



Committee on Financial Institutions

**Thursday, March 20, 2008
9:45 am – 10:45 am
24 House Office Building**

Meeting Packet

**Marco Rubio
Speaker**

**Jennifer Carroll
Chair**

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Financial Institutions

Start Date and Time: Thursday, March 20, 2008 09:45 am
End Date and Time: Thursday, March 20, 2008 10:45 am
Location: 24 HOB
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 853 Cemetery Lands by Troutman
HB 1003 Annuity Products by Ford
HB 1037 Escrow Agents by Poppell
HB 1041 Fire Prevention and Control by Garcia, L.

NOTICE FINALIZED on 03/18/2008 16:21 by COCHRAN.MARGARET

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

There are no house principles implicated.

B. EFFECT OF PROPOSED CHANGES:

Section 1: The bill amends s. 497.270, F.S., Minimum acreage; sale or disposition of cemetery lands.— The bill provides that except for road system, transportation corridor, or rights-of-way purposes, property dedicated for cemetery purposes and licensed under this part may not be taken by eminent domain if the area of property to be taken is 1 contiguous acre or greater in size, unless the taking entity determines in a public hearing that there are no reasonable alternatives except to use cemetery property for the project.

The bill also provides that, a governmental entity may not require the transfer of property dedicated for cemetery purposes and licensed under this part as of July 1, 2007, as a condition of obtaining regulatory approval for any regulatory process to which the cemetery is subject.

Section 2: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0853

COUNCIL/COMMITTEE 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

1 Council/Committee hearing bill: Committee on Financial
2 Institutions
3 Representative Troutman offered the following:

4
5 **Amendment**

6 Remove line(s) 24-25 and insert:
7 part as of July 1, 2008, as a condition of obtaining regulatory
8 approval under this chapter for any regulatory process to which
9 the cemetery is

10

1 A bill to be entitled
 2 An act relating to cemetery lands; amending s. 497.270,
 3 F.S.; revising provisions relating to the sale or
 4 disposition of cemetery lands to provide restrictions with
 5 respect to takings by eminent domain and the imposition of
 6 certain conditions for obtaining specified regulatory
 7 approval; providing an effective date.

8

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

10

11 Section 1. Subsections (6) and (7) are added to section
 12 497.270, Florida Statutes, to read:

13

14 497.270 Minimum acreage; sale or disposition of cemetery
 15 lands.--

16

17 (6) Except for road system, transportation corridor, or
 18 rights-of-way purposes, property dedicated for cemetery purposes
 19 and licensed under this part may not be taken by eminent domain
 20 if the area of property to be taken is 1 contiguous acre or
 21 greater in size, unless the taking entity determines in a public
 22 hearing that there are no reasonable alternatives except to use
 23 cemetery property for the project.

24

25 (7) A governmental entity may not require the transfer of
 26 property dedicated for cemetery purposes and licensed under this
 27 part as of July 1, 2007, as a condition of obtaining regulatory
 28 approval for any regulatory process to which the cemetery is
 29 subject.

30

31 Section 2. This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: Provides that senior consumers may rescind an annuity product within one year of purchase and obtain a full refund.

B. EFFECT OF PROPOSED CHANGES:

Background

Sales of annuities to seniors have risen dramatically over the past several years, and in turn, so have instances of deceptive sales practices. Seniors comprise a vital component of Florida's economy, and are frequently a prime target for fraud because of the lifetime of savings they have amassed.¹

Section 1: Subsection (9) is added to section 627.4554, F.S., Annuity investments by seniors.— The bill provides any person who purchases an annuity product in Florida and is 75 years of age or older at the time of purchase may rescind without penalty a contract for the sale of such annuity product for any reason within one (1) year of purchase.

Such rescission must be in writing and may be delivered to the insured or any agent of the insured selling annuity products. A person rescinding a contract or agreement for such annuity product shall receive from the insurer a full refund of costs paid upon receipt of the written notice of rescission.

Any insurer licensed to write or sell annuities or annuity products must include contractual provisions allowing a person 75 years of age or older who purchases an annuity product to rescind such agreement in accordance with this subsection. Moreover, an insurer is to provide a senior consumer a full refund. Failure to include such provisions constitutes a violation of this code, subject to the appropriate penalties.

Section2: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

None

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

¹ Florida Department of Financial Services : 2008 White Paper on Annuities: by Roxanne Rehm, Assistant General Counsel

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1003

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Committee on Financial
 2 Institutions
 3 Representative(s) Ford offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "John and Patricia
 8 Seibel Act."

9 Section 2. Paragraph (a) of subsection (2) of section
 10 626.171, Florida Statutes, is amended to read:

11 626.171 Application for license as an agent, customer
 12 representative, adjuster, service representative, managing
 13 general agent, or reinsurance intermediary.--

14 (2) In the application, the applicant shall set forth:

15 (a) His or her full name, age, social security number,
 16 residence address, business address, ~~and~~ mailing address, home
 17 telephone number, business telephone number, and e-mail address.

18
 19 However, the application must contain a statement that an
 20 applicant is not required to disclose his or her race or
 21 ethnicity, gender, or native language, that he or she will not
 22 be penalized for not doing so, and that the department will use

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23 this information exclusively for research and statistical
24 purposes and to improve the quality and fairness of the
25 examinations.

26 Section 3. Paragraph (k) is added to subsection (3) of
27 section 626.2815, Florida Statutes, to read:

28 626.2815 Continuing education required; application;
29 exceptions; requirements; penalties.--

30 (3)

31 (k) Effective January 1, 2009, and until January 1, 2010,
32 any person who holds a license to solicit or sell life insurance
33 in this state must complete a minimum of 3 hours in continuing
34 education, approved by the department, on the subject of
35 suitability in annuity and life insurance transactions. A
36 licensee may use the hours obtained under this paragraph to
37 satisfy the requirement for continuing education in ethics under
38 paragraph (a).

39 Section 4. Section 626.551, Florida Statutes, is amended
40 to read:

41 626.551 Notice of change of address, name.--Every licensee
42 shall notify the department in writing within 60 days after a
43 change of name, residence address, principal business street
44 address, ~~or~~ mailing address, home telephone number, business
45 telephone number, or e-mail address. A ~~Any~~ licensed agent who
46 has moved his or her residence from this state shall have his or
47 her license and all appointments immediately terminated by the
48 department. Failure to notify the department within the required
49 time period shall result in a fine not to exceed \$250 for the
50 first offense and, for subsequent offenses, a fine of at least
51 ~~not less than~~ \$500 or suspension or revocation of the license
52 pursuant to s. 626.611 or s. 626.621.

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53 Section 5. Section 626.9521, Florida Statutes, is amended
54 to read:

55 626.9521 Unfair methods of competition and unfair or
56 deceptive acts or practices prohibited; penalties.--

57 (1) No person shall engage in this state in any trade
58 practice which is defined in this part as, or determined
59 pursuant to s. 626.951 or s. 626.9561 to be, an unfair method of
60 competition or an unfair or deceptive act or practice involving
61 the business of insurance.

62 (2) Except as provided in subsection (3), any person who
63 violates any provision of this part is shall be subject to a
64 fine in an amount not greater than \$2,500 for each nonwillful
65 violation and not greater than \$20,000 for each willful
66 violation. Fines under this subsection may not exceed an
67 aggregate amount of \$10,000 for all nonwillful violations
68 arising out of the same action or an aggregate amount of
69 \$100,000 for all willful violations arising out of the same
70 action. ~~The fines authorized by this subsection~~ may be imposed
71 in addition to any other applicable penalty.

72 (3)(a) If a person violates s. 626.9541(1)(1), the offense
73 known as "twisting," or violates s. 626.9541(1)(aa), the offense
74 known as "churning," the person commits a felony of the third
75 degree, punishable as provided in s. 775.082, and a fine not
76 greater than \$5,000 shall be imposed for each nonwillful
77 violation or a fine not greater than \$30,000 shall be imposed
78 for each willful violation. However, if the victim of such
79 offense is 65 years of age or older or the agent knew or should
80 have known the victim is mentally disabled, the person commits a
81 felony of the second degree, punishable as provided in s.
82 775.082, and a fine not greater than \$5,000 shall be imposed for
83 each nonwillful violation or a fine not greater than \$30,000

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84 shall be imposed for each willful violation. To impose criminal
85 penalties under this paragraph, the agent must have exhibited a
86 pattern or practice of "churning" or "twisting."

87 (b) If a person violates s. 626.9541(1)(ee) by submitting
88 fraudulent signatures on an application or policy-related
89 document, the person commits a felony of the third degree,
90 punishable as provided in s. 775.082, and a fine not greater
91 than \$5,000 shall be imposed for each nonwillful violation or a
92 fine not greater than \$30,000 shall be imposed for each willful
93 violation.

94 (c) Fines under this subsection may not exceed an
95 aggregate amount of \$20,000 for all nonwillful violations
96 arising out of the same action or an aggregate amount of
97 \$150,000 for all willful violations arising out of the same
98 action.

99 Section 6. Any increase in the fines imposed under s.
100 626.9521, Florida Statutes, which exceeds the increase provided
101 by this act shall supersede the amendments made to that section
102 by this act if such increase is enacted during the 2008
103 legislative session and becomes law, and the amendments to s.
104 626.9521, Florida Statutes, made by this act shall not take
105 effect.

106 Section 7. Paragraph (aa) of subsection (1) of section
107 626.9541, Florida Statutes, is amended, and paragraphs (ee) and
108 (ff) are added to that subsection, to read:

109 626.9541 Unfair methods of competition and unfair or
110 deceptive acts or practices defined.--

111 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
112 ACTS.--The following are defined as unfair methods of
113 competition and unfair or deceptive acts or practices:

114 (aa) Churning.--

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115 1. Churning is the practice whereby policy values in an
116 existing life insurance policy or annuity contract, including,
117 but not limited to, cash, loan values, or dividend values, and
118 in any riders to that policy or contract, are directly or
119 indirectly used ~~utilized~~ to purchase another insurance policy or
120 annuity contract with that same insurer for the purpose of
121 earning additional premiums, fees, commissions, or other
122 compensation:

123 a. Without an objectively reasonable basis for believing
124 that the replacement or extraction will result in an actual and
125 demonstrable benefit to the policyholder;

126 b. In a fashion that is fraudulent, deceptive, or
127 otherwise misleading or that involves a deceptive omission;

128 c. When the applicant is not informed that the policy
129 values including cash values, dividends, and other assets of the
130 existing policy or contract will be reduced, forfeited, or used
131 ~~utilized~~ in the purchase of the replacing or additional policy
132 or contract, if this is the case; or

133 d. Without informing the applicant that the replacing or
134 additional policy or contract will not be a paid-up policy or
135 that additional premiums will be due, if this is the case.

136

137 Churning by an insurer or an agent is an unfair method of
138 competition and an unfair or deceptive act or practice.

139 2. Each insurer shall comply with sub-subparagraphs 1.c.
140 and 1.d. by disclosing to the applicant at the time of the offer
141 on a form designed and adopted by rule by the commission if,
142 how, and the extent to which the policy or contract values
143 (including cash value, dividends, and other assets) of a
144 previously issued policy or contract will be used to purchase a
145 replacing or additional policy or contract with the same

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146 insurer. The form must ~~shall~~ include disclosure of the premium,
147 the death benefit of the proposed replacing or additional
148 policy, and the date when the policy values of the existing
149 policy or contract will be insufficient to pay the premiums of
150 the replacing or additional policy or contract.

151 3. Each insurer shall adopt written procedures to
152 reasonably avoid churning of policies or contracts that it has
153 issued, and failure to adopt written procedures sufficient to
154 reasonably avoid churning shall be an unfair method of
155 competition and an unfair or deceptive act or practice.

156 (ee) Fraudulent signatures on an application or policy-
157 related document.--Willfully submitting to an insurer on behalf
158 of a consumer an insurance application or policy-related
159 document bearing a false or fraudulent signature.

160 (ff) Unlawful use of designations; misrepresentation of
161 agent qualifications.--

162 1. A licensee may not, in any sales presentation or
163 solicitation for insurance, use a designation or title in such a
164 way as to falsely imply that the licensee:

165 a. Possesses special financial knowledge or has obtained
166 specialized financial training; or

167 b. Is certified or qualified to provide specialized
168 financial advice to senior citizens.

169 2. A licensee may not use terms such as "financial
170 advisor" in such a way as to falsely imply that the licensee is
171 licensed or qualified to discuss, sell, or recommend financial
172 products other than insurance products.

173 3. A licensee may not, in any sales presentation or
174 solicitation for insurance, falsely imply that he or she is
175 qualified to discuss, recommend, or sell securities or other
176 investment products in addition to insurance products.

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177 4. A licensee who also holds a designation as a certified
178 financial planner (CFP), chartered life underwriter (CLU),
179 chartered financial consultant (ChFC), life underwriter training
180 council fellow (LUTC), or the appropriate license to sell
181 securities from the Financial Industry Regulatory Authority
182 (FINRA) may inform the customer of those licenses or
183 designations and make recommendations in accordance with those
184 licenses or designations, and in so doing does not violate this
185 paragraph.

186 Section 8. Paragraph (a) of subsection (4) of section
187 626.99, Florida Statutes, is amended to read:

188 626.99 Life insurance solicitation.--

189 (4) DISCLOSURE REQUIREMENTS.--

190 (a) The insurer shall provide to each prospective
191 purchaser a buyer's guide and a policy summary prior to
192 accepting the any applicant's initial premium or premium
193 deposit, unless the policy for which application is made
194 provides ~~contains a provision for~~ an unconditional refund for a
195 period of at least 14 ~~10~~ days, or unless the policy summary
196 contains an offer of such an unconditional refund, in which
197 event the buyer's guide and policy summary must be delivered
198 with the policy or prior to delivery of the policy. With respect
199 to ~~fixed~~ annuities, the insurer shall provide to each
200 prospective purchaser a buyer's guide to annuities and a
201 contract summary as provided in the National Association of
202 Insurance Commissioners (NAIC) Model Annuity and Deposit Fund
203 Regulation and the policy must provide ~~shall contain a provision~~
204 ~~for~~ an unconditional refund for a period of at least 14 ~~10~~ days.

205 Section 9. Section 627.4554, Florida Statutes, is amended
206 to read:

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207 627.4554 Annuity and life insurance investments by
208 seniors.--

209 (1) PURPOSE; CONSTRUCTION.--

210 (a) The purpose of this section is to set forth standards
211 and procedures for making recommendations to senior consumers
212 which result in a transaction involving life insurance or
213 annuity products to appropriately address the insurance needs
214 and financial objectives of senior consumers at the time of the
215 transaction.

216 (b) A violation of ~~Nothing in~~ this section does not shall
217 ~~be construed to~~ create or imply a private cause of action ~~for a~~
218 ~~violation of this section.~~

219 (2) APPLICATION.--This section applies to any
220 recommendation to purchase or exchange an annuity or life
221 insurance product which is made to a senior consumer by an
222 insurance agent, or an insurer where no agent is involved, and
223 which, ~~that~~ results in the purchase or exchange recommended.

224 (3) DEFINITIONS.--For purposes of this section, the term:

225 (a) "Annuity contract" means a fixed annuity, fixed equity
226 indexed annuity, or variable annuity that is individually
227 solicited, whether the product is classified as an individual
228 annuity or a group annuity.

229 (b) "Life insurance contract" means life insurance of
230 human lives.

231 (c) ~~(b)~~ "Recommendation" means advice provided by an
232 insurance agent, or an insurer if no insurance agent is
233 involved, to an individual senior consumer which results in a
234 purchase or exchange of an annuity or life insurance contract in
235 accordance with that advice.

236 (d) ~~(e)~~ "Senior consumer" means a person 65 years of age or
237 older. In the event of a joint purchase by more than one party,

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238 a purchaser is considered to be a senior consumer if any of the
239 parties is age 65 or older.

240 (4) DUTIES OF INSURERS AND INSURANCE AGENTS.--

241 (a) In recommending to a senior consumer the purchase or
242 exchange of an annuity or life insurance contract which ~~or the~~
243 ~~exchange of an annuity that~~ results in another insurance
244 transaction or series of insurance transactions, an insurance
245 agent, or an insurer if no insurance agent is involved, must
246 ~~shall~~ have an objectively reasonable basis ~~grounds~~ for believing
247 that the recommendation is suitable for the senior consumer
248 based on ~~the basis of~~ the facts disclosed by the senior consumer
249 as to his or her investments and other insurance products and as
250 to his or her financial situation and needs.

