

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #.** HB 989 Department of Financial Services  
**SPONSOR(S).** LaMarca  
**TIED BILLS.** HB 991 **IDEN./SIM. BILLS.** SB 1098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herrera	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer, and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). The bill:

- Renames the Division of Investigative and Forensic Services to the Division of Criminal Investigations.
- Revises regulations for the My Safe Florida Home Program.
- Updates reporting by eliminating quarterly reports on salary indemnification benefits and reimbursements to the State Risk Management Trust Fund.
- Specifies workers' compensation maximum reimbursement methodology for emergency services and care when a maximum reimbursement allowance is unavailable.
- Mandates DFS approval for contracts exceeding \$100,000 by various associations, ensuring competitive procurement.
- Modifies appointment authority and requirements for the Board of Funeral, Cemetery, and Consumer Services.
- Amends provisions related to investigations and prosecutions within the regulatory purview of DFS.
- Adjusts notice requirements for administrative complaints, citations, and insurance policy litigation.
- Requires timely responses from surplus lines insurers to the Division of Consumer Services within DFS within 14 days upon receiving written requests.
- Allows voluntary submission of cellular telephone numbers for two-factor authentication during the agent licensing application process.
- Establishes "Registered Claims Adjuster (RCA)" from American Insurance College as an exemption from the agent licensing examination requirement.
- Grants DFS authority to disclose confidential investigative information to subjects or their representatives for review.
- Adds "Chartered Customer Service Representative (CCSR)" from American Insurance College as a qualifying criterion for customer representatives.
- Requires licensed adjusters to identify themselves in advertisements based on their adjuster appointment type.
- Allows general lines agents with a surplus lines license to appoint licenses with a single surplus license agent appointment.
- Modifies renewal notice requirements for insurance policy term changes.
- Imposes a requirement for insurers under Florida Insurance Guarantee Association to prepare a data transfer plan.
- Revises State Fire Marshal provisions on fireworks usage, the Florida Fire Prevention Code, and safety standards for mobile food dispensing vehicles and energy storage systems.
- Permits motor vehicle service agreement companies to use multiple insurance policies for financial backing.
- Modifies financial requirements for warranty associations and exempt municipal or county government employees from licensing and appointment requirements.
- Amends provisions for bail bond agents, clarifying they are not required to be employed with a bail bond agency.
- Revises sections of the Florida Disposition of Unclaimed Property Act.

The bill has an insignificant impact on state government revenues and expenditures and no impact on local government. It has indeterminate impacts on the private sector.

Except as specified in the bill, it is effective upon becoming law.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME h0989.IBS

DATE 1/23/2024

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED 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,<sup>1</sup> 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.<sup>2</sup> DFS is composed of the following divisions and independent office:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;<sup>3</sup>
- 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.<sup>4</sup> 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.<sup>5</sup>

#### **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.

#### **My Safe Florida Home**

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within DFS, with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections), and grants to eligible applicants, subject to

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<sup>1</sup> Art. IV, s. 4, Fla. Const.

<sup>2</sup> S. 20.121, F.S.

<sup>3</sup> 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.

<sup>4</sup> Department of Financial Services, Investigative and Forensic Services, *About the Division*, <https://myfloridacfso.com/Division/DIFS/> (last visited January 22, 2024).

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

funding availability.<sup>6</sup> The aim of the MSFH Program was to “develop and implement a comprehensive and coordinated approach for hurricane damage mitigation.”<sup>7</sup> The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.<sup>8</sup> It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.<sup>9</sup>

## **Effect of the Bill**

The bill introduces significant changes to the inspection and grant application process under MSFH, as well as the eligibility criteria for inspections. The changes include:

- Allows subsequent applications for mitigation inspection or grant if:
  - The original application was denied or withdrawn;
  - The program's eligibility requirements or applicant's qualifications have changed since the original application; and
  - The applicant reasonably believes that the home will be eligible under the new requirements or qualifications;
- Requires a signed or electronically verified statement, under penalty of perjury, confirming the submission of a single inspection application.
- Grants authority to DFS to request additional information if the information contains errors or omissions, with non-response within 60 days resulting in application withdrawal.
- Permits homeowners meeting mitigation inspection requirements to receive an inspection even if ineligible for a hurricane mitigation grant.
- Requires homeowners to provide information on premium discounts from insurers due to funded mitigation improvements.
- Sets a one-year deadline for homeowners to complete construction and request a final inspection or a 6-month extension after grant approval.
- Provides for when an application is deemed abandoned, leading to grant money reverting to DFS.
- Clarifying that "opening protection" improvements include windows, skylights, exterior doors, and garage doors.
- Refines language regarding a secondary water "resistance" barrier for roofs.
- Eliminates DFS maintaining a list of participating contractors; instead requiring naming of the contractor and their license number in the grant application.
- Encourages contractors to distribute electronic educational materials rather than brochures.
- Directs DFS collaboration with Citizens Property Insurance Corporation for policyholder education.

