## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 989 Chief Financial Officer
**SPONSOR(S):** Commerce Committee and State Administration & Technology Appropriations Subcommittee and Insurance & Banking Subcommittee, LaMarca
**TIED BILLS:** CS/HB 991 **IDEN./SIM. BILLS:** CS/CS/CS/SB 1098

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**FINAL HOUSE FLOOR ACTION:** 92 **Y's** 9 **N's** **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS


CS/CS/CS/HB 989 passed the House, as amended, on March 1, 2024. The bill was amended in the Senate on March 6, 2024, and returned to the House. The House concurred in one Senate amendment and concurred in two others, as amended by the House, and the bill was returned to the Senate. The Senate concurred in the House amendments to the Senate amendments and passed the bill, as amended, on March 8, 2024.

The bill makes changes to various laws related to the Chief Financial Officer (CFO) and programs in which the CFO has a role, including the Department of Financial Services (DFS) and the Office of Financial Regulation (OFR), which include:

- Renaming the Division of Investigative and Forensic Services in DFS to the Division of Criminal Investigations.
- Establishing a tax liaison appointed by the Chief Financial Officer to assist Florida's taxpayers with federal tax issues.
- Allowing complaints to be filed with the OFR for certain account access restrictions, and providing for investigation of financial institutions who acted in bad faith, including penalties and prosecution. It also allows suspension or disqualification for Qualified Public Depositories (QPDs) in certain circumstances.
- Authorizing credit unions to become QPDs under certain circumstances.
- Providing a Workers' Compensation reimbursement methodology for emergency services and care when a maximum reimbursement allowance is unavailable.
- Mandating DFS approval of certain contracts by select governmental or quasi-governmental entities.
- Making select changes related to the Board of Funeral, Cemetery, and Consumer Services; granting DFS authority to disclose certain confidential and exempt public record information; enhancing DFS oversight and administrative authority over Board licensees; and establishing disbursement protocols upon fulfillment of preneed contracts.
- Amending service of process related provisions; adjusting certain notice requirements for administrative complaints and citations.
- Requiring timely responses from surplus lines insurers to the Division of Consumer Services.
- Allowing voluntary submission of information that permits two-factor authentication in agent licensing.
- Allowing disclosure of confidential investigative information in certain circumstances.
- Requiring licensed adjusters to identify themselves in advertisements by their appointment type.
- Allowing general lines agents with a surplus lines license to appoint licenses with a single surplus license agent appointment.
- Revising certain State Fire Marshal-related provisions dealing with fireworks usage, the Florida Fire Prevention Code, and safety standards for mobile food dispensing vehicles and energy storage systems.
- Modifying warranty association and motor vehicle service agreement company financial requirements.
- Exempting municipal/county government employees from certain licensing/appointment requirements.
- Clarifying that bail bond agents are not exclusively required to be employed with a bail bond agency.
- Substantially revising the Florida Disposition of Unclaimed Property Act.
- Clarifies a benefit type for firefighters undergoing cancer treatment.
- Requiring a report from the Florida Birth-Related Neurological Injury Compensation Association (NICA) and modifying the reserve estimate calculation related to limitations on ongoing enrollment.

*See* Fiscal Analysis & Economic Impact Statement for fiscal impacts of the bill.

The bill was approved by the Governor on May 2, 2024, ch. 2024-140, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

**ORGANIZATION OF THE DEPARTMENT OF FINANCIAL SERVICES**

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,[1] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance merged to form DFS. DFS consists of 13 divisions and several specialized offices.[2] DFS is composed of the following divisions and independent offices:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[3]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

**Division of Investigative and Forensic Services**

The Division of Investigative and Forensic Services consolidates all law enforcement and forensic units housed within DFS.[4] Endowed with a comprehensive mandate, the division probes a diverse array of fraudulent and criminal activities, such as investigations into insurance fraud, Workers' Compensation fraud, fire, arson, explosives, theft or misuse of state funds, and the analysis of fire and explosives samples.[5]

**Effect of the Bill**

The bill:

- Renames the Division of Investigative and Forensic Services to the Division of Criminal Investigations (DCI).
- Designates 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.

[1] Art. IV, s. 4, Fla. Const.
[2] S. 20.121, F.S.
[3] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[4] Department of Financial Services, Investigative and Forensic Services, *About the Division*, https://myfloridacfo.com/Division/DIFS/ (last visited January 22, 2024).
[5] *Id.*

## Federal Tax Liaison

### Florida Department of Revenue

The Florida Department of Revenue (DOR) manages programs such as the Child Support Program, General Tax Administration, and Property Tax Oversight.[6] DOR's primary responsibility lies in administering Florida's state tax law.[7] To encourage tax compliance, DOR offers taxpayer education through online resources and webinars.[8] Furthermore, DOR monitors taxpayer compliance and initiates enforcement actions, including audits and collections, while prioritizing the protection of taxpayer rights.[9]

*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.[10] The TRA's role is to address taxpayer concerns and ensure adherence to taxpayer rights as defined by constitutional and statutory provisions.[11]

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.[12] 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.[13]

TRA facilitates the resolution of taxpayer complaints and problems not resolved through regular administrative channels within DOR.[14] This includes issuing stay actions on behalf of taxpayers facing irreparable loss due to DOR actions.[15] Additionally, TRA's are required to safeguard taxpayer rights during tax determination and collection processes.[16]

While the TRA advocates for taxpayer rights, they do not administer DOR's general tax processes.[17] TRA cannot represent taxpayers but works to ensure fair treatment and resolution of taxpayer issues.[18] TRA does not handle inquiries regarding local property tax matters, instead referring them to DOR's Property Tax Oversight Program.[19]

### Effect of the Bill

The bill establishes a Federal Tax Liaison position within DFS, tasked with aiding federal taxpayers in this state. The CFO appoints the liaison, who reports directly to the CFO but operates independently of DFS's authority. The liaison's responsibilities include assisting taxpayers with inquiries, directing them to the appropriate Internal Revenue Service (IRS) divisions and offices for issue resolution, making recommendations to the IRS to address taxpayer problems, providing information on IRS policies and

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[6] DOR, *Quick Facts about the Florida DOR*, https://floridarevenue.com/opengovt/Pages/quick_facts.aspx (last visited Jan. 25, 2024).
[7] Florida DOR. *Florida's Taxpayers' Rights Advocate Annual Report July 1, 2020-June 30,2021*, p.7 4- TRA Annual Report (FY 20-21).pdf (floridarevenue.com) (last visited Jan. 25, 2024).
[8] *Id.*
[9] *Id.*
[10] *Id.* at 1.
[11] *Id.*
[12] Art. I, s. 25, Fla. Const.
[13] Florida DOR. *Florida's Taxpayers' Rights Advocate Annual Report July 1, 2020-June 30,2021*, p.1 4- TRA Annual Report (FY 20-21).pdf (floridarevenue.com) (last visited Jan. 25, 2024). *See also* S. 20.21(3), F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* at 2.
[18] *Id.*
[19] *Id.*

procedures for tax law compliance, and requesting IRS records with taxpayer consent to assist inquiries.

**Division of Risk Management**

The Division of Risk Management strives to support 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.[20] This is achieved through self-insurance, the purchase of insurance, and effective claims administration.[21] The Division of Risk Management consists of three bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims.[22]

**Effect of the Bill**

The bill eliminates the requirement for the Division of Risk Management to produce quarterly reports detailing the total salary indemnification benefits paid and reimbursements from each agency to the State Risk Management Trust Fund for initial salary indemnity costs.

**Financial Institutions Codes**

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.[23] The Financial Institutions Codes apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to state-authorized and state-chartered financial institutions.[24] The Financial Institutions Codes define the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[25]

A primary purpose of the Financial Institutions Codes is to provide for and promote the safe and sound conduct of the financial services industry in Florida.[26] The specific chapters under the Financial Institutions Codes are:

- Ch. 655, F.S. – Financial Institutions Generally
- Ch. 657, F.S. – Credit Unions
- Ch. 658, F.S. – Banks and Trust Companies
- Ch. 660, F.S. – Trust Business
- Ch. 662, F.S. – Family Trust Companies
- Ch. 663, F.S. – International Banking
- Ch. 665, F.S. – Associations
- Ch. 667, F.S. – Savings Banks

[20] DFS, Division of Risk Management, *Fiscal Year 2021 Annual Report,* https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2021.pdf?sfvrsn=720e7fcb_4 (last visited Jan. 17, 2024).
[21] *Id.*
[22] *Id.*
[23] S. 655.005(1)(k), F.S.
[24] S. 655.001(1), F.S.
[25] S. 655.005(i), F.S.
[26] S. 655.001(2), F.S.

