

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 487 Department of Financial Services
SPONSOR(S): Commerce Committee and Insurance & Banking Subcommittee, Salzman
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/CS/SB 1158

FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 487 passed the House, as amended, on April 26, 2023. The bill was amended in the Senate on April 28, 2023, and returned to the House. The House concurred in the Senate amendments and subsequently passed the bill, as amended, on May 3, 2023.

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). Changes made by the bill include:

- Providing that county agencies, municipalities, and special districts must have adequate controls over tangible property.
- Changing the frequency of a required hurricane-related report by DFS from annual to triennial.
- Requiring insurers to bear certain costs and make certain elections prior to mediation of claims;
- Authorizing the suspension of agent appointments by insurers for non-payment of costs;
- Revising various requirements applicable to the DFS property insurance claims mediation program;
- Reducing certain administrative obligations of title agents and agencies; changing certain continuing education requirements; reducing barriers to licensing;
- Expanding the circumstances when DFS can suspend, revoke, or refuse to renew or continue the licenses and the types of criminal offenses that can disqualify an insurance agent licensee;
- Allowing reciprocal non-resident licenses in certain circumstances;
- Eliminating temporary bail bond licenses and creating a means to convert to regular bail bond agent licenses; specifying the qualifications of a primary bail bond agent;
- Converting bail bond agency registration to licensure;
- Improving processing of insolvent insurer estates;
- Authorizing a State Fire Marshal direct support organization, which is repealed in five years, unless saved by subsequent legislative action;
- Allowing any governmental employee to participate in the Deferred Compensation Plan;
- Ratifying the 2020 Workers' Compensation Health Care Provider Reimbursement Manual; eliminating the need for future Reimbursement Manual ratifications;
- Ratifying the workers' compensation "Health Care Provider Medical Billing and Reporting Responsibilities" rule and the "Insurer Authorization and Medical Bill Review Responsibilities" rule;
- Creating term limits, ethical requirements, and other improvements to specified Boards; authorizing the CFO to remove Board members in certain circumstances;
- Exempting travel-related transportation protection agreements for the preparation and return of human remains from regulation as a preneed funeral contract or insurance.
- Prohibiting certain practices in the issuance of collateral protection insurance;
- Increasing the reserve requirement for warranty associations;

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

The bill was approved by the Governor on May 25, 2023, ch. 2023-144, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

ORGANIZATION OF THE DEPARTMENT OF FINANCIAL SERVICES

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

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

Division of Accounting and Auditing

The mission of the Division of Accounting and Auditing is to safeguard public assets, settle the state's financial obligations, report financial information, and improve accountability of the state.⁴ The Division includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity. It is also empowered by statute to "examine, audit, adjust, and settle the accounts of all the officers of this state, and any other person in anywise entrusted with, or who may have received any property, funds, or moneys of this state, or who may be in anywise indebted or accountable to this state for any property, funds, or moneys, and require such officer or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law."⁵ In executing this power, the Division has the authority to conduct investigations, as necessary inside and outside of the state, and refer any suspected criminal conduct to the appropriate law enforcement and prosecutorial agency.

Every state and local government entity provides its financial information to DFS annually, so DFS can prepare annual financial statements for the state of Florida and provide an online clearinghouse for the

¹ Art. IV, s. 4, Fla. Const.

² S. 20.121, F.S.

³ This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.

⁴ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Accounting & Auditing*, <http://www.myfloridacfo.com/Division/AA/> (last visited Mar. 19, 2023).

⁵ S. 17.04, F.S.

financial statements of every county, municipality, and special district in Florida. The Florida Open Financial Statement System is open to public inspection.⁶

Effect of the Bill

The bill makes the following changes within the purview of the Division of Accounting and Auditing:

- Adds county agencies, municipalities, and special districts⁷ to those public entities that must have adequate controls over tangible property.

