2018

LEGISLATIVE SUMMARY

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

INTRODUCTION

This document is an overview of legislation passed by the Florida Legislature during the 2018 Regular Legislative Session affecting the Department of Financial Services and the Financial Services Commission.

Access to all bills, their final action, legislative staff analyses, floor amendments, bill history and Florida Statutes citations are available through the Florida Legislature Online Sunshine web is:

http://www.leg.state.fl.us

For additional information on legislation passed by the Florida Legislature you may contact the Office of Legislative Affairs at (850) 413-2863.

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HB 29 – Military & Veterans Affairs[6]

Effective July 1, 2018; Chapter 2018-7, L.O.F.; by Representatives Ponder, Renner, and others.
Affected Division(s): Agent & Agency Services; Funeral, Cemetery, & Consumer Services; Legal; State Fire Marshal

The bill eases professional licensing fees and requirements for certain military members, veterans, and their spouses within the Department of Health, Department of Business and Professional Regulation, Department of Agriculture and Consumer Services, Department of Education, Office of Financial Regulation (OFR), and the Department of Financial Services (DFS). Specific provisions relative to OFR and DFS are as follows:

Office of Financial Regulation

The bill requires the OFR to waive the following fees:

- $195 application fee and $20 fee for the Mortgage Guaranty Trust Fund for a mortgage loan originator, or $50 associated person assessment fee for an applicant who:
  - ✓ is or was an active duty member of the U.S. Armed Forces. To qualify for the fee waiver, an applicant who is a former member of the U.S. Armed Forces must have received an honorable discharge upon separation or discharge from the U.S. Armed Forces.
  - ✓ is married to a current or former member of the U.S. Armed Forces and is or was married to the member during any period of active duty.
  - ✓ is the surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death.
- $150 renewal fee and $20 fee for the Mortgage Guaranty Trust Fund for a mortgage loan originator, or $50 assessment fee for an associated person renewing his or her registration who:
  - ✓ is an active duty member of the U.S. Armed Forces or the spouse of such member.
  - ✓ is or was a member of the U.S. Armed Forces and served on active duty within the two years preceding the expiration date of the license. To qualify for the fee waiver, a loan originator who is a former member of the U.S. Armed Forces who served on active duty within the two years preceding the expiration date of the license must have received an honorable discharge upon separation or discharge from the U.S. Armed Forces.
  - ✓ is the surviving spouse of a member of the U.S. Armed Forces if the member was serving on active duty at the time of death and died within the two years preceding the surviving spouse's license expiration date.

An individual seeking such fee waiver must submit proof, in a form prescribed by rule of the Financial Services Commission, that the individual meets one of the above fee waiver qualifications.

[6] Contains DFS Priority Legislation

Department of Financial Services

Funeral and Cemetery Services

The bill provides:

- a waiver of initial application fees, provisional licensing fees, and temporary licensing fees, where applicable, including the $5 per license special unlicensed activity fee paid with each license, for members of the U.S. Armed Forces, their spouses, and honorably discharged veterans (within 24 months of discharge) for licensure as:
  - ✓ Embalmer, including Temporary Embalmer, Embalmer Intern, and Embalmer Apprentice;
  - ✓ Funeral Director, including Temporary Funeral Director and Funeral Director Intern;
  - ✓ Preneed Sales (if licensed as an individual), including Preneed Sales Agent;
  - ✓ Brokers of Burial Rights;
  - ✓ Direct Disposer; and
  - ✓ Monument Establishment Sales Agent; and
- recognition of applicable military-issued credentials for purposes of licensure as an embalmer, funeral director, or direct disposer.

Insurance Licenses

The bill provides:

- An expansion of the waiver of application fees for insurance profession licenses. Currently the waiver applies to members of the U.S. Armed Forces, their spouses, and veterans who have retired within 24 months before application. The bill replaces the term "retired" with the term "separated," which allows veterans who have less than 20 years of military service to receive the allowance.
- For the elimination of pre-licensure course requirements for members and honorably discharged veterans of the U.S. Armed Forces, and their spouses, if the applicant is subject to a licensing exam.

Fire Prevention and Control

The bill provides:

- That DFS may extend the four-year period in which a holder of a Firefighter Certificate of Compliance must meet specified conditions to retain the certificate. The certificate holder receiving the extension of time must be a member of the U.S. Armed Forces or an honorably discharged veteran or the spouse of a such a member or veteran. The extension is limited to 12 months from discharge and is available if the length of service did not exceed three years and the licensee or permit holder is within six years of the date of issue or reissue.
- A waiver of certain costs associated with the Florida State Fire College for all active duty military personnel, including their spouses or surviving spouses, and honorably discharged veterans, including their spouses.