**Office of Financial Regulation**

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.[27] OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.[28] OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.[29]

**Unsafe and Unsound Practices**

Florida's Financial Institutions Codes require financial institutions to make determinations about the provision or denial of services based on an analysis of risk factors unique to each current or prospective customer or member.[30] Financial institutions are prohibited from engaging in an unsafe and unsound practice, which means a financial institution may not deny or cancel its services to a person on the basis of:[31]

- The person's political opinions, speech, or affiliations;
- Except as otherwise provided, the person's religious beliefs, religious exercise, or religious affiliations;
- Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or
- The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to, certain environmental, social, and governance factors.[32]

Financial institutions subject to the Financial Institutions Codes must annually attest, under penalty of perjury and on a form prescribed by the Commission, to OFR whether the entity is complying with the applicable Florida's laws regarding the provision or denial of services based on the factors described above.[33]

*Violations*

Engaging in an unsafe or unsound practice or failing to timely submit the required attestation is a violation of Florida's Financial Institutions Codes and subjects the violator to the applicable sanctions and penalties provided in the Codes.[34] Such acts also constitute a violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), which codifies law relating to the protection of consumers from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair practices in commerce.[35] A financial institution that engages in an unsafe or unsound practice or fails to timely submit the attestation is also subject to the applicable sanctions and penalties provided in FDUTPA.[36]

*Qualified Public Depositories*

Under the Florida Security for Public Deposits Act, financial institutions that have been designated as a qualified public depository (QPD) by the CFO must annually attest to the CFO that the QPD is in

[27] Florida Office of Financial Regulation, *About Our Agency*, https://flofr.gov/sitePages/AboutOFR.htm (last visited Dec. 4, 2023).
[28] *Id.*
[29] Florida Department of Financial Services, *Financial Services Commission*, https://www.myfloridacfo.com/about/about-dfs/commission (last visited Dec. 4, 2023). *See also*, s. 655.012, F.S.
[30] S. 655.0323(1), F.S.
[31] S. 655.0323(2), F.S.
[32] *See* s. 655.0323(2)(d)1.-8., F.S., for an enumerated list of such factors.
[33] S. 655.0323(3), F.S.
[34] S. 655.0323(4), F.S.
[35] S. 501.202(2), F.S.
[36] S. 655.0323(

compliance with Florida's laws relating to the provision or denial of services based on political, environmental, social, and governance factors.[37]

A QPD may be suspended or disqualified or both if the CFO determines that the QPD has engaged in an unsafe or unsound practice.[38] Additionally, if the CFO finds that one or more grounds exist for the suspension or disqualification of a QPD, the CFO may, in lieu of suspension or disqualification, impose an administrative penalty upon the QPD.[39] Specifically, with respect to any knowing and willful violation by the QPD of a lawful order or rule, the CFO may impose a penalty not exceeding $1,000 for each violation.[40]

**Bank Secrecy Act**

The federal Bank Secrecy Act (BSA)[41] establishes reporting, recordkeeping, and related requirements for federal and state-chartered[42] financial institutions to help detect and prevent money laundering.[43] Specifically, the BSA and other anti-money laundering regulations (BSA/AML) require financial institutions to, among other things, keep records of cash purchases of negotiable instruments and file reports of cash transactions exceeding $10,000 (daily aggregate amount).[44]

Under the BSA/AML laws, financial institutions must also:
- establish effective BSA compliance programs;
- establish effective customer due diligence systems and monitoring programs;
- screen against Office of Foreign Assets Control lists and other government lists;
- establish an effective suspicious activity monitoring and reporting process; and
- develop risk-based anti-money laundering programs.[45]

The U.S. Office of the Comptroller of Currency regularly conducts examinations of national banks, federal branches, federal savings associations, and agencies of foreign banks in the U.S. to determine compliance with BSA/AML laws.[46]

*Suspicious Activity Reports*

In addition to the other requirements under the BSA/AML laws, financial institutions are also required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.[47] These types of reports are known as "suspicious activity reports" (SAR) and are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, using FinCEN's BSA E-filing system.[48]

Under this requirement, a financial institution is required to file an SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing an SAR.[49] For instances

[37] S. 280.025(1), F.S.
[38] S. 280.051, F.S.
[39] S. 280.054, F.S.
[40] S. 280.054(1)(b), F.S.
[41] 31 U.S.C. § 5311 et seq.
[42] *See*, 12 C.F.R. § 326.8 (sets forth requirements for state-chartered banks to establish and maintain procedures to ensure and monitor their compliance with the BSA). *See also*, 12 C.F.R. § 353 (establishes requirements for state-chartered banks to file a suspicious activity report under certain circumstances).
[43] U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, https://www.fincen.gov/resources/fincens-legal-authorities (last visited Dec. 6, 2023).
[44] *Id.*
[45] U.S. Office of the Comptroller of the Currency, *Bank Secrecy Act*, https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html (last visited Dec. 5, 2023).
[46] *Id.*
[47] U.S. Treasury Financial Crimes Enforcement Network, *supra* note 43.
[48] U.S. Office of the Comptroller of the Currency, *Suspicious Activity Report Program*, https://www.occ.treas.gov/publications-and-resources/forms/sar-program/index-sar-program.html (last visited Dec. 5, 2023).
[49] *Id.*

where no suspect was identified on the date of the incident requiring the filing, a financial institution may delay filing an SAR for an additional 30 calendar days to identify a suspect.[50] However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.[51]

**Federal Trade Commission Act**

Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, prohibits "unfair or deceptive acts or practices in or affecting commerce."[52] The prohibition applies to all persons engaged in commerce, including state-chartered banks.[53] The Board of Governors of the Federal Reserve System have authority under federal law[54] to take appropriate action when unfair or deceptive acts or practices are discovered, regardless of state authorities having primary responsibility for enforcing state statutes against unfair or deceptive acts or practices.[55]

Under the FTC Act, an act or practice is considered unfair if it:
- Causes or is likely to cause substantial injury to consumers;
- Cannot be reasonably avoided by consumers; and
- Is not outweighed by countervailing benefits to consumers or to competition.[56]

According to the Board of Governors of the Federal Reserve System, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as the BSA/AML laws.[57] Moreover, the policies behind the BSA/AML laws could arguably outweigh a finding that a financial institution committed an unfair act under section 5 of the FTC Act.

**Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act**

The purpose of the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act[58] (Act), s. 655.50, F.S., is to require submission to OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if:[59]
- such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities; or
- such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

The Act requires financial institutions to designate and retain a BSA/AML compliance officer, which is defined as an officer that is responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of the Act and BSA/AML laws.[60] Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.[61]

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[50] *Id.*
[51] *Id.*
[52] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *Federal Trade Commission Act* (last updated Dec. 2016), p. 1, https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf (last visited Feb. 6, 2024).
[53] *Id.*
[54] Section 8 of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1811, et seq.
[55] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 52, p. 1.
[56] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 52, p. 1.
[57] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 52, p. 7.
[58] S. 655.50, F.S.
[59] S. 655.50(2), F.S.
[60] S. 655.50(4), F.S.
[61] *Id.*

Additionally, the Act requires financial institutions to maintain:[62]

- full and complete records of all financial transactions, including all records required by the BSA/AML laws, for a minimum of 5 years;
- a copy of all reports filed with OFR as required under the Act for a minimum of 5 years after submission of the report; and
- a copy of all records of exemption for each qualified business customer[63] for a minimum of 5 calendar years after termination of exempt status of such customer.

The Act also requires financial institutions to keep a record of each financial transaction which involves currency or other monetary instrument that has a value greater than $10,000, involves the proceeds of specified unlawful activity, or is designed to evade the reporting requirements of the Act or other state or federal laws, or which the financial institution reasonably believes is suspicious activity.[64]

A financial institution, or officer, employee, or agent thereof, which files a report in good faith pursuant to the Act is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.[65]

*OFR Enforcement*

In addition to any other powers conferred by the Financial Institutions Codes, OFR may bring an action in court to enforce or administer the Act, as well as issue and serve upon any person an order of removal if OFR determines such person is violating, has violated, or is about to violate any provisions of the Act or any similar state or federal law.[66]

OFR may also impose and collect an administrative fine against any person found to have violated any provision of the Act or similar state or federal law in an amount up to $10,000 per day for each willful violation or $500 per day for each negligent violation.[67]

*Violation of the Act*

A person who willfully violates the Act commits a misdemeanor of the first degree,[68] unless the violation involves financial transactions of certain amounts, in which case the criminal penalties vary by first, second, and third-degree felonies depending on the amount and timing of such transactions. [69]
In addition to the criminal penalties, a person who violates the Act may be subject to a fine of up to $250,000 or twice the value of the financial transaction, whichever is greater, and a subsequent

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[62] S. 655.50(8), F.S.
[63] *See*, 31 U.S.C. § 5313(e), providing that the U.S. Secretary of Treasury (Secretary) may exempt a depository institution from BSA/AML reporting requirements for transactions between the institution and a "qualified business customer" (QBC) of the institution on the basis of information submitted to the Secretary. QBC is defined as a business that:

- maintains a transaction account at the depository institution;
- frequently engages in transactions with the institution which are subject to BSA/AML reporting requirements; and
- meets criteria which the Secretary determines is sufficient to ensure the purposes of the BSA/AML laws are carried out without requiring a report for such transactions.