251 (b) Before executing a purchase or exchange of an annuity
252 or life insurance contract resulting from a recommendation to a
253 senior consumer, an insurance agent, or an insurer if no
254 insurance agent is involved, shall make reasonable efforts to
255 obtain information concerning the suitability of senior
256 ~~consumer's financial status, tax status, and investment~~
257 ~~objectives and such other information used or considered to be~~
258 ~~reasonable by the insurance agent, or the insurer if no agent is~~
259 ~~involved, in making the recommendation. The information shall~~
260 include, at a minimum:

261 1. Personal information, including the age and gender of
262 the parties to the annuity or life insurance and ages and number
263 of any dependents;

264 2. Sources and amounts of income, including employment and
265 salary details or other compensation applicable to the parties
266 to the annuity or life insurance;

267 3. Financial information applicable to the parties to the
268 annuity or life insurance, including, at a minimum, specific

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269 assets and liabilities to determine net worth and long-term and
270 short-term debt;

271 4. Other in-force insurance and annuities and retirement
272 or savings plans;

273 5. Tax status of the consumer;

274 6. Current and foreseeable living and health-related
275 expenses;

276 7. Investment experience of the consumer;

277 8. Savings and investment goals relative to investment and
278 income time horizons and need for liquidity;

279 9. Individual objectives, anticipated changes in needs,
280 and investment preferences, including risk tolerance;

281 10. The source of the funds that will be used to purchase
282 the annuity or life insurance; and

283 11. Such other information used or considered to be
284 relevant by the insurance agent or insurer in making
285 recommendations to the consumer regarding the purchase or
286 exchange of an annuity or life insurance contract.

287
288 This information shall be collected on a form adopted by rule by
289 the department and completed and signed by the applicant and
290 agent. Questions requesting this information must be presented
291 in at least 12-point type and be sufficiently clear so as to be
292 readily understandable by both the agent and the consumer. A
293 true and correct executed copy of the form shall be provided by
294 the agent to the insurer within 10 days after execution of the
295 form, and shall be provided to the consumer no later than the
296 date of delivery of the contract or contracts.

297 (c)1. Except as provided under subparagraph 2., an
298 insurance agent, or an insurer if no insurance agent is
299 involved, has no ~~shall not have any~~ obligation to a senior

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300 consumer under paragraph (a) related to any recommendation if
301 the senior consumer:

302 a. Refuses to provide relevant information requested by
303 the insurer or insurance agent;

304 b. Decides to enter into an insurance transaction that is
305 not based on a recommendation of the insurer or insurance agent;
306 or

307 c. Fails to provide complete or accurate information.

308 2. An insurer or insurance agent's recommendation subject
309 to subparagraph 1. shall be objectively reasonable under all the
310 circumstances actually known to the insurer or insurance agent
311 at the time of the recommendation.

312 3. If the consumer refuses to provide relevant information
313 requested by the insurance agent or insurer, before the
314 execution of the sale the insurance agent or insurer shall
315 obtain a signed verification from the senior consumer on a form
316 adopted by rule by the department that he or she refuses to
317 provide the requested information and may be limiting
318 protections afforded by this section regarding the suitability
319 of the sale.

320 (d) In addition to the information required by paragraph
321 (b), before the execution of a replacement or exchange of an
322 annuity or life insurance policy resulting from a
323 recommendation, the insurance agent shall also provide, on a
324 form adopted by rule by the department, information concerning
325 differences between each existing annuity or life insurance
326 policy and the annuity or life insurance policy being
327 recommended in order to determine the suitability of the
328 recommendation and its benefit to the consumer. A true and
329 correct executed copy of this form shall be provided by the
330 agent to the insurer within 10 days after execution of the form,

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331 and shall be provided to the consumer no later than the date of
332 delivery of the contract or contracts. The information shall
333 include, at a minimum:

334 1. A comparison of the benefits, terms, and limitations
335 between the annuities and life insurance policies;

336 2. A comparison of any fees and charges between the
337 annuities and life insurance policies;

338 3. A written basis for the recommended exchange, including
339 the overall advantages and disadvantages to the consumer if the
340 recommendation is followed; and

341 4. Such other information used or considered to be
342 relevant by the insurance agent or the insurer in making
343 recommendations to the consumer regarding the replacement or
344 exchange of an annuity or life insurance policy.

345 (e) Prior to the execution of a purchase or exchange of an
346 annuity or life insurance policy resulting from a
347 recommendation, an agent shall also disclose to the consumer
348 that such purchase or exchange may have tax consequences and
349 that the applicant should contact his or her tax advisor for
350 more information.

351 (f)-(d)1. An insurer or insurance agent ~~must~~ shall ensure
352 that a system to supervise recommendations, which is reasonably
353 designed to achieve compliance with this section, is established
354 and maintained by complying with subparagraphs 3., 4., and 5.,
355 or shall establish and maintain such a system, including, but
356 not limited to:

357 a. Maintaining written procedures.

358 b. Conducting periodic reviews of its records that are
359 reasonably designed to assist in detecting and preventing
360 violations of this section.

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361 2. A managing general agent and an insurance agency shall
362 adopt a system established by an insurer to supervise
363 recommendations of its insurance agents which is reasonably
364 designed to achieve compliance with this section or shall
365 establish and maintain such a system, including, but not limited
366 to:

367 a. Maintaining written procedures.

368 b. Conducting periodic reviews of records that are
369 reasonably designed to assist in detecting and preventing
370 violations of this section.

371 3. An insurer may contract with a third party, including a
372 managing general agent or an insurance agency, to establish and
373 maintain a system of supervision as required by subparagraph 1.
374 with respect to insurance agents under contract with or employed
375 by the third party.

376 4. An insurer shall make reasonable inquiry to ensure that
377 such third party contracting under subparagraph 3. is performing
378 the functions required under subparagraph 1. and shall take such
379 action as is reasonable under the circumstances to enforce the
380 contractual obligation to perform the functions. An insurer may
381 comply with its obligation to make reasonable inquiry by:

382 a. Annually obtaining a certification from a third party
383 senior manager who has responsibility for the delegated
384 functions that the manager has a reasonable basis to represent,
385 and does represent, that the third party is performing the
386 required functions.

387 b. Based on reasonable selection criteria, periodically
388 selecting third parties contracting under subparagraph 3. for a
389 review to determine whether the third parties are performing the
390 required functions. The insurer shall perform any procedures

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391 necessary to conduct the review which are reasonable under the
392 circumstances.

393 5. An insurer that contracts with a third party pursuant
394 to subparagraph 3. and complies with the requirements specified
395 in subparagraph 4. is deemed to have fulfilled its
396 responsibilities under subparagraph 1.

397 6. An insurer, managing general agent, or insurance agency
398 is not required by subparagraph 1. or subparagraph 2. to:

399 a. Review or provide for review of all transactions
400 solicited by an insurance agent; or

401 b. Include in its system of supervision an insurance
402 agent's recommendations to senior consumers of products other
403 than the annuities offered by the insurer, managing general
404 agent, or insurance agency.

405 7. A managing general agent or insurance agency
406 contracting with an insurer pursuant to subparagraph 3. shall
407 promptly, when requested by the insurer pursuant to subparagraph
408 4., provide a certification as described in subparagraph 4. or
409 provide a clear statement that the managing general agent or
410 insurance agency is unable to meet the certification criteria.

411 8. A person may not provide a certification under sub-
412 subparagraph 4.a. unless the person is a senior manager with
413 responsibility for the delegated functions and has a reasonable
414 basis for making the certification.

415 (5) MITIGATION OF RESPONSIBILITY.--

416 (a) The office may order an insurer to take reasonably
417 appropriate corrective action, including rescission of the
418 policy or contract and a full refund of the premiums paid or the
419 accumulation value, whichever is greater, for any senior
420 consumer harmed by a violation of this section by the insurer or
421 the insurer's insurance agent.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

422 (b) The department may order:

423 1. An insurance agent to take reasonably appropriate
424 corrective action for any senior consumer harmed by a violation
425 of this section by the insurance agent.

426 2. A managing general agency or insurance agency that
427 employs or contracts with an insurance agent to sell or solicit
428 the sale of annuities to senior consumers to take reasonably
429 appropriate corrective action for any senior consumer harmed by
430 a violation of this section by the insurance agent.

431 (c) Any applicable penalty under the Florida Insurance
432 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
433 subparagraph (4)(c)2. may be reduced or eliminated, according to
434 a schedule adopted by the office or the department, as
435 appropriate, if corrective action for the senior consumer was
436 taken promptly after a violation was discovered.

437 (6) RECORDKEEPING.--

438 (a) Insurers, managing general agents, insurance agencies,
439 and insurance agents shall each maintain or ~~be able to~~ make
440 available to the department or office, as appropriate, records
441 of the information collected from the senior consumer and other
442 information used in making the recommendations that were the
443 basis for insurance transactions for 5 years after the insurance
444 transaction is completed by the insurer. An insurer is
445 permitted, but shall not be required, to maintain documentation
446 on behalf of an insurance agent.

447 (b) Records required to be maintained by this subsection
448 ~~regulation~~ may be maintained in paper, photographic,
449 microprocess, magnetic, mechanical, or electronic media, or by
450 any process that accurately reproduces the actual document.

451 (7) EXEMPTIONS.--Unless otherwise specifically included,
452 this section does not apply to recommendations involving:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

453 (a) Direct-response solicitations where there is no
454 recommendation based on information collected from the senior
455 consumer pursuant to this section.

456 (b) Contracts used to fund:

457 1. An employee pension or welfare benefit plan that is
458 covered by the Employee Retirement and Income Security Act;

459 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
460 408(k), or s. 408(p) of the Internal Revenue Code of 1986, as
461 amended, if established or maintained by an employer;

462 3. A government or church plan defined in s. 414 of the
463 Internal Revenue Code of 1986, as amended, a government or
464 church welfare benefit plan, or a deferred compensation plan of
465 a state or local government or tax-exempt organization under s.
466 457 of the Internal Revenue Code of 1986, as amended;

467 4. A nonqualified deferred compensation arrangement
468 established or maintained by an employer or plan sponsor;

469 5. Settlements of or assumptions of liabilities associated
470 with personal injury litigation or any dispute or claim
471 resolution process; or

472 6. Prepaid funeral contracts.

473 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance with
474 the Financial Industry Regulatory Authority National Association
475 of Securities Dealers Conduct Rules in effect on January 1,
476 2004, shall satisfy the requirements under this section for the
477 recommendation of variable annuities. This section does not
478 limit the department's ability to enforce the provisions of this
479 section with respect to insurance agents, insurance agencies,
480 and managing general agents, or the office's ability to enforce
481 the provisions of this section with respect to insurers.

482 (9) RULES.--The department and commission may adopt rules
483 to administer this section.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

484 Section 10. This act shall take effect January 1, 2009.

485

486

487

488

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

489

Remove the entire title and insert:

490

A bill to be entitled

491

An act relating to insurance; providing a short title; amending

492

s. 626.171, F.S.; requiring that an applicant for licensure as

493

an insurance agent, customer representative, adjuster, service

494

representative, managing general agent, or reinsurance

495

intermediary provide to the Department of Financial Services his

496

or her home and office telephone numbers and e-mail address;

497

amending s. 626.2815, F.S.; requiring persons licensed to

498

solicit or sell life insurance to complete a specified number of

499

hours in continuing education on the subject of suitability in

500

annuity and life insurance transactions; amending s. 626.551,

501

F.S.; requiring that a licensee notify the department within 60

502

days after a change in home or business telephone numbers or e-

503

mail address; amending s. 626.9521, F.S.; providing enhanced

504

penalties for offenses involving misleading representations or

505

fraudulent comparisons or omissions, the generation of unlawful

506

fees and commissions, or the use of fraudulent signatures;

507

providing for other enhanced penalties to supersede the

508

penalties provided by the act under certain conditions; amending

509

s. 626.9541, F.S.; revising the elements of the offense known as

510

"churning" to include direct or indirect purchases made for the

511

purpose of earning fees or commissions; providing that the

512

submission of certain fraudulent signatures or the

513

misrepresentation of a licensee's qualifications constitute an

514

unfair method of competition and an unfair or deceptive act or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

515 practice; amending s. 626.99, F.S.; revising requirements for
516 life insurance or annuity policies to increase the period of
517 time allowed for obtaining an unconditional refund; requiring
518 insurers for all types of annuities to provide a buyer's guide
519 and a policy summary to the buyer; amending s. 627.4554, F.S.;
520 providing for the regulation of recommendations relating to the
521 sale of life insurance products to senior consumers; redefining
522 the term "annuity" and defining the term "life insurance
523 contract"; requiring that an agent obtain financial and other
524 information concerning the senior consumer before executing a
525 purchase or exchange of an annuity or life insurance contract;
526 requiring that the agent perform a suitability analysis relative
527 to the investment he or she recommends and document the analysis
528 in writing; requiring an agent to provide a comparison of
529 current and recommended products if the transaction involves the
530 replacement or exchange of an in-force insurance policy or
531 annuity; requiring an agent to provide information about any tax
532 consequences; authorizing the department and commission to adopt
533 rules; providing an effective date.

1 A bill to be entitled
 2 An act relating to annuity products; amending s.
 3 627.4554, F.S.; providing that any person who
 4 purchases an annuity product in this state and who is
 5 75 years of age or older at the time of purchase may
 6 rescind without penalty the contract for the sale of
 7 such annuity product for any reason at any time within
 8 a period of 1 year after the date on which such
 9 product is purchased; requiring that a person
 10 rescinding such contract notify the insurer or
 11 insurer's agent of rescission in writing; requiring
 12 that a person rescinding such contract or agreement
 13 receive from the insurer a full refund of any costs
 14 paid to the insurer or insurer's agent for the annuity
 15 product or related services upon receipt by the
 16 insurer or insurer's agent of the written notice of
 17 rescission; requiring that an insurer licensed to
 18 provide annuity products in this state include certain
 19 provisions in a contract for such product; providing
 20 an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (9) is added to section 627.4554,
 25 Florida Statutes, to read:

26 627.4554 Annuity investments by seniors.--

27 (9) RESCISSION.--Any person who purchases an annuity
 28 product in this state and is 75 years of age or older at the

29 time of purchase may rescind without penalty a contract for the
30 sale of such annuity product for any reason at any time within a
31 period of 1 year after the date on which such product is
32 purchased.

33 (a) Such rescission must be made in writing and may be
34 delivered to the insured or any agent of the insured selling
35 annuity products.

36 (b) A person rescinding a contract or agreement for such
37 annuity product shall receive from the insurer a full refund of
38 any costs paid to the insurer or insurer's agent for such
39 product or related services upon receipt by the insurer of the
40 written notice of rescission.

41 (c) Any insurer licensed to write or sell annuities or
42 annuity products in this state must include provisions in any
43 contract or agreement for the purchase of that insurer's annuity
44 products allowing a person 75 years of age or older who
45 purchases an annuity product from that insurer or an agent of
46 that insurer to rescind such contract or agreement in accordance
47 with this subsection and providing that person with a full
48 refund of any costs paid to the insurer or insurer's agent for
49 such product or related services. Failure to include such
50 provisions constitutes a violation of this code, subject to the
51 appropriate penalties.

52 Section 2. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1037

Escrow Agents

SPONSOR(S): Poppell

TIED BILLS:

IDEN./SIM. BILLS: SB 2272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	_____	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1037 creates a section in chapter 501, Consumer Protection. The bill restricts unauthorized individuals from transacting business using the term "escrow" unless authorized under state law. The term "escrow agent" is defined in the bill. Under certain circumstances, the bill creates a cause of action for a person aggrieved by violation of the section. The bill provides for recovery of actual damages plus attorney fees and court costs.

The Department of Financial Services estimates approximately 721 individuals will initially apply for the title insurance agents' licenses. The estimated biennial revenue generated is \$34,604 in the Insurance Regulatory Trust Fund. The estimated biennial revenue generated for local governments is \$4,326.

There is a potential impact to the public sector as individuals acting as escrow agents that are not currently licensed as attorneys, real estate brokers, and title agents or employed by a law firm, real estate brokerage, title insurance agency or a financial institution will apply for title insurance agents' licenses. The amount from potential increase in license fees is indeterminate.

This act takes effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security: Restricts the use of the term "escrow" as a measure for consumer fraud protection.

Ensure lower taxes: The estimated biennial revenue generated is \$34,604 in the Insurance Regulatory Trust Fund. The estimated biennial revenue generated for local governments is \$4,326.

B. EFFECT OF PROPOSED CHANGES:

Background

Escrow Funds

In the routine practice of purchasing and selling real estate, the seller expects the buyer to place property in escrow as consideration of the contract. Various forms of property may be placed in escrow; however, the property is nearly always cash. The property placed in escrow is commonly referred to as a "good faith deposit" or a "good faith binder."

Pursuant section 475.25(1)(d)1., F.S., the Florida Real Estate Commission is authorized to discipline a licensee for failure to account for or deliver a deposit to the party entitled to it "at the time which has been agreed upon or is required by law. . ."

Section 475.25(1)(k), F.S., requires a licensee to hold monies in trust "until disbursement thereof is properly authorized..." Further, "A broker may place and maintain up to \$5,000 of personal or brokerage funds in the broker's property management escrow account and up to \$1,000 of personal or brokerage funds in the broker's sales escrow account." Moreover:

It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.

In general, when a transaction is normally cancelled or withdrawn, a buyer also makes a simultaneous demand for the return of any property escrowed with a real estate licensee. Unless a dispute arises or contractual exception exists, the seller is informed of the buyer's contract rescission and typically asked to sign a form releasing the deposit to the buyer.

Other professional groups similarly act as escrow agents, such as attorneys. For attorneys, The Rules Regulating the Florida Bar and Florida Supreme Court orders regulate their practices and procedures, including accounting of escrow accounts.