HB 37 – Direct Primary Care Agreements

Effective July 1, 2018; Chapter 2018-89, L.O.F.; by Representatives Burgess, Miller, and others.
Affected Division(s): Consumer Services

The bill provides that a direct primary care provider may contract with individuals to provide pre-determined primary care services for a set monthly fee. Primary care providers are defined as health care providers licensed under chapter 458 (physicians), chapter 459 (osteopathic physicians), chapter 460 (chiropractors) and chapter 464 (nurses), or a primary care group practice who provides primary care services to patients.

The primary care agreement between the health care provider and the individual is not insurance and entering into such an agreement is not the business of insurance. It exempts both the agreement and the activity from the Florida Insurance Code (Code), including chapter 636, F.S. Through the exemption, the bill eliminates any authority of OIR to regulate a direct primary care agreement or entering into such an agreement. The bill also exempts a primary care provider, or his or her agent, from certification or licensing requirements under the Code to market, sell, or offer to sell a direct primary care agreement.

The bill requires a direct primary care agreement to:

- Be in writing;
- Be signed by the primary care provider, or his or her agent, and the patient, the patient's legal representative, or an employer;
- Allow either party to terminate the agreement by written notice followed by, at least, a 30 day waiting period;
- Allow immediate termination of the agreement for a violation of physician-patient relationship or a breach of the terms of the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for services not covered under the agreement;
- Specify the duration of the agreement and any automatic renewal provisions;
- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason;
- State that the agreement is not health insurance and that the primary care provider will not bill the patient's health insurance policy or plan for services covered under the agreement;
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual responsibility provision of the Patient Protection and Affordable Care Act; and
- State that the agreement is not workers' compensation insurance and may not replace the employer's obligations under chapter 440, F.S.

HB 193 – Mortgage Brokering

Effective July 1, 2018; Chapter 2018-44, L.O.F.; by Representative Stark.
Affected Division(s): Office of Financial Regulation

The bill exempts a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a mortgage broker or loan originator under ch. 494, F.S., if such person, in the normal course of conducting securities business with a corporate or individual client:

- Solicits or offers to solicit a mortgage loan from a securities client or refers a securities client to a depository institution, certain regulated subsidiaries that are owned and controlled by a depository institution, institutions regulated by the Farm Credit Administration, a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any solicitation or referral made pursuant to the exemption must comply with ch. 517, F.S.; the federal Real Estate Settlement Procedures Act; and any applicable federal law or general law of this state.

SB 220 – Bankruptcy Matters in Foreclosure Proceedings

Effective October 1, 2018; Chapter 2018-15, L.O.F.; by Senators Passidomo & Mayfield.
Affected Division(s): Office of Financial Regulation

The bill specifies how certain documents from a person's bankruptcy proceeding may be used as evidence in a foreclosure action against the same person.

The bill provides that a document creates a rebuttable presumption that a foreclosure defendant has waived any defense to foreclosure if the document:

- Was filed in the defendant's bankruptcy case;
- Evidences the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Has not been withdrawn by the defendant; and
- Is submitted in the foreclosure proceeding together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

However, the filing of such a document in a foreclosure case "does not preclude" the defendant from raising a defense based upon the lienholder's conduct following the document's filing in the bankruptcy case.

Additionally, the bill ensures that any document that a debtor filed under penalty of perjury in a bankruptcy case may be filed in a mortgage foreclosure proceeding as an admission against this person. Finally, the bill also requires the court in a foreclosure proceeding, upon the request of a lienholder, to take judicial notice of any order entered in a bankruptcy case.

The bill takes effect on October 1, 2018, and applies to foreclosure actions filed on or after that date.

HB 351 – Prescription Drug Pricing Transparency

Effective July 1, 2018; Chapter 2018-91, L.O.F.; by Representative Santiago & others.
Affected Division(s): Consumer Services; Office of Insurance Regulation

Regulation of Pharmacy Benefit Managers
The bill creates a new registration program for Pharmacy Benefit Managers (PBMs). The Financial Services Commission would, by rule, create an application form and set registration and renewal fees, not to exceed $500. PBMs would register with OIR by submitting a completed application form and fee for registration. Specifically, PBMs would be required to submit identifying information on the organization itself and each officer and director within the organization.

In addition, the PBM seeking registration must report any changes in this information to OIR within 60 days of changes having occurred. The bill sets the term of registration at two years.

The bill also repeals an existing section29 of the Pharmacy Practice Act that requires PBMs to update MAC pricing lists at least every seven days as a condition of contracts entered into with pharmacies. The bill moves this requirement and associated definitions to the Insurance Code for enforcement purposes. In effect, the bill consolidates statutory requirements related to PBMs into the sections of the Insurance Code that regulate contracts between health plans and their subcontractors. The bill dictates that OIR has the authority to oversee aspects of contracts between PBMs and their clients, and not the Board of Pharmacy.

The bill requires contracts between PBMs and insurers or HMOs to include a prohibition on PBM practices that may limit the ability of a pharmacy or pharmacist to communicate with patients. Each contract must prohibit PBMs from disclosing to a patient whether his or her cost sharing obligation under an insurance benefit exceeds the retail price of a drug, and whether a more affordable alternative drug may be available. These prohibitions would prevent PBMs from taking actions that limit the ability of pharmacists to share cost-related information.

