

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

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1408

INTRODUCER: Banking and Insurance Committee and Senator Burgess

SUBJECT: Department of Financial Services

DATE: April 19, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Favorable</u>
3.	<u>Schrader</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1408 amends sections of Florida Statutes governing the following Department of Financial Services (DFS) Divisions: Investigative and Forensic Services; Public Assistance Fraud; Funeral, Cemetery, and Consumer Services; and State Fire Marshal. The bill:

- Designates the Division of Public Assistance Fraud a criminal justice agency;
- Adds firefighter cancer into the self-insurance coverages provided by Risk Management and requires the Department of Management Services to verify and approve such payments prior to distribution from the State Risk Management Trust Fund;
- Prohibits employees who fall under the State Risk Management Trust Fund from engaging in retaliatory conduct against a sexual harassment victim;
- Provides that willful and knowing dissemination of the identifying information of a sexual harassment victim is a misdemeanor of the first degree;
- Amends the composition requirements of the Board of Funeral, Cemetery, and Consumer Services; clarifies member requirements; amends the definition of “quorum” to enable ease of business; removes term staggering requirements; and clarifies rulemaking responsibilities;
- Clarifies and provides grounds for disqualification of Funeral, Cemetery, and Consumer Services licensure applicants based on criminal history;
- Amends provisions for criminal background checks for Funeral, Cemetery, and Consumer Services licensure applicants;
- Prohibits specific unlicensed funeral activity and increases the penalty to a third-degree felony;

- Increases criminal penalties associated with unlicensed Funeral, Cemetery, and Consumer Services activity;
- Updates the definition of “two-component explosive” to reflect changes in the marketplace;
- Allows contractors to begin repairs on a previously permitted fire alarm prior to receiving a permit to do so, yet maintains that such repair will not be compliant until permitted and approved;
- Amends continuing education requirements for individuals licensed to solicit, sell, or adjust insurance in the state;
- Amends provisions regarding appointments to transact insurance or adjust claims on behalf of an insurer or employer to apply certain deadlines to renewal appointments and to revise procedures and requirements when an individual was not properly appointed by inadvertent error;
- Increases the maximum license suspension time for title insurance agents and agencies;
- Removes a requirement for personal residential property agents to notify an insured regarding coverage from Citizens Property Insurance Corporation before exporting a policy to the surplus lines marketplace;
- Prohibits an insurance agent or agency from giving, or a lender from requiring, a copy of an insurer’s proprietary underwriting information as a condition precedent to extending credit secured by real estate and prohibiting an insurance agent or agency from providing such information without authorization;
- Allows flood insurance coverage to be exported to a surplus lines insurer without the agent first seeking to place the coverage with an admitted insurer;
- Amends the Fire and Emergency Incident Information Reporting Program by replacing “fire protection agencies” with “fire service providers” and defines the term “fire service provider”;
- Revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel;
- Extends assessment and compliance deadlines by three years with regards to minimum radio signal strength for fire department communications and two-way radio systems;
- Prohibits influencing a firesafety inspector to violate applicable law through threats, coercion, trickery, or compensation, and prohibits a firesafety inspector knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe;
- Revises the composition of the Firefighters Employment, Standards, and Training Council;
- Allows fire service providers to hire volunteer firefighters, and allows them to continue to function in a volunteer firefighter capacity for the first year of employment while they obtain career firefighter certifications;
- Creates a criminal penalty for aiding and abetting a person engaged in unlicensed bail bond agent activity; and
- Expands the applicability of criminal penalties for impersonation of investigators and personnel of the DFS.

The DFS has indicated minor modifications will need to be made to the Division of Insurance Agent and Agency Services systems in order to create a tool for enabling or disabling the ability of a party to appoint licensees. The DFS indicates these changes can be addressed during ongoing system updates and within existing resources.

The bill has an indeterminate negative fiscal impact to the State Risk Management Trust Fund. The DFS estimates expenses relating to self-insuring firefighter cancer benefits to be less than \$100,000 annually.

The Criminal Justice Impact Conference has not yet adopted a prison bed impact for this legislation and the fiscal impact relating to those penalties is positive/negative indeterminate.

The bill, except as otherwise expressly provided, has an effective date of July 1, 2021.

## II. Present Situation:

The Department of Financial Services (DFS) is statutorily responsible for:

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

The DFS is composed of the following divisions:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;

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<sup>1</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx> (last visited March 4, 2021).

- Unclaimed Property; and
- Workers' Compensation.<sup>2</sup>

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

The Division of Public Assistance Fraud (DPAF) is responsible for enforcing state laws regarding program eligibility and proper use of public assistance benefits. The DPAF is responsible for investigating allegations of fraud related to the Cash Assistance/Temporary Assistance for Needy Families (TANF) program, the Supplemental Nutritional Assistance Program (SNAP), Medicaid recipients, disaster assistance/emergency benefits, the School Readiness and Voluntary Pre-Kindergarten programs, and Social Security Disability benefits.<sup>3</sup>

According to the DFS, the DPAF has operated as a criminal justice agency since its inception in 1972.<sup>4</sup> However, when the Division of Investigative and Forensic Services (DIFS) was created in 2016, under ch. 20, F.S., the DPAF was not designated as a criminal justice agency, thereby limiting the DPAF's access to information within criminal records systems. Under Florida law, a criminal justice agency is defined, in part, as any governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.<sup>5</sup> The DPAF currently operates, in part, as a criminal justice agency. However, current law does not definitively reflect this designation.

### **State Risk Management**

The State Risk Management Trust Fund (trust fund) is administered by the DFS and is a self-insurance fund.<sup>6</sup> The trust fund provides various types of insurance to all departments of the State of Florida, including their employees, agents, and volunteers.<sup>7</sup> The trust fund provides the following insurance coverage:

- Property claims for all buildings, whether financed in whole or in part by revenue bonds or certificates, and the contents thereof of any other buildings leased or rented by the state, to include manufactured homes and contents. This coverage includes:<sup>8</sup>

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<sup>2</sup> Florida Department of Financial Services, *Divisions and Offices* <https://www.myfloridacfo.com/> (last visited March 4, 2021)

<sup>3</sup> Division of Public Assistance, <https://myfloridacfo.com/Division/PAF/> (last visited March 6, 2021).

<sup>4</sup> Department of Financial Services, *Legislative Bill Analysis of SB 1408* (March 4, 2021) (on file with Senate Banking and Insurance Committee).

<sup>5</sup> Section 943.045(11)(e), F.S. *See also*: s. 943.045(2), F.S.; the term "administration of criminal justice" means "performing functions of detection, apprehension, detention, pretrial release, post trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies." Section 943.045(11)(a)-(e), F.S., defines a criminal justice agency as a court, the Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, which investigates the crime of crimes of abuse and neglect, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule court and that allocates a substantial part of its annual budget to the administration of criminal justice.

