintain a \$20 million reserve in the Insurance Regulatory Trust Fund with the DFS. If the assessments collected and the appropriation of funds provided by s. 41, ch. 88-277, L.O.F., to the Plan from the trust fund are insufficient to maintain the Plan on an actuarially sound basis, the OIR is authorized to transfer an additional amount up to \$20 million to NICA from the Insurance Regulatory Trust Fund reserve.<sup>195</sup>

If required to maintain the Plan on an actuarially sound basis, the OIR is authorized to require each entity licensed to issue casualty insurance, defined in s. 624.601(1)(b), (k) and (q), F.S., to pay into NICA an annual assessment determined by the OIR. The OIR is required to obtain no less than on a biennial basis, an actuarial valuation of NICA's assets and liabilities.<sup>196</sup> The OIR is authorized to increase assessments on a proportional basis as needed, if the OIR determines the Plan cannot be maintained on an actuarially sound basis.<sup>197</sup>

### ***NICA Liabilities***

In 2021, an actuarial analysis of NICA was conducted using data valued as of December 31, 2021.<sup>198</sup> The actuarial study (Pinnacle study) showed the total outstanding loss and loss adjustment expenses (LAE) was \$1,017,205 which is higher than the corresponding outstanding loss and LAE, of \$602.2 million calculated as of December 31, 2019. The Pinnacle study reports the increase to the reserves is driven by three factors:<sup>199</sup>

- An increase in reported and compensable claims in recent years;
- An increase in future costs due to the passage of Senate Bill 1786 in 2021; and
- An increase in future costs related to NICA no longer being considered the payor of last resort.<sup>200</sup>

The Pinnacle study, in its evaluation of the risk or uncertainty of actuarial central estimates determined “uncertainty is magnified by the long duration of benefits and the consequential highly leveraged impact of inflation, interest, medical technology, and life expectancy on future claims costs.”<sup>201</sup> Furthermore, the Pinnacle study indicates NICA is encountering an operating

---

<sup>194</sup> Section 766.315(5)(f)

<sup>195</sup> Section 766.314(5)(b), F.S.

<sup>196</sup> Section 766.314(7)(a), F.S. The OIR is required to prepare a statement as to the contribution rate applicable with the rate not to be greater than 0.25 percent of net direct premiums written.

<sup>197</sup> Section 766.315(7)(b), F.S.

<sup>198</sup> Pinnacle Actuarial Resources, *NICA Actuarial Review of Loss Reserves as of December 31, 2021, Including Additional Costs of the 2022 Birth/Accident Year* (Dec. 18, 2022), available at [https://floir.com/docs-sf/default-source/property-and-casualty/birth-related-neurological-injury-compensation/nica-12-31-21-actuarial-report---final.pdf?sfvrsn=331d749e\\_4](https://floir.com/docs-sf/default-source/property-and-casualty/birth-related-neurological-injury-compensation/nica-12-31-21-actuarial-report---final.pdf?sfvrsn=331d749e_4) (last visited Feb. 13, 2024).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 3.

loss on a birth year basis<sup>202</sup> and that corrective action should be considered before the underwriting losses compound to an unimaginable level.<sup>203</sup> The Pinnacle study suggested corrective action could include, but not be limited to, assessment increases, reduction of benefits, reconsideration of NICA’s status relative to Medicaid, and sunseting of the program.<sup>204</sup>

In late 2022, NICA announced a settlement of \$51 million<sup>205</sup> in a false claims act lawsuit, *United States ex rel. Arven et al. v. Florida Birth-Related Neurological Injury Compensation Association et al.*, No. 19-cv-61053, (S.D. Fla. Nov. 14, 2022) (*Arven* settlement).<sup>206</sup> The settlement resolves allegations NICA violated the False Claims Act by causing NICA participants to submit their healthcare claims to Medicaid rather than NICA, in violation of Medicaid’s status as the payor of last resort under federal law.<sup>207</sup> Pursuant to the terms and conditions of the settlement, NICA agreed to pay \$51 million plus interest at a rate of 3.375 percent per annum from September 13, 2022, to no later than thirty days after the effective date of the settlement agreement.<sup>208</sup> NICA estimated the total cost of the settlement, including legal fees and accrued interest, at \$53 million – two million dollars more than the settlement agreement, which impacts NICA’s assets and its ability to generate investment income to pay claims.<sup>209</sup>

In addition to the *Arven* settlement, NICA has experienced increased costs related to the 2022 changes in the Medicaid fee schedule.<sup>210</sup> The Pinnacle Study reports NICA estimated an increase of \$100 million to future claims costs based on the changes to the Medicaid fee schedule.<sup>211</sup> Additionally, the Pinnacle study indicates since December 31, 2021, NICA has experienced investment losses in excess of \$250 million.<sup>212</sup> However, the Pinnacle study’s discounted reserve estimates reflect, as of December 31, 2021, sufficient assets to support the reserves,<sup>213</sup> and that rising interest rates may also lead to higher returns.<sup>214</sup>

### ***NICA Plan Benefits and Compensation***

A \$100,000 cash award limit was established when the NICA statutory provisions were enacted in 1988. If the initial award of \$100,000 established for the first birth year of 1989 was adjusted

---

<sup>202</sup> *Id* at 3.

<sup>203</sup> *Id* at 3.

<sup>204</sup> *Id* at 3.

<sup>205</sup> *Id* at 4 quoting the Pinnacle Study: “While NICA steadfastly believes it would have prevailed had this dispute gone to trials, it recognizes that litigation is inherently unpredictable. In weighing its options, NICA and its Board ultimately decided it was in the best interest of the program to not only avoid future legal expenses, but also to avoid the risk of losing the lawsuit, which could have resulted in billions of dollars in exposure and been a financially devastating outcome.”

<sup>206</sup> *Id* at 4. See also, U.S. Department of Justice, Office of Public Affairs, Press Release: *Florida Birth-Related Neurological Injury Compensation Plan and Association to Pay \$51 Million to Resolve False Claims Act Allegations* (Nov. 14, 2022), <https://www.justice.gov/opa/pr/florida-birth-related-neurological-injury-compensation-plan-and-association-pay-51-million> (last visited Feb. 13, 2024).

<sup>207</sup> *Id* at 4.

<sup>208</sup> *Id* at 4.

<sup>209</sup> *Id* at 4.

<sup>210</sup> *Id* at 4.

<sup>211</sup> *Id* at 4.

<sup>212</sup> *Id* at 4.

<sup>213</sup> *Id* at 4.