These revisions are designed to streamline processes, enhance homeowner responsibilities, broaden eligible improvements, and promote electronic education within the MSFH Program.

## **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.<sup>10</sup> This is achieved through self-insurance, the purchase of insurance, and effective claims administration.<sup>11</sup> The

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<sup>6</sup> S. 215.5586, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> S. 215.5586(3), F.S.

<sup>9</sup> S. 215.5586(7), F.S.

<sup>10</sup> 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](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).

<sup>11</sup> *Id.*

Division consists of three bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims.<sup>12</sup>

## **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.

## **Division of Workers' Compensation**

Florida's Workers' Compensation Law<sup>13</sup> 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.<sup>14</sup> 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<sup>15</sup> 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.<sup>16</sup> DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals<sup>17</sup> through the rulemaking process provided by the Administrative Procedures Act.<sup>18</sup> 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.<sup>19</sup> Instead, DFS must annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1<sup>st</sup>, effective the following January 1<sup>st</sup>.<sup>20</sup>

### *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.<sup>21</sup> 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.<sup>22</sup> 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;<sup>23</sup> 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.<sup>24</sup> Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.<sup>25</sup>

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

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

<sup>14</sup> S. 440.13(2)(a), F.S.

<sup>15</sup> 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 any health care institution licensed under ch. 400 or ch. 429. S. 440.13(1)(g), F.S.

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

<sup>17</sup> Ss. 440.13(12) and (13), F.S., and r. 69L-7, F.A.C.

<sup>18</sup> Ch. 120, F.S.

<sup>19</sup> Ch. 2023-144, Laws of Fla.

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

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

<sup>22</sup> Ch. 2023-144, Laws of Fla.

<sup>23</sup> S. 440.13(12)(i)(1), F.S.

<sup>24</sup> S. 440.13(12)(i)(2), F.S.

<sup>25</sup> S. 440.13(12)(i)(3), F.S.

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the DWC, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,<sup>26</sup> while reimbursement for surgical procedures is limited to 140 percent of Medicare.<sup>27</sup> The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,<sup>28</sup> while other outpatient services are limited to 75 percent of usual and customary charges.<sup>29</sup> Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.<sup>30</sup> 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.<sup>31</sup> Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.<sup>32</sup> Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.<sup>33</sup>

### **Effect of the Bill**

The bill specifies the reimbursement methodology applicable in situations where the maximum allowance for emergency services and care is not available. In such instances, the maximum allowance is set at 75 percent of the hospital's charge, except when a contract is in place, in which case the contract governs reimbursement.

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

An employer may be eligible to self-insure for their workers' compensation coverage.<sup>34</sup> Such an employer must furnish proof to the Florida Self-Insurers Guaranty Association (FSIGA) that the employer has the financial strength necessary to ensure timely payment of all current and future claims.<sup>35</sup> The FSIGA is a nonprofit corporation established pursuant to s. 440.385, F.S., and monitors the financial strength of self-insured entities for DFS and makes recommendations as to the qualifications to self-insure.<sup>36</sup> All self-insurers other than governmental entities and public utilities are required to be members of the Association.<sup>37</sup>

### **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.

### **Florida Funeral, Cemetery, and Consumers Services Act**

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<sup>26</sup> S. 440.13(12)(f), F.S.

<sup>27</sup> S. 440.13(12)(g), F.S.

<sup>28</sup> S. 440.13(12)(d), F.S.

<sup>29</sup> S. 440.13(12)(a), F.S.

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

<sup>31</sup> S. 440.13(12)(h), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> S. 440.13(12)(f), F.S.

<sup>34</sup> S. 440.38(1)(b), F.S.

<sup>35</sup> *Id.*

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

<sup>37</sup> S. 440.385(1)(a), F.S.

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (Funeral Act), generally regulates funeral and cemetery services.<sup>38</sup> The Funeral Act authorizes the Board of Funeral, Cemetery, and Consumer Services (Board) within DFS to regulate cemeteries, columbaria,<sup>39</sup> cremation services, mausoleums, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.<sup>40</sup>

The Board oversees licensing and rulemaking for the death care industry, including examinations and facility standards.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>

## **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, and Senate confirmation is eliminated.
- 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 on the association'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.

