



Insurance & Banking Subcommittee

**Tuesday, January 21, 2020
3:00 pm – 5:00 pm
Sumner Hall (404 HOB)**

**Jose Oliva
Speaker**

**Byron Donalds
Chair**

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time: Tuesday, January 21, 2020 03:00 pm
End Date and Time: Tuesday, January 21, 2020 05:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 1077 Department of Financial Services by LaMarca

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, January 17, 2020.

By Request of Chair Donalds, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 17, 2020.

NOTICE FINALIZED on 01/16/2020 4:01PM by Harrell.Lindsey



The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

Jose R. Oliva
Speaker

Byron Donalds
Chair

AGENDA

January 21, 2020
404 House Office Building
3:00 PM – 5:00 PM

I. Call to Order & Roll Call

II. Consideration of the following bills:

A. HB 1077 Department of Financial Services by LaMarca

III. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1077 Department of Financial Services
SPONSOR(S): LaMarca
TIED BILLS: IDEN./SIM. BILLS: SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Salter 	Cooper 
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- **Division of Public Assistance Fraud (DPAF):** Current law does not list DPAF as a criminal justice agency. The bill establishes DPAF as a criminal justice agency, allowing proper execution of fighting public assistance fraud.
- **Board of Funeral, Cemetery, and Consumer Services:** Currently, the Chief Financial Officer of DFS is required to nominate three members per vacant position on the Board, and requires six voting members for a quorum. The bill requires only one nomination per vacancy and changes the definition of a quorum. The bill also removes unnecessary member staggering requirements and provides clarification regarding other board member requirements.
- **Disqualification and Penalties of Applicants and Licensees:** Current law lacks a provision under which a person can be disqualified for licensure based on a criminal record. The bill creates a permanent bar to licensure based on certain crimes, as well as disqualifying periods for various felonies and misdemeanors.
- **Violations by Unlicensed Persons:** Current law does not specify activity prohibited without a license under ch. 497, F.S. The bill prohibits specific unlicensed activity and changes the penalty for unlicensed funeral activity from a second-degree misdemeanor to a third-degree felony.
- **Explosives:** Current law defines a two-component explosive as having a detonator that is a No.6 blasting cap. The bill changes this distinction to “any detonator” to fall in line with current practice.
- **Uniform Fire Alarm Permit Application:** Under current law, contractors are required to apply for, and receive, a permit prior to installing, replacing, or repairing a fire alarm system. The bill expedites repairs of systems that have previously been permitted by the local enforcement agency by allowing repair to begin after filing an application. Contractors would not have to wait to receive the permit, although the permit and approval from the local enforcement agency is still required to ensure compliance.
- **Volunteer Firefighter Service:** Currently, a volunteer firefighter who is transitioning to become a career firefighter is prohibited from entering immediately dangerous to life and health environments. The bill allows the transitioning firefighter to act in the same capacity as when they were a volunteer firefighter, as long as they are under supervision of a career firefighter and the period of transition does not go beyond one year.
- **False Personation:** Current law prohibits impersonation of an officer of DFS and a subset of a fire or arson investigator of DFS. The bill eliminates the subset and adds broader language, encompassing all officers of DFS, as well as any personnel or representative of the Division of Investigative and Forensic Services.

The bill has no fiscal impact on state or local government revenue or expenditures. It has no known positive or negative economic impacts on the private sector.

The bill has an effective date of July 1, 2020.

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

STORAGE NAME: h1077.IBS.DOCX

DATE: 1/17/2020

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

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

Division of Public Assistance Fraud

When DIFS was created in 2016, DPAF was not designated as a criminal justice agency, limiting access to information within criminal records systems. Under current law, "criminal justice agency" means a court,¹ the Department of Law Enforcement,² the Department of Juvenile Justice,³ the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect,⁴ and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.⁵ DPAF currently operates, in part, as a criminal justice agency. However, current statute does not appropriately reflect this.

Effect of the Bill

The bill establishes DPAF as a criminal justice agency, permitting broader access to criminal records. The effect of this change should improve the department's investigation and enforcement capabilities.

Board of Funeral, Cemetery, and Consumer Services

The Board of Funeral, Cemetery, and Consumer Services (The Board) consists of ten members, nine of which are nominated by the Chief Financial Officer (CFO), confirmed by the Senate, and appointed by the Governor.⁶ The tenth member is the State Health Officer or his or her designee.⁷ Currently, the CFO is required to nominate three persons for each vacancy on the board. Often times, the CFO does not receive three or more applications for any given vacancy. Additionally, one Board member must be a Certified Public Accountant (CPA) not affiliated with the death care industry. This position has been vacant since September 2017.⁸

¹ S. 943.045 (11)(a), F.S.

² S. 943.045 (11)(b), F.S.

³ S. 943.045 (11)(c), F.S.

⁴ S. 943.045 (11)(d), F.S.

⁵ S. 943.045 (11)(e), F.S.

⁶ S. 497.101 (1), F.S.