<sup>6</sup> Section 284.30, F.S.

<sup>7</sup> Section 284.31, F.S.

<sup>8</sup> Section 284.01, F.S.

- Loss from fire, lightning, sinkholes, and hazards customarily insured by extended coverage;
- Loss from removal of personal property from such properties when endangered by covered perils;
- Flood insurance to the extent necessary to meet self-insurance requirements under the National Flood Insurance Program;
- Rental value insurance is provided to indemnify the state or its agencies for loss of income when such rental income insurance is required to be carried by bonding or revenue certificates or resolutions; and
- Rental value insurance is also provided to indemnify the state or its agencies for loss of income from those buildings operated and maintained by the Department of Management Services from the Supervision Trust Fund.
- Casualty claims, to include:<sup>9</sup>
  - Workers' compensation;
  - General liability:
    - Premises and operations;
    - Personal injury; and
    - Professional malpractice liability;<sup>10</sup>
  - Fleet automotive liability;
  - Federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes; and
  - Court-awarded fees in other proceedings against the state, except for such awards in eminent domain or for inverse condemnation or awards by the Public Employees Relations Commission.

Separate accounts must be kept for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees barring certain exceptions.<sup>11</sup>

Each entity covered by the trust fund must develop and implement a loss prevention program, provide for regular and periodic facility and equipment inspections, investigate job-related employee accidents, and establish a program to promote increased safety awareness among employees.<sup>12</sup> The Division of Risk Management, within the DFS, provides loss prevention services and technical assistance to state agencies and universities for managing risk.<sup>13</sup>

Premiums, as calculated on all coverages, are billed and charged to each state agency according to coverages obtained from the trust fund.<sup>14, 15</sup> All premiums paid into the trust fund and all moneys received from the trust fund from investment or any other source, are held by the DFS

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<sup>9</sup> Section 284.30, F.S.

<sup>10</sup> Department of Financial Services, Division of Risk Management, *Insurance Coverage Provided*, <https://www.myfloridacfo.com/Division/Risk/liability/LiabilityInsuranceCoverage.htm> (last visited March 4, 2021).

<sup>11</sup> Section 284.31, F.S.

<sup>12</sup> Section 284.501(1), F.S.

<sup>13</sup> Department of Financial Services, Division of Risk Management, *Welcome to the Division of Risk Management*, <https://www.myfloridacfo.com/Division/Risk/> (last visited March 6, 2021).

<sup>14</sup> Section 284.02(1), F.S.

<sup>15</sup> Section 284.36, F.S.

for the purpose of paying losses, expenses incurred in adjustment of losses, premiums for reinsurance, risk and claims management, and operating expenses.<sup>16, 17</sup>

### **Firefighters**

A “firefighter” is defined as a person who is employed full-time by the state or local governments and whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.<sup>18</sup>

### **Benefits in Lieu of Workers Compensation Benefits**

Upon a diagnosis of cancer as defined in s. 112.1816, F.S., a firefighter is entitled to certain benefits, as an alternative to pursuing workers’ compensation benefits under ch. 440, F.S., if the firefighter has been employed by his or her employer for at least five continuous years, has not used tobacco products for at least the preceding five years, and has not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of \$25,000, upon the firefighter’s initial diagnosis of cancer.<sup>19</sup>

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter’s cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.<sup>20</sup>

### **Confidentiality of the Personal Identifying Information of Sexual Harassment Victims**

Under s. 119.071(2)(n), F.S., the personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from the public records requirements specified in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, the information may be disclosed to a governmental entity when such disclosure is in the furtherance of such entity’s official duties and responsibilities.

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<sup>16</sup> Section 284.02(2), F.S.

<sup>17</sup> Section 284.37, F.S.

<sup>18</sup> See ss. 112.81, 112.191, 112.1816, and 633.102(9), F.S.

<sup>19</sup> Section 112.1816(2)

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

## Funeral, Cemetery, and Consumer Services

### *Composition and Business of the Board of Funeral, Cemetery, and Consumer Services*

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Division of Funeral, Cemetery, and Consumer Services of the DFS. The board acts as the licensing and rulemaking authority for the purposes of certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements.<sup>21</sup>

Currently, the board must have 10 members; one member must be the State Health Officer, or their designee, and the remaining nine members must be nominated by the Chief Financial Officer (CFO), appointed by the Governor, and confirmed by the Senate.<sup>22</sup> The composition of the board must be as follows:

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

Two or more members must not be principals or employees of the same company or partnership, or group of companies or partnerships under common control.<sup>23</sup> The DFS reports that the CFO often does not receive a sufficient amount of applications to fill member positions.<sup>24</sup> For

<sup>21</sup> See s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S.

<sup>22</sup> Section 497.101(1), F.S.

<sup>23</sup> Section 497.101(2), F.S.

<sup>24</sup> See *supra* note 4.

example, the position that must be filled by a certified public accountant has remained vacant since September 2017.<sup>25</sup>

Board members are appointed for four-year terms, except for the State Health Officer, who serves as long as they hold office.<sup>26</sup> The CFO was directed to stagger the terms of members after the terms of the initial members expired<sup>27</sup> and this has already occurred at the initiation of the board.<sup>28</sup>

A quorum is necessary to conduct the business of the board. A quorum consists of six members of the board.<sup>29</sup> The DFS indicates that it can be difficult to obtain this number due to board vacancies, absenteeism, and necessary recusal.<sup>30</sup>

The DFS is required to adopt rules regarding application forms and procedures for appointment to the board.<sup>31</sup>

### ***Disqualification of Licensure Applicants Licensing Background Checks***

Currently, Florida law does not specifically disqualify applicants for licensure relating to funeral, cemetery, and consumer services under ch. 497, F.S., if said applicants have been found guilty of certain crimes. However, such applicants must provide certified true copies of any crime committed in any jurisdiction, within the 10 years preceding their application, in order to deem the application complete.<sup>32</sup> Currently, regardless of whether adjudication is entered or withheld by a court, disclosure of the following crimes is required:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation;<sup>33</sup>
- Any other felony that was committed within the 20 years immediately preceding the application under this chapter;<sup>34</sup> and
- Any other misdemeanor that was committed within the five years preceding the application under this chapter.<sup>35</sup>

### ***Unlicensed Practice***

Chapter 497, F.S., requires individuals to maintain a license for specified death care industry practices. The DFS is authorized to issue administrative complaints against entities believed to be in violation of licensure requirements.<sup>36</sup> Section 497.159, F.S., additionally provides for

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<sup>25</sup> *Id.*

<sup>26</sup> Section 497.101(3), F.S.

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

<sup>28</sup> *See supra* note 4.