<sup>214</sup> *Id* at 5.

for inflation and assuming an annual increase of three percent, this would result in an indicated award of approximately \$250,000.<sup>215</sup> In 2021, the Legislature increased claim benefits.<sup>216</sup>

The Plan pays, on behalf of a qualifying infant, the following benefits:

- Actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel. At a minimum, compensation must be provided for the following actual expenses:<sup>217</sup>
  - A total annual benefit of up to \$10,000 for immediate family members who reside with the infant for psychotherapeutic services obtained from providers licensed under chs. 490 and 491, F.S.;
  - For the life of the child, providing parents or legal guardians with a reliable method of transportation for the care of the child or reimbursing the cost of upgrading an existing vehicle to accommodate the child's needs when it becomes medically necessary for wheelchair transportation. The mode of transportation must take into account the special accommodations required for the specific child. The Plan may not limit such transportation assistance based on the child's age or weight. The Plan must replace any vans purchased by the Plan every seven years or 150,000 miles, whichever comes first;<sup>218</sup>
  - Housing assistance of up to \$100,000 for the life of the child, including home construction and modification costs;
- Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which beginning January 1, 2021, may not exceed \$250,000. Each January 1, thereafter, the maximum award authorized under this paragraph shall increase by three percent;<sup>219</sup>
  - Parents or legal guardians who received an award prior to January 2, 2021, must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians to \$250,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021.
- Death benefit of \$50,000 for the infant;
  - Parents or legal guardians who received an award prior to January 2, 2021, must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians to \$50,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021.and
- Reasonable expenses for filing the claim under the plan, including attorney's fees.<sup>220</sup>

<sup>215</sup> Turner Consulting, Inc., Consultants and Actuaries, *Proposed Increase in Parental Award-Section 766.31(b)(1)*, Florida Statutes, (Jan. 14, 2020) (on file with the Senate Committee on Health Policy).

<sup>216</sup> See SB 1786 (2021) which increased claim payouts from \$100,000 to \$250,000, plus necessary medical and maintenance expenses for the lifetime of the claimant.

<sup>217</sup> Section 766.31(1)(a), F.S. The Plan excludes coverage for expenses that are compensable by state or federal governments, or by private insurers. See s. 766.31(1)(b)1-4, F.S.

<sup>218</sup> Section 766.31(a)1, F.S.

<sup>219</sup> Section 766.31(d), F.S.

<sup>220</sup> Section 766.31, F.S.

The Administrative Law Judge (ALJ) must require the Plan to immediately pay expenses previously incurred and require that future expenses be paid as incurred.<sup>221</sup>

### **NICA Notice Requirement**

Section 766.316, F.S., requires any hospital with a participating physician on its staff and each participating physician under the Plan, to provide notice to an obstetrical patient as to the limited no-fault alternative for birth-related neurological injuries. The notice must:

- Be provided on forms furnished by the association; and
- Include a clear and concise explanation of a patient's rights and limitations under the plan.

This section of statute also provides that the notice does not need to be provided to a patient when the patient has an emergency medical condition or when notice is not practicable.

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

### **Federal Tax Liaison**

**Section 1** creates s. 17.69, F.S., to establish the position of Federal Tax Liaison within the Department of Financial Services (DFS). The Federal Tax Liaison (liaison), to be appointed by the Chief Financial Officer (CFO), reports directly to the CFO but is not otherwise under the authority of the DFS or of any employee of the DFS. In order to assist the Florida's taxpayers, the tax liaison may:

- Assist taxpayers by answering taxpayer questions;
- Direct taxpayers to the proper departments or offices within the Internal Revenue Service (IRS) in order to hasten resolution of taxpayer issues;
- Prepare recommendations for the IRS of any actions that will help resolve problems encountered by taxpayers;
- Provide information about the policies, practices, and procedures that the IRS uses to ensure compliance with the tax laws; and
- With the consent of the taxpayer, request records from the IRS to assist the liaison in responding to taxpayer inquiries.

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

**Section 2** amends s. 20.121, F.S., to:

- Rename the Division of Investigative and Forensic Services (DIFS) to the Division of Criminal Investigations (DCI) and delete provisions relating to the duties of the DIFS and the bureaus and offices in the DIFS;
- Designate DCI as a criminal justice agency with the authority to initiate and conduct investigations into matters falling under the jurisdiction of the CFO and Fire Marshal; and
- Abolish the Division of Public Assistance Fraud (DPAF). The programs and responsibilities within DPAF will be moved under the DCI (which is the DIFS as renamed by the bill).

---

<sup>221</sup> Section 766.31(2), F.S.

### **Special Risk Class**

**Section 3** amends s. 121.0515, F.S., to replace references to employees of the Division of State Fire Marshal with employees of the DFS, and maintains current employment effective date of July 1, 2008.

### **State Risk Management and Safety Programs**

**Section 4** amends s. 284.44, F.S., to repeal the provision requiring the Division of Risk Management to prepare quarterly reports of the total amount of salary indemnification benefits paid and the total amount of reimbursements from each agency to the State Risk Management Trust Fund for initial costs each quarter.

### **Workers' Compensation**

**Section 5** amends s. 440.13, F.S., to provide for reimbursement for emergency services and care provided when a maximum reimbursement allowance is not available. In such a case, the maximum allowance must be at 250 percent of Medicare, unless there is a contract, in which case the contract governs reimbursement. Requires the DFS to engage an actuarial services firm to begin development of maximum reimbursement provisions contained within this section. Provides an expiration date of June 30, 2026.

### **Florida Self-Insurers Guaranty Association**

**Section 6** amends s. 440.385, F.S., relating to the Florida Self-Insurers Guaranty Association (FSIGA), to require the DFS to approve, beginning July 1, 2024, all contracts entered into, and purchases made by the FSIGA, which are valued at \$100,000 or more. The DFS must approve or deny the contract within 10 days or it is deemed approved. All such contracts must be competitively procured and be awarded to the most responsible and responsive vendor. The bill provides an exemption for contracts required by law from review by the DFS.