Earlier this year, attorney Ira C. Hatch, the president of Coastal Escrow Services, Inc. and Coastal Title Services, Inc. abruptly closed their doors. As of March 17, 2008, both companies are under civil and criminal investigation. Mr. Hatch has been disbarred and faces criminal prosecution for racketeering, money laundering, grand theft, and operating as a money transmitter without proper registration in connection to the disappearance of an estimated \$4 million from escrow accounts at Coastal Escrow Services, Inc.

Effect of Proposed Changes

Section 1: Creates s. 501.165 in chapter 501, F.S., Consumer Protection. The bill provides in subsection (1):

A person, other than a person who is specifically authorized under the laws of this state to act as an escrow agent in this state and is acting within the scope of that authority, may not:

- (a) Transact business under any name or title that contains the word "escrow" or words of similar import; or
- (b)1. Use any name, word, sign, symbol, or device in any context or in any manner; or
2. Circulate or use any letterhead, billhead, circular, paper, or writing of any kind or otherwise advertise or represent in any manner, that indicates or reasonably implies that the business being conducted or advertised is the kind or character of business transacted that is regulated by this state as an escrow agent.

In subsection (2) the term "escrow agent" is defined to exclusively mean:

- (a) A savings and loan association, bank, trust company, or other financial institution, any of which must be located in this state and any of which must have a net worth in excess of \$5 million;
- (b) An attorney who is a member of The Florida Bar or his or her law firm;
- (c) A real estate broker who is licensed pursuant to chapter 475 or his or her brokerage firm; or
- (d) A title insurance agent who is licensed pursuant to s. 626.8417, a title insurance agency that is licensed pursuant to s. 626.8418, or a title insurer who is authorized to transact business in this state pursuant to s. 624.401.

Subsection (3) provides that any person aggrieved by a violation of this section may bring an action in a court of competent jurisdiction to:

- (a) Obtain a declaratory judgment that an act or practice violates this section; or
- (b) Enjoin any person who has violated, is violating, or is otherwise likely to violate this section.

In subsection (4), any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney's fees and court costs.

Any person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

None

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The division estimates approximately 721 individuals will initially apply for the title insurance agents' licenses.

The estimated biennial revenue generated is \$34,604 in the Insurance Regulatory Trust Fund.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

County governments will receive taxes in the amount of \$4,326 for FY 08-09, \$432 for FY 09-10 and \$4,326 for ongoing biennial renewals.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires individuals who act as escrow agents to be licensed as attorneys, real estate brokers, and title agents or be employed by a law firm, real estate brokerage, title insurance agency or a financial institution. The division predicts individuals acting as escrow agents, who are not one of the above or work for one of the above, will apply for title insurance agents' licenses. Therefore, the individuals must pay the application filing fee of \$10 and the examination fee of \$56. The appointing entities must pay the total appointment fee of \$60 (\$42+\$12+\$6).

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comment 1: Subsection (2) is apparently designed to exempt certain professional groups (lenders, attorneys, brokers and title agents) who routinely and regularly act as escrow agents. But, it is unclear whether an attorney is "specifically authorized under the laws of this state to act as an escrow agent in this state" as contemplated by subsection (1). Attorneys are bound by strict ethical rules that regulate their handling of trust accounts, but when they act as an escrow agent there is no any specific grant of authority from the government.

It is questionable whether financial institutions are required to have a specific grant of authority to handle an escrow account, with the exception, for example, of licensing to engage in trust business.

One suggested change to the approach taken by the bill would be to exclude rather than include groups authorized to handle escrows. This could be accomplished by beginning subsection (2) with the introductory phrase: "This section does not apply to: [list of exclusions, a, b, c etc.]" Then set up subsection (1) with: "Except as provided in subsection (2), a person may not: [a, b, c etc.]" OR "Except as provided in subsection (2), no person shall: [a, b, c etc.]"

Consideration should also be given to other legitimate professionals who handle escrow funds and might want to use the word "escrow" in their business name or advertising. The list might include, for example, mortgage brokers, rental management companies, insurance companies, and bonding companies.

Comment 2: Paragraphs (a) and (b) of subsection (3) should be re-written to allow either or both actions to be brought by an aggrieved person. The way the bill is currently written it appears the person aggrieved has to choose only one option. Also, subsection (3)(b) where it states: "or is otherwise likely to violate this section" may be unenforceable both civilly and criminally. Subsection (1) describes specific acts that are violations. How would one prove someone is likely to violate the act? For example, someone has business cards printed using the term "escrow," but has not yet used them? In such a case, there is no aggrieved person until Section (1) is violated.

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1037

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Financial Institutions
2 Representative(s) Poppell offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6
7 Section 1. Section 501.165, Florida Statutes, is created to
8 read:

9 501.165 Escrow business by unauthorized persons; use of
10 name.--

11 (1) Except as provided in subsection (2), a person may
12 not:

13 (a) Transact business under any name or title that
14 contains the word "escrow" or words of similar import; or

15 (b)1. Use any name, word, sign, symbol, or device in any
16 context or in any manner; or

17 2. Circulate or use any letterhead, billhead, circular,
18 paper, or writing of any kind or otherwise advertise or
19 represent in any manner, that indicates or reasonably implies
20 that the business being conducted or advertised is the kind or
21 character of business transacted that is regulated by this state
22 as an escrow agent.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

- 23 (2) This section, does not apply to:
24 (a) A financial institution as defined in s. 655.005;
25 (b) An attorney who is a member of The Florida Bar or his
26 or her law firm;
27 (c) A person who is licensed pursuant to chapter 475 or
28 his or her brokerage firm; or
29 (d) A title insurance agent who is licensed pursuant to s.
30 626.8417, a title insurance agency that is licensed pursuant to
31 s. 626.8418, or a title insurer who is authorized to transact
32 business in this state pursuant to s. 624.401.
33 (3) Any person aggrieved by a violation of this section
34 may bring an action in a court of competent jurisdiction to
35 obtain a declaratory judgment that an act or practice violates
36 this section.
37 (4) In any action brought by a person who has suffered a
38 loss as a result of a violation of this section, such person may
39 recover actual damages, plus attorney's fees and court costs.
40 (5) Any person who willfully violates this section commits
41 a misdemeanor of the first degree, punishable as provided in s.
42 775.082, s. 775.083, or s. 775.084.

43 Section 2. This act shall take effect July 1, 2008.

44
45
46 -----
47 **T I T L E A M E N D M E N T**

48 Remove the entire title and insert:

49 An act relating to escrow agents; creating s. 501.165, F.S.;

50 prohibiting unauthorized persons from transacting business using

51 the term "escrow" in a name or a title under certain

52 circumstances; providing a definition; authorizing certain

53 persons to bring an action for declaratory relief; providing for

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 recovery by injured persons of actual damages plus attorney fees
55 and court costs in certain actions; providing criminal
56 penalties; providing an effective date.

57

1 A bill to be entitled
 2 An act relating to escrow agents; creating s. 501.165,
 3 F.S.; prohibiting unauthorized persons from transacting
 4 business using the term "escrow" in a name or a title
 5 under certain circumstances; providing a definition;
 6 authorizing certain persons to bring an action for
 7 declaratory relief or an injunction for certain purposes;
 8 providing for recovery by injured persons of actual
 9 damages plus attorney fees and court costs in certain
 10 actions; providing criminal penalties; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 501.165, Florida Statutes, is created
 16 to read:

17 501.165 Escrow business by unauthorized persons; use of
 18 name.--

19 (1) A person, other than a person who is specifically
 20 authorized under the laws of this state to act as an escrow
 21 agent in this state and is acting within the scope of that
 22 authority, may not:

23 (a) Transact business under any name or title that
 24 contains the word "escrow" or words of similar import; or

25 (b)1. Use any name, word, sign, symbol, or device in any
 26 context or in any manner; or

27 2. Circulate or use any letterhead, billhead, circular,
 28 paper, or writing of any kind or otherwise advertise or
 29 represent in any manner,

30
 31 that indicates or reasonably implies that the business being
 32 conducted or advertised is the kind or character of business
 33 transacted that is regulated by this state as an escrow agent.

34 (2) For purposes of this section, the term "escrow agent"
 35 means only:

36 (a) A savings and loan association, bank, trust company,
 37 or other financial institution, any of which must be located in
 38 this state and any of which must have a net worth in excess of
 39 \$5 million;

40 (b) An attorney who is a member of The Florida Bar or his
 41 or her law firm;

42 (c) A real estate broker who is licensed pursuant to
 43 chapter 475 or his or her brokerage firm; or

44 (d) A title insurance agent who is licensed pursuant to s.
 45 626.8417, a title insurance agency that is licensed pursuant to
 46 s. 626.8418, or a title insurer who is authorized to transact
 47 business in this state pursuant to s. 624.401.

48 (3) Any person aggrieved by a violation of this section
 49 may bring an action in a court of competent jurisdiction to:

50 (a) Obtain a declaratory judgment that an act or practice
 51 violates this section; or

52 (b) Enjoin any person who has violated, is violating, or
 53 is otherwise likely to violate this section.

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2008

54 (4) In any action brought by a person who has suffered a
55 loss as a result of a violation of this section, such person may
56 recover actual damages, plus attorney's fees and court costs.

57 (5) Any person who willfully violates this section commits
58 a misdemeanor of the first degree, punishable as provided in s.
59 775.082, s. 775.083, or s. 775.084.

60 Section 2. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 Fire Prevention and Control
SPONSOR(S): Garcia, L.
TIED BILLS: HB 1051 **IDEN./SIM. BILLS:** SB 2388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	_____	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1041 generally codifies current agency practices, expands authority, and revises certain requirements. More specifically, the bill:

- Provides for the State Fire Marshal to make certain firesafety inspections and require corrective actions.
- Clarifies that agents appointed by the State Fire Marshal are under her/his control and direction.
- Expands the uniform firesafety standards to include tunnels.
- Provides for inspections of educational property and public post secondary facilities.
- Expands the investigative authority of the State Fire Marshal to include explosions.
- Abolishes special state firesafety inspector classification.
- Provides for certification as a firesafety inspector; provides application and examination requirements.
- Authorizes the State Fire Marshal to develop an advanced training and certification program for firesafety inspectors.
- Authorizes the Division of State Fire Marshal to enter into a reciprocity agreement with the Florida Building Code Administrators and Inspectors Board for certain continuing education recertification purposes
- Revises requirements for the State Fire Marshal to inspect state buildings.
- Revises and expands the authority and powers of the State Fire Marshal to administer oaths, request attendance of witnesses, and collect evidence.
- Provides under certain circumstances forms of immunity from liability
- Exempts certain information from discovery, and under certain circumstances, the bill exempts agents of the State Fire Marshal from subpoena.
- Specifies limitations on treatment of physical evidence.
- Authorizes agents of the State Fire Marshal to have arrests powers equivalent to state law enforcement.
- Establishes the Arson and Destructive Device Reward Program.
- Expands the list of violations for which the State Fire Marshal may issue certain enforcement orders; providing criminal penalties for failure to comply with such orders
- Specifies criteria for commission of fraudulent insurance acts
- Revises certain definitions
- Revises requirements for firefighter training and certification
- Requires the Division of State Fire Marshal to establish training programs for certain certifications
- Authorizes the State Fire Marshal to contract for certain examinations.
- Fiscal impacts to the State, Local Governments and the private sector are indeterminate.

This act shall take effect July 1, 2008.

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

STORAGE NAME: h1041a.FI.doc
DATE: 3/18/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security: Expands the uniform firesafety standards to include tunnels; provides for inspections of educational property, public post secondary facilities by the State Fire Marshal; expands State Fire Marshal's authority to investigate explosions.

B. EFFECT OF PROPOSED CHANGES:

Sections 1-25 amend chapter 633, Fire Prevention and Control

Section 1: Amends subsection (7) of s. 633.01, F.S., State Fire Marshal; powers and duties; rules.— The bill deletes language from s. 633.01 to conform to s. 633.0221 relating to fire safety in education facilities.

Section 2: Amends s. 633.02, F.S., Agents; powers and duties; compensation.— The bill clarifies that agents appointed by the State Fire Marshal are under the control and direction of the State Fire Marshal.

Section 3: Amends paragraph (b) of subsection (1) of s. 633.022, F.S., Uniform firesafety standards.— The bill expands the applicability of the uniform firesafety standards to apply to tunnels.

Section 4: Creates s. 633.0221, F.S., Firesafety in educational facilities.— The bill moves many of the provisions currently in s. 1013.13 relating to use and management of educational facilities to this section. Several responsibilities in the bill are required of the board. The term "board" in chapter 1013 reads:

(3) "Board," unless otherwise specified, means a district school board, a community college board of trustees, a university board of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education or the Board of Governors.

The term "Board" means the Florida Fire Safety Board in chapter 633. It is unclear which definition applies.

Section 5: Amends s. 633.03, F.S., Investigation of fire; reports.— Currently, this section reads:

The State Fire Marshal shall investigate the cause, origin, and circumstances of every fire occurring in this state wherein property has been damaged or destroyed where there is probable cause to believe that the fire was the result of carelessness or design. Report of all such investigations shall be made on approved forms to be furnished by the fire marshal.

The bill expands the State Fire Marshal's investigation authority to included damage or destruction caused by explosion. Additionally, this section changes the investigation threshold from probable cause to "as the State Fire Marshal deems necessary."

Section 6: Amends s. 633.081, F.S., Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.— This section provides the State Fire Marshal and her or his agents' discretion to conduct inspections.

Subsection (3) of s. 633.081, F.S., reads:

(3) Each special state firesafety inspection which is required by law and is conducted by or on behalf of an agency of the state must be performed by an individual who has met the provision of subsection (2), except that the duration of the training program shall not exceed 120 hours of specific training for the type of property that such special state firesafety inspectors are assigned to inspect.

The bill provides that effective July 1, 2011, the classification of special state firesafety inspector is abolished and all special state firesafety inspector certifications expire at midnight June 30, 2011. Any person who is a special state firesafety inspector on June 30, 2011, and who has failed to comply with specific criteria to become a certified firesafety inspector, shall not be permitted to perform any firesafety inspection required by law. Further, certification as a special state firesafety inspector may not be awarded after June 30, 2008.

Rulemaking authority is granted to the State Fire Marshal to develop an advanced training and certification program for firesafety inspectors with fire code management responsibility. Additionally, the Division of State Fire Marshal may enter into a reciprocity agreement with the Florida Building Code Administrators and Inspectors Board to facilitate joint recognition of continuing education recertification hours for certain licensees and certified firesafety inspectors.

Other changes are made in this section to conform to abolishment of the special state firesafety inspector classification.

Section 7: Amends paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 633.085, F.S., Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.— This section clarifies that when a building is located on land owned by the State and used primarily for state purposes, it shall be treated as a state-owned building for purposes of fire safety. Additionally, this section requires the State Fire Marshal to ensure that fire drills are held in all state-owned and state-leased high hazard buildings annually.

Section 8: Amends s. 633.101, F.S., Hearings; investigations; investigatory powers of State Fire Marshal; costs of service and witness fees.— This section is substantially rewritten and includes the following provisions:

- The State Fire Marshal may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence, in state or out of state. The State Fire marshal may respond to similar request from officials of other states.
- The State Fire Marshal may request circuit court intervention when an individual refuses to comply with certain investigative requests. However, the court shall not order such compliance unless the request has a direct bearing to the State Fire Marshal's jurisdiction and the alleged act, constitutes a felony or misdemeanor under this chapter, the Florida Insurance Code, or a fraudulent insurance act, or is pertinent and necessary to further such investigation. An exception is provided in prosecution for perjury.
- In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any other relevant tort by virtue of furnishing information, without malice, as required by this chapter or State Fire Marshal authority. Under certain circumstances, no civil cause of action of any nature shall arise against a person for providing specified information. In addition to such immunity this section specifies how such issues are reviewed when a designated employee is involved.
- This section does not abrogate or modify in any way common-law or statutory privilege or immunity otherwise enjoyed by any person.

- Papers, documents, reports, or evidence relative to an investigation under this section shall not be subject to discovery until the investigation is completed or ceases to be active. Agents of the State Fire Marshal shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending investigation by the State Fire Marshal.
- Physical evidence that is not capable of being copied or reproduced shall not constitute a public record and shall be disposed of in accordance with s. 705.105. During the pendency of an active investigation, physical evidence shall not be subject to subpoena until the investigation is completed or ceases to be active, unless the State Fire Marshal consents to release of the physical evidence.
- Any person, insurer, agent, or other person licensed under the Florida Insurance Code, or an employee of such licensees shall report to the State Fire Marshal any acts involving arson, destructive devices, fraudulent insurance acts or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under State laws. If the State Fire Marshal orders an independent examination of the facts and criminal acts have been committed, a referral is made to the appropriate prosecuting agency. Also, if prosecution by the state attorney or other prosecuting agency has not begun within 60 days, this section requires the prosecuting agency to inform the State Fire Marshal of the reasons for the lack of pursuit.
- State Fire Marshals who fulfill certain certification and other requirements are considered state law enforcement officers.

Section 9: Amends s. 633.121, F.S., Persons authorized to enforce laws and rules of State Fire Marshal.— This section makes conforming change.

Section 10: Amends s. 633.13, F.S., State Fire Marshal; authority of agents.— Currently, the section reads:

The authority given the State Fire Marshal under this law may be exercised by his or her agents, either individually or in conjunction with any other state or local official charged with similar responsibilities.