The bill requires contracts between PBMs and insurers or HMOs to include specific limits on the cost sharing that will be incurred by patients at the point of sale. Each contract must specify that a patient's cost share shall equal the lower of the following prices:

- The applicable cost sharing obligation under a patient's insurance; or,
- The retail (or "cash") price of the drug prescribed.

This requirement would prohibit PBMs from applying any mechanisms that would prevent a patient from paying the lowest applicable price for a particular drug.

Pharmacy Practice Act
The bill revises the Pharmacy Practice Act to create an affirmative duty for a pharmacist to communicate to a patient the availability of a less expensive, generically equivalent drug if one exists and whether the patient's cost sharing obligation exceeds the retail price of a drug in the absence of prescription drug coverage.

The bill applies to contracts entered into or renewed on or after July 1, 2018.

HB 359– State Investments/Venezuela

Effective July 1, 2018; Chapter 2018-125, L.O.F.; by Representatives Nunez, Diaz, & others.
Affected Division(s): Cabinet; Treasury

The bill requires the State Board of Administration (SBA) to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with any agency or instrumentality thereof, in violation of federal law. The bill also prohibits the SBA from investing in such stocks, securities, or other obligations. In addition, the bill provides that the SBA may not be a fiduciary with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded U.S. trade with Venezuela.

The bill also prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S. which, directly or through the U.S. foreign subsidiary, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

The bill defines the term "government of Venezuela" to mean the government of Venezuela, its agencies or instrumentalities, or any company that is majority-owned or controlled by the government of Venezuela.

The bill authorizes the Governor to waive the bill's requirements if the existing regime in Venezuela collapses and there is a need for immediate aid to Venezuela before the convening of the Legislature or for other humanitarian reasons as determined by the Governor.

According to the SBA and DFS, the agencies do not currently invest in any companies that are in violation of federal law as specified in the bill.

SB 376 – Workers' Compensation Benefits for First Responders[7]

Effective October 1, 2018; Chapter 2018-124, L.O.F.; by Senator Book & others.
Affected Division(s): Risk Management; Workers' Compensation

The bill revises the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers' compensation insurance for first responders, which includes volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, or paramedics. The bill allows first responders that meet certain conditions to access indemnity and medical benefits for PTSD without an accompanying physical injury. Current law provides only medical benefits for a mental or nervous injury without an accompanying physical injury and requires the first responder to incur a compensable physical injury to receive indemnity benefits for a mental or nervous injury. Generally, the bill will increase the likelihood of compensability for workers' compensation indemnity benefits for PTSD.

PTSD is a psychiatric disorder that can occur in persons who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault. A diagnosis of PTSD requires direct or indirect exposure to an upsetting traumatic event. Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are significantly more likely to develop PTSD compared to the general population.

The bill creates an exception to current law to authorize the compensation of indemnity benefits for PTSD, if the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:

    - ✓ Seeing for oneself a deceased minor;
    - ✓ Witnessing directly the death of a minor;
    - ✓ Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department, participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
    - ✓ Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
    - ✓ Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
    - ✓ Witnessing directly an injury that results in death, if the person suffered grievous bodily harm that shocks the conscience; or

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- ✓ Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

The PTSD must be demonstrated by clear and convincing evidence. Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file the notice of injury with their employer or carrier within 90 days of the qualifying event, described above, or manifestation of the PTSD. However, the claim is barred if it is not filed within 52 weeks of the qualifying event.

The bill requires an employing agency of a first responder to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

SB 386 – Consumer Finance

Effective July 1, 2018; Chapter 2018-17, L.O.F.; by Senators Garcia & Taddeo.
Affected Division(s): Office of Financial Regulation

The bill permits consumer finance loans made pursuant to ch. 516, F.S., to be repaid in installments due every 2 weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in periodic installments and the final payment may be less than the amount of the prior installments. Lastly, the bill establishes the maximum delinquency charge for each payment in default at least 10 days;

- $15 per default if one payment is due in a month.
- $7.50 per default if two payments are due in a month.
- $5.00 per default if three payments are due in a month.

SB 394 – Fire Safety

Effective July 1, 2018; Chapter 2018-18, L.O.F.; by Senator Bracy.
Affected Division(s): State Fire Marshall; Legal

The bill requires the Division of the State Fire Marshal (Division) within the Department of Financial Services to establish courses that provide training related to cancer and mental health as a part of firefighter and volunteer firefighter training and certification. The bill authorizes the Division to adopt rules for the training requirements related to cancer and mental health risks within the fire service.