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

**Section 7** amends s. 497.101, F.S., relating to the Board of Funeral, Cemetery, and Consumer Services (Board). The bill provides that:

- The CFO is to appoint Board members, rather than the Governor, and such appointments are subject to Senate confirmation;
- One of the funeral director members of the Board no longer must own or operate an approved cinerator facility;
- Board members may be reappointed but may not serve for more than eight consecutive years;
- Specifies the State Health Officer shall serve as long as that person holds office; however, the designee of the State Health Officer shall serve at the pleasure of the CFO;
- Provides the CFO may move any board member for malfeasance or misfeasance, neglect of duty, incompetence, substantial inability to perform official duties, commission of a crime, or other substantial cause as determined by the CFO, to evidence a lack of fitness to sit on the Board. Any vacancy created by a board member's resignation shall be filled by the CFO;
- Members of the Board are subject to the code of ethics under part III of ch. 112, F.S.;

- A Board member may not vote on any measure that would inure to his or her special private gain or loss;
- A Board member may not knowingly accept any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the DFS or Board, which is under consideration for a contract, or is licensed by the DFS;
- Provides Board members who fail to comply with the code of ethics are subject to penalties provided under ss. 112.317 and 112.3173, F.S.<sup>222</sup>
- All meetings of the Board are subject to the open meeting requirements of s. 286.011, F.S., and all books and records of the Board are open to the public for reasonable inspection except as otherwise provided by law; and
- Except for emergency meetings, the DFS must give notice of any Board meeting by publication on the DFS website at least seven days before the meeting. The DFS must publish its agenda at least seven days before the meeting. The agenda must contain the items to be considered in order of presentation. After the agenda has been made available, a change may be made only for good cause.

**Section 8** amends s. 497.153, F.S., relating to disciplinary procedures and penalties to provide if service of an administrative complaint on a licensee by certified mail cannot be obtained at the last address provided to the DFS by the licensee, then service may be made by e-mail, delivery receipt required, sent to the most recent e-mail address provided to the DFS by the licensee in accordance with s. 497.146, F.S.

**Section 9** amends s. 497.155, F.S., relating to disciplinary citations and minor violations to provide if service of a citation on a subject by certified mail cannot be obtained at the last address provided to the DFS by the subject, then service may be made by e-mail, delivery receipt required, sent to the most recent e-mail address provided to the DFS by the subject in accordance with s. 497.146, F.S.

**Section 10** amends s. 497.172, F.S., relating to examinations, inspections and investigations to make investigative file information public if the department issues an emergency order.

**Section 11** amends s. 497.386, F.S., relating to storage, preservation, and transportation of human remains. The bill provides:

- In the event of an emergency situation, including abandonment of any establishments or facilities licensed under ch. 497, F.S., or any medical examiner's facility, morgue or cemetery holding facility, the DFS may enter and secure such establishment, facility, or morgue during or outside normal business hours;
- The DFS may remove human remains and cremains from the establishment, facility, or morgue;

---

<sup>222</sup> Penalties under s. 112.317, F.S., for public officers, include: impeachment; removal from office; suspension from office; public censure and reprimand; forfeiture of no more than one-third of his or her salary per month for no more than 12 months; a civil penalty not to exceed \$20,000; restitution of any pecuniary benefit received due to the violation committed. Section 112.3173, F.S., provides for forfeiture of retirement benefits when a public officer or employee has been adjudicated guilty of specified felonies.



- The DFS is authorized to determine if a facility is abandoned and if there is an emergency situation;
- A licensee or licensed facility that accepts transfer of human remains and cremains from the DFS pursuant to an emergency situation or determination of abandonment, will not be held liable for the condition of such remains or cremains at the time of transfer;
- A person who violates subsection (1) or (3) of s. 497.172, F.S., commits a misdemeanor punishable as provided in ss. 775.082 or 775.083, F.S.; and
- A person who violates subsection (2) or subsection(4) of s. 497.172, F.S., commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083 and 775.084, F.S.<sup>223</sup>

**Section 12** amends s. 497.469, F.S., as it relates to fulfillment of pre-need contracts. The bill provides:

- Upon delivery of merchandise or performance of services in fulfillment of a preneed contract, either in part or in whole, a preneed licensee may withdraw the amount deposited in trust plus income earned on such amount for the merchandise delivered or services performed, when adequate documentation is submitted to the trustee;
- A certified copy of the death certificate and an acknowledgement signed by the purchaser or legally authorized person acknowledging the merchandise was delivered or services performed by the preneed licensee is the only satisfactory evidence necessary to show a preneed contract has been fulfilled; and
- A preneed licensee shall maintain documentation that supports fulfillment of a particular contract until such time as the records are examined by the DFS.

## **Division of Consumer Services**

### ***Surplus Lines Insurers***

**Section 13** amends s. 624.307, F.S., to require eligible surplus lines insurers to respond, in writing or electronically, to the Division of Consumer Services within the DFS within 14 days after receipt of a written request from the Division for documents and information concerning a consumer complaint.

This section of the bill also requires authorized insurers and eligible surplus lines insurers to file e-mail addresses with the DFS to which requests for response to consumer complaints may be directed. The insurer must designate a contact person for escalated complaint issues and must provide the name, e-mail address, and telephone number of the contact person.

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

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

**Section 14** amends s. 626.171, F.S., to require the DFS to make provisions for applicants to submit cellular telephone numbers as part of the application process on a voluntary basis for

---

<sup>223</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

purposes of two-factor authentication of login credentials only. A separate bill, SB 1078 (2024), proposes to exempt these phone numbers from public records requirements.

**Section 15** amends s. 626.221, F.S., to add “Registered Claims Adjuster (RCA) from American Insurance College” to the list of individuals exempted from the examination requirement to become an agent or adjuster.

**Section 16** amends s. 626.601, F.S., to allow the DFS to disclose confidential investigative information to the subject or the subject’s representative in order to review the details of the investigation.

**Section 17** amends s. 626.7351, F.S., to add the designation of “Chartered Customer Service Representative (CCSR) from American Insurance College” to the list of criteria to qualify as a customer representative.

### **Public Adjusters**

**Section 18** amends s. 626.878, F.S., to require a licensed adjuster to identify themselves in any advertisements, solicitations or written documents based on the adjuster appointment type held.

This section also provides an adjuster who has had his or her licensed revoked or suspended may not participate in any part of an insurance claim or in the insurance claim adjusting process. A person who provides these services while the person’s license is revoked or suspended acts as an unlicensed adjuster.

### **Unauthorized Insurers and Surplus Lines**

**Section 19** amends s. 626.929, F.S., to provide a general lines agent while licensed as a surplus lines agent may appoint licenses with a single surplus license agent appointment pursuant to s. 624.501, F.S. Such an appointed agent may only originate surplus lines business and accept surplus lines business from other originating Florida-licensed general lines agents appointed and licensed as to the kinds of insurance involved and may compensate such agent. Such agent may not be appointed by or transact general lines insurance on behalf of an admitted insurer

### **Florida Medical Malpractice Joint Underwriting Association**

**Section 20** amends s. 627.351, F.S., relating to the Florida Medical Malpractice Joint Underwriting Association (FMMJUA), to require the DFS to approve, beginning July 1, 2024, all contracts entered into, and purchases made by the FMMJUA, which are valued at \$100,000 or more. The DFS must approve or deny the contract within 10 days or it is deemed approved. All such contracts must be competitively procured and be awarded to the most responsible and responsive vendor.