[64] S. 655.50(5), F.S.
[65] S. 655.50(5)(c), F.S.
[66] Ss. 655.50(9)(a)-(c), F.S.
[67] S. 655.50(9)(d), F.S.
[68] S. 655.50(10)(a), F.S.
[69] S. 655.50(10)(b), F.S. *See also*, s. 775.082, F.S. A person who willfully violates or knowingly causes another to violate the Act and the violation involves financial transactions of certain amounts:

- financial transactions totaling or exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree;
- financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree; or
- financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree.

violation could result in a fine up to $500,000 or quintuple the value of the financial transaction, whichever is greater.[70]

A person or financial institution who violates the Act may also be liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000.[71]

***Effects of Banks' Termination of Account Access***

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.[72] Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.[73] A New York Times study of over 500 cases of financial institutions "dropping" their customers, including interviews with current and former bank industry staffers, revealed the negative effects of a bank's decision to remove a customer's account access:

> Individuals can't pay their bills on time. Banks often take weeks to send them their balances. While the institutions close their credit cards, their credit scores suffer. Upon cancellation, small businesses often struggle to make payroll – and must explain to vendors and partners that they don't have a bank account for the time being… [And] once customers have moved on, they don't know whether there is a black mark somewhere on their permanent records that will cause a repeat episode at another bank. If the bank has filed an SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs.[74]

As a result, customers do not know why they were ever under suspicion.[75] Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.[76] Specifically, a few of the interviews revealed the following:[77]

- Unusual Cash Deposits: When a bar owner's weekly cash deposits fell just below the federal currency reporting thresholds, the bank closed the bar's account and the personal checking and credit card accounts of the owner and his spouse.
- A Marijuana Connection: A married couple's accounts at a bank were shut down after the husband started receiving direct deposits from a cannabis company that had recently acquired his employer.
- Criminal History: A man who had served 5 years in prison for stealing a car from a dealership and using a counterfeit bill (among other crimes) had his accounts shut down at three different banks. His personal banker from the third bank hinted it was because of his criminal record.

**Effect of the Bill**

The bill provides that it is an unsafe and unsound practice for a financial institution to suspend or terminate, in addition to denying or canceling, its services to a person on the basis of:

- The person's political opinions, speech, or affiliations;
- Except as otherwise provided, the person's religious beliefs, religious exercise, or religious affiliations;
- Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

[70] S. 655.50(10)(c), F.S.
[71] Ss. 655.50(10)(d)-(e), F.S.
[72] Ron Lieber and Tara Seigel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, Thomson Reuters (Nov. 5, 2023), https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked_article_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nytcore-android-share (last visited Dec. 5, 2023).
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*

- The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to, certain environmental, social, and governance factors.[78]

The bill allows a customer or member of a financial institution who suspects that a financial institution has engaged in an unsafe or unsound practice to file, within 30 calendar days of such action, a complaint with OFR. Such complaint is barred if not timely filed. The complaint must, at a minimum, contain the name and address of the customer or member; the name of the financial institution; and the facts upon which the customer or member bases his or her allegation.

*OFR Investigation and Determination*

After receipt of a customer's or member's complaint, OFR must notify the financial institution that a complaint has been filed. Within 90 calendar days after receiving the notice from OFR, the financial institution must file with OFR a complaint response report containing such information as the Commission requires by rule, unless precluded by law. If the complaint response report indicates the financial institution took action due to suspicious activity, as defined by s. 655.50(3),[79] the initial investigation by OFR must be handled in accordance with the Act.

Within 90 calendar days after receiving the customer's or member's complaint, OFR must begin an investigation of the financial institution's alleged violation.

*Post-Investigation Reporting Requirements*

After OFR's investigation is completed or ceases to be active, OFR must:

- Within 30 calendar days after the completion or cessation of the investigation, create a report on the findings of the investigation. Such report, however, may not contain or must redact any information that remains confidential and exempt from Florida's public records laws. If OFR determines that no violation has occurred, the report must only:
  - Identify the complaint for which the report is made; and
  - State that a determination has been made that no violation has occurred.
- Except as otherwise provided or prohibited by law, within 45 calendar days after the completion or cessation of the investigation, send such report to the customer or member who submitted the complaint, via certified mail, return receipt requested, delivery restricted to the addressee; and to the subject financial institution.

Except as otherwise provided or prohibited by law, if OFR determines that a violation has occurred, OFR must provide notice of such violation and a copy of the report to the customer or member, DFS and the enforcing authority.[80]

The bill also grants rule-making authority to the Commission to administer the provisions of the bill.

*Qualified Public Depositories*

The bill amends the definition of "qualified public depository" to ensure that QPDs are also prohibited from suspending or terminating, in addition to denying or canceling, its services to a person on the basis of political, environmental, social, and governance factors.

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[78] *See* s. 655.0323(2)(d)1.-8., F.S., for an enumerated list of such factors.
[79] "Suspicious activity" means any transaction reportable as required and described by 31 C.F.R. § 1020.320, relating to federal SARs reporting requirements.
[80] "Enforcing authority" means the office of the state attorney if a violation of FDUTPA occurs in or affects the judicial circuit under the office's jurisdiction. "Enforcing authority" means the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

## Division of Workers' Compensation

Florida's Workers' Compensation Law[81] requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.[82] DFS provides regulatory oversight of Florida's Workers' Compensation system, including the Workers' Compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate Workers' Compensation health care providers[83] that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel (Panel) is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.[84] DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[85] through the rulemaking process provided by the Administrative Procedures Act.[86] In 2023, the Legislature eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.[87] Instead, DFS must annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st, effective the following January 1st.[88]

*Reimbursement for Healthcare Providers*

The Panel, which consists of the CFO or his or her designee and two Governor's appointees, sets the MRAs for hospital reimbursement.[89] Beginning with rates developed in 2024, and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DFS, instead of being included in the reimbursement manuals.[90] DFS incorporates the statewide schedules of the MRAs through rulemaking. In establishing the MRA manual, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;[91] the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.[92] 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.[93]

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the Division of Workers' Compensation, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,[94] while reimbursement for surgical procedures is limited to 140 percent of Medicare.[95] The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,[96] while other outpatient services are limited to 75 percent of usual and customary charges.[97] Reimbursement of inpatient hospital care is limited

[81] Ch. 440, F.S.
[82] S. 440.13(2)(a), F.S.
[83] The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under ch. 395 and a ny health care institution licensed under ch. 400 or ch. 429. S. 440.13(1)(g), F.S.
[84] S. 440.13(12), F.S.
[85] Ss. 440.13(12) and (13), F.S., and r. 69L-7, F.A.C.
[86] Ch. 120, F.S.
[87] Ch. 2023-144, Laws of Fla.
[88] *Id.*
[89] *Id.*
[90] Ch. 2023-144, Laws of Fla.
[91] S. 440.13(12)(i)(1), F.S.
[92] S. 440.13(12)(i)(2), F.S.
[93] S. 440.13(12)(i)(3), F.S.
[94] S. 440.13(12)(f), F.S.
[95] S. 440.13(12)(g), F.S.
[96] S. 440.13(12)(d), F.S.
[97] S. 440.13(12)(a), F.S.

based on a schedule of per diem rates approved by the panel.[98] The ambulatory surgical centers manual, developed by the panel, limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a $4.18 dispensing fee.[99] 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.[100] Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.[101]

### Effect of the Bill

The bill establishes that reimbursement for emergency services and care, excluding those subject to a maximum reimbursement allowance, must be 250 percent of Medicare rates, unless governed by a contract. Additionally, it requires DFS to collaborate with an actuarial services firm to develop maximum reimbursement allowances for services falling under this provision. This provision will expire on June 30, 2026.

Additionally, the bill gives DFS rulemaking authority.

## Florida Self-Insurers Guaranty Association, Inc.

An employer may be eligible to self-insure for their Workers' Compensation coverage.[102] 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.[103] The FSIGA is a nonprofit corporation established pursuant to s. 440.385, F.S., and monitors the financial strength of self-insured entities for DFS and makes recommendations as to the qualifications to self-insure.[104] All self-insurers other than governmental entities and public utilities are required to be members of the FSIGA.[105]

### Effect of the Bill

The bill amends regulations concerning the Florida Self-Insurers Guaranty Association. Starting July 1, 2024, all contracts valued at $100,000 or more, entered into by the association, must receive prior approval from DFS. DFS is mandated to approve or deny the contract within ten days; otherwise, it is considered approved. Competitive procurement is required for all such contracts, with awards granted to the most responsible and responsive vendor. Contracts required by law are not subject to the provisions outlined in this bill.