HB 411 – Public Records & Public Meetings/Firesafety Systems

Effective April 6, 2018; Chapter 2018-146, L.O.F.; by Representatives Clemons & Gruters.
Affected Division(s): Legal; Risk Management; State Fire Marshal

The bill makes confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution firesafety system plans for any state owned or leased buildings and any privately owned or leased property, and information relating to such systems, that are held by a state agency. The bill also makes confidential and exempt from public meeting requirements any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

The bill specifies that the public record exemptions must be given retroactive application because they are remedial in nature. Thus, records of firesafety system plans and records relating to firesafety systems in existence prior to the effective date of the bill will be protected by the exemptions.

The bill provides a public necessity statement as required by the State Constitution, specifying that as firesafety systems become more integrated with security systems, disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

HB 455 – Governance of Banks & Trust Companies

Effective July 1, 2018; Chapter 2018-48, L.O.F.; by Representatives McCain & Ponder.
Affected Division(s): Office of Financial Regulation

The bill amends the financial institution codes to expand the pool of eligible individuals who may serve as a director, president, or chief executive officer of a new or existing bank or trust company that is subject to regulation by the Office of Financial Regulation. Further, the bill clarifies and revises the limitations on corporate investments.

For existing and new state-chartered banks and trust companies, the bill extends the period from 3 to 5 years during which certain officers and directors must have achieved at least 1 year of direct financial institution experience. Under current law, at least two proposed directors, who are not also proposed officers, must have the requisite experience within the 3 years prior to the date of the application for charter. For existing state-chartered banks or trust companies, the president, chief executive officer, or any other person with an equivalent rank, must have had at least 1 year of direct experience within the last 3 years.

The bill requires that at least a majority, rather than three-fifths, of the directors of a state-chartered bank or trust company must have resided in this state for at least 1 year preceding their

election and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.

Lastly, the bill amends current law to clarify an ambiguity in the interpretation of investment limits relating to corporate obligations or corporate bonds. The bill clarifies that:

- The types of entities for which the limitation on investments in corporations applies are subsidiary corporations and affiliates.
- The limitation on investments in corporations applies to an aggregate of any combination of stocks, obligations, and other securities of subsidiary corporations and affiliates.
- The aggregate of such investments may not exceed 10 percent of the total assets of the bank.

HB 465 - Insurance

Effective March 30, 2018; Chapter 2018-131, L.O.F.; by Representatives Santiago & Hager.
Affected Division(s): Agent & Agency Services; Consumer Services; Investigative & Forensic Services; Legal; Office of Insurance Regulation; Rehabilitation & Liquidation

The bill amends numerous provisions of the Florida Insurance Code. This bill:

- Provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from certain limitations on valuation and investment requirements for solvency evaluation purposes if the investments are permissible in the insurer's domicile state that is a member of the National Association of Insurance Commissioners and the investments meet specified requirements;
- Provides that an applicant for licensure as an all-lines adjuster certified as a Claims Adjuster Certified Professional from WebCE, Inc., does not have to take the adjuster examination;
- Repeals a requirement that surplus lines insurers request eligibility from the Florida Surplus Lines Service Office;
- Incorporates a recent amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to certain notices required by rules adopted by the Department of Financial Services and the Financial Services Commission;
- Provides that an insurer may issue an insurance policy without certain signatures;
- Requires that a notice of policy change summarize the changes made to the policy before renewal;
- Provides that an insurer is not required to participate in a mediation of a property insurance claim requested by an assignee of policy benefits;
- Allows motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices;
- Authorizes specialty insurers to overcome a presumption of control regarding acquisition of stocks, interests, and assets of other companies by filing a disclaimer of control with

the Office of Insurance Regulation, and provides that authorized viatical settlement providers are specialty insurers;
- Expands the confidentiality of documents submitted to the Office of Insurance Regulation under Own-Risk and Solvency Assessment requirements to make such documents inadmissible as evidence in any private civil action, regardless of from whom they were obtained;
- Revises unearned premium reserve requirements for reciprocal insurers; and
- Allows for electronic posting of certain policy information by health maintenance organizations and motor vehicle service agreement companies.

HB 483 – Unfair Insurance Trade Practices

Effective July 1, 2018; Chapter 2018-149, L.O.F.; by Representatives Yarborough & Edwards-Walpole.
Affected Division(s): Agent and Agency Services

The bill amends the Unfair Insurance Trade Practices Act to allow insurers and their agents to give goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, charitable donations, or other items not exceeding $100 in value within 1 calendar year to insureds, prospective insureds, and others.

The bill limits advertising gifts by title insurance agents, agencies, and insurers to an aggregate $25 gift value per calendar year, rather than a $25 per gift value limit with no annual aggregate limitation.

HB 529 – Florida Fire Prevention Code

Effective July 1, 2018; Chapter 2018-152, L.O.F.; by Representative Diaz.
Affected Division(s): State Fire Marshal

The bill establishes a 3-year exemption to the Fire Prevention Code to allow for the limited placement of waste containers and waste within the hallways of apartment buildings that utilize a doorstep waste pickup service.