## **Guaranty Associations**

### ***Florida Insurance Guaranty Association***

**Section 21** amends s. 631.59, F.S., relating to the Florida Insurance Guaranty Association (FIGA), to require the DFS to approve, beginning July 1, 2024, all contracts entered into, and purchases made by the FIGA, which are valued at \$100,000 or more. The DFS must approve or deny the contract within 10 days or it is deemed approved. All such contracts must be competitively procured and be awarded to the most responsible and responsive vendor. The bill clarifies these provisions do not apply to claims defense counsel or claims vendors if contracts with all vendors which may exceed \$100,000 are provided to the DFS for prior approval.

### ***Florida Life and Health Insurance Guaranty Association***

**Section 22** amends s. 631.722, F.S., relating to the Florida Life and Health Guaranty Association (FLHGA) to require the DFS to approve, beginning July 1, 2024, all contracts entered into, and purchases made by the FLHGA, which are valued at \$100,000 or more. The DFS must approve or deny the contract within 10 days or it is deemed approved. All such contracts must be competitively procured and be awarded to the most responsible and responsive vendor.

### ***Florida Health Maintenance Organization Consumer Assistance Plan***

**Section 23** amends s. 631.821, F.S., relating to the Florida Health Maintenance Organization Consumer Assistance Plan (Plan), to require the DFS to approve, beginning July 1, 2024, all contracts entered into, and purchases made by the Plan, which are valued at \$100,000 or more. The DFS must approve or deny the contract within 10 days or it is deemed approved. All such contracts must be competitively procured and be awarded to the most responsible and responsive vendor.

### ***Florida Workers' Compensation Insurance Guaranty Association***

**Section 24** amends s. 631.921, F.S., relating to the Florida Workers' Compensation Guaranty Association (FWCIGA), to require the DFS to approve, beginning July 1, 2024, all contracts entered into, and purchases made by the FWCIGA, which are valued at \$100,000 or more. The DFS must approve or deny the contract within 10 days or it is deemed approved. All such contracts must be competitively procured and be awarded to the most responsible and responsive vendor.

## **State Fire Marshal**

**Section 25** amends s. 633.124, F.S., to adopt the National Fire Protection Association, Inc., Standard 1126, 2021 Edition, Standard for the Use of Pyrotechnics before a Proximate Audience.

**Section 26** amends s. 633.202, F.S., relating to the Florida Fire Prevention Code to provide the State Fire Marshal may not adopt an accessibility code, since accessibility is provided for under the Florida Building Code Americans with Disabilities Act (ADA) accessibility code.

**Section 27** amends s. 633.206, F.S., to require the DFS to establish uniform fire safety standards for mobile food dispensing vehicles and energy storage systems.

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

**Section 28** amends s. 634.041, F.S., to allow motor vehicle service agreement companies to utilize multiple contractual liability insurance policies when backing their financial obligations.

**Section 29** amends s. 634.081, F.S., to allow motor vehicle service agreement companies to utilize multiple contractual liability insurance policies when backing their financial obligations.

### **Home Warranty Associations**

**Section 30** amends s. 634.3077, F.S., to provide that a home service warranty association (association) is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to exceed the ratio to net assets limitation if the association complies with the following:

- The association or, if the association is a direct or indirect wholly owned subsidiary of a parent corporation, its parent corporation has, and maintains at all times, a minimum net worth of at least \$100 million and provides the OIR with the following:
  - A copy of the association's annual audited financial statements or the audited consolidated financial statements of the association's parent corporation, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, that clearly demonstrate the net worth of the association or its parent corporation to be \$100 million, and a quarterly written certification to the OIR that the association or its parent corporation continues to maintain the net worth required under this paragraph; and
  - The association's or its parent corporation's Form 10-K, Form 10-Q, or Form 20-F as filed with the United States Securities and Exchange Commission or such other documents required to be filed with a recognized stock exchange, which shall be provided on a quarterly and annual basis within 10 days after the last date each such report must be filed with the Securities and Exchange Commission, the National Association of Security Dealers Automated Quotation system, or other recognized stock exchange.

Failure to timely file the documents required under this paragraph may subject the association to suspension or revocation of its license.

If the net worth of a parent corporation is used to satisfy the net worth provisions of paragraph (a), the following must be met:

- The parent corporation must guarantee all service warranty obligations of the association, wherever written, on a form approved in advance by the OIR;
- A cancellation, termination, or modification of the guarantee does not become effective unless the parent corporation provides the OIR written notice at least 90 days before the effective date of the cancellation, termination, or modification and the OIR approves the request in writing;
- Before the effective date of the cancellation, termination, or modification of the guarantee, the association must demonstrate to the satisfaction of the OIR compliance with all applicable provisions of this part, including whether the association will meet the

requirements of this section by the purchase of contractual liability insurance, establishing required reserves, or other method allowed under this section;

- If the association or parent corporation does not demonstrate to the satisfaction of the OIR compliance with all applicable provisions of this part, the association or parent association shall immediately cease writing new and renewal business upon the effective date of the cancellation, termination, or modification; and
- The association must maintain at all times net assets of at least \$750,000.

**Section 31** amends s. 634.317, F.S., to exempt a municipality, a county government, a special district, an entity operated by a municipality or county government, or an employee or agent of a municipality, county government, special district, or entity operated by a municipality or county government from the licensing and appointment requirements set forth in s. 634.317, F.S.

### **Bail Bonds**

**Section 32** amends s. 648.25, F.S., to provide the following definitions:

- “Referring bail bond agent” is the limited surety agent who is appointed with the surety company issuing the transfer bond that is to be posted in a county where the referring limited surety agent is not registered. The referring bail bond agent is the appointed agent held liable for the transfer bond, along with the issuing surety company; and
- “Transfer bond” means the appearance bond and power of attorney form posted by a limited surety agent who is registered in the county where the defendant is being held in custody, and who is appointed to represent the same surety company issuing the appearance bond as the referring bail bond agent.

**Section 33** amends s. 648.26, F.S., to provide the papers, documents, reports, or any other records of an investigation (related to the regulation of bail bonds) by the DFS that are made confidential and exempt from the public records law until such investigation is completed or ceases to be active, are not confidential and exempt once the DFS or the OIR files a formal administrative complaint, emergency order, or consent order against the individual or entity.

The bill also provides the confidential and exempt investigative records may be disclosed to the subject or the subject’s representative in order to review the details of the investigation.

**Section 34** amends s. 648.30, F.S., to provide bail bond agents are not required to be employed with a bail bond agency.

**Section 35** s. 648.355, F.S., to remove the requirement of the submission of a full face photograph with a limited surety’s or bail bond agent’s application for license.