⁷ S. 497.101 (1), F.S.

⁸ Department of Financial Services, Agency Analysis of House Bill 1077, p.2 (Jan. 14, 2020).

In order for the Board to conduct business, a quorum must be present. A quorum currently means the presence of six board members. A quorum has proved difficult to meet due to vacant positions, member absences, and member recusals. Current law requires staggered appointments of initial Board members. DFS is required to adopt rules establishing forms and procedures for application for membership on the Board.

Effect of the Bill

The bill amends the requirement of three nominees per vacancy to an option of one to three nominations. Two members, instead of three, would still be required to be residents of the state, to have never been licensed as funeral directors or embalmers, and to have no connection to the death care industry. The CPA qualification of having never been licensed as a funeral director or embalmer remains, while the CPA would be allowed to be associated with the death care industry.

The bill also removes the provision requiring staggered appointments following expiration of the terms of initial board members. Because successor members have since been staggered, the provision no longer is necessary. The bill eliminates the delegated rulemaking authority to DFS for establishing forms by which persons can apply for membership. Because the Governor makes the appointments, that delegation is unnecessary.

Disqualification and Penalties of Applicants and Licensees

Individuals, or the individual on behalf of an entity, applying for licensure or relicensure under ch. 497, F.S., must disclose their criminal records in accordance with s. 497.412, F.S. Applicants must disclose any felony or misdemeanor directly or indirectly relating to the death care industry, no matter when it was committed.⁹ Felonies unrelated to the death care industry and committed within the 20 years immediately preceding the application under ch. 497, F.S., must be disclosed.¹⁰ Misdemeanors unrelated to the death care industry and committed within the five years immediately preceding the application under ch. 497, F.S., must also be disclosed.¹¹ Chapter 497, F.S., currently lacks any ability to disqualify an application for licensure on the basis of an applicant's criminal record.

Effect of the Bill

The bill creates a permanent bar from licensure under certain circumstances. An applicant can be permanently barred from licensure under ch. 497, F.S., if the applicant has been found guilty of or has pleaded guilty or nolo contendere¹² to any of the following, regardless of adjudication:

- (a) A felony of the first degree,
- (b) A capital felony,
- (c) A felony money laundering offense, or
- (d) A felony embezzlement.

The bill also creates disqualification periods for various felonies and misdemeanors. All felonies involving moral turpitude¹³ that do not fall under the permanent bar are subject to a ten-year disqualifying period. All felonies that do not fall under the permanent bar and that do not involve moral turpitude are subject to a five-year disqualifying period. All misdemeanors directly related to the financial services business¹⁴ are subject to a five-year disqualifying period. A disqualifying period

⁹ S. 497.412(10)(c)1., F.S.

¹⁰ S. 497.412(10)(c)2., F.S.

¹¹ S. 497.412(10)(c)3., F.S.

¹² A nolo contendere plea is a plea by which a defendant in a criminal prosecution accepts conviction as though a guilty plea had been entered but does not admit guilt.

¹³ "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a person owes to others and to society in general." 16 Fla. Jur. 2d Criminal Law – Substantive Principles/Offenses §6.

¹⁴ The bill defines financial services business as "any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation."

begins upon an applicant's final release from criminal supervision or upon completion of a criminal sentence. A license may not be issued until all related fines, court costs & fees, and court-ordered restitution have been paid.

Once a disqualifying period has elapsed, the applicant carries the burden of showing that they have been rehabilitated, they do not pose a risk to the public, they are fit and trustworthy to engage in business regulated by ch. 497, F.S., and they are otherwise qualified. A grant of a pardon or the restoration of civil rights pursuant to ch. 940, F.S., and s. 8 Art. IV of the State Constitution, with respect to a finding of guilt or a plea does not bar an applicant from licensure.¹⁵

The bill gives rulemaking authority to the DFS for purposes of implementation. The rules must include additional disqualifying periods upon a finding of the commitment of multiple crimes, and may include other factors reasonably related to the applicant's criminal history.¹⁶ The rules must provide for mitigating and aggravating factors. Mitigating factors must not result in a disqualifying period of less than five years. Mitigating factors will not apply to the five year disqualifying period for all felonies unrelated to both the death care industry and moral turpitude or the five year disqualifying period for all misdemeanors directly related to the financial services business.

The Board may grant an exemption from disqualification due to an applicant's criminal record if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of a judgment and sentence relating to the disqualifying offense. Additionally, five years must have elapsed since the applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for the disqualifying offense. In order for the Board to grant an exemption, an applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or property if granted a license under ch. 497, F.S.

Evidence presented to the Board by an applicant for a potential exemption must include the following:

1. Facts and circumstances surrounding the disqualifying offense,
2. The time that has elapsed since the offense,
3. The nature of the offense and the harm caused to the victim(s),
4. The applicant's history before and after the offense, and
5. Any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

The Board holds discretion whether to grant or deny an exemption. The Board's decision is subject to ch. 120, F.S., the Administrative Procedure Act. A formal proceeding under s. 120.57(1)¹⁷ is available to an applicant only if the applicant disputes material facts that the DLE relied upon in order to reach a decision.