Under the bill, a doorstep waste collection service may operate in apartment buildings with enclosed corridors served by interior or exterior exit stairs if waste is not placed in exit access corridors for longer than 5 hours; waste containers do not occupy exit access corridors for longer than 12 hours; and waste containers do not exceed 13 gallons. For apartment buildings with open-air corridors or balconies serviced by exterior stairs waste cannot be placed in exit access corridors for longer than 5 hours; there is no limit on how long waste containers may occupy access corridors; and a waste container size may not exceed 27 gallons. In all cases the management of an apartment complex utilizing a doorstep waste collection service that would operate under this new law must have written policies and procedures in place and enforce them to insure compliance. A copy of such policies and procedures can be requested and must be provided to the authority having jurisdiction. Additionally, waste containers may not reduce the means of egress width below that required under NFPA Life Safety Code 101:31.

The bill provides that the authority having jurisdiction may approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety and must allow apartment occupancies a phase-in period until December 31, 2020, to comply with the requirements of the bill. The provisions of the bill are repealed on July 1, 2021.

HB 533 – Unfair Insurance Trade Practices

Effective July 1, 2018; Chapter 2018-153, L.O.F.; by Representatives Hager & Stark.
Affected Division(s): Agent & Agency Services; Office of Insurance Regulation

The bill creates an exemption from the Unfair Insurance Trade Practices Act that allows an admitted insurer to refuse to insure a person for failure to purchase motor vehicle services from a membership organization that, as of January 1, 2018, is affiliated with the admitted property and casualty insurer.

HB 545 – Prohibition Against Contracting with Scrutinized Companies

Effective July 1, 2018; Chapter 2018-52, L.O.F.; by Representatives Fine, Moskowitz, and others.
Affected Division(s): Accounting & Auditing; Cabinet; Treasury

The bill amends the provision prohibiting agencies and local governmental entities from contracting with companies on the Israel List or that boycott Israel to apply the prohibition to contracts for goods or services of any amount, rather than only contracts of $1 million or more.

The bill requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Israel List or is engaged in a boycott of Israel.

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List based on the same conditions currently applicable to contracts of $1 million or more.

HB 651 – State Employment

Effective July 1, 2018; Chapter 2018-57, L.O.F.; by Representative Yarborough.
Affected Division(s): Administration

The bill eliminates the FSECC. The bill also prohibits an organization, entity, or person from intentionally soliciting a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services, non-coercive voluntary communications between state employees in workplace areas, and activities at authorized public events occurring in non-work areas of state owned or leased facilities.

SB 660 – Florida Insurance Code Exemption for Nonprofit Religious Organizations

Effective July 1, 2018; Chapter 2018-25, L.O.F.; by Representative Brandes.
Affected Division(s): Consumer Services

The bill amends Florida's statute governing health care sharing ministries to reflect changes in how the entities operate. A health care sharing ministry is a health care cost sharing arrangement among persons of similar and sincerely held beliefs, administered by a not-for-profit religious organization. Some health care sharing ministries act as a clearinghouse to allow one or more members to directly pay the medical expenses of another member. Other health care sharing ministries receive funds from members and use those funds to pay authorized medical expenses when members request payment. These entities are not insurance companies and are not regulated by the Office of Insurance Regulation.

Current law limits participation in a health care sharing ministry to those who share the same religion. The bill allows participation by those who "share a common set of ethical or religious beliefs." The bill provides that the health care sharing ministry must provide for the financial, physical or medical needs of a participant through contributions from other participants. Current law requires the health care sharing ministry must provide for financial or medical needs by direct payments from one participant to another. The bill allows direct payments but also allows payments from a fund to a participant.

The bill requires the health care sharing ministry to provide monthly to the participants the amount of qualified needs actually shared in the previous month. It also requires the organization to conduct an annual audit performed by an independent certified public accounting firm in according with generally accepted accounting principles. The audit must be available to the public upon request or posted on the organization's website.

The bill expands the required notice to participants that the health care sharing ministry is not an insurance company and no participant is required by law to assist others with medical expenses.

SB 920 – Deferred Presentment Transactions

Effective July 1, 2019; Chapter 2018-26, L.O.F.; by Senators Bradley & Braynon.
Affected Division(s): Office of Financial Regulation

The bill authorizes deferred presentment installment transactions under Florida law. A deferred presentment installment transaction must be fully amortizing and repayable in consecutive installments, which must be as equal as mathematically practicable. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days and the time between installment payments must be at least 13 days but not greater than 1 calendar month.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of fees. The maximum fees that may be charged on a deferred presentment installment transaction are 8 percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited. The bill retains current law in prohibiting a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours. If a drawer timely informs the provider in writing or in person that they cannot redeem or pay in full in cash the amount due and owing, the provider must provide a grace period for payment of a scheduled installment.