**Section 36** amends s. 648.43, F.S., to require the license number, in addition to the name and address, of the referring bail bond agent be included on a transfer bond.

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

### ***Definitions***

**Section 37** amends s. 717.101, F.S., to provide or revise definitions for the following terms: “audit”; “audit agent”; “banking organization”; “business association”; “claimant’s representative”; “domicile”; “due diligence”; “electronic”; “financial organization”; “holder”; “intangible property”, to include virtual currency; “owner”; “person”; “record”; “unclaimed property purchase agreement”; “unclaimed property recovery agreement”; and “virtual currency”. The bill repeals the definition of “ultimate equitable owner”.

### ***Owner’s Expression of Interest***

**Section 38** amends s. 717.102, F.S., to provide a presumption that property is unclaimed is rebutted by an apparent owner’s expression of interest in the property. An owner’s expression of interest in property includes:

- A record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;
- An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner’s communication;
- Presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, with respect to an account, underlying security, or interest in a business association;
- Activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;
- A deposit into or withdrawal from an account at a financial organization, excluding an automatic deposit or withdrawal previously authorized by the apparent owner or an automatic reinvestment of dividends or interest, which does not constitute an expression of interest; or
- Any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.

The bill provides a deceased owner is incapable of expressing an interest in property.

### ***Bank Deposits***

**Section 39** amends s. 717.106, F.S., to update a cross-reference.

### ***Virtual Currency***

**Section 40** creates s. 717.1065, F.S., to provide:

- Any virtual currency held or owing by a banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity is presumed unclaimed unless the owner, within five years, has communicated in writing with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity concerning the virtual currency or otherwise indicated an interest as

evidenced by a memorandum or other record on file with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity; and

- A holder may not deduct from the amount of any virtual currency subject to this section any charges imposed by reason of the failure to present the instrument for encashment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges and does not regularly reverse or otherwise cancel those charges with respect to the instrument.

### ***Stock or Equity Interest in a Business Association***

**Section 41** amends s. 717.1101, F.S., to provide that stock or other equity interest in a business association is presumed unclaimed on the date of the earliest of the following:

- Three years after the most recent of any owner-generated activity or communication related to the account, as recorded and maintained in the holder’s database and records systems sufficient enough to demonstrate the owner’s continued awareness or interest in the property;
- Three years after the date of the death of the owner, as evidenced by:
  - Notice to the holder of the owner’s death by an administrator, beneficiary, relative, or trustee, or by a personal representative or other legal representative of the owner’s estate;
  - Receipt by the holder of a copy of the death certificate of the owner;
  - Confirmation by the holder of the owner’s death through other means; or
  - Other evidence from which the holder may reasonably conclude that the owner is deceased; or
- One year after the date on which the holder receives notice under subparagraph 2. if the notice is received two years or less after the owner’s death and the holder lacked knowledge of the owner’s death during that period of two years or less.

### ***Agents and Fiduciaries***

**Section 42** amends s. 717.112, F.S., to provide that intangible property held in a fiduciary capacity for the benefit of another person is presumed unclaimed unless the owner has within five years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated “*in writing*” concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

### ***Reporting Threshold and Notice to Owners***

**Section 43** amends s. 717.117, F.S., effective January 1, 2025, to require holders to report owner or account information for unclaimed property valued at \$10 or more to the DFS, rather than the current threshold of \$50, and that such reporting be made electronically. The bill provides the DFS may request any other information, with the exception of traveler’s checks and money orders, as prescribed by rule.

The bill provides written notice to the apparent owner must:

- Contain a heading that reads substantially as follows: “Notice. The State of Florida requires us to notify you that your property may be transferred to the custody of the Florida

Department of Financial Services if you do not contact us before (insert date that is 30 days after the date of notice)”;

- Identify the type, nature, and, except for property that does not have a fixed value, value of the property that is the subject of the notice;
- State that the property will be turned over to the custody of the DFS if no response is received within 30 days after the date of the notice;
- State that any property that is not legal tender of the United States may be sold or liquidated by the DFS;
- State that after the property is turned over to the DFS, an apparent owner seeking return of the property may file a claim with the DFS; and
- State that the property is currently with a holder and provide instructions that the apparent owner must follow to prevent the holder from reporting and paying for the property or from delivering the property to the DFS.

### ***Reporting Requirements for Virtual Currency***

**Section 44** amends s. 717.119 F.S., to provide virtual currency reported on the annual report must be remitted to the DFS with the report. The holder must liquidate the virtual currency within 30 days before the filing of the report and remit the proceeds to the DFS. Upon delivery of the proceeds, the holder is relieved of all liability for any losses or damages resulting by the delivery of the virtual currency proceeds.

The bill provides a holder may not assign or otherwise transfer its obligation to report, pay, or deliver property or to comply with the provisions of this chapter, other than to a parent, subsidiary, or affiliate of the holder. Unless otherwise agreed to by the parties to a transaction, the holder’s successor by merger or consolidation, or any person or entity that acquires all or substantially all of the holder’s capital stock or assets, is responsible for fulfilling the holder’s obligations under the chapter. A holder is not prohibited from contracting with a third party for the reporting of unclaimed property, but the holder remains responsible for the complete, accurate, and timely reporting of the property.

### ***Good Faith Payment or Delivery of Property***

**Section 45** amends s. 717.1201, F.S., to provide that a holder’s substantial compliance with s. 717.117(4), F.S., and good faith payment or delivery of property terminates any legal relationship between the holder and the owner and releases and discharges the holder from any and all liability to the owner regardless of whether such property is in fact abandoned property. If the holder delivers property to the DFS in good faith and thereafter any other person or state claims the property, the DFS must defend the holder against the claim and indemnify the holder against any liability on the claim, except that a holder may not be indemnified against penalties imposed by another state.

The bill provides a payment or delivery of property is made in good faith if:

- The payment or delivery was made in conjunction with an accurate and acceptable report;
- The payment or delivery was made in a reasonable attempt to comply with this chapter;
- The holder had a reasonable basis for believing, based on the facts then known, that the property was unclaimed and subject to this chapter; and



- There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

If it appears to the DFS that, because of mistake of fact or error, a person has delivered to the DFS pursuant any property not required to be so delivered, the DFS may, within five years after such erroneous payment or delivery, refund or redeliver such money or other property to the person, provided that such money or property has not been paid or delivered to a claimant or otherwise disposed of in accordance with the chapter.

### ***Probate Proceedings***

**Section 46** amends s. 717.1242, F.S., to include devisee, heir, personal representative, or other interested person of an estate among those persons who must file a claim with the DFS for any interest in unclaimed property. If such person seeks administration of the estate, of which unclaimed property makes up 50 percent or more of the assets, the DFS must be considered an interested party and provided with notice of any such proceeding as provided in the Florida Probate Code and the Florida Probate Rules.