<sup>29</sup> Section 497.101(6), F.S.

<sup>30</sup> *See supra* note 4.

<sup>31</sup> *Id.*, s. 497.103(2)(c), F.S.

<sup>32</sup> Section 497.142(9), F.S.

<sup>33</sup> Section 497.142(10)(c)1., F.S.

<sup>34</sup> Section 97.142(10)(c)2., F.S.

<sup>35</sup> Section 497.142(10)(c)3., F.S.

<sup>36</sup> Section 497.157(2), F.S.



criminal penalties for unlicensed activities, with such activities being a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>37</sup>

### **Continuing Education Requirements**

Pursuant to s. 626.2815, F.S., individuals licensed to engage in the sale of insurance or adjustment of insurance claims in Florida are required to fulfill certain continuing education requirements. Currently, licensees, except title insurance agents, are required to complete a five-hour update course every two years, specific to the license they hold.<sup>38</sup> Unless otherwise provided, licensees must also complete 19 hours of elective continuing education courses every two years.<sup>39</sup> If a licensee has been licensed for six years or more, this requirement drops to 15 hours.<sup>40</sup> For licensees licensed 25 years or more, and is a chartered life underwriter, is a chartered property and casualty underwriter, or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses, the elective continuing education course requirement is five hours every two years. For those individuals holding a license as a customer representative, and not a licensed life or health agent, the elective continuing education course requirement is also five hours every two years. An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a five-hour update course and a minimum of nine hours of elective continuing education courses every two years.<sup>41</sup>

If continuing education requirements are not met, the DFS has the authority to immediately terminate or refuse to renew the appointment of an agent or adjuster, following notification from the DFS, unless an extension or waiver has been granted.<sup>42</sup>

### **State Fire Marshal**

#### ***Explosives***

Chapter 552, F.S., sets forth the requirements to lawfully engage in the business of a manufacturer-distributor, or to acquire, sell, possess, store, or engage in the use of explosives in this state. The chapter's current definition of a two-component explosive requires the use of a "No. 6 blasting cap" for detonation.<sup>43</sup> According to the DFS, No. 6 blasting caps are now out of production and current blasting caps no longer use the same rating system.<sup>44</sup>

#### ***Uniform Fire Alarm Permit Application for Previously Permitted Fire Alarm Systems***

Contractors are required to file a Uniform Fire Alarm Permit Application with a local law enforcement agency, and must receive the permit before installing, replacing, or repairing an

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<sup>37</sup> Section 497.159(6), F.S.

<sup>38</sup> Section 626.2815(3), F.S.

<sup>39</sup> Section 626.2815(3)(a), F.S.

<sup>40</sup> Section 626.2815(3)(b), F.S.

<sup>41</sup> Section 626.2815(3)(e), F.S.

<sup>42</sup> Section 626.2815(9), F.S.

<sup>43</sup> Section 552.081(13), F.S.

<sup>44</sup> See *supra* note 4.

existing fire alarm that was previously permitted by the local enforcement agency, if the local enforcement agency requires a permit for the repair.<sup>45</sup>

### ***Fire and Emergency Incident Information Reporting Program***

The Florida Fire Incident Reporting System (FFIRS) is located within the Division of State Fire Marshal. The FFIRS was created by rule and is a means for fire protection agencies to report and maintain computerized records of fires and other fire department incidents in a uniform manner.<sup>46</sup> Annual reports are furnished to the Governor, Legislature and fire protection agencies, and upon request, the public.<sup>47</sup>

Established in 2005 by s. 633.115, F.S., the Fire and Emergency Incident Reporting Program included the creation of the Fire and Emergency Incident Information Technical Advisory Panel (panel) and codified FFIRS language. The FFIRS is the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS).<sup>48</sup> The NFIRS provides system resources and an overview of the standard national reporting system used by the United States fire departments to report fires and other incidents to which they respond and to maintain records of such incidents in a uniform manner.<sup>49</sup> The NFIRS provides software and training at no cost to fire departments.<sup>50</sup>

The panel was created to advise, review and make recommendations to the State Fire Marshal. Currently, membership in the panel comprises 15 members:<sup>51</sup>

- Thirteen members of the Firefighters Employment, Standards, and Training Council;<sup>52</sup>
- One member from the Florida Forest Service, Department of Agriculture and Consumer Services; and
- One member from the Department of Health, appointed by the State Surgeon General.

### ***Florida Fire Prevention Code***

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (fire code), which contains all firesafety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such firesafety laws and rules.<sup>53</sup> The State Fire Marshal adopts a new edition of the fire code every three years.<sup>54</sup> The 7th edition of the fire code took effect on December 31, 2020.<sup>55</sup> State law requires all municipalities, counties, and special districts with firesafety

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<sup>45</sup> Section 553.7921(1)(b), F.S.

<sup>46</sup> Department of Financial Services, Division of State Fire Marshal, *Florida Fire and Incident Reporting System*, <https://www.myfloridacfo.com/Division/SFM/FFIRS/> (last visited March 5, 2021).

<sup>47</sup> Section 633.136, F.S.

<sup>48</sup> See *supra* note 46.

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

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

<sup>51</sup> Section 633.136(2), F.S.

<sup>52</sup> See s. 633.402, F.S., for the composition of this Council.

<sup>53</sup> Chapter 69A-60.002(1), F.A.C.

<sup>54</sup> Section 633.202, F.S.

<sup>55</sup> State Fire Marshal of Florida, *Florida Fire Prevention Code*, available online at: <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view> (last visited March 5, 2021).

responsibilities to enforce the fire code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.<sup>56</sup>

### ***Firesafety Inspectors***

Section 633.216, F.S., requires each county, municipality, and special district that has firesafety enforcement responsibilities to employ or contract with a firesafety inspector. Subject to certain exceptions, the firesafety inspector is responsible for conducting all firesafety inspections required by law.<sup>57</sup> These firesafety inspections include the inspection of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with firesafety responsibilities.<sup>58</sup>

The CFO is designated as the “State Fire Marshal.”<sup>59</sup> In any county, municipality, or special district that does not employ or appoint a firesafety inspector, the State Fire Marshal assumes the duties of the local county, municipality, or independent special fire control district with respect to firesafety inspections of educational property.<sup>60</sup>

A person who violates any provision of ch. 633, F.S., Fire Prevention and Control, any order or rules of the State Fire Marshal, or any order to cease and desist or to correct conditions, commits a misdemeanor of the second degree.<sup>61</sup>

It is unlawful to impersonate the State Fire Marshal or a firesafety inspector. A person who impersonates either official commits a felony of the third degree, and if the impersonation occurs during the commission of a separate felony, a person commits a felony of the first degree.<sup>62</sup> Section 468.629, F.S., makes it illegal for a person to influence a building code enforcement official by coercion or compensation.<sup>63</sup> Any person who commits such acts commits a misdemeanor of the first degree, and, if the person was previously convicted of such act, a felony of the third degree.<sup>64</sup>

### ***Firefighters Employment, Standards, and Training Council (Council)***

The council comprises 14 members and the members are appointed as follows:

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;

<sup>56</sup> Sections 633.108 and 633.208, F.S.