Violations by Unlicensed Persons

Chapter 497, F.S., requires a license for specific death care industry practices, although it does not include specific examples of what is considered a licensed or unlicensed practice. Current law provides a penalty of a second-degree misdemeanor for individuals who engage in activity requiring licensure without possessing a license.¹⁸

Effect of the Bill

The bill specifies that a person may not be, act as, or advertise himself or herself to be a funeral director, embalmer, or direct disposer unless he or she is licensed by DFS. The bill also specifies that

¹⁵ See drafting comments.

¹⁶ See drafting comments.

¹⁷ This section lays out additional procedures applicable to hearings involving disputed issues of material fact under the Administrative Procedure Act.

¹⁸ S. 497.159(6), F.S.

a person may not be, act as, or advertise himself or herself as a preneed¹⁹ sales agent unless currently licensed by DFS and is appointed by a preneed main licensee, for whom they are executing preneed contracts. Any violation of these newly created subsections would result in a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Explosives

Chapter 552, F.S., addresses the manufacture, distribution, and use of explosives, which are regulated by the State Fire Marshal. The current definition of a two-component explosive requires detonation to be triggered by a No. 6 blasting cap. This specific blasting cap has gone out of production and current blasting caps do not fall under the same rating system. Current blasting caps fall outside of this definition and therefore are not effectively regulated.

Effect of the Bill

The bill removes the No. 6 blasting cap specification and changes it to any detonator. The amendment to this subsection brings the language in line with current practices.

Uniform Fire Alarm Permit Application

Contractors can work on installing or repairing a fire alarm system only after receiving a permit. Local enforcement agencies often require a plan review for installation or replacement. If a plan review is required, a contractor must file a Uniform Fire Alarm Permit Application with the local enforcement agency and receive the permit prior to installing or replacing a fire alarm. If the local enforcement agency requires a fire alarm permit for a repair to an existing alarm system previously permitted by the local enforcement agency, a contractor must receive the permit prior to repairing the system.

Effect of the Bill

The bill allows a contractor to begin a repair after filing the application instead of waiting for the permit to be received. However, this change only applies if the local enforcement agency requires a permit to repair an existing alarm system that was previously permitted by the agency. If a contractor begins the repair prior to receiving the permit, the repaired fire alarm will not be compliant with the local enforcement agency until the permit is issued and the agency has approved the repair. This allows repairs to be completed in a more efficient manner.

Volunteer Firefighter Service

Volunteer firefighters are required to obtain a Firefighter Certificate of Completion through training. With this certificate, they can enter into immediately dangerous to life and health (IDLH) environments, just as career firefighters can. Volunteer firefighters can become career firefighters, if they complete a Certificate of Compliance. Currently, if a volunteer firefighter chooses to become a career firefighter, he or she is no longer able to enter an IDLH environment while completing the Certificate of Compliance.

Effect of the Bill

The bill allows volunteer firefighters who are in transition to become career firefighters to function in the same capacity in which they acted as volunteer firefighters. The period for which they remain volunteers cannot extend beyond one year, collectively or consecutively. A volunteer firefighter in transition must hold a Certificate of Completion with a fire service provider and subsequently be employed as a regular or permanent firefighter. The volunteer firefighter in transition must be under

¹⁹ Preneed contract means "any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future." S. 497.005 (61), F.S.

the direct supervision of an individual holding a valid firefighter Certificate of Compliance. This allows Fire Service Providers to transition qualified personnel from volunteer to career status without stripping their ability to perform.

False Personation

Section 843.08, F.S., lays out the penalties for false personation, which is treated as an obstruction of justice, a third-degree felony. If the false personation is committed with another felony, it is considered a second-degree felony. If it is committed and causes death or personal injury to another individual, it is considered a first-degree felony. Current law prohibits impersonation of a fire or arson investigator of DFS and any officer of DFS but does not address officers of DIFS.

Effect of the Bill

The bill would take out the specificity of a fire or arson investigator of DFS and instead add “any personnel or representative of the Division of Investigative and Forensic Services,” making the specific protection broader. This change makes it a felony to impersonate any DIFS personnel and any DFS officer.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 497.101, F.S., relating to the Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.

Section 3: Creates s. 497.1411, F.S., relating to disqualification of applicants and licensees; penalties against licensees; rulemaking.

Section 4: Amends s. 497.157, F.S., relating to unlicensed practice; remedies concerning violations by unlicensed persons.

Section 5: Amends s. 552.081, F.S., relating to definitions.

Section 6: Amends s. 553.7921, F.S., relating to fire alarm permit application to local enforcement agency.

Section 7: Amends s. 633.416, F.S., relating to firefighter employment and volunteer firefighter service; saving clause.

Section 8: Amends s. 843.08, F.S., relating to false personation.