Division of Consumer Services

The Division of Consumer Services deals with consumer issues and complaints related to the jurisdiction of DFS and the Office of Insurance Regulation (OIR). The Division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by DFS or OIR to the appropriate division within DFS or OIR, as appropriate.⁸

Effect of the Bill

The bill:

- Mandates that a property insurer either make a claim determination or elect to repair under applicable law prior to participating in mediation allowed by statute.
- Allows DFS to suspend an insurer's ability to appoint agents to represent the insurer if the insurer does not pay required mediation fees timely.
- Removes a requirement that DFS adopt rules governing qualifications, denials of application, suspension, revocation of approval, and penalties applicable to mediators related to DFS property insurance claim mediation program.
- Provides that mediation costs must be reasonable, that the insurer bears all such costs, but requires the policyholder must pay the costs of rescheduling mediations in certain circumstances. If an insurer representative attends a mediation, but lacks authority to settle the claim, the insurer is deemed to have not appeared, in which case the insurer must pay the insured's actual costs of attendance and the cost of rescheduling the mediation, including DFS' costs. If the per-mediation-event administrative fee is not paid timely, the mediation administrator may request that DFS suspend the insurer's ability to appoint agents to represent the insurer.
- Removes mediation-related tolling of time to file a lawsuit on the disputed claim.
- Deletes a requirement that the policy include details on requirements for filing of first-party claims mediation.
- Repeals mediation program requirements, including:
 - That the mediation must be a formal process;
 - Mediators be randomly selected, with options and process to handle rejections of the selected mediator; and,
 - Equal sharing of costs.

⁶ S. 218.32(1)(h), F.S.

⁷ As defined in s. 189.12, F.S.

⁸ S. 20.121(2)(h), F.S.

Division of Insurance Agent and Agency Services

The 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.⁹

No person may be, act as, or advertise, or hold himself/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.¹⁰ 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.¹¹

General Lines Agent

A general lines agent¹² is one who sells the following lines of insurance: property;¹³ casualty,¹⁴ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,¹⁵ or a workers' compensation self-insurance fund;¹⁶ surety;¹⁷ health;¹⁸ and, marine.¹⁹ 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.²⁰

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.²¹

Bail Bond Agents

Currently, a person may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed.²² A person also may not represent himself or herself to be a bail enforcement

⁹ Ch. 626, parts I, II, III, IV, V, VI, VIII, IX, and XIII, F.S.

¹⁰ S. 626.112, F.S.

¹¹ S. 626.015, F.S.

¹² S. 626.015(5), F.S.

¹³ S. 624.604, F.S.

¹⁴ S. 624.605, F.S.

¹⁵ As defined in s. 624.462, F.S.

¹⁶ Pursuant to s. 624.4621, F.S.

¹⁷ S. 626.606, F.S.

¹⁸ Ss. 624.603 and 627.6482, F.S.

¹⁹ S. 624.607, F.S.

²⁰ S. 626.829, F.S.

²¹ S. 627.786, F.S.

²² S. 648.30(1), F.S.

agent, bounty hunter, or other similar title, and a person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond unless qualified, licensed, and appointed.²³

Effect of the Bill

The bill makes the following changes related to agents and agencies:

Generally –

- Removes the requirement that applicants be fingerprinted at a designated examination center; but, retains the remaining fingerprinting options that include a law enforcement agency or other DFS-approved entity.
- Relieves title insurance, life insurance, and annuity insurance agents and agencies from the requirement that they notice all active policyholders of an office closure that is more than 30 days because the related policies are not continually serviced by the agent or agency.
- Clarifies that a licensee that possesses an advanced degree beyond a Bachelor's degree is eligible for a reduced continuing education requirement; six hours every two years, rather than 20 hours every two years, or other variations thereof depending on experience and credential.
- Removes a prohibition on licensees holding a limited license in motor vehicle damage and mechanical breakdown insurance, industrial fire insurance, burglary insurance, or credit insurance from holding multiple licenses.
- Expands the type of criminal background that allows DFS to suspend, revoke, or refuse to renew or continue the license or appointment of a licensee to include a misdemeanor related to the financial services business, this is in addition to any felony or crime punishable by one year or more in prison.
- Allows DFS to suspend, revoke, or refuse to renew or continue the license or appointment of a licensee who has lost their resident license in another state.
- Permits DFS to suspend, revoke, or refuse to renew or continue the license or appointment of a title agent or agency that:
 - Misappropriates, converts, or unlawfully withholds funds related to an escrow agreement, real estate sales contract, or settlement of a real estate transaction; or
 - Is the subject of an adverse action against a license or similar credential in another state, a court of competent jurisdiction, or federal agency, or similar.
- Reduces a reinsurance intermediary credential from a license to an appointment and removes the \$50 application and license fee for a reinsurance intermediary; such intermediaries are otherwise licensed as another type of insurance licensee.
- Allows DFS to cancel an insurer's ability to appoint agents when an insurer fails to timely pay the exchange of business fee that the insurer is beholden to pay for the agent and applicable to reported agent production activity.
- For the purposes of title agents and agencies, changes the authority to act as an escrow agent from the title agent to the title agency and removes the obligation to invest the escrow funds consistent with the requirements applicable to state investment of funds.
- Broadens the qualifying continuing education courses that public adjusters may take from those specially designed for public adjusters to any related to commercial and residential property and casualty coverage, claim adjusting, and any other adjuster courses approved by DFS.
- Allows DFS to deny the privileges of a temporary adjuster who has been lawfully appointed during a catastrophe or emergency for any violation described in Ch. 626, F.S., rather than only those in ss. 626.611 and 626.621, F.S.
- Provides for expiration of a health insurance navigator's registration if the navigator's fails to maintain a valid, active federal registration.
- Creates a limited insurance license to allow already licensed preneed funeral sales agents to be appointed to represent the preneed insurer.

²³ S. 648.30(2) and (3), F.S.

Bail Bonds –

- Eliminates the “temporary bail bond agent” license type; ends issuance of such licenses as of January 1, 2024; and expires all such licenses as of June 30, 2025.
- Removes authority to grant temporary licensure to the surviving spouse of a licensee to facilitate transfer or wrap-up of the deceased’s bail bond operations.
- Allows DFS to share complaint and investigatory information with other qualified law enforcement or regulatory agencies.
- Converts bail bond agency registration to licensure; requires all commensurate filings and actions consistent with such licensure and other similar types of licensure.
- Clarifies that bail bond agents and agencies must have insurer appointments to conduct business.
- Requires bail bond agencies to pay a fee; however, the referenced statute does not specify such fee, the bill does not amend that statute to create the fee, and there is no associated fee bill to create the fee.
- Allows required classroom instruction to be conducted in in-person and virtual formats consistent with the format allowed for other lines.
- Establishes qualifications for designation as the primary bail bond agent of an agency, which includes 24 months of experience as a bail bond agent immediately preceding the appointment.
- Allows permissible in-jail advertising to include and email address and web address.
- Prohibits all in-person or telephone contacts by bail bond agents or agencies between 9:00 pm and 8:00 am, rather just those related to domestic violence cases.
- Requires appointing insurers to certify that appointees have signed a specified sworn statement regarding owed premiums, discharges, and forfeitures.
- Expires a bail bond agency’s license by operation of law upon failure to file the designation of a new agent in charge with DFS following separation of the previous designee.

Division of Rehabilitation and Liquidation

Part I of ch. 631, F.S., relates to insurer insolvency and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.²⁴ Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of DFS is responsible for rehabilitating or liquidating insurance companies.²⁵ This process involves the initiation of a delinquency proceeding and the placement of an insurer under the control of DFS as the Receiver. The typical causes of insurer insolvency include undercapitalization, uncollectible or inflated assets, insufficient loss reserves for risks assumed, fraudulent transactions, failure to monitor agents, and mismanagement by directors and/or officers.²⁶

Upon a determination by OIR that one or more grounds exist for the initiation of delinquency proceedings and that such proceedings must be initiated, OIR must notify DFS of such determination and must provide DFS with all necessary documentation and evidence.²⁷ DFS subsequently initiates delinquency proceedings by either applying to the appropriate court for an order directing such an insurer to show cause why the proceedings should not be initiated or petitioning the court for the entry of a consent order.²⁸

²⁴ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

²⁵ Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

²⁶ Department of Financial Services, Agency Analysis of 2017 House Bill 837, p.2 (Feb. 20, 2017).