### ***Threshold for Small Estate Accounts***

**Section 47** amends s. 717.1243, F.S., to increase the threshold for small estate accounts to be accompanied with a signed affidavit from \$10,000 to \$20,000.

### ***Tolling of 10-Year Enforcement Period***

**Section 48** amends s. 717.129, F.S., to provide the ten-year period of limitation on the DFS to enforce the provisions of the chapter is tolled by the earlier of the DFS's or audit agent's delivery of a notice that a holder is subject to an audit or examination or the holder's written election to enter into an unclaimed property voluntary disclosure agreement.

### ***Investigations, Examinations and Auditor's Fees***

**Section 49** amends s. 717.1301, F.S., to revise the powers of the DFS in regards to enforcement of the chapter. The powers include the authority to:

- Investigate, examine, inspect, request, or otherwise gather information or evidence on claim documents from a claimant or a claimant's representative during its review of a claim;
- Audit the records of a person or the records in the possession of an agent, representative, subsidiary, or affiliate of the person subject to the chapter to determine whether the person complied with the chapter. Such records may include information to verify the completeness or accuracy of the records provided, even if such records may not identify property reportable to the DFS;
- Take testimony of a person, including the person's employee, agent, representative, subsidiary, or affiliate, to determine whether the person complied with the chapter;
- Issue an administrative subpoena to require that the records specified in paragraph (b) be made available for examination or audit and that the testimony specified in paragraph (c) be provided;
- Bring an action in a court of competent jurisdiction seeking enforcement of an administrative subpoena issued under this section, which the court shall consider under procedures that will lead to an expeditious resolution of the action; and

- Bring an administrative action or an action in a court of competent jurisdiction to enforce this chapter.

If a person is subject to reporting property under the chapter, the DFS may require the person to file a verified report that:

- States whether the person is holding property reportable under the chapter;
- Describes the property not previously reported, the property about which the DFS has inquired, or the property that is in dispute as to whether it is reportable under the chapter; and
- States the amount or value of the property.

The DFS may authorize a compliance review of a report for a specified reporting year that is limited to the contents of the report filed and all supporting documents. If the review results in a finding of a deficiency in unclaimed property due and payable, the DFS must notify the holder in writing of the amount of deficiency within one year after the authorization of the compliance review. If the holder fails to pay the deficiency within 90 days, the DFS may seek to enforce the assessment under subsection (1). The DFS is not required to conduct a review under this section before initiating an audit.

The bill provides in a contract providing for the location or collection of unclaimed property, the DFS may authorize the contractor to deduct its fees and expenses for services provided under the contract from the unclaimed property that the contractor has recovered or collected under the contract. The DFS must annually report to the CFO the total amount collected or recovered by each contractor during the previous fiscal year and the total fees and expenses deducted by each contractor.

The bill provides if any material obtained during an investigation or examination contains a holder's financial or proprietary information, such information may not be disclosed or made public after the investigation or audit is completed, except as required by a court of competent jurisdiction in the course of a judicial proceeding in which the state is a party, or pursuant to an agreement with another state allowing joint audits. Any such material may be considered a trade secret and exempt from the public records law.

The bill provides the fee for the costs of the investigation or audit shall be remitted to the DFS within 30 days after the date of notification the fee is due and owing and allows the DFS to charge interest at the rate of 12 percent per annum.

### ***Records Retention***

**Section 50** amends s. 717.1311, F.S., to increase the duration holders must retain records of unclaimed property from five to 10 years.

### ***Purchase of Unclaimed Property***

**Section 51** amends s. 717.1322, F.S., to remove the requirement that a person must be registered with the DFS in order to purchase unclaimed property.

***Audit Reports***

**Section 52** amends s. 717.1333, F.S., to make conforming changes due to the revised definition of “audit agent.”

***Penalties***

**Section 53** amends s. 717.134, F.S., to provide the penalties only apply to willful violations of the chapter.

***Recovery and Purchase Agreements, Bankruptcy and Electronic Signatures***

**Section 54** amends s. 717.135, F.S., to remove the requirement that a purchaser must act through a representative registered with the DFS. The bill provides that an Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must contain the name, address, e-mail address, and phone number of the purchaser if a representative is not involved.

Removes the threshold of \$2,000 or less for agreements that may be signed electronically, allowing all such agreements to be signed electronically.

Provides this section does not apply to the sale and purchase of Florida-held unclaimed property accounts through a bankruptcy trustee appointed to represent a debtor’s estate in a bankruptcy proceeding in accordance with the United States Bankruptcy Code.

***Registration***

**Section 55** amends s. 717.1400, F.S., to makes conforming changes for allowing anyone to purchase unclaimed property.

***Disbursement of Proceeds and Savings Bonds***

**Sections 56 and 57** amend ss. 197.582 and 717.1382, F.S., respectively to conform cross-references necessitated by changes made in the bill.

***Florida-Birth Related Neurological Injury Compensation Association (NICA)***

**Section 58** amends s. 766.302, F.S., relating to definitions, to remove the exclusion of 20 percent of the asset value from the calculation of assets and liabilities under s. 766.314(9)(c), F.S.

**Section 59** amends s. 766.314, F.S., relating to assessments and plan of operation, to require NICA to review estimates to determine if all current estimates equals or exceeds 100 percent of the funds on hand and the funds which will become available to NICA within the next 12 months; NICA may not accept any new claims without the express authority of the Legislature. However, NICA is not precluded from accepting any claim if the injury occurred 18 months or more before the effective date of the suspension.

The NICA is required to make recommendations for ensuring revenue levels maintain actuarial soundness. The bill requires NICA to provide a report by July 1, 2024, to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives which includes all of the following:

- Options for defining actuarial soundness for NICA, including options for phase-in, if appropriate;
- Options for timing of reporting actuarial soundness and to whom it should be reported;
- Options for ensuring a revenue level to maintain actuarial soundness, including options for phase-in, if appropriate; and
- Consultation and any recommendations made in NICA's consultation with the following:
  - The Office of Insurance Regulation;
  - Hospitals;
  - Participating physicians;
  - Nonparticipating physicians;
  - Casualty insurers;
  - The Agency for Health Care Administration; and
  - Parents of current NICA participants.

### **Division of Law Revision**

**Section 60** directs the Division of Law Revision to prepare a reviser's bill for the 2025 Regular Session to change the term "Division of Investigative and Forensic Services" wherever the term appears in the Florida Statutes to "Division of Criminal Investigations."

### **Effective Date**

**Section 61** provides the bill is effective 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:**

The bill is titled "an act relating to the Department of Financial Services" (DFS).