Section 9: Amends s. 943.045, F.S., relating to definitions.

Section 10: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DFS is directed to adopt rules to:²⁰

- Administer s. 497.1411, F.S.;
- Provide for additional disqualifying periods due to commitment of multiple crimes, which may include other factors reasonably related to the applicant's criminal history; and
- Provide for mitigating and aggravation factors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pardon (lines 212–215): The language of the bill makes it seem as if a pardon is currently a reason for a permanent bar or a period of disqualification. However, the DFS analysis points out that a grant, pardon, or restoration of civil rights for a crime delineated by the section results in the crime not being a bar to licensure.²¹ It is recommended that an amendment be added to reconcile this gap in the language and the analysis.

Rulemaking Authority (lines 187–194): The bill allocates rulemaking authority to DFS in relation to barring or disqualifying licensure. Current law vests sole authority in the Board to determine any and all criteria for licensure,²² and to renew and decline to renew licenses under ch. 497, F.S.²³ Both paragraphs include rulemaking authority, therefore there appears to be a conflict with the delegation to DFS.²⁴

²⁰ See drafting comments.

²¹ Department of Financial Services, Agency Analysis of House Bill 1077, p.4 (Jan. 14, 2020).

²² S. 497.103 (1)(a), F.S.

²³ S. 497.103 (1)(k), F.S.,

²⁴ While the Board is housed in DFS, they have independent authority.

Administrative Procedures Act (lines 239–244): Chapter 120, F.S., the Administrative Procedures Act, allows for a formal proceeding when an applicant disputes the material facts that an agency or board relies upon to make a licensure decision. This chapter already applies to licensure decisions by the Board. Therefore, the bill language establishing the right to a formal hearing appears unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Department of Financial
 3 Services; amending s. 20.121, F.S.; specifying powers
 4 and duties of the Division of Public Assistance Fraud;
 5 amending s. 497.101, F.S.; revising provisions
 6 relating to membership of the Board of Funeral,
 7 Cemetery, and Consumer Services; creating s. 497.1411,
 8 F.S.; providing definitions; providing for permanent
 9 disqualification of applicants for licensure under
 10 chapter 497, F.S., upon conviction of certain
 11 offenses; providing for disqualifying periods for such
 12 applicants who have been convicted of certain
 13 offenses; requiring rulemaking; providing for
 14 calculation of disqualifying periods; providing for
 15 applicants to show rehabilitation after completion of
 16 a disqualifying period; providing for the effect of a
 17 pardon or clemency; providing for exemptions from
 18 disqualification in certain circumstances; providing
 19 procedures for consideration of applications for such
 20 exemptions; amending s. 497.157, F.S.; prohibiting
 21 persons from acting as or advertising themselves as
 22 being certain persons unless they are so licensed;
 23 prohibiting persons from engaging in certain
 24 activities requiring licensure without holding
 25 required licenses; providing criminal penalties;

26 amending s. 552.081, F.S.; revising the definition of
 27 two-component explosives for the purpose of regulation
 28 by the Division of State Fire Marshal; amending s.
 29 553.7921, F.S.; revising requirements for repair of an
 30 existing alarm system that was previously permitted by
 31 a local enforcement agency; amending s. 633.416, F.S.;
 32 providing that certain persons serving as volunteer
 33 firefighters may serve as a regular or permanent
 34 firefighter for a limited period subject to certain
 35 restrictions; amending s. 843.08, F.S.; prohibiting
 36 false personation of personnel or representatives of
 37 the Division of Investigative and Forensic Services;
 38 providing criminal penalties; amending s. 943.045,
 39 F.S.; providing the investigations component of the
 40 Department of Financial Services is a criminal justice
 41 agency for specified purposes; providing an effective
 42 date.

43

44 Be It Enacted by the Legislature of the State of Florida:

45

46 Section 1. Paragraph (f) of subsection (2) of section
 47 20.121, Florida Statutes, is amended to read:

48 20.121 Department of Financial Services.—There is created
 49 a Department of Financial Services.

50 (2) DIVISIONS.—The Department of Financial Services shall

51 consist of the following divisions and office:

52 (f) The Division of Public Assistance Fraud, which shall
 53 function as a criminal justice agency for purposes of ss.
 54 943.045-943.08. The division shall conduct investigations
 55 pursuant to s. 414.411 within or outside of this state as it
 56 deems necessary. If, during an investigation, the division has
 57 reason to believe that any criminal law of this state has or may
 58 have been violated, it shall refer any records tending to show
 59 such violation to state or federal law enforcement or
 60 prosecutorial agencies and shall provide investigative
 61 assistance to those agencies as required.