HB 935 – Mortgage Regulation

Effective July 1, 2019; Chapter 2018-61, L.O.F.; by Representative Nunez.
Affected Division(s): Office of Financial Regulation

The bill revises ch. 494, F.S., governing non-depository loan originators, mortgage brokers, and mortgage lender businesses subject to regulation by the Office of Financial Regulation to provide greater consumer protections. The bill provides that it is unlawful for any person to misrepresent a residential mortgage loan as a business purpose loan, and defines the term, "business purpose loan." Further, the bill provides a definition of the term "hold himself or herself out to the public as being in the mortgage lending business," as that term currently exists under two licensing exemption provisions. These current exemptions permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender, so long as the individual does not "hold himself or herself out to the public as being in the mortgage lending business."

The bill was in response to alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claim that some of these unscrupulous lenders would not make the "residential loan" unless the borrower formed a limited liability company.

HB 953 – Consumer Report Security Freezes[8]

Effective July 1, 2018; Chapter 2018-62, L.O.F.; by Representative Harrison & others.
Affected Division(s): None - FYI only

In recent years, data breaches have increased in frequency, scale, sophistication, and severity of impact, resulting in more widespread identity theft. Currently, Florida law allows a consumer to freeze access to his or her consumer report, which prevents anyone from trying to open a new account or new credit under his or her name. Florida law permits a CRA to charge a consumer up to $10 to institute a credit freeze.

[8] DFS Priority Legislation

The bill prohibits consumer reporting agencies (CRAs) from charging fees for placing, removing, or temporarily lifting a security freeze on a consumer report. A security freeze prevents a CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization.

HB 1011 – Homeowners' Insurance Policy Disclosures

Effective January 1, 2019; Chapter 2018-63, L.O.F.; by Representatives Cruz & Fine.
Affected Division(s): Consumer Services; Office of Insurance Regulation

The bill expands the required notice regarding flood insurance and laws and ordinance coverage in a homeowner's property insurance policy to include notice that the purchase of homeowner's insurance does not cover flood, even if hurricane winds and rain caused the flood to occur. The notice is to be included upon the initial issuance and at each renewal of the homeowner's insurance policy.

HB 1073 – Department of Financial Services[9]

Effective July 1, 2018; Chapter 2018-102, L.O.F.; by Representative Hager.
Affected Division(s): Administration; Accounting & Auditing; Agent & Agency Services; Consumer Services; Funeral, Cemetery, & Consumer Services; Investigative & Forensic Services; Legal; Public Assistance Fraud; Risk Management; State Fire Marshal; Treasury

The bill makes various changes to statutes relating to the Department of Financial Services (DFS). The bill:

- Allows the Division of Treasury to use "electronic images" as a means of producing copies of warrants, vouchers, or checks;
- Creates the Bureau of Insurance Fraud and the Bureau of Workers' Compensation Fraud within the Division of Investigative and Forensic Services of the DFS, codifying the existing structure within the division.
- Requires transition plans of youth aging out of foster care to provide information on the financial literacy curriculum offered by the DFS and requires young adults who have aged out of foster care and who request aftercare services to receive information about the financial literacy curriculum;
- Begins the process of creating the Florida Open Financial Statement System to allow better access to financial reports filed by local governments and provides a $500,000 appropriation;
- Directs agencies to provide risk training, report return-to-work data to the DFS, and submit information regarding internal risk assessments to the DFS;
- Allows DFS to disclose the personal identifying information of injured employees to its contracted vendors for the purpose of administering workers' compensation claims;

[9] DFS Priority Legislation

- Specifies that public assistance recipients give written consent to make inquiry of past or present employers and records to the Department of Education, rather than the Department of Economic Opportunity, to facilitate the investigation by DFS of public assistance fraud.
- Eliminates the licensure requirement for managing general agents and replaces it with a process where managing general agents are appointed by insurance companies;
- Reduces from 24 to 4 the number of risks that an agent can write for an insurer in a calendar year without an appointment by the insurer or an exchange of business appointment;
- Extends the validity of fingerprints from 12 to 48 months for currently licensed individuals seeking other DFS licenses;
- Eliminates the requirement that nonresident public adjusters and nonresident all-lines adjusters submit an affidavit certifying their understanding of Florida law;
- Provides that DFS may provide rewards to individuals who provide information leading to the arrest and conviction of persons who commit arson;
- Creates a uniform 4-year appointment term for members of the Florida Fire Safety Board;
- Clarifies the inactive status requirements for a fire equipment dealer license and removes the requirements that proof of insurance for a fire equipment dealer or fire protection system contractor's license must be on a form provided by the DFS;
- Specifies roles, responsibilities, and retention requirements of individuals holding a Special Certificate of Compliance;
- Repeals outdated language requiring the Florida State Fire College to develop and implement a staffing formula for the Fire College; and
- Allows a life agent who is a certified public accountant and who has specified registrations in the financial services business to serve as trustee in situations where the life agent has placed the life insurance coverage.