## Florida Funeral, Cemetery, and Consumers Services Act

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (Funeral Act), generally regulates funeral and cemetery services.[106] The Funeral Act authorizes the Board of Funeral, Cemetery, and Consumer Services (Board) within DFS to regulate cemeteries, columbaria,[107]

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[98] *Id.*
[99] S. 440.13(12)(h), F.S.
[100] *Id.*
[101] S. 440.13(12)(f), F.S.
[102] S. 440.38(1)(b), F.S.
[103] *Id.*
[104] *Id.*
[105] S. 440.385(1)(a), F.S.
[106] S. 497.001, F.S.
[107] "Columbarium" means a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. S. 497.005(18), F.S.

cremation services, mausoleums, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.[108]

The Board oversees licensing and rulemaking for the death care industry, including examinations and facility standards.[109] It holds authority over various licensure aspects, such as criteria and practical examinations, including content, grading, and time limits. The Board is comprised of ten members, including the State Health Officer and nine individuals appointed by the Governor.[110] The composition of the Board includes funeral directors, cemetery associates, consumers, and a monument establishment principal. Members serve four-year terms, ensuring diverse representation and preventing conflicts of interest.[111]

**Effect of the Bill**

The bill introduces changes to the Board of Funeral, Cemetery, and Consumer Services. The changes include:

- The CFO, rather than the Governor, will appoint Board members.
- The funeral director member is no longer conditioned on owning or operating an approved cinerator facility.
- Board members may be reappointed but are limited to serving no more than 8 consecutive years.
- Members are specifically held subject to the code of ethics under part III of ch. 112, F.S.
- Board members cannot vote on measures for their private gain or loss.
- A board member may not knowingly accept gifts or expenditures from entities under consideration for a contract or licensed by DFS.
- Board meetings must comply with open meeting requirements, and all records are open to the public for inspection.
- Notice of Board meetings, except for emergencies, must be published by DFS on the Board's website at least seven days before the meeting. The agenda, arranged by presentation order, must also be published at least seven days in advance, with changes allowed only for good cause after the agenda release.

The bill amends disciplinary procedures and penalties for board members specifying that if certified mail service of an administrative complaint on a licensee cannot be achieved at the last address provided to DFS, service may be carried out by email. The email should be sent with delivery receipt required to the most recent email address provided to DFS by the licensee in accordance with s. 497.146, F.S.

Additionally, the bill modifies procedures for disciplinary citations and minor violations, stipulating that if certified mail service of a citation on a subject cannot be accomplished at the last address provided to DFS, then service may be conducted by email. The email should be sent with delivery receipt required, directed to the most recent email address provided to DFS by the subject in accordance with s. 497.146, F.S.

*Disclosure of Confidential and Exempt Information by DFS*

The bill specifies circumstances under which confidential and exempt information may be disclosed by the department, including to the probable cause panel of the board for probable cause proceedings, to law enforcement or government agencies for official duties, for matters of immediate public health, safety, or welfare concern, and if the department issues an emergency order.

[108] *See* ss. 497.101 and 479.103, F.S.
[109] S. 497.101 and 497.103, F.S.
[110] S. 497.103(1)(a)-(g), F.S.
[111] S. 497.101(3), F.S.

*Regulations on Storage, Preservation, and Transportation of Human Remains*

The bill prohibits storing human remains at any establishment or facility not licensed under ch. 497, except for specific designated facilities. Additionally, it sets guidelines for the timeframe and conditions under which human bodies may be held after death, mandates proper transportation measures, and requires the licensing authority to establish minimal standards for handling and storing human remains. Furthermore, it grants the Department authority to intervene and remove human remains in emergency situations, absolving licensees from liability in such cases. Violations of these regulations incur misdemeanor or felony charges, depending on the severity of the offense.

*Procedures for Fulfillment of Preneed Contracts*

The bill establishes protocols for the fulfillment of preneed contracts, specifying documentation required for withdrawal of funds deposited in trust upon delivery of merchandise or performance of services. It allows the following as acceptable evidence of contract fulfillment: a certified copy of the death certificate, an invoice for merchandise, an acknowledgment signed by the purchaser, or a burial permit. The bill, for purposes of fulfillment of a preneed cemetery contract, allows a certification signed by an officer, manager, or designee to substitute for the evidence that is otherwise required. Additionally, it mandates preneed licensees to maintain documentation supporting contract fulfillment until reviewed by the department.

**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.[112] 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). OIR provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.[113] The Commission, 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 Commission appoints the commissioner of the Florida Office of Insurance Regulation.[114] Service of process on the CFO is made by mail, personal service, or via DFS's e-portal.[115]

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.[116] Verifiable means includes making the documents available by electronic transmission from a secure website established by DFS.[117] If 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.[118]

Service is considered perfected on an insurer when the CFO is served with the process.[119] 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.[120] 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.

**Surplus Lines Insurers**

[112] S. 48.151, F.S.
[113] S. 20.121(3)(a), F.S.
[114] *Id.*
[115] *Id.* DFS, https://myfloridacfo.com/division/generalcounsel/service-of-process (last visited Jan. 23, 2024).
[116] S. 624.423, F.S.
[117] S. 624.307(9), F.S.
[118] *Id.*
[119] S. 624.423(3), F.S.
[120] S. 624.423(2), F.S.

Surplus lines insurance is coverage for specific risks that the standard or admitted market is either unable or unwilling to cover.[121] 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.[122] 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.[123]

**Effect of the Bill**

The bill requires eligible surplus lines insurers to provide a written or electronic response to the Division of Consumer Services within DFS within 14 days of receiving a written request for documents and information related to a consumer complaint.

Additionally, the bill requires that authorized insurers and eligible surplus lines insurers submit email addresses to DFS for directing requests related to consumer complaints. The insurer is required to designate a contact person to DFS for escalated complaint issues, providing the name, email address, and telephone number of the designated contact person.

**Division of Insurance Agent and Agency Services**

DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.[124]

No person may be, act as, or advertise, or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.[125] There are several types of insurance representatives. These include:

- General lines agents,
- Life insurance agents,
- Health insurance agents,
- Title insurance agents,
- Personal lines agents, and
- Unaffiliated insurance agents.[126]

*General Lines Agent*

A general lines agent[127] is one who sells the following lines of insurance: property;[128] casualty,[129] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[130] or a Workers' Compensation self-insurance fund;[131] surety;[132] health;[133] and, marine.[134] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to

[121] 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 Jan. 23, 2024).
[122] *Id.*
[123] S. 626.915, F.S.
[124] Ch. 626, parts I-IX, and XIII.
[125] S. 626.112, F.S.
[126] S. 626.015, F.S.
[127] S. 626.015(5), F.S.
[128] S. 624.604, F.S.
[129] S. 624.605, F.S.
[130] As defined in s. 624.462, F.S.
[131] Pursuant to s. 624.4621, F.S.
[132] S. 626.606, F.S.
[133] Ss. 624.603 and 627.6482, F.S.
[134] S. 624.607, F.S.

represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[135]

*Title Agents and Agencies*

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[136]

**Effect of the Bill**

The bill

- Requires DFS to allow applicants to submit cellular telephone numbers as part of the application process on a voluntary basis for purposes of two-factor authentication[137] of login credentials only. A separate bill, HB 991, which is linked to the passage of the bill, proposes to exempt these phone numbers from public records requirements.
- Adds "Registered Claims Adjuster (RCA) from American Insurance College" to the list of individuals exempted from the examination requirement to become an agent or adjuster.
- Allows DFS to disclose confidential investigative information to the subject or the subject's representative in order to review the details of the investigation.
- Adds designation of "Chartered Customer Service Representative (CCSR) from American Insurance College" to the list of criteria to qualify as a customer representative.

**Insurance Adjusters**

Florida law requires all insurance adjusters to be licensed by DFS and appointed by the appropriate entity or person[138] in order to adjust claims. General requirements for licensure include applying; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[139]

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,[140] company employee adjusters,[141] and public adjuster apprentices.[142] The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.[143] In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.[144]

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or

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[135] S. 626.829, F.S.
[136] S. 627.786, F.S.
[137] Two-factor authentication (TFA) is an identity and access management security method that requires two forms of identification to access resources and data. TFA gives businesses the ability to monitor and help safeguard their most vulnerable information and networks. Microsoft, *What is Two-Factor Authentication?,* https://www.microsoft.com/en-us/security/business/security-101/what-is-two-factor-authentication-2fa (last visited Jan. 22, 2024).
[138] *See* s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.
[139] S. 626.171, F.S.
[140] S. 626.855, F.S.
[141] S. 626.856, F.S.
[142] S. 626.8561, F.S.
[143] S. 626.864(2), F.S.
[144] S. 626.864(3), F.S

settling an insurance claim on behalf of an insured or third party.[145] Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.[146]

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.[147]

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss, or damage.[148]

**Effect of the Bill**

The bill mandates licensed adjusters to clearly identify themselves in all advertisements, solicitations, or written documents, reflecting their specific adjuster appointment type.

Additionally, an adjuster whose license has been revoked or suspended is expressly prohibited from participating in any aspect of an insurance claim or the insurance claim adjusting process.

**Unauthorized Insurers and Surplus Lines**

A general lines agent, when licensed and appointed as a surplus lines agent, is authorized to initiate and accept surplus lines business from any other originating Florida-licensed general lines agent appointed and licensed for the relevant kinds of insurance, and may receive compensation accordingly.[149] Similarly, a managing general agent, when licensed and appointed as a surplus lines agent, can accept and place surplus lines business originated by a Florida-licensed general lines agent, and may compensate that agent.[150] General lines agents may not knowingly misrepresent any material fact related to such insurance or its eligibility for placement with a surplus lines insurer.[151]

**Effect of the Bill**

The bill specifies that a general lines agent, while licensed as a surplus lines agent, is authorized to appoint licenses using a single surplus license agent appointment under s. 624.501, F.S. This appointed agent is limited to initiating surplus lines business and receiving surplus lines business exclusively from other Florida-licensed general lines agents who are appointed and licensed for the relevant kinds of insurance. Such agents are not eligible for appointment by or allowed to engage in transacting general lines insurance on behalf of an admitted insurer. Compensation may be provided to such agents.