²⁷ S. 631.031, F.S.

²⁸ *Id.*

Effect of the Bill

The bill:

- Authorizes DFS as the Receiver to transfer estate property to a solvent insurer and share records with a prospective assuming insurer to extent necessary to conduct due diligence in the possible transfer of obligations.
- Permits the Receivership Court to set a date requested by the Receiver for policy cancellation as an earlier alternative to dates currently specified in statute.

Division of State Fire Marshal

Chapter 633, F.S., Fire Prevention and Control, designates the CFO as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.²⁹ The SFM also has the responsibility to minimize the loss of life and property due to fire.³⁰ Pursuant to this authority, the SFM regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal has two bureaus:

- The Bureau of Fire Prevention conducts safety inspections and reviews construction plans for all state-owned buildings, regulates fireworks and the fire sprinkler industry, inspects and licenses boilers, and certifies persons working in the fire suppression industry; and
- The Bureau of Firefighter Standards and Training approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards. Persons may be certified as a volunteer firefighter, firefighter, or administrator of a fire service provider (*i.e.* fire chief, fire coordinator, fire director, or fire administrator).³¹

Effect of the Bill

The bill authorizes the Division of State Fire Marshal to create a direct support organization to be known as the “State Fire Marshal Safety and Training Force” to support the safety and training of firefighters and recognize exemplary service.

Division of Treasury

The CFO, with approval of the State Board of Administration, is required to establish a deferred compensation plan for state employees under the “Government Employees’ Deferred Compensation Act.” A deferred compensation plan is a retirement savings plan that allows eligible employees to supplement any existing retirement and pension benefits by saving and investing before-tax dollars through a tax-deferred voluntary salary contribution. The Deferred Compensation Plan is open to employees of state agencies, State University System, State Board of Administration, and other special district employers (subject to employer election). These various constituencies are delineated in statute and represented by a member of the Deferred Compensation Advisory Council. The Deferred Compensation Plan has been in operation for over 35 years and offers a reasonably priced supplemental retirement savings program.

²⁹ S. 633.104 F.S.

³⁰ *Id.*

³¹ Department of Financial Services, Division of State Fire Marshal, *What We Do*, <https://myfloridacfo.com/Division/SFM/> (last visited Mar. 19, 2023).

Effect of the Bill

The bill:

- Allows a governmental employee of any governmental unit of the state to participate in the Deferred Compensation Plan.
- Expands the membership of the Deferred Compensation Advisory Council from seven members to eight members. The additional member will be an executive branch appointee made by the Chancellor of the Florida College System who must be an employee of the system.

Division of Workers' Compensation

Florida's Workers' Compensation Law³² 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.³³ The Department of Financial Services, Division of Workers' Compensation (DWC), 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 providers³⁴ that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member 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.³⁵ DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals³⁶ through the rulemaking process provided by the Administrative Procedures Act.³⁷

Medical Services

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.³⁸

In 1980, the Legislature delegated authority over maximum reimbursement allowances to a Three-Member-Panel which consists of the Insurance Commissioner (as a representative of the Chief Financial Officer) and two others appointed by the Governor and subject to confirmation by the Senate. Section 440.13(12)(a), F.S., states: "Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs."

The Medical Services Section within the DWC provides administrative support to the panel, which is statutorily charged with collecting data to evaluate the adequacy of the fee schedule, surveying healthcare providers to determine the availability and accessibility of healthcare, and surveying carriers to determine the impact of changes to the reimbursement schedule.³⁹ According to DWC, medical costs represent 67 percent of all workers' compensation costs in Florida.