## **Service of Process**

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<sup>38</sup> S. 497.001, F.S.

<sup>39</sup> "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.

<sup>40</sup> See ss. 497.101 and 479.103, F.S.

<sup>41</sup> S. 497.101 and 497.103, F.S.

<sup>42</sup> S. 497.103(1)(a)-(g), F.S.

<sup>43</sup> S. 497.101(3), F.S.

In general, the law provides for the designation of a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in the state.<sup>44</sup> However, the state CFO is designated as the agent for service of process on insurers and other specific entities or persons licensed by DFS or the Office of Insurance Regulation (OIR). OIR provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.<sup>45</sup> The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the FSC appoints the commissioner of the Florida Office of Insurance Regulation.<sup>46</sup> Service of process on the CFO is made by mail, personal service, or via DFS's e-portal.<sup>47</sup>

After receiving service of process, the CFO is required to promptly send a copy by registered or certified mail, or by any other verifiable means, to the person designated by an insurer to receive the process.<sup>48</sup> Verifiable means includes making the documents available by electronic transmission from a secure website established by DFS.<sup>49</sup> 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.<sup>50</sup>

Service is considered perfected on an insurer when the CFO is served with the process.<sup>51</sup> Although an insurer is not required to respond to a lawsuit except until 20 days after the CFO sends or makes a copy of the process available, the triggering date for other legal deadlines is the date the CFO is served with process.<sup>52</sup> This can create problems for an insurer when a delay occurs between the time the CFO is served and the time the CFO notifies the insurer of the service of process.

### **Pre-suit Notice to Initiate Litigation under an Insurance Policy**

Before pursuing a bad faith claim under s. 624.155, F.S., an insured must provide at least 60 days' written notice to the insurer and DFS.<sup>53</sup> This notice period allows insurers a final chance to fulfill their claim obligations.<sup>54</sup> Then, DFS dispatches the notice to the insurer's specifically designated email address.<sup>55</sup> The civil remedy notice includes details like the alleged violation, involved individuals, relevant policy language, and a statement expressing the intent to pursue a civil remedy.<sup>56</sup>

In property insurance cases, a claimant must give DFS written notice of intent to sue the insurer at least ten business days before filing a lawsuit, following a coverage determination under s. 627.70131, F.S.<sup>57</sup> The notice outlines alleged acts or omissions and, in case of coverage denial, estimates damages.<sup>58</sup> The insurer must respond within ten business days.<sup>59</sup> If coverage is denied, the insurer must accept, deny, or assert the right to re-inspect within 14 business days.<sup>60</sup> If other acts are alleged, the insurer must respond with a settlement offer or propose alternative dispute resolution.<sup>61</sup> If ADR is not concluded within 90 days after the ten day notice, the claimant can file suit without additional notice.<sup>62</sup> Failure to comply with the ten day notice requirement results in dismissal without prejudice.<sup>63</sup>

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<sup>44</sup> S. 48.151, F.S.

<sup>45</sup> S. 20.121(3)(a), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* DFS, <https://myfloridacfo.com/division/generalcounsel/service-of-process> (last visited Jan. 23, 2024).

<sup>48</sup> S. 624.423, F.S.

<sup>49</sup> S. 624.307(9), F.S.

<sup>50</sup> *Id.*

<sup>51</sup> S. 624.423(3), F.S.

<sup>52</sup> S. 624.423(2), F.S.

<sup>53</sup> S. 624.155(3), F.S.

<sup>54</sup> See *Talat Enterprises, Inc., v. Aetna Cas. and Sur. Co.*, 753 So. 2d 1278, 1284 (Fla. 2000).

<sup>55</sup> *Id.* S. 624.422, F.S.

<sup>56</sup> S. 624.155(3)(b)(1)-(5), F.S.

<sup>57</sup> S. 627.70152(3)(a), F.S.

<sup>58</sup> S. 627.70152(6)(a), F.S.

<sup>59</sup> S. 627.70152(4), F.S.

<sup>60</sup> S. 627.70152(4)(a), F.S.

<sup>61</sup> S. 627.70152(4)(b), F.S.

<sup>62</sup> *Id.*

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

## **Effect of the Bill**

The bill mandates a 60-day written notice of a violation as a prerequisite for initiating legal action against an insurer. DFS must provide this notice to the insurer via its designated email address.