Section 19 of the bill is related to the Florida Medical Malpractice Joint Underwriting Association (FMMJUA) and requires the DFS to review and approve all contracts entered

into and all purchases made by the association valued at \$100,000 or more. Currently, the DFS has no role in the FMMJUA. Bestowing such a role to the DFS may present a constitutional single subject concern.

While the DFS has a role in the statute as to agents, i.e., individual licensees, the Office of Insurance Regulation (OIR) is the regulator of service agreement companies and Home Warranty Agreements; thus, is incongruous with the title of the bill. This may present a constitutional single subject concern.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill has both a positive and negative impact to the private sector.

Emergency services and care providers under the workers' compensation system, when a maximum reimbursement allowance is not available, will be reimbursed at 75 percent of the hospital's charge, unless there is a contract, in which case the contract governs reimbursement.

Due to lowering the aggregate reporting in Section 43 from \$50 to \$10, there may be a small impact on the total dollar value of disbursements from the Unclaimed Property Trust Fund. Currently, more than 98 percent of the value of all funds held is for accounts greater than \$50.<sup>224</sup>

Under Section 47, owners of small estate accounts may experience a positive impact as those accounts with an aggregate value of \$20,000 or less (rather than \$10,000 or less) require a signed affidavit.<sup>225</sup>

As it relates to recovery agreements and purchase agreements for claims filed by a claimant's representative or purchaser, Section 54 removes the \$2,000 or less threshold for electronic signature of the Unclaimed Property Recovery Agreement, resulting in a positive impact. The changes in s. 717.135, F.S., would allow anyone meeting the requirements to be able to purchase unclaimed property.

Adjusters may experience additional advertising costs to implement the language in Section 18.

Applicants are subject to filing and application fees under s. 624.501, F.S.

---

<sup>224</sup> The Florida Department of Financial Services, *Senate Bill Analysis 1098* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

<sup>225</sup> *Id.*

Applicants may experience out of pocket expenses for any fingerprint or state or federal background check required under the bill. The cost for a state and national criminal history record check is \$37.25 per name. In addition, the Florida Department of Law Enforcement (FDLE) reports Livescan Services may assess additional processing fees,<sup>226</sup> which may require an applicant to pay additional fees.<sup>227</sup>

### C. Government Sector Impact:

The bill has a significant impact on state revenues and expenditures.

#### *Department of Financial Services*

Within the Department of Financial Services (DFS), the bill makes numerous changes that will require systems and process changes in the DFS. With regards to a reduction in expenses, the DFS is:

- No longer required to publish brochures for distribution (Section 4); and
- Able to serve administrative complaints, disciplinary citations, minor violations and written notice of violation by email (Sections 8 and 9).

These changes should result in savings in terms of staff time spent towards preparing service of process and the costs related to other types of service of process.

Section 5 of the bill, as amended, requires the DFS to engage an actuarial firm to begin development of maximum reimbursement allowances but does not appropriate any funds to do so.

The DFS is authorized to adopt rules to implement provisions of the bill. In addition, the DFS will need to update all software to reflect the changes to multiple divisions contemplated in the bill. However, the cost of any technology changes or rulemaking can be absorbed within existing resources.

In order to ensure competitive procurement, Section 20 and Sections 21 – 25 of the bill requires the DFS to approve, beginning July 1, 2024, all contracts (excluding those contracts which are expressly stated as exempt) entered into, and purchases made by various associations, which are valued at \$100,000 or more within ten days. The DFS has not indicated if such review would cause additional workload upon staff.

The bill creates a new third degree felony for violation of s. 497.386, F.S., which is punishable by up to five years in prison.<sup>228</sup> The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not met to review the bill. A final impact, if any, is not available at this time.

---

<sup>226</sup> The Florida Department of Law Enforcement, *Senate Bill Analysis 1098* (Jan. 12, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

<sup>227</sup> *Id.*

<sup>228</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

The cost for the DFS, local and state law enforcement agencies and the court to respond to, investigate and process any civil or criminal cases related an emergency situation in the death care business is unknown. State and local governments, as well as the court system, may experience an increase in costs should these emergency situations arise.

***Florida Department of Law Enforcement***

The bill may have a positive impact to the Florida Department of Law Enforcement's Operating Trust Fund as the cost for a state and national criminal history record check is \$37.25 per name submitted. The Federal Bureau of Investigation (FBI) receives \$13.25 and, pursuant to s. 943.053(3)(e), F.S., the FDLE retains \$24.<sup>229</sup>

**VI. Technical Deficiencies:**

Section 18 amends s. 626.878, F.S., to provide adjusters who continue to provide services after a license revocation or suspension, commit unlicensed activity. However, the section does not provide for penalties, including administrative or criminal, for such conduct. Neither does the bill contemplate enforcement of such unlicensed activity nor address with specificity the statute under which a revocation or suspension may occur.

For clarification purposes, in Section 18, lines 934 – 935 may need to be amended to provide a reference to s. 626.8697, F.S., relating to disciplinary guidelines for adjusting firm licenses (if the intent is to include adjusting firms) and s. 626.8698, F.S., which provides disciplinary guidelines for public adjusters and public adjuster apprentices, to include suspensions and revocations.

If the intent of the bill is to address and discourage unlicensed activity within this sector of licensure, language may need to be added to provide for penalties (*see* Lines 939 – 941). Such penalties could mirror those currently in s. 626.8738, F.S.

Under s. 626.8738, F.S., any person acting as a resident or nonresident public adjuster or who hold himself or herself out to be a public adjuster, without being duly licensed by the Department of Financial Services (DFS), commits a third degree felony, punishable by ss. 775.082, 775.083 or 775.084, F.S.<sup>230</sup>

Section 59 requires the Florida Birth-Related Neurological Injury Compensation Association (NICA) to provide options and recommendations to ensure actuarial soundness of the NICA to the Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives by July 1, 2024. NICA is required to consult with a variety of stakeholders, which may cause a delay in meeting the required report deadline. In order to allow

<sup>229</sup> The Florida Department of Law Enforcement, *Senate Bill Analysis 1098* (Jan. 12, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

<sup>230</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

the NICA to fully address options and recommendations, the required reporting deadline may need to be extended to October 1, 2024, or December 1, 2024.