HB 1127 – Public Records & Meetings/Citizens Property Insurance Corporation

Effective *March 21, 2018*; Chapter 2018-65, L.O.F.; by Representative Lee.
Affected Division(s): None – FYI only

The bill creates public record and public meeting exemptions to protect data and records pertaining to the security of Citizens Property Insurance Corporation's information networks from disclosure. The bill provides that records held by the corporation that identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from public record requirements. Portions of risk assessments, evaluations, audits, and other reports of Citizen's information technology security program are also exempt from public disclosure. The exemption applies if the disclosure would facilitate unauthorized access to, or unauthorized modification, disclosure, or destruct of data or information or information technology resources.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described information technology security information. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are

confidential and exempt from public record requirements, unless a court, following an in-camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. In the event of such a judicial determination, only that portion of a transcript that reveals nonexempt data and information may be disclosed to a third party.

The bill requires the confidential and exempt records related to the public meeting exemption to be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The public record exemptions apply to records or portions of public meetings, recordings, and transcripts held by the corporation. The public records exemption applies retroactively.

This section is subject to the Open Government Sunset Review and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

HB 1361 – Clerks of Court/Surplus Trustee/Unclaimed Property[10]

Effective July 1, 2019; Chapter 2018-71, L.O.F.; by Representative Clemons.
Affected Division(s): Unclaimed Property

The bill modifies how the clerks of the circuit courts will dispose of surplus funds and how they will receive course completion information from driver improvement schools.

Remission of Unclaimed or Surplus Funds from Courts to the Department of Financial Services (DFS)

The bill repeals s. 43.19, F.S., which requires courts to retain unclaimed funds in their possession for 5 years and requires a court order for payment of an unclaimed fund. This will require courts to turn unclaimed funds over to the DFS 1 year after they become payable or distributable as provided in s. 717.113, F.S. A surplus of less than $10 escheats to the clerk.

The bill provides any surplus fund remaining 1 year after the judicial sale of property are presumed unclaimed, and the clerk of court is required to report (in accordance with s. 717.117, F.S.) and remit (in accordance with s. 717.119, F.S.) the surplus funds to the DFS. However, the time for remitting funds is extended if the owner of the funds has not been determined by the court or if entitlement to the funds is being litigated.

Termination of the Surplus Trustee Program and Related Fees

The bill repeals statutory provisions regarding the use of surplus trustees to locate the owners of surplus funds from judicial sales. Such trustees receive 2 percent of the surplus funds upon appointment and an additional 10 percent of the funds if the trustee locates and disburses the

[10] Contains DFS Priority Legislation

funds to the owner. By terminating this program, no surplus trustee will be appointed and the full amount of unclaimed surplus funds will be transferred to the DFS, which is obligated under current law to attempt to locate the owners of the funds at no cost to the owners. Additionally, the bill repeals related clerk's fees for trustee appointment.

Submission of Claims by Subordinate Lienholders

The bill increases the time period in which subordinate lienholders may claim surplus funds resulting from the judicial sale of property, to any time prior to when the clerk reports the surplus as unclaimed to the DFS (at least one year after the sale) instead of within the 60-day period after the sale. The bill retains the provisions of existing law requiring a court to hold an evidentiary hearing to determine entitlement if the record owner claims the funds during the time period for subordinate lienholders to assert claims to the funds. If entitlement to the funds is being litigated, the clerk of court must retain the funds until conclusion of the litigation. Once a clerk remits the surplus funds to DFS, only the owner of record of the property sold at a judicial sale or the beneficiary of the deceased owner is entitled to the surplus.

The bill makes cross-reference changes to conform to the repeal of the surplus trustee program and the transfer of surplus funds to the DFS.

Transmission of Course Completion Information by Driver Improvement Schools

The bill requires driver improvement schools to transmit student course completion certificates through the Florida Courts E-Filing Portal, within three days after a person successfully completes the course. The certificate must be transmitted to the clerk of the circuit court for the county in which the citation was issued which resulted in the student's attendance at the driver improvement school. The requirement for the electronic submission of driver improvement school completion certificates is intended to eliminate the need for students to obtain and submit the certificate to a clerk's office.

HB 1383 – Tax Deed Sales

Effective July 1, 2018; Chapter 2018-160, L.O.F.; by Representative Latvala.
Affected Division(s): Unclaimed Property

Local ad valorem taxes are due on November 1 or as soon as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 of the following year or immediately upon the expiration of 60 days from the date the original tax notice was mailed, whichever is later. If ad valorem taxes are not paid by June 1 or the 60th day after the tax becomes delinquent, whichever is later, the tax collector advertises and sells tax certificates to pay the delinquency.

Two years after April 1 of the year in which the tax certificate was issued, and before the certificate expires, a certificateholder may apply for a tax deed with the tax collector. Certificateholders other than the county must pay all costs required by statute before the sale may occur, including the costs of any title search or abstract. The tax collector is responsible for

notifying the clerk of the circuit court of the parties requiring notice of the pending tax deed sale. The costs to bring the property to sale are added to the opening bid on the property.