<sup>57</sup> Section 633.216(1), F.S.

<sup>58</sup> Section 633.102(12), F.S.

<sup>59</sup> Section 633.104(1), F.S.

<sup>60</sup> Section 633.104(7), F.S.

<sup>61</sup> Section 633.124(1), F.S.

<sup>62</sup> Section 633.122, F.S.

<sup>63</sup> Section 468.629(1)(f) and (g), F.S.

<sup>64</sup> Section 468.629(2), F.S.

- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.<sup>65</sup>

There are certain eligibility requirements set forth for membership. Members shall serve only as long as they continue to meet the criteria under which they were appointed or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.<sup>66</sup> Members are appointed for four year terms, are not eligible to serve more than two consecutive terms,<sup>67</sup> and serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.<sup>68</sup>

The council has special powers in connection with the employment and training of firefighters to recommend for adoption by the Division of State Fire Marshal:<sup>69</sup>

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters;
- Minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters; and
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.

In addition, the council may make or support studies on any aspect of firefighting employment, education, and training or recruitment or may make recommendations concerning any matter within its purview.<sup>70</sup>

### ***Volunteer Firefighter Employment***

The National Fire Prevention Association estimates that there were 1,115,000 career and volunteer firefighters in the United States in 2018; of this total, 370,000 (33 percent) were career firefighters and 745,000 (67 percent) were volunteer firefighters.<sup>71</sup> At least 315 Florida fire departments utilize volunteers to sustain operations and, according to the Division of State Fire

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<sup>65</sup> Section 633.402(1)(a), F.S.

<sup>66</sup> Section 633.402(1)(b), F.S.

<sup>67</sup> Section 633.402(2), F.S.

<sup>68</sup> Section 633.402(7), F.S.

<sup>69</sup> Section 633.402(9), F.S.

<sup>70</sup> Section 633.402(9)(d)-(e), F.S.

<sup>71</sup> National Fire Prevention Association, *U.S. Fire Department Profile – 2018 Supporting Tables*, (Feb. 2020) <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osFDProfileTables.pdf> (last visited March 17, 2021).

Marshal, approximately 12 million Florida residents depend on volunteer firefighters to protect their communities.<sup>72</sup> The Firefighter Assistance Grant Program (FAGP), created in 2016 to improve the emergency response capability of fire departments reliant on volunteer firefighters, provides grant money to such fire departments to provide volunteer firefighter training and procure firefighter personal protective equipment.<sup>73</sup> The FAGP funds of one million dollars is only available for instructor reimbursement for skills sign-offs, personal protection equipment (PPE), supplied air respirators (SCBA), and cost share subsidy for Federal Emergency Management Agency's Assistance to Firefighters Grants Program (AFG) apparatus awards.<sup>74</sup> Since its inception, the FAGP has awarded 84 grants.<sup>75, 76, 77</sup>

Florida fire service providers are currently prohibited from employing an individual to extinguish fires, or to supervise those who do, unless the individual holds a current and valid Firefighter Certificate of Compliance.<sup>78</sup> Thus, fire service providers are currently prohibited from employing volunteer firefighters, who hold a Volunteer Firefighter Certificate of Completion. Volunteer firefighters can enter immediately dangerous to life and health (IDLH) environments. However, if employed by the same department prior to achieving a Firefighter Certificate of Compliance they would not be allowed to enter the IDLH environments they were authorized to enter the day before beginning career employment.<sup>79</sup>

### ***False Personation***

Pursuant to s. 843.08, F.S., any person who falsely assumes or pretends to be an officer of a specified type commits a felony of the third degree, a felony of the second degree when committed with another felony, and a felony in the first degree if the felony is the cause of death or personal injury of another individual.<sup>80</sup> A person who impersonates an officer of the DFS is subject to these criminal penalties.<sup>81</sup> However, there is no criminal penalty for impersonating an investigator or personnel of the DFS. According to the DFS, it employs personnel who are not officers but have access to active criminal cases and conduct criminal investigations.<sup>82</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> Section 633.135 F.S.

<sup>74</sup> Department of Financial Services, Division of State Fire Marshal, *FY 2019 – 2020 Florida Firefighter Assistance Grant Program*, <https://www.myfloridacfo.com/division/sfm/volff/ff-grant.htm> (last visited March 17, 2021).

<sup>75</sup> Department of Financial Services, Division of State Fire Marshal, *FY2017 Florida Firefighter Assistance Grant Award Outcomes*, [https://www.myfloridacfo.com/division/sfm/VOLFF/FY2017\\_GrantOutcomes.pdf](https://www.myfloridacfo.com/division/sfm/VOLFF/FY2017_GrantOutcomes.pdf), (last visited March 17, 2021).

<sup>76</sup> Department of Financial Services, Division of State Fire Marshal, *FY2018 Florida Firefighter Assistance Grant Award Outcomes*, [https://myfloridacfo.com/Division/SFM/VOLFF/FY2018\\_GrantOutcomes.pdf](https://myfloridacfo.com/Division/SFM/VOLFF/FY2018_GrantOutcomes.pdf), (last visited March 17, 2021).

<sup>77</sup> Department of Financial Services, Division of State Fire Marshal, *FY2019 Florida Firefighter Assistance Grant Award Outcomes*, [https://www.myfloridacfo.com/division/sfm/VOLFF/FY2019\\_GrantOutcomes.pdf](https://www.myfloridacfo.com/division/sfm/VOLFF/FY2019_GrantOutcomes.pdf) (last visited March 17, 2021).

<sup>78</sup> Section 633.416(1)(a), F.S.

<sup>79</sup> *See supra* note 4; and s. 633.416(1)(a), F.S.

<sup>80</sup> Section 843.08, F.S., contains a list specifying which types of officers it is unlawful to impersonate. This list includes, but is not limited to, firefighters, sheriffs, officers of agencies, and school guardians.

<sup>81</sup> Section 843.08, F.S.

<sup>82</sup> *See supra* note 4.