The bill clarifies that authority is given the State Fire Marshal under this chapter, or any rule or order adopted by the State Fire Marshal.

Section 11: Creates s. 633.145, F.S., Arson and Destructive Device Reward Program.-- The Arson and Destructive Device Reward Program is within the Department of Financial Services (Department) and is to be funded from the Insurance Regulatory Trust Fund. The department may pay rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes involving arson and destructive devices investigated by the Bureau of Fire and Arson Investigations. Rulemaking authority is granted to implement the program. Determination of awards is discretionary by the department. Such determinations are not agency actions subject to review under s. 120.569 or s. 120.57 and are not final orders or appealable in any court of appeal.

Section 12: Amends subsections (1) and (3) of section 633.161, F.S., Violations; orders to cease and desist, correct hazardous conditions, preclude occupancy, or vacate; enforcement; penalties.— This section provides that in subsection (1) a: A fire department that is not operated by or under contract with a political subdivision as defined in s. 1.01, F.S., is a violation of this subsection. In subsection (3) a clarifying change is made.

Section 13: Amends subsection (1) of s. 633.171, F.S., Penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.— This section makes a clarifying change.

Section 14: Amends s. 633.175, F.S., Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.— For purposes of this section, the bill defines a person who commits a fraudulent insurance act. Other changes to the section are clarifying.

Section 15: Amends s. 633.18, F.S., State Fire Marshal; hearings and investigations; subpoena of witnesses; orders of circuit court.— The bill makes clarifying change.

Section 16: Amends s. 633.30, F.S., Standards for firefighting; definitions.— This section defines the following terms: “Apprentice firefighter,” “Career firefighter,” “Fire department,” “Firefighter I,” “Firefighter II,” and “Fireground resource technician.”

Section 17: Amends s. 633.34, F.S., Firefighters; qualifications for employment.— This section amends and clarifies the qualifications for any person applying as a firefighter.

Section 18: Amends s. 633.35, F.S., Firefighter training and certification.— The section provides that the division shall establish by rule a firefighter training programs for certification as a 1) fireground resource technician, 2) apprentice firefighter, 3) firefighter I, and 4) firefighter II. Additionally, this section also provides for the issuance of certificates of compliance for certification in these four positions.

Section 19: Amends s. 633.351, F.S., Disciplinary action; firefighters; standards for revocation of certification.— This section changes the threshold for retaining firefighter certification in the case of felony conviction or certain misdemeanors.

Section 20: Amends s. 633.352, F.S., Retention of firefighter certification.— This section requires a firefighter who has not been active as a firefighter or volunteer firefighter for a 3 year period to retake and pass the written and practical portions of the examination specified in division rules. This requirement does not apply to state-certified firefighters who are certified and employed as full-time fire safety inspectors by a fire department employing agency. The bill adds that the 3 year period also tolls upon expiration of instruction certification.

Section 21: Amends subsections (1), (2), and (3) of s. 633.382, F.S., Firefighters; supplemental compensation.— This section makes a conforming change to the definition “firefighter” and the qualifications for supplemental compensation for a firefighter II. The bill provides additional compensation in the amount of \$150.00 to a firefighter II who receives a certain master’s degree from an accredited college or university.

Section 22: Amends s. 633.524, F.S., Certificate and permit fees; use and deposit of collected funds.— This section provides for the State Fire Marshal to enter into contracts with qualified public or private entities to provide examination services to applicants for certification and competency examinations administered by the State Fire Marshal; provides for payment of such fees for examinations to be paid directly to the testing contractor.

Section 23: Amends s. 633.541, F.S., Contracting without certificate prohibited; violations; penalty.— This section clarifies the prohibition of unlicensed individuals engaging in the business of fire protection contracting; provides an exemption for an owner to inspect fire protection systems in their personal home as long as it is a one or two family dwelling.

Section 24: Amends s. 633.811, F.S., Firefighter employer penalties.— This section creates penalty provision in the event any firefighter employer violates or fails or refuses to comply with the “Florida Firefighters Occupational Safety and Health Act.” This section provides that the division may issue an administrative cease and desist order, enforceable in the circuit court in the jurisdiction where the violation is occurring or has occurred, and assess an administrative fine against such firefighter employer of not less than \$100 nor more than \$1,000 for each violation and each day of each violation,

in addition to current penalties. The administrative penalty assessment shall be subject to the provisions of chapter 120.

Section 25: Amends subsection (3) of s. 633.821, F.S., Workplace safety.— This section removes outdated references.

Section 26: Amends s. 1013.12, F.S., Casualty, safety, sanitation, and firesafety standards and inspection of property.— This section deletes the provisions that were incorporated in s. 633.0221, Firesafety in educational facilities.

Section 27: Amends paragraph (e) of subsection (1) of s. 218.23, F.S., Revenue sharing with units of local government.— This section corrects a cross reference.

Section 28: Amends paragraph (b) of subsection (4) of s. 447.203, F.S., Definitions. This section corrects a cross reference.

Section 29: Repeals s. 633.14.

Section30: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends State Fire Marshal; powers and duties; rules.

Section 2: Amends Agents; powers and duties; compensation.

Section 3: Amends Uniform firesafety standards.

Section 4: Creates s. 633.0221, F.S., Firesafety in educational facilities.

Section 5: Amends Investigation of fire; reports.

Section 6: Amends Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.

Section 7: Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.

Section 8: Amends Hearings; investigations; investigatory powers of State Fire Marshal; costs of service and witness fees.

Section 9: Amends Persons authorized to enforce laws and rules of State Fire Marshal.

Section 10: Amends State Fire Marshal; authority of agents.

Section 11: Creates Arson and Destructive Device Reward Program.

Section 12: Amends Violations; orders to cease and desist, correct hazardous conditions, preclude occupancy, or vacate; enforcement; penalties.

Section 13: Amends Penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.

Section 14: Amends Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.

Section 15: Amends State Fire Marshal; hearings and investigations; subpoena of witnesses; orders of circuit court.

Section 16: Amends Standards for firefighting; definitions.

Section 17: Amends Firefighters; qualifications for employment.

Section 18: Amends Firefighter training and certification.

Section 19: Amends Disciplinary action; firefighters; standards for revocation of certification.

Section 20: Amends Retention of firefighter certification.

Section 21: Amends Firefighters; supplemental compensation.

Section 22: Amends Certificate and permit fees; use and deposit of collected funds.

Section 23: Amends Contracting without certificate prohibited; violations; penalty.

Section 24: Amends Firefighter employer penalties.

Section 25: Amends Workplace safety.

Section 26: Amends Casualty, safety, sanitation, and firesafety standards and inspection of property.

Section 27: Amends Revenue sharing with units of local government.

Section 28: Amends Definitions.
Section 29: Repeals s. 633.14.
Section30: This act shall take effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Section 11 creates the Arson and Destructive Device Reward Program that rewards up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes involving arson and destructive devices investigated by the Bureau of Fire and Arson Investigations, it is not possible to identify how much the program may disburse in a given year.

Any firefighter II who receives from an accredited college or university a master's degree, which master's degree is applicable to fire department duties, as outlined in policy guidelines of the division shall receive one hundred and fifty dollars monthly. The actual cost to the department is undetermined at this time.

Florida Statutes 633.524 is amended to allow any applicant for any examination administered under the jurisdiction of the State Fire Marshal to pay the vendor directly instead of paying the department. The additional costs or cost benefits related to this change in contracting have not been determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Rule-making is granted to the State Fire Marshal

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to fire prevention and control; amending
 3 s. 633.01, F.S.; revising a provision relating to
 4 requirements for the State Fire Marshal to make certain
 5 firesafety inspections and take certain corrective
 6 actions; amending s. 633.02, F.S.; revising provisions
 7 relating to agents of the State Fire Marshal; amending s.
 8 633.022, F.S.; revising provisions relating to uniform
 9 firesafety standards to include application to tunnels;
 10 creating s. 633.0221, F.S.; providing for firesafety in
 11 educational facilities; specifying uniform firesafety
 12 standards; providing for periodic inspections of property
 13 by district school boards; providing for inspections of
 14 educational property by the State Fire Marshal; providing
 15 for inspections of public postsecondary education
 16 facilities; providing for actions to correct firesafety
 17 deficiencies; specifying additional standards; amending s.
 18 633.03, F.S.; expanding application of authority of the
 19 State Fire Marshal to investigate fires to include
 20 explosions; amending s. 633.081, F.S.; abolishing special
 21 state firesafety inspector classifications; providing for
 22 certification as a firesafety inspector; providing
 23 application and examination requirements; authorizing the
 24 State Fire Marshal to develop a certain advanced training
 25 and certification program for firesafety inspectors;
 26 authorizing the Division of State Fire Marshal to enter
 27 into a reciprocity agreement with the Florida Building
 28 Code Administrators and Inspectors Board for certain

29 continuing education recertification purposes; amending s.
 30 633.085, F.S.; revising requirements for the State Fire
 31 Marshal to inspect state buildings; amending s. 633.101,
 32 F.S.; revising and expanding the authority and powers of
 33 the State Fire Marshal to administer oaths, request
 34 attendance of witnesses, and collect evidence; providing
 35 certain forms of immunity from liability for certain
 36 actions and persons under certain circumstances; exempting
 37 certain information from discovery under certain
 38 circumstances; exempting agents of the State Fire Marshal
 39 from subpoena under certain circumstances; specifying
 40 limitations on treatment of physical evidence; providing
 41 for submittal for certain crime-related reports or
 42 information to the State Fire Marshal; authorizing agents
 43 of the State Fire Marshal to make arrests as state law
 44 enforcement officers under certain circumstances; making
 45 it unlawful to resist arrest; amending s. 633.121, F.S.;
 46 expanding eligible persons authorized to enforce laws and
 47 rules of the State Fire Marshal; amending s. 633.13, F.S.;
 48 revising a provision relating to the authority of agents
 49 of the State Fire Marshal; creating s. 633.145, F.S.;
 50 establishing the Arson and Destructive Device Reward
 51 Program within the department; providing for funding;
 52 authorizing the department to pay awards for information
 53 leading to certain arrests; providing limitations;
 54 requiring the department to adopt rules; amending s.
 55 633.161, F.S.; expanding the list of violations for which
 56 the State Fire Marshal may issue certain enforcement

57 orders; providing criminal penalties for failure to comply
 58 with such orders; amending s. 633.171, F.S.; revising a
 59 criminal penalty provision; amending s. 633.175, F.S.;
 60 specifying criteria for commission of fraudulent insurance
 61 acts; providing a criminal penalty; amending s. 633.18,
 62 F.S.; revising a provision relating to conduct of
 63 inquiries or investigations by agents of the State Fire
 64 Marshal; amending s. 633.30, F.S.; revising definitions;
 65 amending s. 633.34, F.S.; revising requirements for
 66 qualification for employment as a firefighter; amending s.
 67 633.35, F.S.; revising requirements for firefighter
 68 training and certification; requiring the Division of
 69 State Fire Marshal to establish training programs for
 70 certain certifications; providing requirements; amending
 71 s. 633.351, F.S.; revising provisions for disciplinary
 72 actions for firefighters; revising standards for
 73 revocation of firefighter certifications; amending s.
 74 633.352, F.S.; revising requirements for retention of
 75 firefighter certification; amending s. 633.382, F.S.;
 76 expanding application of provisions providing for required
 77 supplemental compensation for firefighters; amending s.
 78 633.524, F.S.; authorizing the State Fire Marshal to
 79 contract to provide certain examinations; amending s.
 80 633.541, F.S.; expanding an exclusion from application of
 81 a prohibition against contracting without certification
 82 for certain homeowners; amending s. 633.811, F.S.;
 83 expanding authority of the division to enforce provisions
 84 of law and rules applicable to employers; authorizing

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85 assessment of administrative fines; amending s. 633.821,
 86 F.S.; deleting certain obsolete provisions requiring
 87 counties, municipalities, and special districts to
 88 implement certain provisions of federal law; amending s.
 89 1013.12, F.S.; revising provisions providing for casualty,
 90 safety, sanitation, and firesafety standards and
 91 inspections of educational facilities and ancillary
 92 plants; amending ss. 218.23 and 447.203, F.S.; revising
 93 cross-references; repealing s. 633.14, F.S., relating to
 94 agents' powers to make arrests, conduct searches and
 95 seizures, serve summonses, and carry firearms; providing
 96 an effective date.

97

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

99

100 Section 1. Subsection (7) of section 633.01, Florida
 101 Statutes, is amended to read:

102 633.01 State Fire Marshal; powers and duties; rules.--

103 (7) The State Fire Marshal shall adopt and administer
 104 rules prescribing standards for the safety and health of
 105 occupants of educational and ancillary facilities pursuant to
 106 ss. 633.022, 1013.12, 1013.37, and 1013.371. In addition, in any
 107 county that does not employ or appoint a local fire official,
 108 the State Fire Marshal shall assume the duties of the local fire
 109 official with respect to firesafety inspections ~~of educational~~
 110 ~~property required under s. 1013.12(3)(b), and the State Fire~~
 111 ~~Marshal may take necessary corrective action as authorized under~~
 112 ~~s. 1013.12(6).~~

113 Section 2. Section 633.02, Florida Statutes, is amended to
 114 read:

115 633.02 Agents; powers and duties; compensation.--The State
 116 Fire Marshal shall appoint such agents as may be necessary to
 117 carry out effectively the provisions of this chapter, who shall
 118 be reimbursed for travel expenses as provided in s. 112.061, in
 119 addition to their salary, when traveling or making
 120 investigations in the performance of their duties. Such agents
 121 shall be at all times under the direction and control of the
 122 State Fire Marshal, who shall fix their compensation, and all
 123 orders shall be issued in the State Fire Marshal's name and by
 124 her or his authority.

125 Section 3. Paragraph (b) of subsection (1) of section
 126 633.022, Florida Statutes, is amended to read:

127 633.022 Uniform firesafety standards.--The Legislature
 128 hereby determines that to protect the public health, safety, and
 129 welfare it is necessary to provide for firesafety standards
 130 governing the construction and utilization of certain buildings
 131 and structures. The Legislature further determines that certain
 132 buildings or structures, due to their specialized use or to the
 133 special characteristics of the person utilizing or occupying
 134 these buildings or structures, should be subject to firesafety
 135 standards reflecting these special needs as may be appropriate.

136 (1) The department shall establish uniform firesafety
 137 standards that apply to:

138 (b) All new, existing, and proposed hospitals, nursing
 139 homes, assisted living facilities, adult family-care homes,
 140 correctional facilities, public schools, transient public

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141 lodging establishments, public food service establishments,
 142 elevators, migrant labor camps, mobile home parks, lodging
 143 parks, recreational vehicle parks, recreational camps,
 144 residential and nonresidential child care facilities, facilities
 145 for the developmentally disabled, motion picture and television
 146 special effects productions, ~~and~~ self-service gasoline stations,
 147 and tunnels, of which standards the State Fire Marshal is the
 148 final administrative interpreting authority.

149

150 In the event there is a dispute between the owners of the
 151 buildings specified in paragraph (b) and a local authority
 152 requiring a more stringent uniform firesafety standard for
 153 sprinkler systems, the State Fire Marshal shall be the final
 154 administrative interpreting authority and the State Fire
 155 Marshal's interpretation regarding the uniform firesafety
 156 standards shall be considered final agency action.

157 Section 4. Section 633.0221, Florida Statutes, is created
 158 to read:

159 633.0221 Firesafety in educational facilities.--

160 (1) UNIFORM FIRESAFETY STANDARDS.--The State Fire Marshal,
 161 in consultation with the Department of Education, shall adopt
 162 uniform firesafety standards for educational and ancillary
 163 plants and educational facilities, as provided in s.
 164 633.022(1)(b), and a firesafety evaluation system to be used as
 165 an alternate firesafety inspection standard for existing
 166 educational and ancillary plants and educational facilities. The
 167 uniform firesafety standards and the alternate firesafety
 168 evaluation system shall be administered and enforced by local

169 fire officials. These standards shall be used by all public
 170 agencies when inspecting public educational and ancillary
 171 plants, and the firesafety standards shall be used by local fire
 172 officials when performing firesafety inspections of public
 173 educational and ancillary plants and educational facilities.

174 (2) PERIODIC INSPECTION OF PROPERTY BY DISTRICT SCHOOL
 175 BOARDS.--

176 (a) Firesafety inspections of each educational and
 177 ancillary plant shall be made annually by persons certified by
 178 the Division of State Fire Marshal to be eligible to conduct
 179 firesafety inspections in public educational and ancillary
 180 plants. The board shall submit a copy of the firesafety
 181 inspection report to the State Fire Marshal and, if there is a
 182 local fire official who conducts firesafety inspections, to the
 183 local fire official.

184 (b) In each firesafety inspection report, the board shall
 185 include a plan of action and a schedule for the correction of
 186 each deficiency which have been formulated in consultation with
 187 the local fire control authority. If immediate life-threatening
 188 deficiencies are noted in any inspection, the board shall take
 189 action to promptly correct the deficiencies or withdraw the
 190 educational or ancillary plant from use until such time as the
 191 deficiencies are corrected.