**Florida Medical Malpractice Joint Underwriting Association**

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is a legislatively established risk apportionment plan designed to ensure the availability of medical liability (malpractice) insurance for various Florida health care providers, including physicians, surgeons, dentists, nurses, physician

[145] S. 626.854(1), F.S.
[146] S. 626.8548, F.S.
[147] S. 626.855, F.S.
[148] S. 626.856, F.S.
[149] S. 626.929(1), F.S.
[150] S. 626.929(2), F.S.
[151] S. 626.929(3), F.S.

partnerships or corporations, hospitals, medical facilities, and others.[152] The FMMJUA serves as a provider of liability insurance for medical practitioners who face challenges obtaining coverage from the private market.[153]

Administered by its Board of Governors, composed of representatives from key entities such as the Florida Medical Association, Florida Hospital Association, The Florida Bar, Florida Dental Association, and the insurance industry, the FMMJUA operates under the framework of the FMMJUA Plan of Operation.[154] The Board, with OIR approval, oversees crucial aspects like insurance rates, rate classifications, policy forms, and overall policy setting.[155]

**Effect of the Bill**

The bill requires that, starting July 1, 2024, the FMMJUA must obtain prior approval from DFS for all contracts valued at $100,000 or more. DFS is obligated to render a decision on the contract within ten days; failure to do so will result in the contract being deemed approved. Competitive procurement is a requisite for all such contracts, and awards are to be granted to the most responsible and responsive vendor.

**Guaranty Associations**

A guaranty association is typically a nonprofit corporation established by law to safeguard policyholders against financial losses and delays in claim payment and settlement resulting from the insolvency of an insurance company.

*Florida Insurance Guaranty Association*

Section 631.55, F.S., establishes the Florida Insurance Guaranty Association, Inc. (FIGA). In the event of insolvency of a property and casualty insurance company, FIGA is mandated to take over the claims and fulfill obligations to the policyholders of the insolvent insurer.[156] Participation in FIGA is a mandatory requirement for all insurers licensed to sell property and casualty insurance in Florida.[157] Operating as a nonprofit corporation, FIGA is governed by a Board of Directors appointed by DFS, with each member serving a four-year term.[158]

**Effect of the Bill**

The bill requires that, starting July 1, 2024, FIGA must seek prior approval from DFS for all contracts valued at $100,000 or more, with the exception of contracts involving defense counsel and claim administrators. DFS is required to decide on the contract within ten days; failure to do so will result in it being deemed approved. Competitive procurement is a prerequisite for all such contracts, and awards are to be directed to the most responsible and responsive vendor.

*Florida Life and Health Insurance Guaranty Association*

Section 631.715, F.S., establishes the Florida Life and Health Insurance Guaranty Association (FLHIGA). Every insurer licensed to sell direct life insurance policies, health insurance policies, annuity contracts, and supplemental contracts in the state must participate in FLHIGA as a requirement for

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[152] S. 627.351, F.S. *See also* www.fmmjua.com (last visited Jan. 20, 2024).
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] S. 631.57, F.S.
[157] S. 631.56(1), F.S.
[158] *Id.*

conducting business in Florida.[159] FLHIGA functions as a nonprofit corporation, governed by a Board of Directors consisting of nine to eleven members appointed by member insurers.[160]

**Effect of the Bill**

The bill requires the FLHIGA to obtain approval from DFS for all contracts valued at $100,000 or more, initiated by the association after July 1, 2024. DFS is mandated to decide on the contract within ten days; otherwise, it is deemed approved. Competitive procurement is a requirement for all such contracts, with awards directed to the most responsible and responsive vendor.

*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 DFS to serve four-year terms.[161]

**Effect of the Bill**

The bill requires the FHMOCAP to obtain approval from DFS for all contracts valued at $100,000 or more, initiated by the association after July 1, 2024. DFS is mandated to decide on the contract within ten days; otherwise, it is deemed approved. Competitive procurement is a requirement for all such contracts, with awards directed to the most responsible and responsive vendor.

*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.[162]

**Effect of the Bill**

The bill requires the FWCIGA to obtain approval from DFS for all contracts valued at $100,000 or more, initiated by the association after July 1, 2024. DFS is mandated to decide on the contract within ten days; otherwise, it is deemed approved. Competitive procurement is a requirement for all such contracts, with awards directed to the most responsible and responsive vendor.

**State Fire Marshal**

The CFO serves as the State Fire Marshal, operating through the Division of the State Fire Marshal within DFS.[163] Under this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; oversees 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 manages the Florida State Fire College.[164]

[159] S. 631.716(1), F.S.
[160] *Id.*
[161] S. 631.816(1), F.S.
[162] S. 631.912(1), F.S.
[163] S. 633.104, F.S.
[164] S. 633.128(h), F.S.

*Uniform Fire Safety Standards*

DFS is mandated to establish uniform fire safety standards applicable to various entities, including state-owned and state-leased buildings, 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.[165]

These standards must be reasonably prudent in safeguarding life, safety, and property, considering the characteristics of individuals using these buildings and structures and other associated hazards across the state.[166] Local authorities are generally restricted from imposing more stringent uniform fire safety standards, except in limited circumstances.[167]

**Effect of the Bill**

The bill adopts the National Fire Protection Association, Inc., Standard 1126, 2021 Edition, Standard for the Use of Pyrotechnics before a Proximate Audience. This replaces the 2001 Edition and is the most current edition.

The bill requires that the State Fire Marshal cannot adopt an accessibility code, as accessibility is already addressed within the Florida Building Code's Americans with Disabilities Act accessibility provisions.

Additionally, the bill mandates DFS to establish consistent fire safety standards for both mobile food dispensing vehicles and energy storage systems.

**Motor Vehicle Service Agreement Companies**

To engage in service agreement[168] business activities in Florida, a person must hold a license and adhere to various requirements under applicable laws, including the Florida Insurance Code.[169] These requirements include maintaining solvency, demonstrating competent and trustworthy management, making specified deposits, maintaining reserves, and ensuring a minimum net asset requirement of $500,000.[170] Additionally, a service agreement company may establish an unearned premium reserve or secure contractual liability insurance meeting certain criteria.[171] If using contractual liability insurance, the policy must cover 100 percent of claim exposure, ensure refund obligations, provide 90 days' notice for cancellation, and furnish claims statistics to the OIR.[172] Such policies can pay claims as incurred or in the event of the company's failure to meet payment obligations.[173]

**Effect of the Bill**

[165] S. 633.206(1), F.S.
[166] S. 633.206(2)(a), F.S.
[167] S. 633. 206(2)(b), F.S.
[168] S. 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.
[169] S. 634.031(1), F.S.
[170] S. 634.041, F.S.
[171] *Id.*
[172] S. 634.041(8)(b)6., F.S.
[173] *Id.*

The bill permits motor vehicle service agreement companies to employ multiple contractual liability insurance policies to support their financial obligations.

**Home Warranty Associations**

A home warranty is a contract or agreement between the homeowner and the issuing company, safeguarding the homeowner from expenses related to the repair or replacement of structural components or appliances in the home.[174] This protection extends to issues caused by normal wear and tear or defects in these components or appliances.[175]

Home warranty contracts or agreements can be drafted by a Home Warranty Association licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.[176]

The elective market in Florida allows a builder, seller, buyer, or owner of a home to choose whether they would like to purchase a home warranty to cover against the cost of repair or replacement, or furnishes repair or replacement, of any structural component or appliance of a home, caused by wear and tear or a defect of a structural component or appliance.[177]

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the OIR.[178]

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.[179] Home and service warranty associations must be licensed by OIR[180] and must maintain certain minimum financial standards in order to do warranty business in Florida.[181]

**Effect of the Bill**

The bill specifies that home warranty associations are not obligated to establish an unearned premium[182] reserve or maintain contractual liability insurance. The association may allow premiums to exceed the ratio to net assets limitation under the following conditions:

- The association or its parent corporation, if applicable, must maintain a minimum net worth of at least $100 million and provide the OIR with:
    - Annual audited financial statements or audited consolidated financial statements demonstrating the required net worth.
    - A quarterly written certification of the continuing net worth maintenance.
- Submission of required documents, including Form 10-K, Form 10-Q, or Form 20-F, to the OIR on a quarterly and annual basis.

Failure to timely file the necessary documents may result in the association facing suspension or revocation of its license.