## **Insurance Field Representatives and Operations**

### ***Appointment Requirements***

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

### ***Duration of Suspension or Revocation for Title Insurance Agents***

Section 626.844, F.S., authorizes the DFS to suspend or revoke the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency, upon certain specified grounds. However, an order may not suspend such license or appointment for more than one year.<sup>83</sup>

### ***Eligibility for Export of Insurance Coverage and Export of Flood Insurance Policies***

In general, insurance policies written in Florida must be done so by Florida authorized insurers. However, standard insurance companies authorized to do business in Florida may not be able to, or unwilling to, take on certain unusual or high risks. These types of risks could include older homes near the coast, yachts, home day-care liability, medical malpractice, and professional athletes insuring certain body parts.<sup>84</sup> These policies are instead written in the surplus lines market and are sold through surplus lines agents.<sup>85</sup> To “export” an insurance policy means to place a policy with a surplus lines insurer who is not part of the standard/admitted insurance market.<sup>86</sup> Section 626.916(1), F.S., requires that insurance coverage is not eligible for export unless all of certain conditions are met. These conditions include:

- The full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in Florida, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.
- The premium rate at which the coverage is exported may not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.
- The policy or contract form under which the insurance is exported may not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in

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<sup>83</sup> Section 626.844(1), F.S.

<sup>84</sup> Department of Financial Services, Florida Surplus Lines Office, *Understanding Florida’s Excess and Surplus Market*, <https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/SurplusLinesConsumerBrochure.pdf> (last visited March 17, 2021).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*; s. 626.914(3), F.S.

actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks, subject to certain exceptions.

- Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported may provide not for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts actually and currently used by a Florida authorized insurer.
- For personal residential property risks, the retail or producing agent must provide specified notice to the insured that coverage may be available, and may be less expensive, from Citizens Property Insurance Corporation.

There is no clear language in the Florida Insurance Code that allows a surplus lines agent to export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage. A provision in s. 627.715, F.S., which allowed surplus lines agents to do so, expired on July 1, 2019.

Currently, the private residential flood insurance market is a small but growing percentage of total policies written in the state. The vast majority of residential flood insurance policies are written by the National Flood Insurance Program—a federal insurance program. While Florida has the largest private residential market in the United States, only three percent of residential flood insurance policies are written by private insurers.<sup>87</sup>

#### ***Provision of Replacement Cost Estimator and Other Underwriting Information Relating to Real Estate Loans***

According to the DFS, many lenders require consumers or their insurance agent or broker to provide, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, the replacement cost estimator or other underwriting information that is the proprietary business information of the insurer underwriting the insurance policy covering such property.<sup>88</sup> In some situations, lenders have used this proprietary business information of the insurers for reasons that are outside the scope of the insurance policy.

#### **Unlicensed Bail Bond Agent Activity**

Section 648.30, F.S., addresses the unlicensed activity relating to bail bond agents and temporary bail bond agents. Specifically, the section states that one may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed as provided in ch. 648, F.S. The section also prohibits one from representing himself or herself to be a bail enforcement agent, bounty hunter, or other similar title and also provides restrictions on whom may apprehend, detain, or arrest a principal on a bond. The section, however, does not provide a specific penalty for persons aiding and abetting another person violating the section.<sup>89</sup>

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<sup>87</sup> Brett Lingle and Carolyn Kousky, *Issue Brief: Florida's Private Residential Insurance Market*, Wharton School of Business at the University of Pennsylvania: Risk Management and Decision Processes Center (Sep. 2018), available at: <https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/09/Florida-Private-Flood-Issue-Brief.pdf>. (last visited March 17, 2021)

<sup>88</sup> See *supra* note 4.

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

## **Public Records Law**

### ***Access to Public Records – Generally***

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>90</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>91</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2) and (3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.<sup>92</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>93</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### ***Executive Agency Records – The Public Records Act***

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>94</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>95</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include, “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>96</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

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<sup>90</sup> FLA. CONST. art. I, s. 24(a).

<sup>91</sup> *Id.*

<sup>92</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

<sup>93</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>94</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>95</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>96</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).



custodian of the public record.<sup>97</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>98</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>99</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>100</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>101</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>102</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>103</sup> Custodians of records designated as “confidential and exempt” may not disclose the record, except under circumstances specifically defined by the Legislature.<sup>104</sup>

### ***Open Government Sunset Review Act***

The Open Government Sunset Review Act<sup>105</sup> (the Sunset Review Act) prescribes a legislative review process for newly created or substantially amended<sup>106</sup> public records or open meetings exemptions, with specified exceptions.<sup>107</sup> It requires the automatic repeal of each such exemption on October 2nd of the fifth year after it is created or substantially amended, unless the Legislature reenacts the exemption.<sup>108</sup> However, an exemption may be reviewed under the Sunset Review Act prior to the fifth year since enactment.

The Sunset Review Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is

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<sup>97</sup> Section 119.07(1)(a), F.S.

<sup>98</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>99</sup> FLA. CONST. art. I, s. 24(c).

<sup>100</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>101</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>102</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>103</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>104</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>105</sup> Section 119.15, F.S.

<sup>106</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>107</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>108</sup> Section 119.15(3), F.S.

necessary.<sup>109</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>110</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>111</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>112</sup>

The Sunset Review Act also requires specified questions to be considered during the review process.<sup>113</sup> In examining an exemption, the Sunset Review of Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>114</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>115</sup>

### ***General Public Records Exemptions for State Agency Personnel***

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's social security number, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.<sup>116</sup>

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<sup>109</sup> Section 119.15(6)(b), F.S.

<sup>110</sup> Section 119.15(6)(b)1., F.S.

<sup>111</sup> Section 119.15(6)(b)2., F.S.

<sup>112</sup> Section 119.15(6)(b)3., F.S.

<sup>113</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>114</sup> See generally s. 119.15, F.S.

<sup>115</sup> Section 119.15(7), F.S.

<sup>116</sup> Section 119.071(4)(a) and (b), F.S.

### ***Social Security Numbers***

Social security numbers of all current and former agency personnel, which are held by an employing agency, are confidential and exempt.<sup>117</sup> An employing agency may only release social security numbers for the following reasons:

- It is required by state or federal law, or court order.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.<sup>118</sup>

In addition, there is a general exemption for social security numbers that applies to the public that makes social security numbers confidential and exempt.<sup>119</sup> This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.<sup>120</sup>

### ***Medical Information***

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.<sup>121</sup>

### ***Personal Identifying Information***

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.<sup>122</sup>

### ***Public Records Exemptions for Enumerated Personnel***

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency that holds the employee's information.<sup>123</sup> Additionally, all of these exemptions have retroactive application.<sup>124</sup> In order to have such exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.<sup>125</sup> Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.<sup>126</sup>

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<sup>117</sup> Section 119.071(4)(a)1., F.S.

<sup>118</sup> Section 119.071(4)(a), F.S.

<sup>119</sup> Section 119.071(5)(a)5., F.S.

<sup>120</sup> Section 119.071(5)(a)6.f. and g., F.S.

<sup>121</sup> Section 119.071(4)(b)1., F.S.