Once the tax deed sale is completed, any proceeds in excess of the opening bid are paid over to and distributed by the clerk, first to governmental entities and then to nongovernmental entities in priority. However, if the balance after the governmental liens have been paid is insufficient to cover the cost to notify possible claimants of the proceeds then the clerk may retain the entire balance as a service charge. Any unclaimed money is remitted to the state on behalf of persons entitled to notice of the tax deed sale.

The bill clarifies the responsibilities of the tax certificateholder when applying for a tax deed, including the specific costs to pay. The bill requires tax collectors to contract with title companies or abstract companies to provide a property information report. Costs for property information reports will be added to the costs of sale. Additionally, the bill revises certain provisions regarding notice and distribution of surplus funds and makes certain technical changes.

HB 7013 – OGSR/False Claims

Effective October 1, 2018; Chapter 2018-75, L.O.F.; by House Oversight, Transparency & Administration Subcommittee.
Affected Division(s): Legal

The bill continues a public records exemption that is contained in the Florida False Claims Act. Maintaining the exemption encourages a private citizen to report fraud and facilitates the recovery of state funds and property that are taken by false claims or fraud.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the acts has occurred.

This exemption helps the state recover monies and property by:

- Protecting the identity of a person who initiates a false claim action;
- Allowing the Department of Legal Affairs to privately investigate the merits of a claim to determine if the government should intervene; and
- Maintaining the confidentiality of state information that is similarly shielded under a federal public records exemption, which, if disclosed in Florida, would compromise the confidentiality of the federal investigation.

The original exemption was enacted in 2013 and is scheduled for repeal on October 2, 2018, unless continued by the Legislature.

HB 7027 – Florida Statutes/Rulemaking Repeals

Effective on the 60th day after adjournment sine die of the session of the Legislature which enacted; Chapter 2018-112, L.O.F.; by House Rules & Policy Committee.
Affected Division(s): Legal

Section 11.242(5)(j), F.S., directs the Office of Legislative Services to include duplicative, redundant, or unused statutory rulemaking authority among its proposed repeals in reviser's bill recommendations. The purpose of this directive is not to diminish the authority of executive branch agencies to adopt administrative rules necessary to implement their statutory responsibilities but to remove unnecessary text from the statutes.

This reviser's bill removes such rule authorizing provisions through revision of existing statutes or repeal of unnecessary provisions. The bill also makes conforming changes to correct cross-references.

Rulemaking authority is deemed unused if the provision has been in effect for more than 5 years without being relied upon to adopt rules.

HB 7075 – OGSR/Payment Instrument Transaction Information

Effective October 1, 2018; Chapter 2018-116, L.O.F.; by House Oversight, Transparency & Administration Subcommittee.
Affected Division(s): Office of Financial Regulation; Investigative & Forensic Investigations

The Office of Financial Regulation (OFR) licenses and regulates check cashers. Florida law imposes various requirements on check cashiers, including that such licensees maintain certain payment instrument transaction information. In addition, certain information related to each payment instrument being cashed that exceeds $1,000 must be entered into the OFR's check cashing database.

Current law provides that payment instrument transaction information held by the OFR pursuant to the database that identifies a licensee, payor, payee, or conductor is confidential and exempt from public record requirements. The OFR may enter into information-sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order.

The bill extends the repeal date by 2 years, to October 2, 2020, for the public record exemption. The bill clarifies that the OFR may release information in the database in the aggregate as long as confidential and exempt identifying information is not disclosed.

HB 7077 – OGSR/Agency Employee Misconduct Complaint

Effective October 1, 2018; Chapter 2018-117, L.O.F.; by House Oversight, Transparency & Administration Subcommittee.
Affected Division(s): Administration; Inspector General

The bill is based on an Open Government Sunset Review of a public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct.

Current law requires that complaints of misconduct filed with an agency against an agency employee be kept confidential and exempt from public records requirements. If an agency investigates such a complaint, the information obtained from the investigation is also confidential and exempt. The complaint and the investigative information remain confidential and exempt until either the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint. The written notice may be delivered personally or by mail and must state that the agency has concluded the investigation with a finding to proceed with disciplinary action, file charges, or not to proceed.

The bill removes the scheduled October 2, 2018, repeal date.

HB 7097 – OGSR/Citizens Property Insurance Corporation

Effective October 1, 2018; Chapter 2018-121, L.O.F.; by House Government Accountability Committee.
Affected Division(s): None – FYI only

The bill reenacts and saves from repeal the public records exemption for proprietary business information provided by participating insurers to the Citizens Property Insurance Corporation's clearinghouse program. Such proprietary business information is shared with the clearinghouse to facilitate placing risks with participating private market insurers when applicants or current Citizens policyholders seek new or renewal property insurance coverage from Citizens.