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[174] S. 634.301(2), F.S.
[175] *Id.*
[176] S. 634.303, F.S.
[177] S. 634.301(2), F.S.
[178] *See* ch. 634, F.S.
[179] *See* ch. 634, F.S.
[180] Ss. 634.303 and 634.403, F.S. Neither the Florida Insurance Code (FIC) nor this section grants permission for any home warranty association to conduct insurance business beyond what is specifically defined as home warranty or to participate in any other form of insurance. Sale of alternative insurance types requires explicit authorization through a certificate of authority issued by the office under the provisions of the FIC. S. 634.325, F.S.
[181] Ss. 634.3077 and 634.406, F.S.
[182] Unearned premiums are parts of the insurance premiums that are collected in advance by the insurers. The insurer is subject to refund the unearned premium if the insured decides to terminate the policy before the policy period ends. Clear Tax, *What is Unearned Premium?*, https://cleartax.in/glossary/unearned-premium/ (last visited Jan 23, 2024).

If the net worth of a parent corporation is used to satisfy the net worth provisions:

- The parent corporation must guarantee all service warranty obligations, subject to OIR approval.
- Cancellation, termination, or modification of the guarantee requires a 90-day notice to the OIR.
- The association must demonstrate compliance with all provisions before the effective date of any changes to the guarantee.
- If compliance is not demonstrated, the association must cease writing new and renewal business.

The bill also provides an exemption for employees and agents of municipal or county governments from the licensing and appointment requirements specified in s. 634.317, F.S.

**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 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.[183]

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.[184]

*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.[185] 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.[186] A bail bond agent must be appointed by a licensed insurer and the insurer must report the appointment to DFS.[187] A bail bond agent may not charge a premium other than the rate that has been approved by 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.[188] 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.[189] 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.[190]

*Ownership of a Bail Bond Agency*

The owner of a bail bond agency must hold a valid license and appointment as a bail bond agent.[191] Additionally, the owner or operator of the agency is required to appoint a primary bail bond agent,

[183] Ss. 648.24 and 624.26, F.S. *Also see* DFS, Division of Consumer Services, *Bail Bonds Overview*, https://www.myfloridacfo.com/bail-bonds-overview (last visited Jan. 20, 2024).
[184] S. 648.355, F.S.
[185] *Id.*
[186] S. 648.34, F.S.
[187] S. 648.30, F.S.
[188] Ss. 648.295 and S. 648.36, F.S.,
[189] S. 648.42, F.S.
[190] S. 648.44, F.S.
[191] S. 648.285, F.S.

responsible for the overall operation and management of a specific agency location.[192] The name and license number of the primary bail bond agent, along with the agency's address, must be filed with DFS.[193] A primary bail bond agent can supervise only one location, has the authority to hire employees, and is prohibited from employing or contracting with individuals who have been convicted of a felony.[194]

*Continuing Education*

Bail bond agents are required to complete a minimum of 14 hours of continuing education every two years.[195] Approved schools providing continuing education must be certified by DFS, offering a minimum of three classroom-instruction classes per calendar year.[196] Each continuing education class should include at least two hours of approved coursework and be taught by a DFS-approved supervising instructor.[197]

**Effect of the Bill**

The bill provides 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.
- "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.

The bill requires that the papers, documents, reports, or any other records related to the regulation of bail bonds, which are made confidential and exempt from public records law during an active investigation by DFS, cease to be confidential once DFS or the OIR files a formal administrative complaint, emergency order, or consent order against the individual or entity.

Additionally, the bill allows for the disclosure of confidential investigative records to the subject or their representative for a detailed review.

Furthermore:

- The bill eliminates the requirement for bail bond agents to be employed with a bail bond agency.
- The bill removes the mandate for the submission of a full-face photograph with a limited surety's or bail bond agent's license application.
- The bill mandates the inclusion of the license number, along with the name and address, of the referring bail bond agent on a transfer bond.

**<u>Florida Disposition of Unclaimed Property Act</u>**

As part of its statutory duties, DFS is mandated to collect and return unclaimed property to Florida residents under ch. 717, F.S., known as the Florida Disposition of Unclaimed Property Act. Unclaimed property refers to funds or other tangible and intangible assets that have remained unclaimed by the owner for a specific period, encompassing various forms such as savings and checking accounts, money orders, stocks, and more.[198]

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[192] *Id.*
[193] *Id.*
[194] S. 648.25(6) and 648.387, F.S.
[195] S. 648.385, F.S.
[196] S. 648.386, F.S.
[197] *Id.*
[198] Ss. 717.104-717.116, F.S.

Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. Businesses, acting as holders of unclaimed property, are obligated to make reasonable efforts to locate the owner.[199] If these attempts prove unsuccessful, the businesses then report the property, along with the owner's name, last known address, and other relevant details, to DFS. While DFS serves as the custodian for the State of Florida, it does not assume legal ownership of the property.[200]

To notify owners of their unclaimed property, DFS employs various methods, including database searches.[201] Citizens have the right to claim their property at any time, irrespective of the amount, without incurring any costs.[202] Unclaimed funds are deposited into the State School Fund to support public schools.[203] Importantly, the original amount reported as unclaimed can always be claimed by the owner or their heirs at no cost.[204]

More than 326 licensed[205] claimant's representatives are registered with DFS to gain access to the unclaimed property database and to seek authorizations from potential claimants of unclaimed property held by DFS to file claims on behalf of those claimants.[206] 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 to register with DFS.[207] A claimant representative must register with DFS on a form designated by 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.[208] In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization.

**Effect of the Bill**

*Revised and New Definitions*

The bill includes substantial changes to the law regarding unclaimed property. It significantly revises some definitions and creates others so that the statutory definitions related to the unclaimed property process will better apply to modern business and consumer practices.[209] The updated definitions will also account for new property types, technology advancements, electronic communications, and consumer's changing preferences regarding financial accounts.[210]

The revisions to, and creation of, definitions in the bill include the following:

- An unclaimed property related audit is defined as an action or proceeding to assist in curbing the intentional delay of DFS audits of unclaimed property.
- Audit agent is defined to differentiate between DFS's employee auditors and auditors that DFS contracts with for audit services to establish that the contracted auditors have authority delegated by DFS.
- A definition of claimant representative is created because of confusion regarding the role of such people in the unclaimed property process.

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199 *Id.*
200 *Id.*
201 Florida Department of Financial Services, Agency Analysis of House Bill 425, p. 1 (Feb. 9, 2021).
202 *Id.*
203 *Id.*
204 *Id.*
205 Email from Chase Mitchell, Director of Legislative Affairs and Policy, DFS, Inquiry Regarding Licensed Claimant's Representatives Registration, (Jan. 22, 2024).
206 DFS, Agency Analysis of House Bill 425, p. 1 (Feb. 9, 2021).
207 S. 717.124, F.S.
208 S. 717.1400, F.S.
209 Department of Financial Services (DFS), Agency Analysis of 2024 House Bill 989, p.5 (Dec. 28, 2023). Many of these definitions have not been updated since 1987.
210 *Id.*

*Clarifications on Dormancy Period and Owner's Expression of Interest*

The bill clarifies the dormancy period before property is presumed unclaimed and reported to DFS.[211] It also designates what constitutes an owner's expression of interest.

*Virtual Currency and Reporting Requirements*

The bill adds a definition of virtual currency to unclaimed property law and provides requirements on how this type of property is to be reported and remitted to DFS when it is unclaimed. Virtual currency must be reported to DFS on the annual report filed property holders file with DFS. Property holders must liquidate virtual currency within 30 days before the filing of the report and remit the proceeds to DFS.

*Property Holder Obligations*

The bill provides that a property holder may not assign or otherwise transfer its obligation to report, pay, or deliver property or to comply with unclaimed property law. Furthermore, an entity that acquires all or substantially all of a property holder's capital stock or assets is responsible for the reporting to DFS unless otherwise agreed to by the parties.

*Changes to Dormancy Period for Stock or Equity Interest*

The bill also updates the time frames for determining whether stock or equity interest in a business association is presumed to be unclaimed. Such stock or equity is presumed to be unclaimed after the earliest of the following:

- three years after any owner-generated activity;
- three years after the death of the owner; or
- one year after notice of the owner's death is received by the holder.

*Presumption of Unclaimed Property in Trusts*

The bill establishes that all intangible property and associated income held in a fiduciary capacity under a trust instrument are considered unclaimed unless certain actions are taken by the owner within two years. These actions include increasing or decreasing the principal, accepting payment, communicating regarding the property, or expressing interest through documented means. Additionally, the bill specifies that these provisions do not exempt fiduciaries from their obligations under the Florida Trust Code.

*Lower Reporting Threshold and Notice to Owners*

The bill aims to increase the number of searchable and claimable unclaimed property accounts. Instead of the current reporting threshold of $50, the bill requires that property holders report to DFS the owner and account information for unclaimed property valued at $10 or more.

The bill also makes changes to provide adequate notice to owners that their property has become unclaimed and may be transferred to the custody of the state. It allows notice to be given by mail or email. Such notice must contain a heading that informs the recipient that his or her property may be transferred to DFS if they do not contact the property holder within 30 days after the date of the notice.

The bill establishes that a property holder's substantial compliance with the reporting requirements for unclaimed property and good faith payment of delivery of the property to DFS:

- terminates any legal relationship between the holder and the owner with respect to the property; and

[211] *Id.* at p. 9.