<sup>122</sup> Section 119.071(4)(b)2., F.S.

<sup>123</sup> Section 119.071(4)(d)3., F.S.

<sup>124</sup> Section 119.071(4)(d)5., F.S.

<sup>125</sup> Section 119.0714(2)(f) and (3)(f), F.S.

<sup>126</sup> Section 119.071(4)(d)4., F.S.

***Confidential and Exempt – Alleged Sexual Harassment Victim***

Section 119.071(2)(n), F.S., provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt.<sup>127</sup> Such information may be disclosed to another governmental entity in the furtherance of its official duties.<sup>128</sup>

Section 119.10(2)(a), F.S., provides that any person who willfully and knowingly violates any provisions of ch. 119, F.S., commits a first degree misdemeanor punishable by imprisonment up to one year or a fine up to \$1,000.

**III. Effect of Proposed Changes:**

**Division of Public Assistance Fraud (Sections 1 and 27)**

**Section 1** amends s. 20.121(2)(f), F.S., to designate the Department of Financial Services (DFS), Division of Public Assistance Fraud (DPAF) as a criminal justice agency for the purposes of ss. 943.045-943.08, F.S. The DFS asserts that the designation allows the DPAF to continue having access to criminal justice information contained in Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) systems of criminal records when conducting criminal investigations and other law enforcement support functions.<sup>129</sup>

**Section 26** amends s. 943.045, F.S., to include the DPAF in the definition of “criminal justice agency.”

**State Risk Management**

***Benefits in Lieu of Workers Compensation Benefits – Florida Firefighters***

**Section 2** amends s. 284.30, F.S., to add benefits payable to firefighters diagnosed with cancer pursuant to s. 112.1816(2), F.S., to the self-insurance coverage provided through the State Risk Management Trust Fund (trust fund).

**Section 3** amends s. 284.31, F.S., to require separate accounting in the trust fund for benefits payable to firefighters who are employees of a state agency and diagnosed with cancer.

**Section 4** amends s. 284.385, F.S., to require the Department of Management Services to validate and approve firefighter cancer benefits before such benefits may be disbursed from the trust fund.

***Workplace Sexual Harassment***

**Section 5** creates s. 284.45, F.S., to define a sexual harassment victim as an individual employed with, or being considered for, employment with an entity participating in the trust fund, who becomes a victim of workplace sexual harassment within the entity. The bill prohibits individuals

<sup>127</sup> Section 119(2)(n), F.S., and s. 24(a), Art. 1 of the State Constitution

<sup>128</sup> Subject to the Open Government Sunset Review Act and stands repeal on October 2, 2022 unless reviewed and saved from repeal through reenactment by the Legislature.

<sup>129</sup> See *supra* note 4.

working for an entity covered by the trust fund from engaging in retaliatory conduct, of any kind, toward a sexual harassment victim.

The section also prohibits the willful and knowing distribution of personal identifying information of a sexual harassment victim. Personal identifying information of a victim may not be distributed to any party other than a government entity, in furtherance of its official duties, or pursuant to a court order. Any violation results in a first degree misdemeanor, punishable as provided in s. 775.082, F.S.

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

### ***Composition and Business of Board of Funeral, Cemetery, and Consumer Services (Board)***

**Section 6** amends s. 497.101, F.S., to reduce the minimum number of nominations the Chief Financial Officer (CFO) must make for nine board member positions from three nominations to one, though the CFO may still nominate up to three persons to fill one or more vacancies. The bill also reduces from three to two the number of positions on the board that must be filled by consumers who are residents of Florida; have never been licensed funeral directors or embalmers; are not connected with a cemetery or licensed cemetery company; and are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition. The board must also now have a consumer member who is: a resident; a licensed certified public accountant (CPS) who has never been licensed as a funeral director or embalmer; is not a principal or employee of any ch. 497, F.S., licensee; and is not otherwise in control (as defined in s. 497.005, F.S.) over any ch. 497, F.S., licensee. This change essentially requires the appointment of a licensed CPA who has some knowledge of and association with, but not a controlling interest in, licensees in the death care industry.

Necessary conforming changes have also been made to properly implement the above changes. This includes revising the definition of a “quorum” for the purposes of conducting board business to constitute a simple majority of eligible members instead of six members. The bill also allows members to appear electronically and still be counted in regards to a determination of quorum.

The section also eliminates outdated statutory provisions regarding the implementation of staggered terms of board members upon the expiration of the initial terms of the board members. This staggering of terms has already been established and is no longer needed. The bill eliminates the DFS’ rulemaking responsibilities concerning the application process, which the DFS asserts is unnecessary, as the Governor makes the appointments.<sup>130</sup>

### ***Disqualification of Funeral, Cemetery, and Consumer Services Licensure Applicants***

**Section 7** of the bill creates s. 497.1411, F.S., to provide and clarify grounds for disqualification of Funeral, Cemetery, and Consumer Services licensure applicants under ch. 497, F.S., based on such applicant’s criminal history.

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<sup>130</sup> *Id.*

Subsection (1) defines “applicant,” “felony of the first degree,” “capital felony,” and “financial services business.”

Subsection (2) enumerates crimes that, if an applicant is found guilty of or pleads nolo contendere to, regardless of adjudication, permanently bar the applicant from licensure under ch. 497, F.S. These crimes are a first degree felony, a capital felony, a felony money laundering offense, or a felony embezzlement.

Subsection (3) provides the following disqualifying periods for other specified crimes:

- A 10-year disqualifying period for all felonies involving moral turpitude not subject to a permanent bar on licensure as specified in subsection (2); and
- A five-year disqualifying period for all other felonies, and for all misdemeanors directly related to the financial services business. The section defines “financial services business” as any financial activity regulated by the DFS, the Office of Insurance Regulation, or the Office of Financial Regulation.

These specifications are intended to provide clarity beyond the current statutory scheme, which provides no guidelines to determine whether a specific crime is considered “directly or indirectly related to or involving any aspect of the practice or business” of death care industry functions. The DFS suggests that the lack of clarity and guidance in current law has led to inconsistencies in recommendations and board rulings on applications.<sup>131</sup>

Subsection (4) requires the DFS to adopt rules to administer the section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant’s criminal history. The rules must also provide mitigating and aggravating factors, except that mitigation may not result in a disqualification period of less than five years.

Subsection (5) specifies that a disqualifying period begins upon an applicant’s final release from supervision or upon completion of the applicant’s criminal sentence. The subsection further prohibits the DFS from issuing a license unless all related fines, court costs and fees, and court-ordered restitutions have been paid.

Subsection (6) places the burden of proof for rehabilitation on the applicant.

Subsection (7) allows the DFS to award a license, despite a conviction, upon a grant of a pardon or restoration of civil rights.