Additionally, the bill requires claimants filing a property insurance suit to submit written notice to DFS before initiating litigation, ensuring it's delivered at least ten business days after an insurer's coverage determination. The notice, sent to the insurer's designated email, must detail the suit's basis, any denial of coverage, an estimate of damages if applicable, and, if represented, acknowledgment by the claimant. For cases beyond denial, it must include a pre-suit settlement demand and the disputed amount. Supporting documentation may accompany the notice.

## **Surplus Lines Insurers**

Surplus lines insurance is coverage for specific risks that the standard or admitted market is either unable or unwilling to cover.<sup>64</sup> While the admitted market is where most consumers find coverage, the surplus lines market is a supplement for those individuals and businesses that cannot find coverage otherwise.<sup>65</sup> Florida law defines "eligible surplus lines insurer" as an unauthorized insurer which has been made eligible by the OIR to issue insurance coverage under the Surplus Lines Law.<sup>66</sup>

## **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.<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup>

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<sup>64</sup> Florida Surplus Lines Service Office, *Surplus Lines Insurance*, <https://www.fsiso.com/about/surplus-lines-insurance#:~:text=Surplus%20lines%20insurance%20is%20coverage,that%20cannot%20find%20coverage%20otherwise> (last visited Jan. 23, 2024).

<sup>65</sup> *Id.*

<sup>66</sup> S. 626.915, F.S.

<sup>67</sup> Ch. 626, parts I-IX, and XIII.

<sup>68</sup> S. 626.112, F.S.

<sup>69</sup> S. 626.015, F.S.

## General Lines Agent

A general lines agent<sup>70</sup> is one who sells the following lines of insurance: property;<sup>71</sup> casualty,<sup>72</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,<sup>73</sup> or a workers' compensation self-insurance fund;<sup>74</sup> surety;<sup>75</sup> health;<sup>76</sup> and, marine.<sup>77</sup> 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 represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.<sup>78</sup>

## 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.<sup>79</sup>

## **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<sup>80</sup> 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 the Department of Financial Services (DFS) and appointed by the appropriate entity or person<sup>81</sup> in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.<sup>82</sup>

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<sup>70</sup> S. 626.015(5), F.S.

<sup>71</sup> S. 624.604, F.S.

<sup>72</sup> S. 624.605, F.S.

<sup>73</sup> As defined in s. 624.462, F.S.

<sup>74</sup> Pursuant to s. 624.4621, F.S.

<sup>75</sup> S. 626.606, F.S.

<sup>76</sup> Ss. 624.603 and 627.6482, F.S.

<sup>77</sup> S. 624.607, F.S.

<sup>78</sup> S. 626.829, F.S.

<sup>79</sup> S. 627.786, F.S.

<sup>80</sup> 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).

<sup>81</sup> 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.

<sup>82</sup> S. 626.171, F.S.

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,<sup>83</sup> company employee adjusters,<sup>84</sup> and public adjuster apprentices.<sup>85</sup> The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.<sup>86</sup> 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.<sup>87</sup>

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.<sup>88</sup> 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.<sup>89</sup>

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.<sup>90</sup>

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.<sup>91</sup>

### **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.<sup>92</sup> 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.<sup>93</sup> General lines agents may not knowingly misrepresent any material fact related to such insurance or its eligibility for placement with a surplus lines insurer.<sup>94</sup>

### **Effect of the Bill**

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<sup>83</sup> S. 626.855, F.S.

<sup>84</sup> S. 626.856, F.S.

<sup>85</sup> S. 626.8561, F.S.

<sup>86</sup> S. 626.864(2), F.S.

<sup>87</sup> S. 626.864(3), F.S.

<sup>88</sup> S. 626.854(1), F.S.

<sup>89</sup> S. 626.8548, F.S.

<sup>90</sup> S. 626.855, F.S.

<sup>91</sup> S. 626.856, F.S.

<sup>92</sup> S. 626.929(1), F.S.

<sup>93</sup> S. 626.929(2), F.S.

<sup>94</sup> S. 626.929(3), F.S.

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 partnerships or corporations, hospitals, medical facilities, and others.<sup>95</sup> The FMMJUA serves as a provider of liability insurance for medical practitioners who face challenges obtaining coverage from the private market.<sup>96</sup>

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.<sup>97</sup> The Board, with OIR approval, oversees crucial aspects like insurance rates, rate classifications, policy forms, and overall policy setting.<sup>98</sup>

### **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.

Please see section III A, Constitutional Issues.