- releases and discharges the holder from liability to the owner or his heirs and representatives.

A payment or delivery of property has been made in good faith if:

- It was made in conjunction with an accurate and acceptable report.
- It was made in a reasonable attempt to comply with ch. 717, F.S.
- The holder had a reasonable basis for believing the property was unclaimed and subject to ch. 717, F.S.
- 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.

*Records Retention Period Extension*

The bill increases the period of time for which property holders must retain records regarding reportable property from five years to ten years. This aligns the records retention requirement with the number of years within which DFS can bring an action to enforce unclaimed property law.

*DFS Authority*

The bill provides DFS with the authority to refund or return the money or property to a person within five years if it was remitted in error as long as the money or property has not been paid or delivered to a claimant or otherwise disposed of according to unclaimed property law.

*DFS Role in Probate Proceedings*

The bill clarifies DFS's authority when determining entitlement to unclaimed property that is part of probate proceedings. DFS will be considered a party and provided with notice of proceedings as provided for in the Florida Probate Code and Probate Rules. By becoming a party to the probate proceedings, DFS should no longer have to disburse unclaimed property based upon court orders that were issued based upon false information.

*Threshold Increase for Small Estate Accounts*

The bill increases the threshold for small estate accounts accompanied with a signed affidavit from $10,000, to $20,000.

*Tolling of 10-Year Enforcement Period*

The bill clarifies that the 10-year period within which DFS may commence and action or proceeding to enforce unclaimed property law is tolled by the earlier of:

- DFS's or its 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.

*Auditors' Fees, Investigations, and Examinations*

Pursuant to the bill, auditors are allowed to deduct their fees from the property recovered or collected under a contract for the location or collection of unclaimed property. In addition to audits, significant changes and clarifications of DFS's authority to conduct investigations and examinations are made in the bill. Confidential information, including a property holder's financial or proprietary information, may not be disclosed until after an investigation or audit is completed, unless a court requires the disclosure during a judicial proceeding.

The bill allows anyone to purchase unclaimed property as long as they comply with the other legal requirements regarding recovery and purchase agreements.[212] It also eliminates the prohibition on electronically signing a recovery agreement for claims above $2,000. The bill further provides that the law regarding recovery and purchase agreements 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.

**Firefighter Benefits and Eligibility Criteria for Cancer-Related Disability and Death Benefits**

Firefighters diagnosed with certain cancers are eligible for specific disability or death benefits. Instead of pursuing workers' compensation coverage, firefighters are entitled to cancer treatment and a one-time cash payout of $25,000 upon the initial diagnosis of cancer.[213] To qualify for these benefits, they must:[214]

- Be employed full-time as a firefighter;
- Be employed by the state, university, city, county, port authority, special district, or fire control district;
- Have been employed by his or her employer for at least five continuous years;
- Not have used tobacco products for at least the preceding five years; and
- Have not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer.

The term "cancer" includes bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.[215]

Employers are required to provide coverage for cancer treatment within an employer-sponsored health plan or through a group health insurance trust fund.[216] Furthermore, employers must promptly reimburse firefighters for any out-of-pocket deductible, co-payment, or coinsurance costs incurred due to cancer treatment.[217] For disability and death benefits, firefighters are considered permanently and totally disabled if diagnosed with one of the enumerated cancers and meet the retirement plan's definition of total and permanent disability due to the cancer diagnosis or related treatment circumstances.[218] Additionally, if the cancer or its treatment is deemed to have occurred in the line of duty, firefighters are eligible for higher disability and death benefits.[219]

**Effect of the Bill**

The bill requires that firefighters receive leave time and employee retention benefits equal to those provided for other injuries or illnesses sustained while on duty.

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

*Medical Malpractice Crisis*

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[212] These requirements are found in s. 717.135, F.S.
[213] S. 112.1816(2)(b), F.S.
[214] S. 112.1816(c), F.S.
[215] S. 112.1816(1)(a), F.S.
[216] S. 112.1816(2)(a), F.S.
[217] *Id.*
[218] *Id.*
[219] S. 112.1816(5)(b), F.S.

During the 1970s and 1980s, medical liability insurance in Florida had become so expensive that, although technically available, it was functionally unavailable.[220] The Florida Legislature determined that obstetrician-gynecologists (ob-gyns) disproportionately accounted for medical liability claims, both in number of claims and amount of payout.[221] Therefore, in 1986, the Legislature created a special task force to study the Florida medical malpractice crisis and address the ob-gyn impact on that crisis.[222] The task force evaluated the rising insurance costs and reported that litigation costs and attorney's fees had increased between 1975 and 1986, but there was no particular change in substantive law to account for the change.[223] Moreover, some physicians became reluctant to treat high-risk patients and practice certain high-risk specialties altogether.[224] In 1985, ob-gyns in Florida paid an average medical malpractice liability premium of $185,460, compared to a national average for ob-gyns of $23,300.[225]

*Florida Birth-Related Neurological Injury Compensation Plan*

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was part of the Legislature's efforts to manage both rising medical malpractice costs and diminishing availability of liability insurance by creating a hybrid no-fault and tort medical liability system.[226] The Plan was created to pay for the care of infants born with certain neurological injuries and is available to eligible families without the need for litigation. By eliminating costly legal proceedings, the Plan aims to ensure that birth-injured infants receive the care they need while reducing the financial burden on both medical providers and families.

*Florida Birth-Related Neurological Injury Compensation Association*

In February 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA) to manage the Plan.[227] 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 (CFO) for staggered terms of three years or until their successors are appointed, but they may not serve more than six consecutive years on the board.[228] The board of directors is composed of:

- One citizen representative.
- One representative of participating physicians.
- One representative of hospitals.
- One representative of casualty insurers.
- One representative of physicians other than participating physicians.
- One parent or guardian representative of an injured infant under the plan.
- One representative of an advocacy organization for children with disabilities.[229]

The board of directors may:

- Administer the Plan.
- Administer the funds collected on behalf of the Plan.
- Administer the payment of claims on behalf of the Plan.
- Direct the investment and reinvestment of any surplus funds over losses and expenses, provided that any investment income generated thereby remains credited to the Plan.
- Reinsure the risks of the Plan in whole or in part.

[220] Sandy Martin, *NICA - Florida Birth-Related Neurological Injury Compensation Act*, 26 Nova L. R. 609 (2002), https://core.ac.uk/download/pdf/51081713.pdf (last visited Feb. 20, 2024).
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] *Id.*
[225] *Id.*
[226] *Id.*
[227] S. 766.315, F.S. and ch. 88-1, s. 74, Laws of Fla.
[228] *Id.*
[229] *Id.*

- Sue, be sued, appear, and defend in all actions relating to the Plan.
- Exercise all powers necessary to effectuate any of the purposes for which the Plan is created.
- Enter into such contracts as are necessary or proper to administer the Plan.
- Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the Plan.
- Take such legal action as may be necessary to avoid payment of improper claims.
- Indemnify any person acting on behalf of the Plan in an official capacity, provided that such person acted in good faith.[230]

Annually, NICA must furnish audited financial reports to:
- Any Plan participant upon request;
- The OIR; and
- The Joint Legislative Auditing Committee.[231]

The reports must be prepared in accordance with accepted accounting procedures. The OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.[232]

*Eligibility*

An administrative law judge (ALJ) within the Florida Division of Administrative Hearings[233] hears all claims under the Plan and determines whether a claim is compensable.[234] To qualify, there must have been a birth injury to the brain or spinal cord of a live infant in which:
- The birth occurred in a hospital;
- The infant weighed 2500g at birth for single gestation or 2000g for multiple gestation at birth;
- There was oxygen deprivation or mechanical injury;
- The injury occurring during labor, delivery or resuscitation efforts in the immediate post delivery period;
- The infant experienced permanent and substantial mental and physical impairment;
- The injury was not caused by genetic or congenital abnormality; and
- The physician is participating in the Plan.[235]

A participating physician under the Plan is a licensed Florida physician who either practices obstetrics or performs obstetrical services on a full or part-time basis and pays a yearly NICA assessment.[236] If the physician did not pay his or her assessment for the year in which the injury occurred, there is no NICA coverage. Hospitals that allow doctors who do not participate in NICA to deliver babies are subject to multi-million dollar catastrophic injury lawsuits despite having paid into the NICA fund.[237]

*Benefits*

Once an ALJ determines a child is eligible under the Plan, the child is covered for life, and no other compensation from a medical malpractice lawsuit or settlement is available.[238] Instead, there are lifetime benefits and care available through the Plan, which include actual expenses for:
- Medical and hospital services;
- Rehabilitation, therapy, and training;
- Family residential or custodial care;
- Professional residential and custodial care;

[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] S. 766.302, F.S. The Division of Administrative Hearings is housed within the Florida Department of Management Services.
[234] S. 766.304, F.S.
[235] S. 766.302(2), F.S.
[236] S. 766.314, F.S.
[237] S. 766.302(7), F.S.
[238] *Id.*

- Medications;
- Special equipment and facilities; and
- Related travel expenses.[239]