³² Ch. 440, F.S.

³³ S. 440.13(2)(a), F.S.

³⁴ 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 chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.

³⁵ S. 440.13(12), F.S.

³⁶ Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.

³⁷ Ch. 120, F.S.

³⁸ S. 440.13, F.S.

³⁹ S. 440.13(12)(e), F.S.

Maximum reimbursements approved by the Three-Member Panel must be based on the following statutory requirements:

- For inpatient treatment, hospitals must be reimbursed 75 percent of the usual and customary charges;⁴⁰
- For schedule surgeries, hospitals must be reimbursed 60 percent of the charges;⁴¹
- For physicians, reimbursement is 110 percent of the reimbursement allowed by Medicare for an office visit and 140 percent of the reimbursement allowed by Medicare for a surgical procedure.⁴²
- For prescription medications, reimbursement is the wholesale price plus a \$4.18 dispensing fee; but for repackaged or relabeled prescription medications, reimbursement is 112.5 percent of the average wholesale price plus an \$8 dispensing fee.⁴³

Healthcare providers cannot recover fees that are higher than those outlined in the schedule. This applies to treatment, care, and attendance provided by any hospital or other healthcare provider, ambulatory surgical center, work-hardening program, or pain program.⁴⁴ Florida courts have enforced fee schedule limits against healthcare providers who sought higher fees for their services.⁴⁵

The law requires reimbursement to medical providers at either the agreed-upon contract price or the maximum reimbursement allowed in the appropriate schedule.

The Three-Member Panel adopts the schedules as an independent entity, but DWC relies on the schedules when rendering determinations in reimbursement disputes between healthcare providers and insurance carriers,⁴⁶ and when adopting fee schedules for services rendered by medical providers.⁴⁷ As a result, DWC adopts the maximum reimbursement schedules through rulemaking, and, when the cost of a schedule exceeds \$1 million in the aggregate within a five-year period, the adopted rule is subject to legislative ratification.

The Administrative Procedures Act requires a statement of regulatory cost that includes an economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.⁴⁸

The law provides three exemptions to the ratification requirement. Legislative ratification does not apply to triennial updates of the Florida Building Code and Florida Fire Prevention Code, which are expressly

⁴⁰ S. 440.13(12)(a), F.S.

⁴¹ S. 440.13(12)(b), F.S.

⁴² *Id.*

⁴³ S. 440.13(12)(c), F.S.

⁴⁴ S. 440.13(12)(d), F.S.

⁴⁵ [Sun Bank/South Florida, N.A. v. Baker, 632 So. 2d 669 \(Fla. 4th DCA 1994\)](#), cause dismissed, [639 So. 2d 982 \(Fla. 1994\)](#); citing, *Easter Elevator Co. v. Hedman*, 290 So. 2d 56, 58 (Fla. 1974).

⁴⁶ S. 440.13(7), F.S.

⁴⁷ S. 440.13(13), F.S.

⁴⁸ S. 120.541(2)(a), F.S.

authorized by statute, or when a state agency adopts federal standards or rules that are needed to receive federal funds or other benefits under federal law.⁴⁹

The Legislature ratified the 2016 manual for healthcare providers, which increased the overall cost of the workers' compensation system by 1.8 percent, or \$64 million.⁵⁰

The Legislature declined to ratify reimbursement manuals for:

- Ambulatory surgical centers – the 2016 manual proposed an increase of 0.6 percent or \$22 million; the 2017 manual proposed an increase of 1.1 percent or \$40 million.⁵¹
- Healthcare providers – the 2017 manual proposed an increase of 0.1 percent, or \$4 million.⁵²
- Hospitals – the 2016 and 2017 manuals proposed increases of 2.2 percent, or \$80 million.⁵³