## VII. Related Issues:

### *Criminal Justice Agency Designation*

The bill merges and abolishes a division within the Department of Financial Services (DFS) and renames another division. These subunits are currently recognized as criminal justice agencies by the Federal Bureau of Investigation (FBI).<sup>231</sup> The Florida Department of Law Enforcement (FDLE) is the FBI's Criminal Justice Information Services (CJIS) Systems Agency for Florida. Any abolishment or renaming, merging of these divisions necessitates the FDLE involvement. The FDLE should be included to ensure the newly created merged and renamed division meets the criminal justice subunit designation as well as to ensure access to state and federal CJIS systems are properly authorized.<sup>232</sup>

### *Criminal History Records Checks*

The FDLE recommends amending applicable sections within the bill to facilitate fingerprint based state and national criminal history records checks (Level 2).

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the Florida Department of Law Enforcement (FDLE), a sex offender registry check, local criminal records check, and a domestic violence check.<sup>233</sup> Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE, a national criminal history records check through the FBI, and a domestic violence check. It may also include local criminal records checks. A Level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.<sup>234</sup>

If it is the intent of the bill to require applicants and inspectors to undergo finger-print based, state and national criminal history record checks (Level 2), during the application process, the FDLE recommends stating so specifically within each applicable section of the bill. To facilitate state and national criminal history record checks, the following language should be included to ensure compliance with federal law and the United States Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services (CJIS) Division for a national criminal history background check.<sup>235</sup>

---

<sup>231</sup> The Florida Department of Law Enforcement, *Senate Bill Analysis 1098* (Jan. 12, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

<sup>232</sup> *Id.*

<sup>233</sup> Section 435.03, F.S.

<sup>234</sup> Section 435.04, F.S.

<sup>235</sup> *Id.*



An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).<sup>236</sup>

The FDLE notes that a statute cannot be approved for access to FBI criminal history record information (CHRI) unless all criterion specified within Public Law 92-544 are satisfied which includes a review of whether the population(s) (i.e., categories of individuals) being screened is clearly defined and the state agency responsible for conducting the fingerprint-based background check and receiving the CHRI from the FBI is identified within the statute(s). As written, the FDLE opines “the FBI will likely deny the request for fingerprint-based access to national criminal history record check information.”<sup>237</sup>

### *Definitions and Terminology*

The FDLE suggest the bill contains terms which the FBI may consider overly broad. The FDLE recommends amending applicable sections within chs. 624, 626, 627, 648 and 717, F.S., to include FBI approved fingerprint language and to either define or clarify the following terms or phrases: “banking organization”; “business association”; “officer”; “director”; “includes, but is not limited to”; “manager”; “other similar term”; and “otherwise”. The FBI has advised catch-all phrases are considered overly broad and make it unclear as to who would be the subject of fingerprint-based background checks under this criterion.<sup>238</sup>

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.121, 121.0515, 284.44, 440.13, 440.385, 497.101, 497.153, 497.155, 497.172, 497.386, 624.307, 626.171, 626.221, 626.601, 626.7351, 626.878, 626.929, 627.351, , 631.59, 631.722, 631.821, 631.921, 633.124, 633.202, 633.206, 634.041, 634.081, 634.3077, 634.317, 648.25, 648.26, 648.30, 648.355, 648.43, 717.101, 717.102, 717.106, 717.1101, 717.112, 717.117, 717.119, 717.1201, 717.1242, 717.1243, 717.129, 717.1301, 717.1311, 717.1322, 717.1333, 717.134, 717.135, 717.1400, 197.582, 717.1382, 766.302 and 766.314.

This bill creates the following sections of the Florida Statutes: 17.69, 497.469 and 717.1065.

---

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial 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 February 13, 2024;**

The committee substitute:

- Revises the special risk provision to refer to employees of the Department of Financial Services (DFS) rather than the State Fire Marshal and retains the current effective employment date of July 1, 2008;
- Removes provisions related to My Safe Florida Home;
- As it relates to Workers' Compensation:
  - Revises provision on reimbursement for emergency services and care, without a maximum reimbursement allowance, to be 250 percent of Medicare, unless there is a contract, in which case the contract governs reimbursement;
  - Authorizes the DFS to engage an actuarial firm to being development of maximum reimbursement allowances for emergency care services;
  - Provides an expiration date of June 30, 2026; and
  - Grants rulemaking authority to DFS;
- Exempts Florida Self-Insurers Guaranty Association contracts that are required by law from DFS approval;
- Maintains Senate confirmation for Board of Funeral, Cemetery, and Consumer Services appointments;
- Adds the following death care industry provisions:
  - Makes investigative file information public if the department issues an emergency order pursuant to s. 497.156;
  - Authorizes, in the event of an emergency situation, the department to enter and secure an establishment outside of normal business hours, and remove human remains and cremains from the establishment;
  - Provides a third degree criminal penalty for violations; and
  - Provides restrictions on when a preneed licensee may withdraw funds from the amount deposited in trust;
- Removes a provision in bill related to a notice of change in policy terms;
- Provides Florida Insurance Guaranty Association legal contracts are not subject to bidding;
- Expands definition of local government employee that is exempt from the home warranty licensure requirements;
- Restores exemption for traveler's checks and money orders for unclaimed property information required to be reported;
- Removes provision increasing unclaimed property trust fund balance to \$65 million;
- Removes garnishment provision on unclaimed property;
- Revises provisions for Florida Birth-Related Neurological Injury Compensation Association (NICA) to:
  - Removes the exclusion of 20 percent of the asset value from the calculation of assets and liabilities;

- Requires NICA to review estimates to determine if all current estimates equals or exceeds 100 percent of the funds on hand and the funds which will become available within the next 12 months;
- Requires NICA to conduct a study of recommendations for ensuring a revenue level to maintain actuarial soundness;
- Provides a due date of July 1, 2024, for the NICA study and directs who shall receive the report; and
- Removes an appropriation funding associated with the creation of a position in Section 1 within the DFS.

**CS by Banking and Insurance Committee on January 22, 2024:**

The committee substitute:

- Creates the position of Federal Tax Liaison within the Department of Financial Services and appropriates 110,000 in rate, \$183,863 in recurring funds and \$5,067 in non-recurring funds to support the position;
- Replaces incorrect references to “association” and “board” on lines 804-813 of the bill, and inserts “department;”
- Revises the Notice of Change provision on lines 1100 and 1101 of the bill to allow the Notice to run on consecutive pages, if necessary;
- Removes Section 22 from the bill that required each insurer subject to the Florida Insurance Guaranty Association requirements to prepare a data transfer plan;
- Restores current law for the definition of “intangible property” on lines 1747 - 1750 of the bill;
- Revises the provision on lines 1925 – 1932 of the bill to add the term “virtual currency” in place of the term “instrument;”
- Provides that the changes in Section 44 of the bill become effective on January 1, 2025;
- Replaces the word “abandoned” on line 2205 of the bill with the word “unclaimed;” and;
- Restores current law on lines 2331-2344 of the bill.

**B. Amendments:**

None.