192 (3) INSPECTION OF EDUCATIONAL PROPERTY BY THE STATE FIRE
 193 MARSHAL.--

194 (a) One firesafety inspection of each educational or
 195 ancillary plant must be conducted each fiscal year by the
 196 county, municipality, or special fire control district in which

197 the plant is located using the standards adopted by the State
 198 Fire Marshal. The board shall cooperate with the inspecting
 199 authority when a firesafety inspection is made by a governmental
 200 authority under this paragraph.

201 (b) In each firesafety inspection report, the local fire
 202 official, in conjunction with the board, shall include a plan of
 203 action and a schedule for the correction of each deficiency. If
 204 immediate life-threatening deficiencies are noted in any
 205 inspection, the local fire official shall take action to require
 206 the board to promptly correct the deficiencies or withdraw the
 207 educational facility from use until the deficiencies are
 208 corrected, subject to review by the State Fire Marshal, who
 209 shall act within 10 days to ensure that the deficiencies are
 210 corrected or withdraw the facility from use.

211 (4) INSPECTIONS OF PUBLIC POSTSECONDARY EDUCATION
 212 FACILITIES.--

213 (a) Firesafety inspections of community college facilities
 214 shall comply with the applicable rules of the State Fire
 215 Marshal.

216 (b) Firesafety inspections of state universities shall
 217 comply with rules of the State Fire Marshal related to state-
 218 owned buildings.

219 (5) CORRECTIVE ACTION; FIRESAFETY DEFICIENCIES.--Upon
 220 failure of the board to take corrective action within the time
 221 designated in the plan of action to correct any firesafety
 222 deficiency noted under paragraph (2) (b) or paragraph (3) (b), the
 223 local fire official shall immediately report the deficiency to
 224 the State Fire Marshal, who shall have enforcement authority

225 with respect to educational and ancillary plants and educational
 226 facilities as provided in this chapter for a violation or
 227 deficiency of any other building, structure, or facility.

228 (6) ADDITIONAL STANDARDS.--In addition to any other rules
 229 adopted under this section or s. 633.022, the State Fire
 230 Marshal, in consultation with the Department of Education, shall
 231 adopt and administer rules prescribing the following standards
 232 for the safety and health of occupants of educational and
 233 ancillary plants:

234 (a) The designation of serious life-threatening hazards,
 235 including, but not limited to, nonfunctional fire alarm systems,
 236 nonfunctional fire sprinkler systems, doors with padlocks or
 237 other locks or devices that preclude egress at any time,
 238 inadequate exits, hazardous electrical system conditions,
 239 potential structural failure, and storage conditions that create
 240 a fire hazard.

241 (b) The proper placement of functional smoke and heat
 242 detectors and accessible, unexpired fire extinguishers.

243 (c) The maintenance of fire doors without doorstops or
 244 wedges improperly holding them open.

245 Section 5. Section 633.03, Florida Statutes, is amended to
 246 read:

247 633.03 Investigation of fires and explosions ~~fire~~;
 248 reports.--The State Fire Marshal shall investigate the cause,
 249 origin, and circumstances of every fire or explosion occurring
 250 in this state wherein the State Fire Marshal deems an
 251 investigation is necessary and ~~property has been damaged or~~
 252 ~~destroyed~~ where there is probable cause to believe that the fire

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253 or explosion was the result of carelessness or design. Report of
 254 all such investigations shall be made on approved forms to be
 255 furnished by the State Fire Marshal ~~fire marshal~~.

256 Section 6. Section 633.081, Florida Statutes, is amended
 257 to read:

258 633.081 Inspection of buildings and equipment; orders;
 259 firesafety inspection training requirements; certification;
 260 disciplinary action.--The State Fire Marshal and her or his
 261 agents may ~~shall~~, at any reasonable hour, when the department
 262 has reasonable cause to believe that a violation of this chapter
 263 or s. 509.215, or a rule promulgated thereunder, or a minimum
 264 firesafety code adopted by the State Fire Marshal or a local
 265 authority, may exist, inspect any and all buildings and
 266 structures which are subject to the requirements of this chapter
 267 or s. 509.215 and rules promulgated thereunder. The authority to
 268 inspect shall extend to all equipment, vehicles, and chemicals
 269 which are located on or within the premises of any such building
 270 or structure.

271 (1) Each county, municipality, and special district that
 272 has firesafety enforcement responsibilities shall employ or
 273 contract with a firesafety inspector. The firesafety inspector
 274 must conduct all firesafety inspections that are required by
 275 law. The governing body of a county, municipality, or special
 276 district that has firesafety enforcement responsibilities may
 277 provide a schedule of fees to pay only the costs of inspections
 278 conducted pursuant to this subsection and related administrative
 279 expenses. Two or more counties, municipalities, or special

280 | districts that have firesafety enforcement responsibilities may
 281 | jointly employ or contract with a firesafety inspector.

282 | (2) Every firesafety inspection conducted pursuant to
 283 | state or local firesafety requirements shall be by a person
 284 | certified as having met the inspection training requirements set
 285 | by the State Fire Marshal. Such person shall:

286 | (a) Be a high school graduate or the equivalent as
 287 | determined by the department;

288 | (b) Not have been found guilty of, or having pleaded
 289 | guilty or nolo contendere to, a felony or a crime punishable by
 290 | imprisonment of 1 year or more under the law of the United
 291 | States, or of any state thereof, which involves moral turpitude,
 292 | without regard to whether a judgment of conviction has been
 293 | entered by the court having jurisdiction of such cases;

294 | (c) Have her or his fingerprints on file with the
 295 | department or with an agency designated by the department;

296 | (d) Have good moral character as determined by the
 297 | department;

298 | (e) Be at least 18 years of age;

299 | (f) Have satisfactorily completed the firesafety inspector
 300 | certification examination as prescribed by the department; and

301 | (g)1. Have satisfactorily completed, as determined by the
 302 | department, a firesafety inspector training program of not less
 303 | than 200 hours established by the department and administered by
 304 | agencies and institutions approved by the department for the
 305 | purpose of providing basic certification training for firesafety
 306 | inspectors; or

307 2. Have received in another state training which is
 308 determined by the department to be at least equivalent to that
 309 required by the department for approved firesafety inspector
 310 education and training programs in this state.

311 (3) (a) 1. Effective July 1, 2011, the classification of
 312 special state firesafety inspector is abolished and all special
 313 state firesafety inspector certifications expire at midnight
 314 June 30, 2011.

315 2. Any person who is a special state firesafety inspector
 316 on June 30, 2011, and who has failed to comply with paragraph
 317 (b) or paragraph (c) shall not be permitted to perform any
 318 firesafety inspection required by law.

319 3. A special state firesafety inspector certification may
 320 not be awarded after June 30, 2008.

321 (b) 1. Any person who is a special state firesafety
 322 inspector on July 1, 2008, and who has at least 5 years'
 323 experience as a special state firesafety inspector as of July 1,
 324 2008, may take the same firesafety inspection examination as
 325 provided in paragraph (2) (f) for firesafety inspectors prior to
 326 July 1, 2011, to be certified as a firesafety inspector
 327 described in subsection (2).

328 2. Upon passing the examination, such person shall be
 329 certified as a firesafety inspector as provided in subsection
 330 (2).

331 3. Failure to obtain certification requires compliance
 332 with paragraph (c) to be certified as a firesafety inspector as
 333 provided in subsection (2).

334 (c)1. To be certified as a firesafety inspector as
 335 provided in subsection (2), any person who:

336 a. Is a special state firesafety inspector on July 1,
 337 2008, and who does not have 5 years' experience as a special
 338 state firesafety inspector as of July 1, 2008; or

339 b. Has 5 years' experience as a special state firesafety
 340 inspector but has failed the examination taken pursuant to
 341 paragraph (b),

342

343 must take an additional 80 hours of the courses described in
 344 paragraph (2)(g).

345 2. After successfully completing the courses described in
 346 this paragraph, such person is permitted to take the firesafety
 347 inspection examination described in paragraph (2)(f), provided
 348 such examination is taken prior to July 1, 2011.

349 3. Upon passing the examination, such person shall become
 350 certified as a firesafety inspector as provided in subsection
 351 (2).

352 4. A person who fails the course of study or the
 353 examination described in this paragraph may not perform any
 354 firesafety inspection required by law on or after July 1, 2011.
 355 ~~Each special state firesafety inspection which is required by~~
 356 ~~law and is conducted by or on behalf of an agency of the state~~
 357 ~~must be performed by an individual who has met the provision of~~
 358 ~~subsection (2), except that the duration of the training program~~
 359 ~~shall not exceed 120 hours of specific training for the type of~~
 360 ~~property that such special state firesafety inspectors are~~
 361 ~~assigned to inspect.~~

362 (4) A firefighter certified pursuant to s. 633.35 may
 363 conduct firesafety inspections, under the supervision of a
 364 certified firesafety inspector, while on duty as a member of a
 365 fire department company conducting inservice firesafety
 366 inspections without being certified as a firesafety inspector,
 367 if such firefighter has satisfactorily completed an inservice
 368 fire department company inspector training program of at least
 369 24 hours' duration as provided by rule of the department.

370 (5) Every firesafety inspector ~~or special state firesafety~~
 371 ~~inspector~~ certificate is valid for a period of 3 years from the
 372 date of issuance. Renewal of certification shall be subject to
 373 the affected person's completing proper application for renewal
 374 and meeting all of the requirements for renewal as established
 375 under this chapter or by rule adopted ~~promulgated~~ thereunder,
 376 which shall include completion of at least 40 hours during the
 377 preceding 3-year period of continuing education as required by
 378 the rule of the department or, in lieu thereof, successful
 379 passage of an examination as established by the department.

380 (6) The State Fire Marshal may deny, refuse to renew,
 381 suspend, or revoke the certificate of a firesafety inspector ~~or~~
 382 ~~special state firesafety inspector~~ if it finds that any of the
 383 following grounds exist:

384 (a) Any cause for which issuance of a certificate could
 385 have been refused had it then existed and been known to the
 386 State Fire Marshal.

387 (b) Violation of this chapter or any rule or order of the
 388 State Fire Marshal.

389 (c) Falsification of records relating to the certificate.

390 (d) Having been found guilty of or having pleaded guilty
 391 or nolo contendere to a felony, whether or not a judgment of
 392 conviction has been entered.

393 (e) Failure to meet any of the renewal requirements.

394 (f) Having been convicted of a crime in any jurisdiction
 395 which directly relates to the practice of fire code inspection,
 396 plan review, or administration.

397 (g) Making or filing a report or record that the
 398 certificateholder knows to be false, or knowingly inducing
 399 another to file a false report or record, or knowingly failing
 400 to file a report or record required by state or local law, or
 401 knowingly impeding or obstructing such filing, or knowingly
 402 inducing another person to impede or obstruct such filing.

403 (h) Failing to properly enforce applicable fire codes or
 404 permit requirements within this state which the
 405 certificateholder knows are applicable by committing willful
 406 misconduct, gross negligence, gross misconduct, repeated
 407 negligence, or negligence resulting in a significant danger to
 408 life or property.

409 (i) Accepting labor, services, or materials at no charge
 410 or at a noncompetitive rate from any person who performs work
 411 that is under the enforcement authority of the certificateholder
 412 and who is not an immediate family member of the
 413 certificateholder. For the purpose of this paragraph, the term
 414 "immediate family member" means a spouse, child, parent,
 415 sibling, grandparent, aunt, uncle, or first cousin of the person
 416 or the person's spouse or any person who resides in the primary
 417 residence of the certificateholder.

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418 (7) The department shall provide by rule for the
 419 certification of firesafety inspectors.

420 (8) The State Fire Marshal may develop by rule an advanced
 421 training and certification program for firesafety inspectors
 422 with fire code management responsibility. This program shall be
 423 consistent with national standards. The program shall establish
 424 minimum training, education, and experience levels for fire
 425 safety inspectors with fire code management responsibilities.

426 (9) The Division of State Fire Marshal may enter into a
 427 reciprocity agreement with the Florida Building Code
 428 Administrators and Inspectors Board, established pursuant to s.
 429 468.605, to facilitate joint recognition of continuing education
 430 recertification hours for certificateholders licensed in
 431 accordance with s. 468.609 and firesafety inspectors certified
 432 in accordance with subsection (2).

433 Section 7. Paragraph (a) of subsection (1) and subsections
 434 (2), (3), and (4) of section 633.085, Florida Statutes, are
 435 amended to read:

436 633.085 Inspections of state buildings and premises; tests
 437 of firesafety equipment; building plans to be approved.--

438 (1) (a) It is the duty of the State Fire Marshal and her or
 439 his agents to inspect, or cause to be inspected, each state-
 440 owned building and each building located on land owned by the
 441 state and used primarily for state purposes as determined by the
 442 State Fire Marshal, such buildings to be referred to in this
 443 section as a state-owned building or state-owned buildings, on a
 444 recurring basis established by rule, and to ensure that high-
 445 hazard occupancies are inspected at least annually, for the

446 | purpose of ascertaining and causing to be corrected any
 447 | conditions liable to cause fire or endanger life from fire and
 448 | any violation of the firesafety standards for state-owned
 449 | buildings, the provisions of this chapter, or the rules or
 450 | regulations adopted and promulgated pursuant hereto. The State
 451 | Fire Marshal shall, within 7 days following an inspection,
 452 | submit a report of such inspection to the head of the department
 453 | of state government responsible for the building.

454 | (2) The State Fire Marshal and her or his agents may ~~shall~~
 455 | conduct performance tests on any electronic fire warning and
 456 | smoke detection system, and any pressurized air-handling unit,
 457 | in any state-owned building or state-leased space on a recurring
 458 | basis as provided in subsection (1). The State Fire Marshal and
 459 | her or his agents shall also ensure that fire drills are
 460 | conducted in all high hazard state-owned buildings or high
 461 | hazard state-leased ~~high-hazard~~ occupancies at least annually.

462 | (3) All construction of any new, or renovation,
 463 | alteration, or change of occupancy of any existing, state-owned
 464 | building or state-leased space shall comply with the uniform
 465 | firesafety standards of the State Fire Marshal.

466 | (a) For all new construction or renovation, alteration, or
 467 | change of occupancy of state-leased space, compliance with the
 468 | uniform firesafety standards shall be determined by reviewing
 469 | the plans for the proposed construction or occupancy submitted
 470 | by the lessor to the Division of State Fire Marshal for review
 471 | and approval prior to commencement of construction or occupancy,
 472 | which review shall be completed within 10 working days after
 473 | receipt of the plans by the Division of State Fire Marshal.

474 (b) The plans for all construction of any new, or
 475 renovation or alteration of any existing, state-owned building
 476 are subject to the review and approval of the Division of State
 477 Fire Marshal for compliance with the uniform firesafety
 478 standards prior to commencement of construction or change of
 479 occupancy, which review shall be completed within 30 calendar
 480 days of receipt of the plans by the Division of State Fire
 481 Marshal.

482 (4) The Division of State Fire Marshal may inspect state-
 483 owned buildings and space and state-leased space as necessary
 484 prior to occupancy or during construction, renovation, or
 485 alteration to ascertain compliance with the uniform firesafety
 486 standards. Whenever the Division of State Fire Marshal
 487 determines by virtue of such inspection or by review of plans
 488 that construction, renovation, or alteration of state-owned
 489 buildings and state-leased space is not in compliance with the
 490 uniform firesafety standards, the Division of State Fire Marshal
 491 shall issue an order to cease construction, renovation, or
 492 alteration, or to preclude occupancy, of a building until
 493 compliance is obtained, except for those activities required to
 494 achieve such compliance.

495 Section 8. Section 633.101, Florida Statutes, is amended
 496 to read:

497 633.101 Hearings; investigations; investigatory powers of
 498 State Fire Marshal; costs of service and witness fees.--

499 (1) The State Fire Marshal may in his or her discretion
 500 take or cause to be taken the testimony on oath of all persons
 501 whom he or she believes to be cognizant of any facts in relation

502 | to matters under investigation. The State Fire Marshal may
 503 | administer oaths and affirmations, request the attendance of
 504 | witnesses or proffering of matter, and collect evidence.

505 | (2) If the State Fire Marshal seeks to obtain by request
 506 | any matter that or the testimony of any person who is located
 507 | outside the state, the person requested shall provide the
 508 | testimony to the State Fire Marshal or make the matter available
 509 | to the State Fire Marshal to examine at the place where the
 510 | matter is located. The State Fire Marshal may designate
 511 | representatives, including officials of the state in which the
 512 | matter is located, to inspect the matter on behalf of the State
 513 | Fire Marshal, and the State Fire Marshal may respond to similar
 514 | requests from officials of other states.

515 | (3) (a) The State Fire Marshal may request that an
 516 | individual who refuses to comply with any request made under
 517 | subsection (2) be ordered by the circuit court to provide the
 518 | testimony or matter. The court shall not order such compliance
 519 | unless the State Fire Marshal has demonstrated to the
 520 | satisfaction of the court that the testimony of the witness or
 521 | the matter under request has a direct bearing on matter under
 522 | the jurisdiction of the State Fire Marshal, constitutes a felony
 523 | or misdemeanor under this chapter, the Florida Insurance Code,
 524 | or a fraudulent insurance act, or is pertinent and necessary to
 525 | further such investigation.