On October 22, 2020, DFS filed a rule adopting the 2020 Health Care Reimbursement Manual approved by the Three-Member Panel setting a revised uniform schedule of MRAs for physicians and other recognized practitioners.⁵⁴ According to the National Council on Compensation Insurance, the revisions to MRAs in the 2020 Edition will result in increased costs to the overall compensation system of \$8 million over the next five years, as of November 16, 2020.⁵⁵

Effect of the Bill

The bill:

- Ratifies Rule 69L-7.020, F.A.C., allowing the rule to go into effect. The Rule incorporates by reference the 2020 Edition of the Manual, which provides for reimbursement of health care providers under the increased MRAs approved by the Three-Member Panel. The National Council on Compensation Insurance estimates that this will produce a 0.2 percent increase in workers' compensation rates, as of November 16, 2020. This increase would likely be incorporated into the next annual rate filing for OIR approval, to become effective January 1, 2024, which could be an overall increase or decrease in total rate, after considering the entirety of the annual rate filing.
- Removes the authority of the Three-Member Panel to adopt maximum reimbursement allowances for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers. Rather, it requires DFS to post the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st each year, to become effective the following January 1st. This seeks to remove the health care provider reimbursements from rulemaking and the applicable legislative rule ratification requirement for rules that increase private sector costs by more than \$1 million in the aggregate over five years.⁵⁶

⁴⁹ S. 120.541(4), F.S.

⁵⁰ Three Member Panel, 2019 Biennial Report, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjgNuTnun9AhWlr4QIHYLrBecQFn_oECA8QAQ&url=https%3A%2F%2Fwww.myfloridacfo.com%2Fdocs-sf%2Fworkers-compensation-libraries%2Fworkers-comp-documents%2Freports%2Fthree-member-panel%2F2019-biennial-report.pdf%3Fsfvrsn%3Db3c08839_4&usg=AOvVaw20P1pPOhVMVyfoJ2TFEMvc, at 18 (last visited Mar. 19, 2023).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Email from Austin Stowers, Legislative Affairs Director, Department of Financial Services, RE: . Department of Financial Services Rule 69L-7.020, F.A.C. (Jan. 30, 2023).

⁵⁵ The National Council on Compensation Insurance, Inc., *Analysis of Florida Medial Fee Schedule Changes Proposed to be Effective July 1, 2021* (Nov. 16, 2020).

⁵⁶ It is unclear if this provision abrogates DFS' obligation under Ch. 120, F.S., the Administrative Procedures Act, to adopt policy and interpretations of statute via rulemaking.

- Repeals the statutory incorporation of an outdated medical practice and parameters requirement.⁵⁷
- Allows a judge of compensation claims the discretion to order an expert medical examination, rather than requiring it to be ordered by the judge upon request of either the injured worker or insurance carrier during litigation.

The bill also ratifies Rule 69L-7.730, Florida Administrative Code, titled "Health Care Provider Medical Billing and Reporting Responsibilities" and Rule 69L-7.740, Florida Administrative Code, titled "Insurer Authorization and Medical Bill Review Responsibilities." These rules address authorization and reimbursement of dispensed medication to prohibit denial of reimbursement solely on the basis of the medication having been dispensed by a treating provider, rather than a pharmacy.

Miscellaneous

Effect of the Bill

The bill also makes the following changes:

Boards within the CFO's Appointment Authority:

Florida Self-Insurers Guaranty Association, Inc. (Section 8)

Florida Insurance Guaranty Association (Section 41)

Florida Life and Health Insurance Guaranty Association (Section 42)

Florida Health Maintenance Organization Consumer Assistance Plan (Section 43)

Florida Workers' Compensation Insurance Guaranty Association (Section 44)

Medical Malpractice Risk Apportionment Plan (Section 32)

- Allows the CFO to consider board appointment recommendations from persons with experience in applicable subject matter, in addition to current recommendation sources;
- Authorizes the CFO removal of board members based on misconduct, malfeasance, misfeasance, or neglect of duty;
- Clarifies that the board member's appointment and service are within an exemption to a prohibition on conflicting employment of public employees.
- Subjects board members to the code of ethics under part III of ch. 112, F.S., with specifications regarding application of the code to the board members;
- Creates gift restrictions for board members; and,
- Provides penalties for board member ethical and gift acceptance violations.