### **The Insurance Contract**

An insurer has the authority to modify the terms of a policy upon its renewal. In case of such changes, the insurer must provide the named insured with advance written notice that summarizes the modifications.<sup>99</sup> This notice can be included with the notice of renewal premium or sent separately within the specified timeframe.<sup>100</sup> Prior to, or concurrently with, providing the insured with the notice, the insurer must furnish a sample copy of the notice to the insured's insurance agent. The notice itself must be titled "Notice of Change in Policy Terms."<sup>101</sup>

For renewal policies incorporating optional coverage leading to a premium increase, the insurer cannot use the Notice of Change in Policy Terms to introduce the optional coverage without the policyholder's approval.<sup>102</sup> The insured's payment of the renewal premium is considered acceptance of the new policy terms.<sup>103</sup> Failure to furnish the required notice means the original policy terms remain in effect until the

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<sup>95</sup> S. 627.351, F.S. See also [www.fmmjua.com](http://www.fmmjua.com) (last visited Jan. 20, 2024).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> S. 627.43141(2), F.S.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> S. 627.43141(3), F.S.

<sup>103</sup> S. 627.43141(5), F.S.

subsequent renewal with proper notice, or until the effective date of replacement coverage obtained by the named insured, whichever happens first.<sup>104</sup>

### **Effect of the Bill**

The bill requires that the renewal notice sent to the named insured containing changes in policy terms must be in bold type of not less than 14 points and included as a single page within the written notice.

Please see section III A, Constitutional Issues.

### **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.<sup>105</sup> Participation in FIGA is a mandatory requirement for all insurers licensed to sell property and casualty insurance in Florida.<sup>106</sup> Operating as a nonprofit corporation, FIGA is governed by a Board of Directors appointed by DFS, with each member serving a four-year term.<sup>107</sup>

### **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. 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.

Additionally, the bill mandates that each insurer, subject to FIGA requirements, establish, implement, and maintain a data transfer plan. This plan is to be filed with the Commissioner of Insurance Regulation (Commissioner) in the event of a company-action level event, as outlined in s. 624.4085. Such events encompass various scenarios, including the insurer's total adjusted capital falling within specific risk-based capital thresholds or notification by the OIR regarding an adjusted risk-based capital report.

The data transfer plan must delineate procedures, actions, and safeguards, including the manner of maintaining records, the process for transferring records to DFS and FIGA in case of liquidation, and any additional information deemed necessary by the Commissioner. If a third-party vendor is involved, the plan must outline the process for prompt provision of records by the vendor in case of liquidation.

The Commissioner is tasked with reviewing each plan for compliance, consulting with DFS and FIGA to ensure integration with their record-keeping processes, and may conduct investigations, direct testing of processes, mandate plan modifications, prefund services, and enforce actions to remedy noncompliance with plan requirements.

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<sup>104</sup> S. 627.43141(6), F.S.

<sup>105</sup> S. 631.57, F.S.

<sup>106</sup> S. 631.56(1), F.S.

<sup>107</sup> *Id.*

### *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 conducting business in Florida.<sup>108</sup> FLHIGA functions as a nonprofit corporation, governed by a Board of Directors consisting of nine to eleven members appointed by member insurers.<sup>109</sup>

#### **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 make a decision 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.<sup>110</sup>

#### **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 make a decision 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.<sup>111</sup>

#### **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 make a decision 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**

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<sup>108</sup> S. 631.716(1), F.S.

<sup>109</sup> *Id.*

<sup>110</sup> S. 631.816(1), F.S.

<sup>111</sup> S. 631.912(1), F.S.

The CFO serves as the State Fire Marshal, operating through the Division of the State Fire Marshal within DFS.<sup>112</sup> 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.<sup>113</sup>

### *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.<sup>114</sup>

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.<sup>115</sup> Local authorities are generally restricted from imposing more stringent uniform fire safety standards, except in limited circumstances.<sup>116</sup>

### **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<sup>117</sup> business activities in Florida, a person must hold a license and adhere to various requirements under applicable laws, including the Florida Insurance Code.<sup>118</sup> 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.<sup>119</sup> Additionally, a service agreement company may establish an unearned premium reserve or secure contractual liability insurance meeting certain criteria.<sup>120</sup> If using contractual liability insurance, the policy must cover 100 percent of claim exposure, ensure refund obligations, provide 90 days' notice

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<sup>112</sup> S. 633.104, F.S.

<sup>113</sup> S. 633.128(h), F.S.

<sup>114</sup> S. 633.206(1), F.S.

<sup>115</sup> S. 633.206(2)(a), F.S.

<sup>116</sup> S. 633.206(2)(b), F.S.

<sup>117</sup> 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.

<sup>118</sup> S. 634.031(1), F.S.

<sup>119</sup> S. 634.041, F.S.