62 Section 2. Subsections (1), (2), (3), (6), and (8) of
 63 section 497.101, Florida Statutes, are amended to read:

64 497.101 Board of Funeral, Cemetery, and Consumer Services;
 65 membership; appointment; terms.—

66 (1) The Board of Funeral, Cemetery, and Consumer Services
 67 is created within the Department of Financial Services and shall
 68 consist of 10 members, 9 of whom shall be appointed by the
 69 Governor from nominations made by the Chief Financial Officer
 70 and confirmed by the Senate. The Chief Financial Officer shall
 71 nominate one to three persons for each of the nine vacancies on
 72 the board, and the Governor shall fill each vacancy on the board
 73 by appointing one of the ~~three~~ persons nominated by the Chief
 74 Financial Officer to fill that vacancy. If the Governor objects
 75 to each of the ~~three~~ nominations for a vacancy, she or he shall

76 inform the Chief Financial Officer in writing. Upon notification
 77 of an objection by the Governor, the Chief Financial Officer
 78 shall submit one to three additional nominations for that
 79 vacancy until the vacancy is filled. One member must be the
 80 State Health Officer or her or his designee.

81 (2) Two members of the board shall be funeral directors
 82 licensed under part III of this chapter who are associated with
 83 a funeral establishment. One member of the board shall be a
 84 funeral director licensed under part III of this chapter who is
 85 associated with a funeral establishment licensed under part III
 86 of this chapter that has a valid preneed license issued pursuant
 87 to this chapter and who owns or operates a cinerator facility
 88 approved under chapter 403 and licensed under part VI of this
 89 chapter. Two members of the board shall be persons whose primary
 90 occupation is associated with a cemetery company licensed
 91 pursuant to this chapter. Two ~~Three~~ members of the board shall
 92 be consumers who are residents of the state, have never been
 93 licensed as funeral directors or embalmers, are not connected
 94 with a cemetery or cemetery company licensed pursuant to this
 95 chapter, and are not connected with the death care industry or
 96 the practice of embalming, funeral directing, or direct
 97 disposition. One of the two consumer members shall be at least
 98 60 years of age, ~~and one shall be licensed as a certified public~~
 99 ~~accountant under chapter 473.~~ One member of the board shall be a
 100 consumer who is a resident of this state; licensed as a

101 certified public accountant under chapter 473; has never been
 102 licensed as a funeral director or embalmer; is not a principal
 103 or employee of any licensee licensed under this chapter; and
 104 does not otherwise have control, as defined in s. 497.005, over
 105 any licensee licensed under this chapter. One member of the
 106 board shall be a principal of a monument establishment licensed
 107 under this chapter as a monument builder. One member shall be
 108 the State Health Officer or her or his designee. There shall not
 109 be two or more board members who are principals or employees of
 110 the same company or partnership or group of companies or
 111 partnerships under common control.

112 (3) Board members shall be appointed for terms of 4 years,
 113 and the State Health Officer shall serve as long as that person
 114 holds that office. The designee of the State Health Officer
 115 shall serve at the pleasure of the Governor. ~~When the terms of~~
 116 ~~the initial board members expire, the Chief Financial Officer~~
 117 ~~shall stagger the terms of the successor members as follows: one~~
 118 ~~funeral director, one cemetery representative, the monument~~
 119 ~~builder, and one consumer member shall be appointed for terms of~~
 120 ~~2 years, and the remaining members shall be appointed for terms~~
 121 ~~of 4 years. All subsequent terms shall be for 4 years.~~

122 (6) The headquarters and records of the board shall be in
 123 the Division of Funeral, Cemetery, and Consumer Services of the
 124 Department of Financial Services in the City of Tallahassee. The
 125 board may be contacted through the Division of Funeral,

126 Cemetery, and Consumer Services of the Department of Financial
 127 Services in the City of Tallahassee. The Chief Financial Officer
 128 shall annually appoint from among the board members a chair and
 129 vice chair of the board. The board shall meet at least every 6
 130 months, and more often as necessary. Special meetings of the
 131 board shall be convened upon the direction of the Chief
 132 Financial Officer. A quorum is necessary for the conduct of
 133 business by the board. Unless otherwise provided by law, a
 134 majority of the board members eligible to vote shall constitute
 135 a quorum for the purpose of conducting its business ~~six board~~
 136 ~~members shall constitute a quorum for the conduct of the board's~~
 137 ~~business.~~

138 ~~(8) The department shall adopt rules establishing forms by~~
 139 ~~which persons may apply for membership on the board and~~
 140 ~~procedures for applying for such membership. Such forms shall~~
 141 ~~require disclosure of the existence and nature of all current~~
 142 ~~and past employments by or contracts with, and direct or~~
 143 ~~indirect affiliations or interests in, any entity or business~~
 144 ~~that at any time was licensed by the board or by the former~~
 145 ~~Board of Funeral and Cemetery Services or the former Board of~~
 146 ~~Funeral Directors and Embalmers or that is or was otherwise~~
 147 ~~involved in the death care industry, as specified by department~~
 148 ~~rule.~~

149 Section 3. Section 497.1411, Florida Statutes, is created
 150 to read:

151 497.1411 Disqualification of applicants and licensees;
 152 penalties against licensees; rulemaking.-

153 (1) For purposes of this section, the term:

154 (a) "Applicant" means an individual applying for licensure
 155 or relicensure under this chapter, and an officer, director,
 156 majority owner, partner, manager, or other person who manages or
 157 controls an entity applying for licensure or relicensure under
 158 this chapter.