526 | (b) Except in a prosecution for perjury, an individual who
 527 | complies with a court order to provide testimony or matter after
 528 | asserting a privilege against self-incrimination to which the
 529 | individual is entitled by law may not be subjected to a criminal

530 proceeding or to a civil penalty with respect to the act
 531 concerning which the individual is required to testify or
 532 produce relevant matter.

533 (c) In the absence of fraud or bad faith, a person is not
 534 subject to civil liability for libel, slander, or any other
 535 relevant tort by virtue of filing reports, without malice, or
 536 furnishing other information, without malice, required by this
 537 chapter or required by the State Fire Marshal under the
 538 authority granted in this chapter, and no civil cause of action
 539 of any nature shall arise against such person for:

540 1. Any information relating to a matter under the
 541 jurisdiction of the State Fire Marshal, suspected violations of
 542 the Florida Insurance Code, or fraudulent insurance acts or
 543 persons suspected of engaging in such acts furnished to or
 544 received from law enforcement officials or their agents or
 545 employees;

546 2. Any information relating to any matter under the
 547 jurisdiction of the State Fire Marshal, suspected violations of
 548 the Florida Insurance Code, fraudulent insurance acts or persons
 549 suspected of engaging in such acts furnished to or received from
 550 other persons subject to the provisions of this chapter:

551 3. Any such information furnished in reports to the State
 552 Fire Marshal or any local, state, or federal enforcement
 553 officials or their agents or employees; or

554 4. Other actions taken in cooperation with any of the
 555 agencies or individuals specified in this paragraph in the
 556 lawful investigation of violations under the jurisdiction of the

557 State Fire Marshal, suspected violations of the Florida
 558 Insurance Code, or suspected fraudulent insurance acts.
 559 (d) In addition to the immunity granted in paragraph (c),
 560 persons identified as designated employees whose
 561 responsibilities include the investigation and disposition of
 562 violations under the jurisdiction of the State Fire Marshal or
 563 the Florida Insurance Code and claims relating to suspected
 564 fraudulent insurance acts may share information relating to
 565 persons suspected of such acts with other designated employees
 566 employed by the same or other insurers whose responsibilities
 567 include such acts, provided the State Fire Marshal has been
 568 given written notice of the names and job titles of such
 569 designated employees prior to such designated employees sharing
 570 information. Unless the designated employees of the insurer act
 571 in bad faith or in reckless disregard for the rights of any
 572 insured, the insurer or its designated employees are not civilly
 573 liable for libel, slander, or any other relevant tort, and a
 574 civil action does not arise against the insurer or its
 575 designated employees for:
 576 1. Any information related to any matter under the
 577 jurisdiction of the State Fire Marshal, the Florida Insurance
 578 Code, or suspected fraudulent insurance acts provided to an
 579 insurer; or
 580 2. Any information relating to any matter under the
 581 jurisdiction of the State Fire Marshal, the Florida Insurance
 582 Code, or suspected fraudulent insurance acts provided to the
 583 National Insurance Crime Bureau or the National Association of
 584 Insurance Commissioners.

585
 586 However, the qualified immunity against civil liability
 587 conferred on any insurer or its designated employees shall be
 588 forfeited with respect to the exchange or publication of any
 589 defamatory information with third persons not expressly
 590 authorized by this paragraph to share in such information.

591 (e) The State Fire Marshal and any employee or agent of
 592 the department, when acting without malice and in the absence of
 593 fraud or bad faith, is not subject to civil liability for libel,
 594 slander, or any other relevant tort, and no civil cause of
 595 action of any nature exists against such person by virtue of the
 596 execution of official activities or duties of the State Fire
 597 Marshal or by virtue of the publication of any report or
 598 bulletin related to the official activities or duties of the
 599 State Fire Marshal under this chapter.

600 (f) This section does not abrogate or modify in any way
 601 any common-law or statutory privilege or immunity otherwise
 602 enjoyed by any person.

603 (5) (a) Papers, documents, reports, or evidence relative to
 604 the subject of an investigation under this section shall not be
 605 subject to discovery until the investigation is completed or
 606 ceases to be active. Agents of the State Fire Marshal shall not
 607 be subject to subpoena in civil actions by any court of this
 608 state to testify concerning any matter of which they have
 609 knowledge pursuant to a pending investigation by the State Fire
 610 Marshal.

611 (b) Physical evidence that is not capable of being copied
 612 or reproduced shall not constitute a public record and shall be

613 disposed of in accordance with s. 705.105. During the pendency
 614 of an active investigation, physical evidence shall not be
 615 subject to subpoena until the investigation is completed or
 616 ceases to be active, unless the State Fire Marshal consents to
 617 release of the physical evidence.

618 (6) Any person, other than an insurer, agent, or other
 619 person licensed under the Florida Insurance Code, or an employee
 620 of such licensee, having knowledge or a belief that a crime
 621 involving arson, a destructive device, a fraudulent insurance
 622 act, or any other act or practice which, upon conviction,
 623 constitutes a felony or a misdemeanor under this chapter, the
 624 Florida Insurance Code, or s. 817.233 is being or has been
 625 committed may submit to the State Fire Marshal a report or
 626 information pertinent to such knowledge or belief and such
 627 additional information relative to such knowledge or belief as
 628 the State Fire Marshal may request. Any insurer, agent, or other
 629 person licensed under the Florida Insurance Code, or an employee
 630 of such licensee, having knowledge or believes belief that a
 631 fraudulent insurance act or any other act or practice which,
 632 upon conviction, constitutes a felony or a misdemeanor under
 633 this chapter, the Florida Insurance Code, or s. 817.233 is being
 634 or has been committed shall send to the State Fire Marshal a
 635 report or information pertinent to such knowledge or belief and
 636 such additional information relative to such knowledge or belief
 637 as the State Fire Marshal may require. The State Fire Marshal
 638 shall review such information or reports and select such
 639 information or reports as, in his or her judgment, may require
 640 further investigation. The State Fire Marshal shall then cause

641 an independent examination of the facts surrounding such
 642 information or report to be made to determine the extent, if
 643 any, to which a crime involving arson, a destructive device, or
 644 a fraudulent insurance act or any other act or practice which,
 645 upon conviction, constitutes a felony or a misdemeanor under
 646 this chapter, the Florida Insurance Code, or s. 817.233 is being
 647 or has been committed. The State Fire Marshal shall report any
 648 alleged violations of law which his or her investigations reveal
 649 to the appropriate licensing agency and state attorney or other
 650 prosecuting agency having jurisdiction with respect to any such
 651 violation. If prosecution by the state attorney or other
 652 prosecuting agency having jurisdiction with respect to such
 653 violation is not begun within 60 days after such report by the
 654 State Fire Marshal, the state attorney or other prosecuting
 655 agency having jurisdiction with respect to such violation shall
 656 inform the State Fire Marshal of the reasons for the lack of
 657 prosecution.

658 (7) Each agent of the State Fire Marshal may make arrests
 659 for criminal violations established as a result of an
 660 investigation and are considered state law enforcement officers
 661 for all purposes and may execute arrest warrants and search
 662 warrants; may serve subpoenas issued for the examination,
 663 investigation, and trial of all offenses; and may arrest upon
 664 probable cause without warrant any person found engaging in any
 665 act constituting a felony or misdemeanor under this chapter, the
 666 Florida Insurance Code, or s. 817.233. Each agent of the State
 667 Fire Marshal may make arrests under this section and may bear
 668 arms in the performance of his or her duties. In such

669 situations, the agent of the State Fire Marshal must be
 670 certified in compliance with the provisions of s. 943.1395 or
 671 must meet the temporary employment or appointment exemption
 672 requirements of s. 943.131 until certified.

673 (8) It is unlawful for any person to resist an arrest by
 674 an agent of the State Fire Marshal authorized by this section or
 675 in any manner to interfere, by abetting or assisting such
 676 resistance or otherwise interfering, with any Division of State
 677 Fire Marshal investigator in the duties imposed upon such agent
 678 or investigator by law or department rule.

679 ~~(2) If the State Fire Marshal shall be of the opinion that~~
 680 ~~there is sufficient evidence to charge any person with an~~
 681 ~~offense, he or she shall cause the arrest of such person and~~
 682 ~~shall furnish to the prosecuting officer of any court having~~
 683 ~~jurisdiction of said offense all information obtained by him or~~
 684 ~~her, including a copy of all pertinent and material testimony~~
 685 ~~taken, together with the names and addresses of all witnesses.~~
 686 ~~In the conduct of such investigations, the fire marshal may~~
 687 ~~request such assistance as may reasonably be given by such~~
 688 ~~prosecuting officers and other local officials.~~

689 ~~(3) The fire marshal may summon and compel the attendance~~
 690 ~~of witnesses before him or her to testify in relation to any~~
 691 ~~manner which is, by the provisions of this chapter, a subject of~~
 692 ~~inquiry and investigation, and he or she may require the~~
 693 ~~production of any book, paper or document deemed pertinent~~
 694 ~~thereto by him or her, and may seize furniture and other~~
 695 ~~personal property to be held for evidence.~~

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696 ~~(4) All persons so summoned and so testifying shall be~~
 697 ~~entitled to the same witness fees and mileage as provided for~~
 698 ~~witnesses testifying in the circuit courts of this state, and~~
 699 ~~officers serving subpoenas or orders of the fire marshal shall~~
 700 ~~be paid in like manner for like services in such courts, from~~
 701 ~~the funds herein provided.~~

702 Section 9. Section 633.121, Florida Statutes, is amended
 703 to read:

704 633.121 Persons authorized to enforce laws and rules of
 705 State Fire Marshal.--The chiefs of county, municipal, and
 706 special-district fire departments; other fire department
 707 personnel designated by their respective chiefs; ~~and~~ personnel
 708 designated by local governments having no organized fire
 709 departments; and all law enforcement officers in the state duly
 710 certified under chapter 943 may are authorized to enforce this
 711 chapter law and all rules adopted ~~prescribed~~ by the State Fire
 712 Marshal within their respective jurisdictions. Such personnel
 713 acting under the authority of this section shall be deemed to be
 714 agents of their respective jurisdictions, not agents of the
 715 State Fire Marshal.

716 Section 10. Section 633.13, Florida Statutes, is amended
 717 to read:

718 633.13 State Fire Marshal; authority of agents.--The
 719 authority given the State Fire Marshal under this chapter or any
 720 rule or order adopted by the State Fire Marshal law may be
 721 exercised by his or her agents, either individually or in
 722 conjunction with any other state or local official charged with
 723 similar responsibilities.

724 Section 11. Section 633.145, Florida Statutes, is created
 725 to read:

726 633.145 Arson and Destructive Device Reward Program.--

727 (1) The Arson and Destructive Device Reward Program is
 728 established within the department, to be funded from the
 729 Insurance Regulatory Trust Fund.

730 (2) The department may pay rewards of up to \$25,000 to
 731 persons providing information leading to the arrest and
 732 conviction of persons committing crimes involving arson and
 733 destructive devices investigated by the Bureau of Fire and Arson
 734 Investigations arising from violations of s. 790.161, s.
 735 790.1615, s. 790.162, s. 790.163, s. 790.164, s. 790.166, s.
 736 806.01, s. 806.031, s. 806.10, s. 806.111, or s. 817.233.

737 (3) Only a single reward amount may be paid by the
 738 department for claims arising out of the same transaction or
 739 occurrence, regardless of the number of persons arrested and
 740 convicted and the number of persons submitting claims for the
 741 reward. The reward may be disbursed among more than one person
 742 in amounts as determined by the department.

743 (4) The department shall adopt rules, including any
 744 necessary forms, which set forth the application and approval
 745 process, including the criteria against which claims shall be
 746 evaluated, the basis for determining specific reward amounts,
 747 and the manner in which rewards shall be disbursed. Applications
 748 for rewards authorized by this section must be made pursuant to
 749 rules adopted by the department.

750 (5) Determinations by the department to grant or deny a
 751 reward under this section are discretionary on the part of the

752 department and are final. Such determinations are not agency
 753 actions subject to review under s. 120.569 or s. 120.57 and are
 754 not final orders or appealable in any court of appeal.

755 Section 12. Subsections (1) and (3) of section 633.161,
 756 Florida Statutes, are amended to read:

757 633.161 Violations; orders to cease and desist, correct
 758 hazardous conditions, preclude occupancy, or vacate;
 759 enforcement; penalties.--

760 (1) If it is determined by the department that a violation
 761 specified in this subsection exists, the State Fire Marshal or
 762 her or his deputy may issue and deliver to the person committing
 763 the violation an order to cease and desist from such violation,
 764 to correct any hazardous condition, to preclude occupancy of the
 765 affected building or structure, or to vacate the premises of the
 766 affected building or structure. Such violations consist of ~~are~~:

767 (a) Except as set forth in paragraph (b), a violation of
 768 any provision of this chapter, of any rule adopted pursuant
 769 thereto, of any applicable uniform firesafety standard adopted
 770 pursuant to s. 633.022 which is not adequately addressed by any
 771 alternative requirements adopted on a local level, or of any
 772 minimum firesafety standard adopted pursuant to s. 394.879.

773 (b) A substantial violation of an applicable minimum
 774 firesafety standard adopted pursuant to s. 633.025 which is not
 775 reasonably addressed by any alternative requirement imposed at
 776 the local level, or an unreasonable interpretation of an
 777 applicable minimum firesafety standard, and which violation or
 778 interpretation clearly constitutes a danger to lifesafety.

779 (c) A building or structure which is in a dilapidated
 780 condition and as a result thereof creates a danger to life,
 781 safety, or property.

782 (d) A building or structure which contains explosive
 783 matter or flammable liquids or gases constituting a danger to
 784 life, safety, or property.

785 (e) A fire department that is not operated by or under
 786 contract with a political subdivision as defined in s. 1.01.

787 (3) Any person who violates or fails to comply with any
 788 order under subsection (1) or subsection (2) commits ~~is guilty~~
 789 ~~of~~ a misdemeanor, punishable as provided in s. 633.171.

790 Section 13. Subsection (1) of section 633.171, Florida
 791 Statutes, is amended to read:

792 633.171 Penalty for violation of law, rule, or order to
 793 cease and desist or for failure to comply with corrective
 794 order.--

795 (1) Any person who violates any provision of this chapter
 796 ~~law~~, any order or rule of the State Fire Marshal, or any order
 797 to cease and desist or to correct conditions issued under this
 798 chapter commits a misdemeanor of the second degree, punishable
 799 as provided in s. 775.082 or s. 775.083.

800 Section 14. Subsection (1) of section 633.175, Florida
 801 Statutes, is amended, subsection (9) of that section is
 802 renumbered as subsection (10), and a new subsection (9) is added
 803 to that section, to read:

804 633.175 Investigation of fraudulent insurance claims and
 805 crimes; immunity of insurance companies supplying information.--

806 (1) In addition to the other powers granted by this
 807 chapter, the State Fire Marshal or an agent appointed pursuant
 808 to s. 633.02, any law enforcement officer as defined in s.
 809 111.065, any law enforcement officer of a federal agency, or any
 810 fire department official who is engaged in the investigation of
 811 a fire loss may request any insurance company or its agent,
 812 adjuster, employee, or attorney, investigating a claim under an
 813 insurance policy or contract with respect to a fire to release
 814 any information whatsoever in the possession of the insurance
 815 company or its agent, adjuster, employee, or attorney relative
 816 to a loss from that fire. The insurance company shall release
 817 the available information to and cooperate with any official
 818 authorized to request such information pursuant to this section.
 819 The information shall include, but shall not be limited to:

820 (a) Any insurance policy relevant to a loss under
 821 investigation and any application for such a policy.

822 (b) Any policy premium payment records.

823 (c) The records, reports, and all material pertaining to
 824 any previous claims made by the insured with the reporting
 825 company.

826 (d) Material relating to the investigation of the loss,
 827 including statements of any person, proof of loss, and other
 828 relevant evidence.

829 (e) Memoranda, notes, and correspondence relating to the
 830 investigation of the loss in the possession of the insurance
 831 company or its agents, adjusters, employees, or attorneys.

832 (9) For the purposes of this section, a person commits a
 833 fraudulent insurance act if the person knowingly and with intent

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834 to defraud presents, causes to be presented, or prepares with
 835 knowledge or belief that it will be presented, to or by an
 836 insurer, self-insurer, self-insurance fund, servicing
 837 corporation, purported insurer, or broker, or any agent of such
 838 an entity, any written statement as part of, or in support of,
 839 an application for the issuance of, or the rating of, any
 840 insurance policy, or a claim for payment or other benefit
 841 pursuant to any insurance policy, which the person knows to
 842 contain materially false information concerning any fact
 843 material to such statement or claim or if the person conceals,
 844 for the purpose of misleading another, information concerning
 845 any fact material to such statement or claim.

846 (10)-(9) Any person who willfully violates the provisions
 847 of this section is guilty of a misdemeanor of the first degree,
 848 punishable as provided in s. 775.082 or s. 775.083.