<sup>120</sup> *Id.*

for cancellation, and furnish claims statistics to the OIR.<sup>121</sup> Such policies can pay claims as incurred or in the event of the company's failure to meet payment obligations.<sup>122</sup>

## **Effect of the Bill**

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.<sup>123</sup> This protection extends to issues caused by normal wear and tear or defects in these components or appliances.<sup>124</sup>

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.<sup>125</sup>

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.<sup>126</sup>

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.<sup>127</sup>

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.<sup>128</sup> Home and service warranty associations must be licensed by OIR<sup>129</sup> and must maintain certain minimum financial standards in order to do warranty business in Florida.<sup>130</sup>

## **Effect of the Bill**

The bill specifies that home warranty associations are not obligated to establish an unearned premium<sup>131</sup> 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.

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<sup>121</sup> S. 634.041(8)(b)6., F.S.

<sup>122</sup> *Id.*

<sup>123</sup> S. 634.301(2), F.S.

<sup>124</sup> *Id.*

<sup>125</sup> S. 634.303, F.S.

<sup>126</sup> S. 634.301(2), F.S.

<sup>127</sup> See ch. 634, F.S.

<sup>128</sup> See ch. 634, F.S.

<sup>129</sup> 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.

<sup>130</sup> Ss. 634.3077 and 634.406, F.S.

<sup>131</sup> 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).

- 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.

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.

Please see section III A, Constitutional Issues.

## **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.<sup>132</sup>

Bail bond agents may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or insurer that employs the bail bond agent.<sup>133</sup>

### *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.<sup>134</sup> 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.<sup>135</sup> A bail bond agent must be appointed by a licensed insurer and the insurer must report the appointment to DFS.<sup>136</sup> 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.<sup>137</sup> 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.<sup>138</sup> Bail bond agents may not

<sup>132</sup> 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).

<sup>133</sup> S. 648.355, F.S.

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

<sup>135</sup> S. 648.34, F.S.

<sup>136</sup> S. 648.30, F.S.

<sup>137</sup> Ss. 648.295 and S. 648.36, F.S.,

<sup>138</sup> S. 648.42, F.S.

solicit clients at a jail, prison, or courthouse, and may not pay fees for referrals from any person working in the law enforcement community.<sup>139</sup>

### *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.<sup>140</sup> Additionally, the owner or operator of the agency is required to appoint a primary bail bond agent, responsible for the overall operation and management of a specific agency location.<sup>141</sup> The name and license number of the primary bail bond agent, along with the agency's address, must be filed with DFS.<sup>142</sup> 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.<sup>143</sup>

### *Continuing Education*

Bail bond agents are required to complete a minimum of 14 hours of continuing education every two years.<sup>144</sup> Approved schools providing continuing education must be certified by DFS, offering a minimum of three classroom-instruction classes per calendar year.<sup>145</sup> Each continuing education class should include at least two hours of approved coursework and be taught by a DFS-approved supervising instructor.<sup>146</sup>

### **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.

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

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<sup>139</sup> S. 648.44, F.S.

<sup>140</sup> S. 648.285, F.S.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

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

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

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

<sup>146</sup> *Id.*

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.<sup>147</sup>

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.<sup>148</sup> 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.<sup>149</sup>

To notify owners of their unclaimed property, DFS employs various methods, including database searches.<sup>150</sup> Citizens have the right to claim their property at any time, irrespective of the amount, without incurring any costs.<sup>151</sup> Unclaimed funds are deposited into the State School Fund to support public schools.<sup>152</sup> Importantly, the original amount reported as unclaimed can always be claimed by the owner or their heirs at no cost.<sup>153</sup>

More than 326 licensed<sup>154</sup> 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.<sup>155</sup> A claimant representative, who must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under Chapter 493, F.S., is required to register with DFS.<sup>156</sup> 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.<sup>157</sup> In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization.

## 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.<sup>158</sup> The updated definitions will also account for new property types, technology advancements, electronic communications, and consumer's changing preferences regarding financial accounts.<sup>159</sup>

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

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

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Florida Department of Financial Services, Agency Analysis of House Bill 425, p. 1 (Feb. 9, 2021).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Email from Chase Mitchell, Director of Legislative Affairs and Policy, DFS, Inquiry Regarding Licensed Claimant's Representatives Registration, (Jan. 22, 2024).

<sup>155</sup> DFS, Agency Analysis of House Bill 425, p. 1 (Feb. 9, 2021).

<sup>156</sup> S. 717.124, F.S.

<sup>157</sup> S. 717.1400, F.S.