159 (b) "Felony of the first degree" and "capital felony"
 160 include all felonies designated as such in this state, at the
 161 time of the commission of the offense, as well as any offense in
 162 another jurisdiction that is substantially similar to an offense
 163 so designated in this state.

164 (c) "Financial services business" means any financial
 165 activity regulated by the Department of Financial Services, the
 166 Office of Insurance Regulation, or the Office of Financial
 167 Regulation.

168 (2) An applicant who has been found guilty of or has
 169 pleaded guilty or nolo contendere to any of the following
 170 crimes, regardless of adjudication, is permanently barred from
 171 licensure under this chapter:

172 (a) A felony of the first degree.

173 (b) A capital felony.

174 (c) A felony money laundering offense.

175 (d) A felony embezzlement.

176 (3) An applicant who has been found guilty of or has
 177 pleaded guilty or nolo contendere to a crime not included in
 178 subsection (2), regardless of adjudication, is subject to:

179 (a) A 10-year disqualifying period for all felonies
 180 involving moral turpitude that are not specifically included in
 181 the permanent bar contained in subsection (2).

182 (b) A 5-year disqualifying period for all felonies to
 183 which neither the permanent bar in subsection (2) nor the 10-
 184 year disqualifying period in paragraph (a) applies.

185 (c) A 5-year disqualifying period for all misdemeanors
 186 directly related to the financial services business.

187 (4) The department shall adopt rules to administer this
 188 section. The rules must provide for additional disqualifying
 189 periods due to the commitment of multiple crimes and may include
 190 other factors reasonably related to the applicant's criminal
 191 history. The rules shall provide for mitigating and aggravating
 192 factors. However, mitigation may not result in a period of
 193 disqualification of less than 5 years and may not mitigate the
 194 disqualifying periods in paragraphs (3)(b) and (c).

195 (5) For purposes of this section, a disqualifying period
 196 begins upon the applicant's final release from supervision or
 197 upon completion of the applicant's criminal sentence. The
 198 department may not issue a license to an applicant unless all
 199 related fines, court costs and fees, and court-ordered
 200 restitution have been paid.

201 (6) After the disqualifying period has expired, the burden
 202 is on the applicant to demonstrate that he or she has been
 203 rehabilitated, does not pose a risk to the public, is fit and
 204 trustworthy to engage in business regulated by this chapter, and
 205 is otherwise qualified for licensure.

206 (7) Notwithstanding subsections (2) and (3), upon a grant
 207 of a pardon or the restoration of civil rights pursuant to
 208 chapter 940 and s. 8, Art. IV of the State Constitution with
 209 respect to a finding of guilt or a plea under subsection (2) or
 210 subsection (3), or such pardon or the restoration of civil
 211 rights under the laws of another jurisdiction with respect to a
 212 conviction in that jurisdiction, such finding or plea no longer
 213 bars or disqualifies the applicant from licensure under this
 214 chapter; however, such a pardon or restoration of civil rights
 215 does not require the department to award such license.

216 (8)(a) The Board of Funeral, Cemetery, and Consumer
 217 Services may grant an exemption from disqualification to any
 218 person disqualified from licensure under this section because of
 219 a criminal record if:

220 1. The applicant has paid in full any fee, fine, fund,
 221 lien, civil judgment, restitution, or cost of prosecution
 222 imposed by the court as part of the judgment and sentence for
 223 any disqualifying offense; and

224 2. At least 5 years have elapsed since the applicant
 225 completed or has been lawfully released from confinement,

226 supervision, or nonmonetary condition imposed by the court for a
 227 disqualifying offense.

228 (b) For the board to grant an exemption under this
 229 subsection, the applicant must clearly and convincingly
 230 demonstrate that he or she would not pose a risk to persons or
 231 property if licensed under this chapter, evidence of which must
 232 include, but need not be limited to, facts and circumstances
 233 surrounding the disqualifying offense, the time that has elapsed
 234 since the offense, the nature of the offense and harm caused to
 235 the victim, the applicant's history before and after the
 236 offense, and any other evidence or circumstances indicating that
 237 the applicant will not present a danger if licensed or
 238 certified.

239 (c) The board has discretion whether to grant or deny an
 240 exemption under this subsection. The board's decision is subject
 241 to chapter 120, except that a formal proceeding under s.
 242 120.57(1) is available only if there are disputed issues of
 243 material fact that the department relied upon in reaching its
 244 decision.