Subsection (8) authorizes the board to grant an exemption from a criminal record related disqualification, and provides standards for mitigating factors. The subsection also clarifies that ch. 120, F.S., provides administrative remedies available to applicants for whom the board has granted or denied an exemption.

Subsection (9) clarifies that the disqualification periods provided in this section do not apply to the renewal of a license or to a new licensure application if the applicant has an active license as

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<sup>131</sup> *Id.*

of July 1, 2021, and the applicable criminal history was considered by the board on the prior active license approval.

### ***Licensing Background Checks***

**Section 8** amends s. 497.142, F.S., to require certified true copies of any crime committed in any jurisdiction in order to deem an application under ch. 497, F.S., complete, regardless of how many years have passed. The bill requires disclosure of all felonies, regardless of when committed and regardless of adjudication. It also requires disclosure of any misdemeanor directly or indirectly related to the financial services business,<sup>132</sup> no matter when committed.

### ***Unlicensed Practice***

**Section 9** of the bill amends s. 497.157, F.S., to increase penalties for unlicensed activity under ch. 497, F.S., from a misdemeanor of the second degree (as provided in s. 497.159(6), F.S.) to a felony of the third degree. Section 9 also expands unlicensed activity to include acting, advertising, or otherwise holding oneself out to be a funeral director, embalmer, direct disposer, or preneed sales agent, unless currently licensed and appointed (as necessary) as such.

**Section 10** of the bill amends s. 497.159, F.S., by making a conforming change to remove the second-degree misdemeanor penalty for unlicensed activity under ch. 497, F.S.

### **Explosives**

**Section 11** updates the definition of “two-component explosives” in s. 552.081, F.S., by removing the requirement of a “No. 6 blasting cap,” and replacing it with a “detonator.” According to the DFS, the No. 6 blasting cap is no longer manufactured and the statutory revision brings the section in line with current practices.<sup>133</sup>

### **Fire Alarm Permits**

**Section 12** amends s. 553.7921, F.S., to authorize contractors to begin repairs on existing, permitted fire alarms upon filing a Uniform Fire Alarm Permit Application but prior to receiving the permit for the repair. However, fire alarms repaired under such circumstances are not compliant until the permit is issued and the local law enforcement agency approves the repair.

### **Continuing Education Requirements**

**Section 13** amends s. 626.2815, F.S., by lowering the update course requirement to four hours for individuals licensed to solicit, sell, or adjust insurance in the state, barring title insurance agents. The update course is raised to six hours for an individual who holds a license as a customer representative, and who is not a licensed life or health agent. Licensees must complete 20 hours of elective continuing education every two years, and if a licensee has been licensed for six years or more, he or she must complete 16 hours of continuing education every two years. Lastly, individuals subject to chapter 648, F.S., relating to bail bond agents, are required to

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<sup>132</sup> The bill defines financial services business as “any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.”

<sup>133</sup> *Supra* note 4.

complete a four-hour update course and a minimum of 10 hours of continuing education every two years.

The effective date of this section is January 1, 2022.

### **Appointments to Transact Insurance or Adjust Claims on Behalf of an Insurer or Employer**

**Section 14** amends s. 626.371, F.S., to indicate that all appointments, including renewal appointments, must be submitted no later than 45 days from the effective date of the appointment. The section also specifies that if the DFS determines an individual was not properly appointed and that said appointment was an inadvertent error, the appointing entity will be informed of its obligation by the DFS and must pay all associated fees and taxes within 21 days. Upon payment of said fees, the DFS may issue or authorize issuance of appointment and consider the inadvertent failure to no longer be a violation. If said fees and taxes are not paid on time, the DFS must suspend the appointing entity's authority to appoint licensees until all outstanding fees have been paid.

### **Title Insurance License and Appointment Suspension Period for Violations of the Florida Insurance Code**

**Section 15** amends s. 626.8443, F.S., to increase the maximum license suspension time for title insurance agents and agencies from one year to two years. This change is consistent with similar language related to other agent and agency types, including insurance representatives,<sup>134</sup> viatical settlement providers,<sup>135</sup> and Patient Protection and Affordable Care Act health exchange navigators.<sup>136</sup>

### **Insurance Coverage Eligibility for Export**

**Section 16** amends s. 626.916, F.S., to remove the requirement for personal residential property agents to notify an insured in writing, prior to exporting coverage to the surplus lines marketplace, that less expensive coverage may be available from Citizens Property Insurance Corporation.

### **Coercion to Provide Proprietary Underwriting Information**

**Section 17** amends s. 626.9551, F.S., to prohibit an insurance agent or agency from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information—including the replacement cost estimator—as a condition precedent to lending money or extending credit which is to be secured by real property. The section also prohibits an insurance agent or agency from providing such information without authorization from the insurer.

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<sup>134</sup> Section 626.641(1), F.S.

<sup>135</sup> Section 626.9914(2), F.S.

<sup>136</sup> Section 626.9957(9), F.S.



## **Exporting of Flood Insurance Coverage**

**Section 18** amends s. 627.715, F.S., to allow flood insurance coverage to be exported to an eligible surplus lines insurer without the agent complying with the requirement of s. 626.916(1)(a), F.S., to make a diligent effort to seek coverage with at least three authorized insurers.

## **Florida Fire Marshal – Florida Fire Prevention and Control**

### ***Fire and Emergency Incident Information Reporting Program***

**Section 19** amends s. 633.136, F.S., by replacing “fire protection agencies” with “fire service providers,” specifies that “fire service provider” is defined as in s. 633.102, F.S., and removes a requirement that Division of State Fire Marshal define by rule the term “fire protection agency.” Section 633.102(13), F.S., defines “fire services provider” as a municipality or county, the state, the Division of State Fire Marshall, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

This section also revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel (panel) to retain 15 members on the panel as currently provided in statute, but to remove requirements that the panel have one member from the Florida Forest Service and the Department of Health.

### ***Florida Fire Prevention Code***

**Section 20** amends s. 633.202(18), F.S., to extend by one year to January 1, 2023, the deadline for existing high-rise buildings to comply with requirements for minimum radio strength for fire department communications. The section eliminates a requirement that existing high-rise buildings not in compliance with the requirements for minimum radio strength for fire department communications apply for appropriate permitting by December 31, 2019. The section does, however, require that such buildings complete a minimum radio strength assessment by January 1, 2022, with compliance by January 1, 2023.

The bill eliminates the requirement that existing apartment buildings apply for a permit for the required communications installation by December 31, 2022, and instead requires completion of a minimum radio strength assessment by that date.

### ***Influencing a Firesafety Inspector***

**Section 21** creates s. 633.217, F.S., to prohibit influencing or attempting to influence a firesafety inspector by threatening, coercing, tricking, or offering compensation for the purpose of inducing the firesafety inspector to violate any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. Subsection (2) prohibits a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe. Section 633.124(1), F.S., provides that any person who violates any

provision of ch. 633, F.S., commits a misdemeanor of the second degree. Thus, a violation of s. 633.217, F.S., would carry such a penalty.