<sup>158</sup> 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.

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

- 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.

#### *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.<sup>160</sup> 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.

#### *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:

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<sup>160</sup> *Id.* at p. 9.  
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- terminates any legal relationship between the holder and the owner with respect to the property; and
- 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 and Unclaimed Property Trust Fund*

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.

The bill increases the amount of money retained in the Unclaimed Property Trust Fund from \$15 million to \$65 million to aid DFS with the amount of claims payments it processes each month, which significantly exceed \$15 million.

#### *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.

#### *Codification of Common Law Requirement*

The bill codifies the common law requirement that a plaintiff who has received a writ of garnishment upon unclaimed property delivered to DFS must also file a claim for the unclaimed property that is the subject of the writ.

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

The bill clarifies that the 10-year period within which DFS may commence an 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.

*Unclaimed Property Purchase, Electronic Signatures, and Exemption for Sale in Bankruptcy*

The bill allows anyone to purchase unclaimed property as long as they comply with the other legal requirements regarding recovery and purchase agreements.<sup>161</sup> 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.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 20.121, F.S. relating to Department of Financial Services.

**Section 2.** Amends s. 121.0515, F.S., relating to Special Risk Class.

**Section 3.** Amends s. 215.5586, F.S., relating to My Florida Safe Home Program.

**Section 4.** Amends s. 284.44, F.S., relating to salary indemnification costs of state agencies.

**Section 5.** Amends s 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations.

**Section 6.** Amends s. 440.385, F.S., relating to Florida Self-Insurers Guaranty Association Incorporated.

**Section 7.** Amends s. 497.101, F.S., relating to Board Of Funeral, Cemetery, And Consumer Services; Membership; Appointment; Terms.

**Section 8.** Amends s. 497.153, F.S., relating to disciplinary procedures and penalties.

**Section 9.** Amends s. 497.155, F.S., relating to disciplinary citations and minor violations.

**Section 10.** Amends s. 624.155, F.S., relating to civil remedy.

**Section 11.** Amends s. 624.307, F.S., relating to general powers; duties.

**Section 12.** Amends s. 626.171, F.S., relating to application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.

**Section 13.** Amends s. 626.221, F.S., relating to examination requirement; exemptions.

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<sup>161</sup> These requirements are found in s. 717.135, F.S.  
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- Section 14.** Amends s. 626.601, F.S., relating to improper conduct; inquiry; fingerprinting.
- Section 15.** Amends s. 626.7351, F.S., relating to qualifications for customer representative's license.
- Section 16.** Amends s. 626.878, F.S., relating to rules; code of ethics.
- Section 17.** Amends s. 626.929, F.S., relating to origination, acceptance, placement of surplus lines business.
- Section 18.** Amends s. 627.351, F.S., relating to insurance risk appointment plans.
- Section 19.** Amends s. 627.43141, F.S., relating to notice of change in policy terms.
- Section 20.** Amends s. 627.70152, F.S., relating to suits arising under a property insurance policy.
- Section 21.** Amends s. 631.59, F.S., relating to duties and powers of department and office.
- Section 22.** Creates s. 631.6955, F.S., relating to Florida Insurance Guaranty Fund Data Transfer Plan.
- Section 23.** Amends s. 631.722, F.S., relating to powers and duties of department and office.
- Section 24.** Amends s. 631.821, F.S., relating to powers and duties of the department.
- Section 25.** Amends s. 631.921, F.S., relating to department powers.
- Section 26.** Amends s. 633.124, F.S., relating to penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.
- Section 27.** Amends s. 633.202, F.S., relating to Florida Fire Prevention Code.
- Section 28.** Amends s. 633.206, F.S., relating to uniform fire safety standards.
- Section 29.** Amends s. 634.041, F.S., relating to qualifications for license.
- Section 30.** Amends s. 634.081, F.S., relating to suspension or revocation of license; grounds.
- Section 31.** Amends s. 634.3077, F.S., relating to financial requirements.
- Section 32.** Amends s. 634.317, F.S., relating to license and appointment required.
- Section 33.** Amends s. 648.25, F.S., relating to definitions.
- Section 34.** Amends s. 648.26, F.S., relating to Department of Financial Services; administration.
- Section 35.** Amends s. 648.30, F.S., relating to licensure and appointment required; prohibited acts; penalties.
- Section 36.** Amends s. 648.355, F.S., relating to limited surety agents and professional bail bond agents; qualifications.
- Section 37.** Amends s. 648.43, F.S., relating to power of attorney; approval by office; filing of copies; notification of transfer bond.
- Section 38.** Amends s. 717.101, F.S., relating to definitions.