245 Section 4. Subsections (2) through (5) of section 497.157,
 246 Florida Statutes, are renumbered as subsections (4) through (7),
 247 respectively, new subsections (2), (3) and (8) are added to that
 248 section, and present subsection (3) is amended, to read:

249 497.157 Unlicensed practice; remedies concerning
 250 violations by unlicensed persons.-

251 (2) A person may not be, act as, or advertise or hold
 252 himself or herself out to be a funeral director, embalmer, or
 253 direct disposer, unless he or she is currently licensed by the
 254 department.

255 (3) A person may not be, act as, or advertise or hold
 256 himself or herself out to be a preneed sales agent unless he or
 257 she is currently licensed by the department and appointed by a
 258 preneed main licensee for which they are executing preneed
 259 contracts.

260 (5)~~(3)~~ Where the department determines that an emergency
 261 exists regarding any violation of this chapter by any unlicensed
 262 person or entity, the department may issue and serve an
 263 immediate final order upon such unlicensed person or entity, in
 264 accordance with s. 120.569(2)(n). Such an immediate final order
 265 may impose such prohibitions and requirements as are reasonably
 266 necessary to protect the public health, safety, and welfare, and
 267 shall be effective when served.

268 (a) For the purpose of enforcing such an immediate final
 269 order, the department may file an emergency or other proceeding
 270 in the circuit courts of the state seeking enforcement of the
 271 immediate final order by injunctive or other order of the court.
 272 The court shall issue its injunction or other order enforcing
 273 the immediate final order pending administrative resolution of
 274 the matter under subsection (4)~~(2)~~, unless the court determines
 275 that such action would work a manifest injustice under the

276 | circumstances. Venue for judicial actions under this paragraph
 277 | shall be, at the election of the department, in the courts of
 278 | Leon County, or in a county where the respondent resides or has
 279 | a place of business.

280 | (b) After serving an immediate final order to cease and
 281 | desist upon any person or entity, the department shall within 10
 282 | days issue and serve upon the same person or entity an
 283 | administrative complaint as set forth in subsection (4)~~(2)~~,
 284 | except that, absent order of a court to the contrary, the
 285 | immediate final order shall be effective throughout the pendency
 286 | of proceedings under subsection (4)~~(2)~~.

287 | (8) Any person who is not licensed under this chapter and
 288 | who engages in activity requiring licensure under this chapter
 289 | commits a felony of the third degree, punishable as provided in
 290 | s. 775.082, s. 775.083, or s. 775.084.

291 | Section 5. Subsection (13) of section 552.081, Florida
 292 | Statutes, is amended to read:

293 | 552.081 Definitions.—As used in this chapter:

294 | (13) "Two-component explosives" means any two inert
 295 | components which, when mixed, become capable of detonation by
 296 | any detonator ~~a No. 6 blasting cap~~, and shall be classified as a
 297 | Class "A" explosive when so mixed.

298 | Section 6. Subsection (2) of section 553.7921, Florida
 299 | Statutes, is renumbered as subsection (3), subsection (1) of
 300 | that section is amended, and a new subsection (2) is added to

301 that section, to read:

302 553.7921 Fire alarm permit application to local
 303 enforcement agency.-

304 (1) A contractor must file a Uniform Fire Alarm Permit
 305 Application as provided in subsection (3) ~~(2)~~ with the local
 306 enforcement agency and must receive the fire alarm permit
 307 before:

308 ~~(a)~~ installing or replacing a fire alarm if the local
 309 enforcement agency requires a plan review for the installation
 310 or replacement, ~~or~~

311 ~~(b)~~ ~~Repairing an existing alarm system that was previously~~
 312 ~~permitted by the local enforcement agency if the local~~
 313 ~~enforcement agency requires a fire alarm permit for the repair.~~

314 (2) If the local enforcement agency requires a fire alarm
 315 permit to repair an existing alarm system that was previously
 316 permitted by the local enforcement agency, a contractor may
 317 begin work after filing a Uniform Fire Alarm Permit Application
 318 as provided in subsection (3). A fire alarm repaired pursuant to
 319 this subsection shall not be considered compliant until the
 320 required permit has been issued and the local enforcement agency
 321 has approved the repair.

322 Section 7. Subsection (1) of section 633.416, Florida
 323 Statutes, is amended to read:

324 633.416 Firefighter employment and volunteer firefighter
 325 service; saving clause.-

326 (1) A fire service provider may not employ an individual
 327 to:

328 (a) Extinguish fires for the protection of life or
 329 property or to supervise individuals who perform such services
 330 unless the individual holds a current and valid Firefighter
 331 Certificate of Compliance. However, a person who is currently
 332 serving as a volunteer firefighter and holds a volunteer
 333 firefighter certificate of completion with a fire service
 334 provider, who is then employed as a regular or permanent
 335 firefighter, by such fire service provider, may function, for a
 336 period of 1 year under the direct supervision of an individual
 337 holding a valid firefighter certificate of compliance, in the
 338 same capacity in which he or she acted as a volunteer
 339 firefighter, provided that he or she has completed all training
 340 required by the volunteer organization. Under no circumstance
 341 can this period extend beyond 1 year either collectively or
 342 consecutively from the start of employment to obtain a
 343 Firefighter Certificate of Compliance; or

344 (b) Serve as the administrative and command head of a fire
 345 service provider for a period in excess of 1 year unless the
 346 individual holds a current and valid Firefighter Certificate of
 347 Compliance or Special Certificate of Compliance.