849 Section 15. Section 633.18, Florida Statutes, is amended
 850 to read:

851 633.18 State Fire Marshal; hearings and investigations;
 852 subpoena of witnesses; orders of circuit court.--Any agent
 853 designated by the State Fire Marshal for such purposes, may hold
 854 hearings, sign and issue subpoenas, administer oaths, examine
 855 witnesses, receive evidence, and require by subpoena the
 856 attendance and testimony of witnesses and the production of such
 857 accounts, records, memoranda or other evidence, as may be
 858 material for the determination of any complaint or conducting
 859 any inquiry or investigation under this chapter or any rule or
 860 order of the State Fire Marshal law. In case of disobedience to
 861 a subpoena, the State Fire Marshal or his or her agent may

862 invoke the aid of any court of competent jurisdiction in
 863 requiring the attendance and testimony of witnesses and the
 864 production of accounts, records, memoranda or other evidence and
 865 any such court may in case of contumacy or refusal to obey a
 866 subpoena issued to any person, issue an order requiring the
 867 person to appear before the State Fire Marshal's agent or
 868 produce accounts, records, memoranda or other evidence, as so
 869 ordered, or to give evidence touching any matter pertinent to
 870 any complaint or the subject of any inquiry or investigation,
 871 and any failure to obey such order of the court shall be
 872 punished by the court as a contempt thereof.

873 Section 16. Section 633.30, Florida Statutes, is amended
 874 to read:

875 633.30 Standards for firefighting; definitions.--As used
 876 in this chapter, the term:

877 (1) "Apprentice firefighter" means any high school student
 878 who completes a high school course of instruction and
 879 examination approved by the department that includes specified
 880 components of firefighter I and II certification in accordance
 881 with the division's rules. Prior to the person's 18th birthday,
 882 an apprentice firefighter may function as a fireground resource
 883 technician with a recognized fire department. Upon the
 884 apprentice firefighter's 18th birthday and graduation from high
 885 school, the apprentice firefighter may complete the outstanding
 886 components of firefighter I and II certification training and
 887 become certified at level II in accordance with the division's
 888 rules.

889 (2) "Career firefighter" means a person who is compensated
 890 at an hourly or salaried rate and whose work hours are scheduled
 891 in advance to maintain a schedule of coverage at a station,
 892 facility, or area to function as described in subsection (8).

893 ~~(3)-(4)~~ "Council" means the Firefighters Employment,
 894 Standards, and Training Council.

895 ~~(4)-(3)~~ "Department" means the Department of Financial
 896 Services.

897 ~~(5)-(5)~~ "Division" means the Division of State Fire Marshal
 898 of the Department of Financial Services.

899 ~~(6)-(2)~~ "Employing agency" means any municipality or
 900 county, the state, or any political subdivision of the state,
 901 including authorities and special districts, employing
 902 firefighters ~~as defined in subsection (1).~~

903 (7) "Fire department" means an organization that responds
 904 to emergency calls for the purpose of fighting fires.

905 ~~(8)-(1)~~ "Firefighter" means any person ~~initially employed~~
 906 ~~as a full-time professional firefighter by any employing agency,~~
 907 ~~as defined herein,~~ whose primary responsibility is the
 908 prevention and extinguishment of fires, the protection and
 909 saving of life and property, and the enforcement of municipal,
 910 county, and state fire prevention codes, as well as of any law
 911 pertaining to the prevention and control of fires.

912 (9) "Firefighter I" means a person who has successfully
 913 completed the firefighter I training program and is certified at
 914 level I in accordance with the division's rules. Firefighter I
 915 is the minimum level of certification to function as a volunteer
 916 firefighter.

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917 (10) "Firefighter II" means a person who has successfully
 918 completed the firefighter II training program and is certified
 919 at level II in accordance with the division's rules. Firefighter
 920 II is the minimum level of certification to function as a full-
 921 time career firefighter as set forth in subsection (2).

922 (11) "Fireground resource technician" means a volunteer
 923 exterior firefighter or support person who is not qualified by
 924 certification to be an interior firefighter but who has
 925 completed a course of instruction in accordance with the
 926 division's rules. Fireground resource technician is the minimum
 927 level of certification to function on the fireground in
 928 accordance with division rules.

929 Section 17. Section 633.34, Florida Statutes, is amended
 930 to read:

931 633.34 Firefighters; qualifications for employment.--

932 (1) Any person applying to an employing agency to function
 933 for employment as a firefighter must:

934 (a)(1) Be a high school graduate or the equivalent, as the
 935 term may be determined by the division, and at least 18 years of
 936 age.

937 (b)(2) Never have been adjudicated guilty of, or pled
 938 guilty or nolo contendere to, any:

939 1. Felony. If an applicant has been convicted of a felony,
 940 the applicant is not eligible for certification until the
 941 applicant complies with s. 112.011(2)(b); or

942 2. Misdemeanor involving moral turpitude, dishonest acts,
 943 or misleading or false statements relating to certification or
 944 employment as a firefighter.

945
 946 If an applicant has been sentenced for any conviction of a
 947 felony or a misdemeanor, the applicant is not eligible for
 948 certification until 4 years after the expiration of any
 949 sentence. If a sentence is suspended or adjudication is withheld
 950 and a period of probation is imposed, the applicant must have
 951 been released from probation. ~~Neither have been convicted of a~~
 952 ~~felony or of a misdemeanor directly related to the position of~~
 953 ~~employment sought, nor have pled nolo contendere to any charge~~
 954 ~~of a felony. If an applicant has been convicted of a felony,~~
 955 ~~such applicant must be in compliance with s. 112.011(2)(b). If~~
 956 ~~an applicant has been convicted of a misdemeanor directly~~
 957 ~~related to the position of employment sought, such applicant~~
 958 ~~shall be excluded from employment for a period of 4 years after~~
 959 ~~expiration of sentence. If the sentence is suspended or~~
 960 ~~adjudication is withheld in a felony charge or in a misdemeanor~~
 961 ~~directly related to the position or employment sought and a~~
 962 ~~period of probation is imposed, the applicant must have been~~
 963 ~~released from probation.~~

964 (c)(3) Pay for and submit fingerprints as directed by the
 965 division. Submit a fingerprint card to the division with a
 966 current processing fee. The fingerprints shall fingerprint card
 967 will be forwarded to the Department of Law Enforcement or and/or
 968 the Federal Bureau of Investigation or both, as directed by
 969 division rule.

970 ~~(4) Have a good moral character as determined by~~
 971 ~~investigation under procedure established by the division.~~

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972 ~~(d)(5)~~ Be in good physical condition as determined by a
 973 medical examination given by a physician, surgeon, or physician
 974 assistant licensed to practice in the state pursuant to chapter
 975 458; an osteopathic physician, surgeon, or physician assistant
 976 licensed to practice in the state pursuant to chapter 459; or an
 977 advanced registered nurse practitioner licensed to practice in
 978 the state pursuant to chapter 464, who are aware of and familiar
 979 with the medical requirements for training and certification as
 980 stated in department rule. ~~Such examination may include, but~~
 981 ~~need not be limited to, provisions of the National Fire~~
 982 ~~Protection Association Standard 1582.~~ Results of this A medical
 983 examination evidencing good physical condition shall be
 984 submitted to the division, on a form as provided by rule, before
 985 an individual is eligible for admission into a firefighter
 986 training program as defined in s. 633.35.

987 ~~(e)(6)~~ Be a nonuser of tobacco or tobacco products for at
 988 least 1 year immediately preceding application, as evidenced by
 989 the sworn affidavit of the applicant.

990 (2) A person who does not hold an apprentice firefighter,
 991 fireground resource technician, firefighter I, or firefighter II
 992 certificate shall not respond or engage in hazardous operations,
 993 including, but not limited to, interior structural firefighting,
 994 hazardous-materials-incident mitigation, and incident command,
 995 requiring the knowledge and skills taught in the training
 996 programs established in s. 633.35, regardless of volunteer or
 997 employment status.

998 Section 18. Section 633.35, Florida Statutes, is amended
 999 to read:

1000 633.35 Firefighter training and certification.--

1001 (1) The division shall establish by rule a firefighter

1002 training programs for certification as a fireground resource

1003 technician, an apprentice firefighter, a firefighter I, and a

1004 firefighter II, to be ~~program of not less than 360 hours,~~

1005 administered by such agencies and institutions as approved by

1006 the division in accordance with division rules, ~~it approves~~ for

1007 the purpose of providing ~~basic employment~~ training for

1008 firefighters. Nothing herein shall require a public employer to

1009 pay the cost of such training.

1010 (2) The division shall issue certificates ~~a certificate~~ of

1011 compliance for certification as a fireground resource

1012 technician, an apprentice firefighter, a firefighter I, and a

1013 firefighter II to any person who has satisfactorily completed

1014 ~~complying with~~ the training programs ~~program~~ established in

1015 subsection (1), who has successfully passed an examination as

1016 prescribed by the division, and who possesses the qualifications

1017 specified for employment in s. 633.34, ~~except s. 633.34(5).~~ A No

1018 person may not be employed as a career ~~regular or permanent~~

1019 firefighter by an employing agency, or by a private entity under

1020 contract with the state or any political subdivision of the

1021 state, including authorities and special districts, unless

1022 certified as a firefighter II, except for an individual hired to

1023 be trained and become certified as a firefighter II. An

1024 individual hired to be trained and become certified as a

1025 firefighter II has a maximum of, ~~for a period of time in excess~~

1026 ~~of~~ 1 year from the date of initial employment to obtain the

1027 firefighter II ~~until he or she has obtained such certificate of~~

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1028 compliance. A person who does not hold a firefighter II
 1029 certificate of compliance and is employed under this section may
 1030 not directly engage in hazardous operations, such as interior
 1031 structural firefighting or ~~and~~ hazardous-materials-incident
 1032 mitigation, requiring the knowledge and skills taught in a
 1033 training program established in subsection (1), including
 1034 incident command. However, a person who is certified and has
 1035 been employed by ~~served as a volunteer firefighter with the~~
 1036 state or any political subdivision of the state, including
 1037 authorities and special districts, who is then employed as a
 1038 career ~~regular or permanent~~ firefighter may function, during
 1039 this period, in the same capacity in which he or she acted prior
 1040 to being employed as a career firefighter ~~as a volunteer~~
 1041 ~~firefighter, provided that he or she has completed all training~~
 1042 ~~required by the volunteer organization.~~

1043 (3) The division may issue a certificate of compliance at
 1044 the firefighter I or firefighter II level to any person who has
 1045 received basic employment training for firefighters in another
 1046 state when the division has determined that such training was at
 1047 least equivalent to that required by the division for approved
 1048 firefighter education and training programs in this state and
 1049 when such person has satisfactorily complied with all other
 1050 requirements of this section. The division may also issue a
 1051 special certificate to a person who is otherwise qualified under
 1052 this section and who is employed as the administrative and
 1053 command head of a fire/rescue/emergency services organization,
 1054 based on the acknowledgment that such person is less likely to
 1055 need physical dexterity and more likely to need advanced

1056 knowledge of firefighting and supervisory skills. The
 1057 certificate is valid only while the person is serving in a
 1058 position as an administrative and command head of a
 1059 fire/rescue/emergency services organization and must be obtained
 1060 prior to employment in such capacity.

1061 (4) A person who fails an examination given under this
 1062 section may retake the examination once within 6 months after
 1063 the original examination date. An applicant who does not pass
 1064 ~~retake~~ the examination within such time must repeat or take the
 1065 applicable training program ~~Minimum Standards Course~~, pursuant
 1066 to subsection (1), before being reexamined. The division may
 1067 establish reasonable preregistration deadlines for such
 1068 reexaminations.

1069 (5) Pursuant to s. 590.02(1)(e), the division shall
 1070 establish a structural fire training program of not less than 40
 1071 hours. The division shall issue to any person satisfactorily
 1072 complying with this training program and who has successfully
 1073 passed an examination as prescribed by the division and who has
 1074 met the requirements of s. 590.02(1)(e) a Certificate of
 1075 Forestry Firefighter.

1076 (6) A certified forestry firefighter is entitled to the
 1077 same rights, privileges, and benefits provided for by law as a
 1078 certified firefighter.

1079 Section 19. Section 633.351, Florida Statutes, is amended
 1080 to read:

1081 633.351 Disciplinary action; firefighters; standards for
 1082 revocation of certification.--

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1083 (1) The certification of a firefighter shall be revoked if
 1084 evidence is found that the certification was improperly issued
 1085 by the division or if evidence is found that the certification
 1086 was issued on the basis of false, incorrect, incomplete, or
 1087 misleading information.

1088 (2) The certification of a firefighter who has been
 1089 adjudicated guilty of, or pled guilty or nolo contendere to, any
 1090 felony, or any misdemeanor involving moral turpitude, dishonest
 1091 acts, or misleading or false statements relating to the
 1092 certification or employment as a firefighter, shall be revoked.
 1093 In the case of a felony, the certification may not be reinstated
 1094 ~~is convicted of a felony, or who is convicted of a misdemeanor~~
 1095 ~~relating to misleading or false statements, or who pleads nolo~~
 1096 ~~contendere to any charge of a felony shall be revoked~~ until the
 1097 firefighter complies with s. 112.011(2)(b). However, if sentence
 1098 upon such felony or such misdemeanor charge is suspended or
 1099 adjudication is withheld, the firefighter's certification shall
 1100 be revoked until she or he completes any probation.

1101 Section 20. Section 633.352, Florida Statutes, is amended
 1102 to read:

1103 633.352 Retention of firefighter certification.--

1104 (1) Any certified firefighter who has not been active as a
 1105 firefighter, or as a volunteer firefighter with an organized
 1106 fire department, for a period of 3 years shall be required to
 1107 retake and pass the written and practical portions ~~portion~~ of
 1108 the ~~minimum standards state~~ examination specified in division
 1109 rules. ~~rule 4A 37.056(6)(b), Florida Administrative Code, in~~

1110 ~~order to maintain her or his certification as a firefighter;~~
 1111 ~~however,~~

1112 (2) This requirement does not apply to state-certified
 1113 firefighters who are certified and employed as full-time fire
 1114 safety inspectors by a fire department employing agency
 1115 instructors, as determined by the division.

1116 (3) The 3-year period begins on the date the certificate
 1117 of compliance is issued, or upon termination of service with an
 1118 organized fire department, or upon expiration of instructor
 1119 certification.

1120 Section 21. Subsections (1), (2), and (3) of section
 1121 633.382, Florida Statutes, are amended to read:

1122 633.382 Firefighters; supplemental compensation.--

1123 (1) DEFINITIONS.--As used in this section, the term:

1124 (a) "Employing agency" means any municipality or any
 1125 county, the state, or any political subdivision of the state,
 1126 including authorities and special districts employing
 1127 firefighters.

1128 (b) "Firefighter" means any person who meets the
 1129 definition of the term "firefighter" in s. 633.30(2) and (10) ~~(1)~~
 1130 ~~who is certified in compliance with s. 633.35 and who is~~
 1131 employed solely within the fire department of the employing
 1132 agency or is employed by the division.

1133 (2) QUALIFICATIONS FOR SUPPLEMENTAL COMPENSATION.--

1134 (a) In addition to the compensation now paid by an
 1135 employing agency to a any firefighter II, every career
 1136 firefighter shall be paid supplemental compensation by the

1137 employing agency when such firefighter has complied with one of
 1138 the following criteria:

1139 1. Any firefighter II who receives an associate degree
 1140 from an accredited a college, which degree is applicable to fire
 1141 department duties, as outlined in policy guidelines of the
 1142 division, shall be additionally compensated as outlined in
 1143 paragraph (3) (a).

1144 2. Any firefighter II, regardless of whether or not she or
 1145 he earned an associate degree earlier, who receives from an
 1146 accredited college or university a bachelor's degree, which
 1147 bachelor's degree is applicable to fire department duties, as
 1148 outlined in policy guidelines of the division, shall receive
 1149 compensation as outlined in paragraph (3) (b).

1150 3. Any firefighter II who receives from an accredited
 1151 college or university a master's degree, which master's degree
 1152 is applicable to fire department duties, as outlined in policy
 1153 guidelines of the division, shall receive compensation as
 1154 outlined in paragraph (3) (c).

1155 (b) Whenever any question arises as to the eligibility of
 1156 any firefighter to receive supplemental compensation as provided
 1157 in this section, the question, together with all facts relating
 1158 thereto, shall be submitted to the division for determination,
 1159 and the decision of the division with regard to determination of
 1160 eligibility shall be final, subject to the provisions of chapter
 1161 120.

1162 (3) SUPPLEMENTAL COMPENSATION.--Supplemental compensation
 1163 shall be determined as follows:

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1164 (a) Fifty dollars shall be paid monthly to each
 1165 firefighter who qualifies under the provisions of subparagraph
 1166 (2)(a)1.

1167 (b) One hundred and ten dollars shall be paid monthly to
 1168 each firefighter who qualifies under the provisions of
 1169 subparagraph (2)(a)2.

1170 (c) One hundred and fifty dollars shall be paid monthly to
 1171 each firefighter who qualifies under subparagraph (2)(a)3.

1172 Section 22. Subsection (3) is added to section 633.524,
 1173 Florida Statutes, to read:

1174 633.524 Certificate and permit fees; use and deposit of
 1175 collected funds.--

1176 (3) The State Fire Marshal may enter into a contract with
 1177 any qualified public entity or private company in accordance
 1178 with chapter 287 to provide examinations for any applicant for
 1179 any examination administered under the jurisdiction of the State
 1180 Fire Marshal under this chapter or any other chapter under the
 1181 jurisdiction of the State Fire Marshal. The State Fire Marshal
 1182 may have payments from each applicant for each examination made
 1183 directly to such public entity or private company.