- Section 39.** Amends s. 717.102, F.S., relating to property presumed unclaimed; general rule.
- Section 40.** Amends s. 717.106, F.S., relating to bank deposits and funds in financial organizations.
- Section 41.** Creates s. 717.1065, F.S., relating to virtual currency.
- Section 42.** Amends s. 717.1101, F.S., relating to unclaimed equity and debt of business associations.
- Section 43.** Amends s. 717.112, F.S., relating to property held by agents and fiduciaries.
- Section 44.** Amends s. 717.117, F.S., relating to report of unclaimed property.
- Section 45.** Amends s. 717.119, F.S., relating to payment or delivery of unclaimed property.
- Section 46.** Amends s. 717.1201, F.S., relating to custody by state; holder relieved from liability; reimbursement of holder paying claim; reclaiming for owner; defense of holder; payment of safe-deposit box or repository charges.
- Section 47.** Amends s. 717.123, F.S., relating to deposit of funds.
- Section 48.** Amends s. 717.1242, F.S., relating to restatement of jurisdiction of the circuit court sitting in probate and the department.
- Section 49.** Amends s. 717.1243, F.S., relating to small estate accounts.
- Section 50.** Amends s. 717.1245, F.S., relating to garnishment of unclaimed property.
- Section 51.** Amends s. 717.129, F.S., relating to periods of limitations.
- Section 52.** Amends s. 717.1301, F.S., relating to investigations; examinations; subpoenas.
- Section 53.** Amends s. 717.1311, F.S., relating to retention of records.
- Section 54.** Amends s. 717.1322, F.S., relating to administrative and civil enforcement.
- Section 55.** Amends s. 717.133, F.S., relating to evidence; estimations; audit reports, examiners worksheets, investigative reports, other related documents.
- Section 56.** Amends s. 717.134, F.S., relating to penalties and interest.
- Section 57.** Amends s. 717.135, F.S., relating to recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs.
- Section 58.** Amends s. 717.1400, F.S., relating to registration.
- Section 59.** Amends s. 197.582, F.S., relating to disbursement of proceeds of sale.
- Section 60.** Amends s. 717.1382, F.S., relating to United States savings bond; unclaimed property; escheatment; procedure.
- Section 61.** Directs the Division of Law Revision to replace “Division of Investigative and Forensic Services” with “Division of Criminal Investigations” within Florida Statutes.
- Section 62.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

State government may see a negative fiscal impact due to the existing constraints on the Division of Unclaimed Property's operational capacity. DFS disburses substantial monthly claim payments, but the current \$15 million retention limit hampers its ability to meet fiscal demands without relying on loans. The proposed permanent increase in the retention limit to \$65 million aims to mitigate this challenge, ensuring timely loan repayment and facilitating smoother fiscal operations. However, DFS believes this change may contribute to a more stable revenue stream for the State School Trust Fund.

#### 2. Expenditures:

State government may face a minimal fiscal impact due to the change in lowering the required aggregate reporting from \$50 per property to \$10. While this adjustment could lead to more people claiming "less than \$50" accounts, the overall impact on expenditures is expected to be small. Additionally, DFS anticipates saving money on the cost of serving administrative complaints and citations upon funeral licensees.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

The fiscal impact on the private sector, particularly reporting entities, is expected to be positive. The changes in the bill involve deviations to the ways apparent owners of unclaimed equity and debt property indicate that they have not lost track of their property.

These updates are designed to enhance the process for determining when equity and debt property is considered unclaimed. Reporting entities are already accustomed to providing owner information to other states with similar regulations, and the impact on holders is anticipated to be minimal. While there may be an initial minor IT cost for formatting changes, the overall fiscal impact on the private sector is expected to be positive, fostering increased awareness and opportunities for citizens to recover unclaimed funds.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

#### 2. Other:

The bill is titled “an act relating to the Department of Financial Services.” Section 18 of the bill affects the FMMJUA for which DFS has no role. While the bill bestows DFS a role in the FMMJUA, this may present a constitutional single subject concern.

Section 19 of the bill pertains to insurers, introducing provisions regarding the notice of change in policy terms for renewal policies. Notably, this section does not propose any role for DFS within its provisions, nor does it establish such a role within the statute. This may present a constitutional single subject concern.

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

**B. RULE-MAKING AUTHORITY:**

The bill provides rulemaking authority to the Division of Consumer Services to clarify the process for an insurance company, agency, or agent to submit and update their designated contact for receiving and responding to consumer complaints.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**