348 Section 8. Section 843.08, Florida Statutes, is amended to
 349 read:

350 843.08 False personation.—A person who falsely assumes or

351 | pretends to be a firefighter, a sheriff, an officer of the
 352 | Florida Highway Patrol, an officer of the Fish and Wildlife
 353 | Conservation Commission, an officer of the Department of
 354 | Environmental Protection, ~~a fire or arson investigator of the~~
 355 | ~~Department of Financial Services,~~ an officer of the Department
 356 | of Financial Services, or any personnel or representative of the
 357 | Division of Investigative and Forensic Services, an officer of
 358 | the Department of Corrections, a correctional probation officer,
 359 | a deputy sheriff, a state attorney or an assistant state
 360 | attorney, a statewide prosecutor or an assistant statewide
 361 | prosecutor, a state attorney investigator, a coroner, a police
 362 | officer, a lottery special agent or lottery investigator, a
 363 | beverage enforcement agent, a school guardian as described in s.
 364 | 30.15(1)(k), a security officer licensed under chapter 493, any
 365 | member of the Florida Commission on Offender Review or any
 366 | administrative aide or supervisor employed by the commission,
 367 | any personnel or representative of the Department of Law
 368 | Enforcement, or a federal law enforcement officer as defined in
 369 | s. 901.1505, and takes upon himself or herself to act as such,
 370 | or to require any other person to aid or assist him or her in a
 371 | matter pertaining to the duty of any such officer, commits a
 372 | felony of the third degree, punishable as provided in s.
 373 | 775.082, s. 775.083, or s. 775.084. However, a person who
 374 | falsely personates any such officer during the course of the
 375 | commission of a felony commits a felony of the second degree,

376 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 377 If the commission of the felony results in the death or personal
 378 injury of another human being, the person commits a felony of
 379 the first degree, punishable as provided in s. 775.082, s.
 380 775.083, or s. 775.084.

381 Section 9. Paragraph (f) is added to subsection (11) of
 382 section 943.045, Florida Statutes, to read:

383 943.045 Definitions; ss. 943.045-943.08.—The following
 384 words and phrases as used in ss. 943.045-943.08 shall have the
 385 following meanings:

386 (11) "Criminal justice agency" means:

387 (f) The investigations component of the Department of
 388 Financial Services, which investigates the crimes of fraud and
 389 official misconduct in all public assistance given to residents
 390 of the state or provided to others by the state.

391 Section 10. This act shall take effect July 1, 2020.

INSURANCE & BANKING SUBCOMMITTEE

**HB 1077 by Rep. LaMarca
Department of Financial Services**

AMENDMENT SUMMARY January 21, 2020

Amendment 1 by Rep. Altman (Line 322): The amendment creates s. 633.217, F.S., relating to firesafety inspectors, to prohibit:

- Any person from influencing a firesafety inspector by threatening, coercing, tricking, or attempting to threaten, coerce, or trick, a firesafety inspector into violating, or offering to compensate the firesafety inspector to induce a violation of, any provision of the Florida Fire Prevention Code, a rule adopted by the State Fire Marshal, or ch. 633, F.S.
- A firesafety inspector from knowingly and willfully accepting an attempt by a person to influence the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Altman offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 321 and 322, insert:

7 Section 7. Section 633.217, Florida Statutes, is created
 8 to read:

9 633.217 Influencing a firesafety inspector; prohibited
 10 acts.—

11 (1) A person may not influence a firesafety inspector by:

12 (a) Threatening, coercing, tricking, or attempting to
 13 threaten, coerce, or trick, the firesafety inspector into
 14 violating any provision of the Florida Fire Prevention Code, any
 15 rule adopted by the State Fire Marshal, or any provision of this
 16 chapter.

Amendment No. 1

17 (b) Offering any compensation to the firesafety inspector
18 to induce a violation of the Florida Fire Prevention Code, any
19 rule adopted by the State Fire Marshal, or any provision of this
20 chapter.

21 (2) A firesafety inspector may not knowingly and willfully
22 accept an attempt by a person to influence the firesafety
23 inspector into violating any provision of the Florida Fire
24 Prevention Code, any rule adopted by the State Fire Marshal, or
25 any provision of this chapter.

26

27

28

29

T I T L E A M E N D M E N T

30

Remove line 31 and insert:

31

a local enforcement agency; creating s. 633.217, F.S.;

32

prohibiting certain actions to influence a firesafety inspector

33

into violating certain provisions; prohibiting a firesafety

34

inspector from knowingly and willfully accepting an attempt to

35

influence the firesafety inspector into violating certain

36

provisions; amending s. 633.416, F.S.;