DFS, Division of Investigative and Forensic Services (DIFS)

- Allows DIFS to initiate, not just conduct, investigations and specifies that such investigations may cover any matter under the jurisdiction of the CFO, including the CFO's role as State Fire Marshal; and,
- Expands DIFS authority to refer suspected criminal violations for prosecution to include criminal violation of federal law, in addition to state law criminal violations.

Strategic Markets Research and Assessment Unit

- Repeals the unit and its required quarterly report on the state of the financial services industry in the state.⁵⁸

Insurance Field Representatives (Agents)

- Corrects the name of a referenced association to reflect their current name.

⁵⁷ S. 440.13(14), F.S., requires workers' compensation medical practice parameters and protocols to adhere to the United States Agency for Healthcare Research and Quality practice parameters and protocols in effect on January 1, 2003.

⁵⁸ DFS asserts that this report is duplicative and out of date. Department of Financial Services, Agency Bill Analysis HB 487, p. 3 (Feb. 15, 2023).

- Prohibits insurance agents from selling nonprofit religious organization health coverage that is exempt from the Florida Insurance Code.⁵⁹

Continuing Education Requirements

- Authorizes the Professional in Claims (PIC) designation from 2021 Training, LLC, to be accepted for a permitted exemption from examination.

Insurance Fraud

- Removes the requirement that a conviction be obtained to qualify for a reward under the Anti-Fraud Reward Program. A tip that leads to an arrest will be eligible for the reward.

Property Insurance Claim Mediation

- Limits claim eligibility until an insurer has either made a claim determination or elected to repair the property.
- Authorizes DFS to contract with an administrator to oversee sinkhole-related alternative dispute resolution provided by law.
- Allows mediation of issues involving litigants referred by a county court or circuit court.

Service Warranty Contracts

- Exempts service warranty sales representatives from the requirements of the home solicitation sales law.

Unclaimed Property Recovery Contracts

- Clarifies provisions limiting recovery agreements or contracts.

Livery Vessel Rental

- Permits a livery vessel owner to facilitate a renter's purchase of insurance to cover the rental period without obtaining an insurance agent license and being appointed to represent an insurer. However, the livery operator may not advise or inform the prospective renter of specific coverage provisions, exclusions, or limitations, and the signed acknowledgement must identify the licensed insurer or agent that transacted the livery's insurance policy. Also, all compensation for such insurance must be remitted to the insurer or agent.

Behavioral Health Coverage Notice

- Limits which insurers must post a required notice to insureds related to behavioral health benefits. Only insurers providing behavioral health coverage will need to post the notice, rather than all health insurers.

Regulation of Pread Funeral Contracts

- Creates an express exemption to make clear that travel-related transportation protection agreement for the preparation and return of human remains is not a preneed funeral contract. It also provides that such agreements are not subject to the Florida Insurance Code.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill eliminates the reinsurance intermediary application filing and license fee. The bill will result in an insignificant reduction in revenues. The chart below shows total revenues collected for the last four fiscal years.

⁵⁹ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." S. 624.01, F.S.

	FY 19-20	FY 20-21	FY 21-22	FY 22-23 (partial)
TOTAL ⁶⁰	\$ 1,250.00	\$ 1,100.00	\$ 2,050.00	\$ 750.00

2. Expenditures:

The bill makes numerous changes that will require systems and process changes in DFS. However, the fiscal impact is anticipated to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires warranty associations to have a reserve of \$100 million, instead of \$10 million. The bill requires motor vehicle insurers bear the entire cost of mediation. It makes various other changes that have an indeterminate, negative fiscal impact.

D. FISCAL COMMENTS:

None.

⁶⁰ Email from Teri Madsen, Director of the Office of Finance and Budget, Department of Financial Services, FW: Reinsurance.xls (Apr. 06, 2023).