1184 Section 23. Subsections (1) and (4) of section 633.541,
 1185 Florida Statutes, are amended to read:

1186 633.541 Contracting without certificate prohibited;
 1187 violations; penalty.--

1188 (1) It is unlawful for any organization or individual to
 1189 engage in, or to engage in the business of, the layout,
 1190 fabrication, installation, inspection, alteration, repair, or
 1191 service of a fire protection system, other than a preengineered

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1192 system, act in the capacity of a fire protection contractor, or
 1193 advertise itself as being a fire protection contractor without
 1194 having been duly certified and holding a valid and existing
 1195 certificate, except as hereinafter provided. The holder of a
 1196 certificate used to qualify an organization must be a full-time
 1197 employee of the qualified organization or business. A
 1198 certificateholder who is employed by more than one fire
 1199 protection contractor during the same period of time is deemed
 1200 not to be a full-time employee of either contractor. The State
 1201 Fire Marshal shall revoke, for a period of time determined by
 1202 the State Fire Marshal, the certificate of a certificateholder
 1203 who allows the use of the certificate to qualify a company of
 1204 which the certificateholder is not a full-time employee. A
 1205 contractor who maintains more than one place of business must
 1206 employ a certificateholder at each location. Nothing in this
 1207 subsection prohibits an employee acting on behalf of
 1208 governmental entities from inspecting and enforcing firesafety
 1209 codes, provided such employee is certified under s. 633.081, or
 1210 an owner of a one or two family dwelling from inspecting or
 1211 maintaining the fire protection system for his or her own house.

1212 (4) In addition to the penalties provided in subsection
 1213 (3), a fire protection contractor certified under this chapter
 1214 who violates any provision of this chapter ~~section~~ or who
 1215 commits any act constituting cause for disciplinary action is
 1216 subject to suspension or revocation of the certificate and
 1217 administrative fines pursuant to s. 633.547.

1218 Section 24. Section 633.811, Florida Statutes, is amended
 1219 to read:

1220 633.811 Firefighter employer penalties.--If any
 1221 firefighter employer violates or fails or refuses to comply with
 1222 ss. 633.801-633.821, or with any rule adopted by the division
 1223 under such sections in accordance with chapter 120 for the
 1224 prevention of injuries, accidents, or occupational diseases or
 1225 with any lawful order of the division in connection with ss.
 1226 633.801-633.821, or fails or refuses to furnish or adopt any
 1227 safety device, safeguard, or other means of protection
 1228 prescribed by division rule under ss. 633.801-633.821 for the
 1229 prevention of accidents or occupational diseases, the division
 1230 may issue an administrative cease and desist order, enforceable
 1231 in the circuit court in the jurisdiction where the violation is
 1232 occurring or has occurred, and assess an administrative fine
 1233 against a firefighter employer of not less than \$100 nor more
 1234 than \$1,000 for each violation and each day of each violation.
 1235 The administrative penalty assessment shall be subject to the
 1236 provisions of chapter 120. The division may also assess against
 1237 the firefighter employer a civil penalty of not less than \$100
 1238 nor more than \$5,000 for each day the violation, omission,
 1239 failure, or refusal continues after the firefighter employer has
 1240 been given written notice of such violation, omission, failure,
 1241 or refusal. The total penalty for each violation shall not
 1242 exceed \$50,000. The division shall adopt rules requiring
 1243 penalties commensurate with the frequency or severity of safety
 1244 violations. A hearing shall be held in the county in which the
 1245 violation, omission, failure, or refusal is alleged to have
 1246 occurred, unless otherwise agreed to by the firefighter employer
 1247 and authorized by the division. All penalties assessed and

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1248 collected under this section shall be deposited in the Insurance
 1249 Regulatory Trust Fund.

1250 Section 25. Subsection (3) of section 633.821, Florida
 1251 Statutes, is amended to read:

1252 633.821 Workplace safety.--

1253 (3) With respect to 29 C.F.R. s. 1910.134(g)(4), the two
 1254 individuals located outside the immediately dangerous to life
 1255 and health atmosphere may be assigned to an additional role,
 1256 such as incident commander, pumper operator, engineer, or
 1257 driver, so long as such individual is able to immediately
 1258 perform assistance or rescue activities without jeopardizing the
 1259 safety or health of any firefighter working at an incident. Also
 1260 with respect to 29 C.F.R. s. 1910.134(g)(4):

1261 ~~(a) Each county, municipality, and special district shall~~
 1262 ~~implement such provision by April 1, 2002, except as provided in~~
 1263 ~~paragraphs (b) and (c).~~

1264 ~~(b) If any county, municipality, or special district is~~
 1265 ~~unable to implement such provision by April 1, 2002, without~~
 1266 ~~adding additional personnel to its firefighting staff or~~
 1267 ~~expending significant additional funds, such county,~~
 1268 ~~municipality, or special district shall have an additional 6~~
 1269 ~~months within which to implement such provision. Such county,~~
 1270 ~~municipality, or special district shall notify the division that~~
 1271 ~~the 6 month extension to implement such provision is in effect~~
 1272 ~~in such county, municipality, or special district within 30 days~~
 1273 ~~after its decision to extend the time for the additional 6~~
 1274 ~~months. The decision to extend the time for implementation shall~~
 1275 ~~be made prior to April 1, 2002.~~

1276 ~~(c) If, after the extension granted in paragraph (b), the~~
 1277 ~~county, municipality, or special district, after having worked~~
 1278 ~~with and cooperated fully with the division and the Firefighters~~
 1279 ~~Employment, Standards, and Training Council, is still unable to~~
 1280 ~~implement such provisions without adding additional personnel to~~
 1281 ~~its firefighting staff or expending significant additional~~
 1282 ~~funds, such municipality, county, or special district shall be~~
 1283 ~~exempt from the requirements of 29 C.F.R. s. 1910.134(g)(4).~~
 1284 ~~However, each year thereafter the division shall review each~~
 1285 ~~such county, municipality, or special district to determine if~~
 1286 ~~such county, municipality, or special district has the ability~~
 1287 ~~to implement such provision without adding additional personnel~~
 1288 ~~to its firefighting staff or expending significant additional~~
 1289 ~~funds. If the division determines that any county, municipality,~~
 1290 ~~or special district has the ability to implement such provision~~
 1291 ~~without adding additional personnel to its firefighting staff or~~
 1292 ~~expending significant additional funds, the division shall~~
 1293 ~~require such county, municipality, or special district to~~
 1294 ~~implement such provision. Such requirement by the division under~~
 1295 ~~this paragraph constitutes final agency action subject to~~
 1296 ~~chapter 120.~~

1297 Section 26. Section 1013.12, Florida Statutes, is amended
 1298 to read:

1299 1013.12 Casualty, safety, sanitation, and firesafety
 1300 standards and inspection of property.--

1301 (1) FIRESAFETY.--The State Board of Education shall adopt
 1302 and administer rules prescribing standards for the safety and
 1303 health of occupants of educational and ancillary plants as a

1304 part of State Requirements for Educational Facilities or the
 1305 Florida Building Code for educational facilities construction as
 1306 provided in s. 1013.37, ~~except that the State Fire Marshal in~~
 1307 ~~consultation with the Department of Education shall adopt~~
 1308 ~~uniform firesafety standards for educational and ancillary~~
 1309 ~~plants and educational facilities, as provided in s.~~
 1310 ~~633.022(1)(b), and a firesafety evaluation system to be used as~~
 1311 ~~an alternate firesafety inspection standard for existing~~
 1312 ~~educational and ancillary plants and educational facilities. The~~
 1313 ~~uniform firesafety standards and the alternate firesafety~~
 1314 ~~evaluation system shall be administered and enforced by local~~
 1315 ~~fire officials. These standards must be used by all public~~
 1316 ~~agencies when inspecting public educational and ancillary~~
 1317 ~~plants, and the firesafety standards must be used by local fire~~
 1318 ~~officials when performing firesafety inspections of public~~
 1319 ~~educational and ancillary plants and educational facilities. In~~
 1320 accordance with such standards, each board shall prescribe
 1321 policies and procedures establishing a comprehensive program of
 1322 safety and sanitation for the protection of occupants of public
 1323 educational and ancillary plants. Such policies must contain
 1324 procedures for periodic inspections as prescribed in this
 1325 section and for withdrawal of any educational and ancillary
 1326 plant, or portion thereof, from use until unsafe or unsanitary
 1327 conditions are corrected or removed.

1328 (2) PERIODIC INSPECTION OF PROPERTY BY DISTRICT SCHOOL
 1329 BOARDS.--

1330 ~~(a)~~ Each board shall provide for periodic inspection,
 1331 other than firesafety inspection, of each educational and

1332 ancillary plant at least once during each fiscal year to
 1333 determine compliance with standards of sanitation and casualty
 1334 safety prescribed in the rules of the State Board of Education.

1335 ~~(b) Firesafety inspections of each educational and~~
 1336 ~~ancillary plant must be made annually by persons certified by~~
 1337 ~~the Division of State Fire Marshal to be eligible to conduct~~
 1338 ~~firesafety inspections in public educational and ancillary~~
 1339 ~~plants. The board shall submit a copy of the firesafety~~
 1340 ~~inspection report to the State Fire Marshal and, if there is a~~
 1341 ~~local fire official who conducts firesafety inspections, to the~~
 1342 ~~local fire official.~~

1343 ~~(c) In each firesafety inspection report, the board shall~~
 1344 ~~include a plan of action and a schedule for the correction of~~
 1345 ~~each deficiency which have been formulated in consultation with~~
 1346 ~~the local fire control authority. If immediate life threatening~~
 1347 ~~deficiencies are noted in any inspection, the board shall either~~
 1348 ~~take action to promptly correct the deficiencies or withdraw the~~
 1349 ~~educational or ancillary plant from use until such time as the~~
 1350 ~~deficiencies are corrected.~~

1351 (3) INSPECTION OF EDUCATIONAL PROPERTY BY OTHER PUBLIC
 1352 AGENCIES.--

1353 ~~(a)~~ A safety or sanitation inspection of any educational
 1354 or ancillary plant may be made at any time by the Department of
 1355 Education or any other state or local agency authorized or
 1356 required to conduct such inspections by either general or
 1357 special law. Each agency conducting inspections shall use the
 1358 standards adopted by the Commissioner of Education in lieu of,
 1359 and to the exclusion of, any other inspection standards

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1360 prescribed either by statute or administrative rule. The agency
 1361 shall submit a copy of the inspection report to the board.

1362 ~~(b) One firesafety inspection of each educational or~~
 1363 ~~ancillary plant must be conducted each fiscal year by the~~
 1364 ~~county, municipality, or special fire control district in which~~
 1365 ~~the plant is located using the standards adopted by the State~~
 1366 ~~Fire Marshal. The board shall cooperate with the inspecting~~
 1367 ~~authority when a firesafety inspection is made by a governmental~~
 1368 ~~authority under this paragraph.~~

1369 ~~(c) In each firesafety inspection report, the local fire~~
 1370 ~~official in conjunction with the board shall include a plan of~~
 1371 ~~action and a schedule for the correction of each deficiency. If~~
 1372 ~~immediate life threatening deficiencies are noted in any~~
 1373 ~~inspection, the local fire official shall either take action to~~
 1374 ~~require the board to promptly correct the deficiencies or~~
 1375 ~~withdraw the educational facility from use until the~~
 1376 ~~deficiencies are corrected, subject to review by the State Fire~~
 1377 ~~Marshal who shall act within 10 days to ensure that the~~
 1378 ~~deficiencies are corrected or withdraw the facility from use.~~

1379 (4) CORRECTIVE ACTION; DEFICIENCIES OTHER THAN FIRESAFETY
 1380 DEFICIENCIES.--Upon failure of the board to take corrective
 1381 action within a reasonable time, the agency making the
 1382 inspection, other than a local fire official, may request the
 1383 commissioner to:

1384 (a) Order that appropriate action be taken to correct all
 1385 deficiencies in accordance with a schedule determined jointly by
 1386 the inspecting authority and the board; in developing the
 1387 schedule, consideration must be given to the seriousness of the

1388 deficiencies and the ability of the board to obtain the
 1389 necessary funds; or

1390 (b) After 30 calendar days' notice to the board, order all
 1391 or a portion of the educational or ancillary plant withdrawn
 1392 from use until the deficiencies are corrected.

1393 ~~(5) INSPECTIONS OF PUBLIC POSTSECONDARY EDUCATION~~
 1394 ~~FACILITIES.—~~

1395 ~~(a) Firesafety inspections of community college facilities~~
 1396 ~~shall comply with State Board of Education rules.~~

1397 ~~(b) Firesafety inspections of state universities shall~~
 1398 ~~comply with rules of the Board of Governors.~~

1399 ~~(6) CORRECTIVE ACTION; FIRESAFETY DEFICIENCIES.— Upon~~
 1400 ~~failure of the board to take corrective action within the time~~
 1401 ~~designated in the plan of action to correct any firesafety~~
 1402 ~~deficiency noted under paragraph (2)(c) or paragraph (3)(c), the~~
 1403 ~~local fire official shall immediately report the deficiency to~~
 1404 ~~the State Fire Marshal, who shall have enforcement authority~~
 1405 ~~with respect to educational and ancillary plants and educational~~
 1406 ~~facilities as provided in chapter 633 for any other building or~~
 1407 ~~structure.~~

1408 ~~(7) ADDITIONAL STANDARDS.— In addition to any other rules~~
 1409 ~~adopted under this section or s. 633.022, the State Fire Marshal~~
 1410 ~~in consultation with the Department of Education shall adopt and~~
 1411 ~~administer rules prescribing the following standards for the~~
 1412 ~~safety and health of occupants of educational and ancillary~~
 1413 ~~plants.~~

1414 ~~(a) The designation of serious life safety hazards,~~
 1415 ~~including, but not limited to, nonfunctional fire alarm systems,~~

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1416 ~~nonfunctional fire sprinkler systems, doors with padlocks or~~
 1417 ~~other locks or devices that preclude egress at any time,~~
 1418 ~~inadequate exits, hazardous electrical system conditions,~~
 1419 ~~potential structural failure, and storage conditions that create~~
 1420 ~~a fire hazard.~~

1421 ~~(b) The proper placement of functional smoke and heat~~
 1422 ~~detectors and accessible, unexpired fire extinguishers.~~

1423 ~~(c) The maintenance of fire doors without doorstops or~~
 1424 ~~wedges improperly holding them open.~~

1425 (5)~~(8)~~ ANNUAL REPORT.--The State Fire Marshal shall
 1426 publish an annual report to be filed with the substantive
 1427 committees of the state House of Representatives and Senate
 1428 having jurisdiction over education, the Commissioner of
 1429 Education or his or her successor, the State Board of Education,
 1430 the Board of Governors, and the Governor documenting the status
 1431 of each board's firesafety program, including the improvement or
 1432 lack thereof.

1433 Section 27. Paragraph (e) of subsection (1) of section
 1434 218.23, Florida Statutes, is amended to read:

1435 218.23 Revenue sharing with units of local government.--

1436 (1) To be eligible to participate in revenue sharing
 1437 beyond the minimum entitlement in any fiscal year, a unit of
 1438 local government is required to have:

1439 (e) Certified that persons in its employ as firefighters,
 1440 as defined in s. 633.30~~(1)~~, meet the qualification for
 1441 employment as established by the Division of State Fire Marshal
 1442 pursuant to the provisions of ss. 633.34 and 633.35 and that the
 1443 provisions of s. 633.382 have been met.

1444
 1445 Additionally, to receive its share of revenue sharing funds, a
 1446 unit of local government shall certify to the Department of
 1447 Revenue that the requirements of s. 200.065, if applicable, were
 1448 met. The certification shall be made annually within 30 days of
 1449 adoption of an ordinance or resolution establishing a final
 1450 property tax levy or, if no property tax is levied, not later
 1451 than November 1. The portion of revenue sharing funds which,
 1452 pursuant to this part, would otherwise be distributed to a unit
 1453 of local government which has not certified compliance or has
 1454 otherwise failed to meet the requirements of s. 200.065 shall be
 1455 deposited in the General Revenue Fund for the 12 months
 1456 following a determination of noncompliance by the department.

1457 Section 28. Paragraph (b) of subsection (4) of section
 1458 447.203, Florida Statutes, is amended to read:

1459 447.203 Definitions.--As used in this part:

1460 (4) "Managerial employees" are those employees who:

1461 (b) Serve as police chiefs, fire chiefs, or directors of
 1462 public safety of any police, fire, or public safety department.
 1463 Other police officers, as defined in s. 943.10(1), and
 1464 firefighters, as defined in s. 633.30(~~1~~), may be determined by
 1465 the commission to be managerial employees of such departments.
 1466 In making such determinations, the commission shall consider, in
 1467 addition to the criteria established in paragraph (a), the
 1468 paramilitary organizational structure of the department
 1469 involved.

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1471 However, in determining whether an individual is a managerial
1472 employee pursuant to either paragraph (a) or paragraph (b),
1473 above, the commission may consider historic relationships of the
1474 employee to the public employer and to coemployees.

1475 Section 29. Section 633.14, Florida Statutes, is repealed.

1476 Section 30. This act shall take effect July 1, 2008.