The Plan may also provide:
- A one-time cash award, not to exceed $250,000, to the infant's parents or guardians.
- A $50,000 death benefit for the infant.[240]
- Compensation for reasonable expenses incurred for filing the claim, including attorney's fees.
- An annual benefit up to $10,000 for psychotherapeutic services for immediate family members residing with the birth-injured child;
- A reliable method of transportation to Plan beneficiaries;
- Replacement of any vans purchased by the Plan every 7 years or 150,000 miles, whichever comes first; and
- Housing assistance of up to $100,000 for the lifetime of the child, including home construction and modification costs.[241]

*Exclusions*

The Plan does not reimburse or pay expenses that might otherwise be covered by insurance or any private or governmental programs, unless such exclusion is prohibited by federal law.[242] Many children with birth-related injuries are either covered by programs such as Children's Medical Services or Medicaid. Under current state and federal law, Medicaid is the payor of last resort for medically necessary goods and services furnished to Medicaid recipients; therefore, current law appears to prohibit NICA from shifting covered costs onto Medicaid.[243]

**Effect of the Bill**

The bill requires that by September 1, 2024, NICA submit a report, in consultation with OIR and AHCA, to several governmental bodies, including the Governor, the CFO, the President of the Senate, and the Speaker of the House of Representatives. This report must include:
- Recommendations for defining actuarial soundness for the association, including potential options for phasing it in if deemed appropriate.
- Recommendations for the timing of reporting actuarial soundness and specifying to whom the soundness should be reported.
- Recommendations for ensuring a revenue level that will maintain actuarial soundness, also providing potential options for phasing it in if deemed appropriate.

The bill clarifies "family residential or custodial care" as care provided by family members beyond typical duties, without compensation for tasks deemed part of normal family responsibilities. However, the bill removes the provision stating that the award for family residential or custodial care should not be included in current estimates for the purposes of another section.

The bill requires that if the total estimates exceed 100 percent of available funds within 12 months, NICA can't accept new claims without legislative approval, except for claims from injuries occurring 18 months prior. Additionally, the bill mandates that NICA must notify the Governor, the CFO, the President of the Senate, the Speaker of the House of Representatives, OIR, and AHCA within 30 days after the effective date of this suspension.

**<u>Qualified Public Depositories</u>**

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[239] S. 766.31, F.S.
[240] S. 766.31(1)(b)2., F.S. In 2003, the $10,000 death benefit for an infant replaced the requirements to pay funeral expenses up to $1,500. (Ch. 2003-416, s. 78, Laws of Fla.)
[241] S. 766.31(1)(c), F.S.
[242] S. 766.31(1)(a), F.S.
[243] S. 409.910, F.S.; 42 C.F.R. s. 433.136; 42 U.S.C. s. 1396a.

Pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (FSPD), and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).[244] A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended;[245]
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the FSPD; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.[246]

Upon approval from the CFO, these banks, savings banks, and savings associations may accept "public deposits" from state and local governments. The FSPD does not permit credit unions to become QPDs, due to their absence from the definition of "qualified public depository." As of December 1, 2023, there are approximately 117 active QPDs in this state.[247]

*Custodian and Collateral Agreement*

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.[248] The FSPD's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[249] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[250] and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[251]

A "custodian" can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public deposits.[252] Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;[253]
- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;[254]
- CFO's custody arrangement for collateral deposited in the CFO's name, subject to certain requirements;[255]

[244] S. 280.03(1)(b), F.S.
[245] 12 U.S.C. ss. 1811 *et seq.*
[246] S. 280.02(26), F.S.
[247] Email from Parker Powell, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 3 Attestations (Dec. 1, 2023).
[248] S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.
[249] S. 280.041(6), F.S.
[250] 12 U.S.C. § 1821(a)(1)(E).
[251] S. 280.07, F.S.
[252] Ss. 280.02(10) and 280.041(1)(a), F.S.
[253] S. 280.041(1)(a), F.S.
[254] S. 280.041(1)(b), F.S.
[255] S. 280.041(1)(c), F.S.

- Federal Home Loan Bank letter of credit arrangement for collateral issued with the CFO as beneficiary, subject to certain requirements.[256]

DFS oversees the FSPD's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.[257] The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.[258] In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.[259]

*Required Attestation*

Under the FSPD, QPDs are required to attest, under penalty of perjury and on a form prescribed by the CFO, whether the entity is in compliance with s. 280.02(26)(e) and (f).[260] Specifically, QPDs must attest that:

- The QPD makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member;[261] and
- The QPD does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:
  - The person's political opinions, speech, or affiliations;
  - Except as otherwise provided in law, the person's religious beliefs, religious exercise, or religious affiliations;
  - Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or
  - The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain environmental, social, and governance factors.[262]

*Regulation of Credit Unions*

Like banks, savings banks, and savings associations, credit union accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[263] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[264] State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[265] and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered

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[256] S. 280.041(1)(d), F.S.
[257] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[258] S. 280.05, F.S.
[259] *Id.* at (10).
[260] S. 280.025, F.S.
[261] S. 280.02(26)(e), F.S.
[262] S. 280.02(26)(f), F.S.
[263] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[264] S. 657.003, F.S.
[265] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq.*

credit unions.[266] All state-chartered credit unions operating in Florida must carry NCUSIF insurance.[267] The standard maximum share insurance amount is $250,000.[268]

**Effect of the Bill**

Effective July 1, 2024, the bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral. Specifically, the bill creates s. 280.042, F.S., which provides criteria that a credit union must meet before the CFO can designate a credit union as a QPD.

Under the bill, credit union QPDs are limited to the following maximums:

- Up to 7 percent of the total funds held in the state treasury.
- Up to 7 percent of all public deposits of any state university or any state college.

Further, public deposits in credit union QPDs may not exceed 10 percent of the credit union's total assets.

*Attestation Required*

Beginning July 1, 2024, the bill requires credit union QPDs to make the same attestations required of other QPDs relating to the provision of services based on risk factors unique to each customer and the unsafe and unsound practice of denying or canceling services on the basis of political, environmental, social, or governance factors.

*Collateral Agreements*

The bill requires a credit union QPD to submit to the CFO its agreement of contingent liability, its collateral agreement, and a signed statement from a public depositor (i.e., a state or local government) indicating that, if the credit union is designated as a QPD, the public depositor intends to deposit public funds with the credit union.

Within 10 business days of the CFO notifying a credit union QPD that the CFO has withdrawn from the collateral agreement, the credit union QPD must return all public deposits to the public depositor who deposited the funds. The notice may be sent to a credit union QPD by regular mail or by email.

*Shared Contingent Liability*

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs.

In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess QPDs, subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

*Segregation of Penalties; Public Deposit Program*

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[266] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, *How Your Accounts Are Federally Insured*, https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf (last visited Jan. 5, 2024).
[267] Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[268] NCUA, *supra* note 266.

The bill requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any bank, savings bank, or savings association. Subject to this segregation of funds requirement, the CFO is authorized to pay any losses to public depositors from the Public Deposits Trust Fund.

Lastly, the bill makes conforming changes to allow credit unions to participate in the public deposit program and to subject credit union QPDs to the regulatory oversight of the CFO.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill's provisions relating to unsafe and unsound practices by financial institution may have an indeterminate negative impact on OFR given the investigatory obligations imposed upon OFR. See Fiscal Comments below.

   Regarding the bill's provisions relating to credit union QPDs, DFS estimates that authorizing credit unions to become QPDs will require $168,038 for workload and programming costs:[269]

   - $86,680 in non-recurring expenditures for DFS's Office of Information Technology (OIT) to make:
     - Significant programming changes to the Collateral Administration Program (CAP), a computer application used to administer Florida's public deposits program.
     - Modifications to the Florida Planning Accounting, and Ledger Management (PALM) system to accommodate the required segregated accounting of collateral proceeds, assessments, or administrative penalties attributable to credit unions.
   - $5,728 in recurring expenditures for independent ranking service data on credit unions.
   - $75,450 in recurring expenditures for one additional Financial Examiner/Analyst II FTE, class code 1564, pay grade 023.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Regarding the bill's provisions authorizing credit unions to be QPDs, the bill's impact on local government revenues is indeterminate. However, a 2014 study by the Office of Program Policy Analysis and Government Accountability explained the potential positive impact to local government public depositors:

   > Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.[270]

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[269] DFS, Agency Analysis of 2024 HB 611, p. 5 (Jan. 19, 2024).

[270] Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions relating to unsafe and unsound practices by financial institutions may have an indeterminate positive economic impact on the private sector. The bill may lead to fewer financial institutions suspending, terminating, or taking similar action restricting customers' or members' account access without legitimate reason.

D. FISCAL COMMENTS:

The bill's provisions relating to unsafe and unsound practices by financial institutions could increase the workload of OFR, depending on how many complaints are filed with OFR. It is currently unknown whether additional resources would be needed to address the additional workload. However, if additional resources are needed, the OFR could include the required resources in their FY 2025-2026 Legislative Budget Request, due to the Legislature and the Governor, October 15, 2024.