### ***Firefighters Employment, Standards and Training Council***

**Section 22** amends s. 633.402, F.S., to revise the composition of the Firefighters Employment, Standards, and Training Council to include one individual from the Department of Health, appointed by the Surgeon General. This increases the size of the board from 14 to 15 members.

### ***Volunteer Firefighter Employment***

**Section 23** amends s. 633.416, F.S., to authorize fire service providers to employ volunteer firefighters and allow them to act in volunteer firefighter capacity for up to one year under the direct supervision of an individual holding a valid firefighter certificate of compliance while they obtain career firefighter certifications. This will increase the availability of firefighters capable of entering immediately dangerous to life and health environments and protecting their communities. The DFS anticipates that this change will improve rural and small agency recruitment and retention efforts by facilitating the hiring of local candidates who are more inclined to remain in the area instead of hiring candidates from other parts of the state who are inclined to return to their home communities once gaining some experience.<sup>137</sup>

### ***Aiding and Abetting Unlicensed Bail Bond Agent***

**Section 24** amends s. 648.30, F.S., to make it a felony of the third degree for a licensee to knowingly aid or abet a person in violating the section. Section 648.30, F.S., prohibits: acting as a bond agent or temporary bail bond agent without being qualified, licensed, and appointed as provided in ch. 648; representing oneself as a bail enforcement agent, bounty hunter, or other similar title; and apprehending, detaining, or arresting a principal on a bond unless said person is a law enforcement officer or is qualified, licensed, and appointed as provided in ch. 648 or licensed as a bail bond agent or bail bond enforcement agent (or holds an equivalent license from where the bond in question was written).

Presently, s. 777.011, F.S., includes as a “principal in the first degree” a person who aids, abets, counsels, hires, or otherwise procures a criminal offense to be committed. Thus, such person may be charged, convicted, and punished, with the underlying criminal offense even if they were actually or constructively present at the commission of such offense. Accordingly, given current statutory provisions regarding aiding and abetting, appears to merely clarify or restate existing law.

### ***False Personation***

**Section 25** of the bill amends s. 843.08, F.S., to expand the applicability of criminal penalties associated with false personation of an officer to apply to the impersonation of any personnel or representative of the Division of Investigative and Forensic Services.

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<sup>137</sup> See *supra* note 4.

**Reenactment**

**Section 27** reenacts s. 497.141, F.S., to incorporate changes made to s. 497.142, F.S., in Section 8 of the bill.

**Effective Date**

**Section 28** provides, except as otherwise expressly provided and except for Section 28, which shall take effect upon the act becoming law, the bill has an effective date of July 1, 2021.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill has an indeterminate negative impact to state revenues and expenditures.

The Department of Financial Services (DFS) has indicated minor modifications will need to be made to the Division of Insurance Agent and Agency Services systems in order to create a tool for enabling of disabling the ability of a party to appoint licensees. The DFS

indicates these changes can be addressed during ongoing system updates and within existing resources.<sup>138</sup>

The bill has an indeterminate negative fiscal impact to the State Risk Management Trust Fund. The DFS estimates expenses relating to self-insuring firefighter cancer benefits to be less than \$100,000 annually.<sup>139</sup>

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

Section 9 of the bill amends and increases the penalty related to unlicensed activity pursuant to ch. 497, F.S., from a second degree misdemeanor to a third degree felony, and extends this penalty to impersonating a funeral director, embalmer, direct disposer, or a preneed sales agent. Section 21 of the bill creates a new criminal violation, a second degree misdemeanor, for improperly influencing a firesafety inspector or a firesafety inspector accepting an attempt at such influence. Section 25 expands false personation, which carries first, second and third degree felony penalties, to include all personnel or representatives of the Division of Investigative and Forensic Services. These changes could increase an indeterminate number of people who are subject to misdemeanor or felony penalties. The bill has a positive/negative indeterminate prison bed impact.

#### **VI. Technical Deficiencies:**

Section 5 of the bill, creating s. 284.45, F.S., prohibits individuals working for an entity covered by the State Risk Management Trust Fund from engaging in retaliatory conduct of any kind against a sexual harassment victim in subsection (1). While the provision specifies the prohibited behavior, it does not provide any punishment or other consequences for violation. Also, in proposed s. 284.45(2), F.S., a prohibition of the willful and knowing dissemination of personal identifying information of a sexual harassment victim is provided. Based on the placement of this provision in ch. 284, F.S., and the context provided by subsection (1), this provision appears to only apply to individuals working for entities covered by the State Risk Management Trust Fund, however, the subsection does not state this explicitly. Given that this provision provides for a criminal penalty, and that such provisions are strictly construed,<sup>140</sup> the Legislature should consider specifically defining to whom the provisions of subsection (2) apply.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.121, 284.30, 284.31, 284.385, 497.101, 497.142, 497.157, 497.159, 552.081, 553.7921, 626.2815, 626.371,

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<sup>138</sup> See *supra* note 4.

<sup>139</sup> *Id.*

<sup>140</sup> Section 775.021(1), F.S., provides that “offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.”

626.8443, 626.916, 626.9551, 627.715, 633.136, 633.202, 633.402, 633.416, 648.30, 843.08, and 943.045.

This bill creates the following sections of the Florida Statutes: 284.45, 497.1411, and 633.217.

This bill reenacts section 497.141 of the Florida Statutes.

## **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

### **CS by Banking and Insurance on March 10, 2021:**

The committee substitute:

- Clarifies that payments for firefighter cancer benefits are to be made to employees of state agencies;
- In regards to the disclosure of the personal identifying information of sexual harassment victims, a definition of “personal identifying information” is deleted. This deletion addresses a potential issue where this definition could have been construed as expanding an existing public record exception, thereby necessitating a separate bill;
- Clarifies that when the Department of Financial Services (DFS) determines an individual was not properly appointed and that said appointment was an inadvertent error by the insurer or employer, both back taxes and fees must be paid to have the DFS make the appointment and for the appointing entity to avoid suspension of their authority to appoint licensees;
- Clarifies and simplifies language prohibiting an insurance agent from giving, or a lender from requiring, a copy of an insurer’s proprietary underwriting information as a condition precedent to extending credit secured by real estate;
- Clarifies language allowing flood insurance coverage to be exported to a surplus lines insurer without the agent first seeking to place the coverage with an admitted insurer;
- Deletes a provision revising the scope of fire protection system work for persons certified as a contractors by the Division of State Fire Marshal; and
- Clarifies a provision prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe.

- B. **Amendments:**

None.