

House Bill No. 1057

An act relating to the Florida Statutes; amending ss. 633.061, 641.23, 641.316, 663.066, 671.304, 741.29, 744.444, 768.28, 938.07, 943.051, 943.0535, 943.0544, 943.1702, 943.25, 946.205, 946.515, 946.518, and 960.045, F.S.; and reenacting s. 658.26, F.S., pursuant to s. 11.242, F.S.; deleting provisions which have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; replacing incorrect cross-references and citations; correcting grammatical, typographical, and like errors; removing inconsistencies, redundancies, and unnecessary repetition in the statutes; improving the clarity of the statutes and facilitating their correct interpretation; and confirming the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process.

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

Section 1. Paragraph (c) of subsection (3) of section 633.061, Florida Statutes, is amended to read:

633.061 License or permit required of organizations and individuals servicing, recharging, repairing, testing, marking, inspecting, installing, or hydrotesting fire extinguishers and preengineered systems.—

(3)

(c) A license of any class shall not be issued or renewed by the State Fire Marshal and a license of any class shall not remain operative unless:

1. The applicant has submitted to the State Fire Marshal evidence of registration as a Florida corporation or evidence of compliance with s. 865.09.

2. The State Fire Marshal or his or her designee has by inspection determined that the applicant possesses the equipment required for the class of license sought. The State Fire Marshal shall give an applicant a reasonable opportunity to correct any deficiencies discovered by inspection. A fee of \$50, payable to the State Fire Marshal, shall be required for any subsequent reinspection.

3. The applicant has submitted to the State Fire Marshal proof of insurance providing coverage for comprehensive general liability for bodily injury and property damage, products liability, completed operations, and contractual liability. The State Fire Marshal shall adopt rules providing for the amounts of such coverage, but such amounts shall not be less than \$300,000 for Class A or Class D licenses, \$200,000 for Class B licenses, and \$100,000 for Class C licenses; and the total coverage for any class of license held in conjunction with a Class D license shall not be less than \$300,000. The State Fire Marshal may, at any time after the issuance of a license or its renewal, require upon demand, and in no event more than 30 days after notice of such

demand, the licensee to provide proof of insurance, on a form provided by the State Fire Marshal, containing confirmation of insurance coverage as required by this chapter. Failure, for any length of time, to provide proof of insurance coverage as required shall result in the immediate suspension of the license until proof of proper insurance is provided to the State Fire Marshal. An insurer which provides such coverage shall notify the State Fire Marshal of any change in coverage or of any termination, cancellation, or nonrenewal of any coverage.

4. The applicant successfully completes a prescribed training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal. This subparagraph does not apply to any holder of or applicant for a permit under paragraph ~~(f)~~ (d) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

5. The applicant has a current retestor identification number that is appropriate for the license for which the applicant is applying and that is listed with the United States Department of Transportation.

6. The applicant has passed, with a grade of at least 70 percent, a written examination testing his or her knowledge of the rules and statutes regulating the activities authorized by the license and demonstrating his or her knowledge and ability to perform those tasks in a competent, lawful, and safe manner. Such examination shall be developed and administered by the State Fire Marshal, or his or her designee. An applicant shall pay a nonrefundable examination fee of \$50 for each examination or reexamination scheduled. No reexamination shall be scheduled sooner than 30 days after any administration of an examination to an applicant. No applicant shall be permitted to take an examination for any level of license more than a total of four times during 1 year, regardless of the number of applications submitted. As a prerequisite to taking the examination, the applicant:

a. Must be at least 18 years of age.

b. Must have 4 years of proven experience as a fire equipment permittee at a level equal to or greater than the level of license applied for or have a combination of education and experience determined to be equivalent thereto by the State Fire Marshal. Having held a permit at the appropriate level for the required period constitutes the required experience.

c. Must not have been convicted of, or pled nolo contendere to, any felony. If an applicant has been convicted of any such felony, the applicant must comply with s. 112.011(1)(b).

This subparagraph does not apply to any holder of or applicant for a permit under paragraph ~~(f)~~ (d) or to a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, marking, recharging, hydrotesting, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

Reviser's note.—Amended to conform to the redesignation of paragraph (d) as paragraph (f) by s. 53, ch. 98-419, Laws of Florida, and s. 2, ch. 98-170, Laws of Florida.

Section 2. Subsection (5) of section 641.23, Florida Statutes, is amended to read:

641.23 Revocation or cancellation of certificate of authority; suspension of enrollment of new subscribers; terms of suspension.—

(5) The department shall promulgate rules establishing an actuarially sound medical loss ratio ratios for Medicaid. In determining the appropriate medical loss ratio, the department shall consider factors, including but not limited to, plan age, plan structure, geographic service area, product mix, provider network, medical inflation, provider services, other professional services, out of network referrals and expenditures, in and out of network emergency room expenditures, inpatient expenditures, other medical expenditures, incentive pool adjustments, copayments, coordination of benefits, subrogation, and any other expenses associated with the delivery of medical benefits. The department shall utilize assistance from the Agency for Health Care Administration, the State University System, an independent actuary, and representatives from health maintenance organizations in developing the rule for appropriate medical loss ratios.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 3. Paragraph (b) of subsection (2) and subsection (6) of section 641.316, Florida Statutes, are amended to read:

641.316 Fiscal intermediary services.—

(2)

(b) The term “fiscal intermediary services organization” means a person or entity which performs fiduciary or fiscal intermediary services to health care professionals who contract with health maintenance organizations other than a fiscal intermediary services organization owned, operated, or controlled by a hospital licensed under chapter 395, an insurer licensed under chapter 624, a third-party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under this chapter, or physician group practices as defined in s. ~~455.654(3)(h)~~ 455.654(3)(f).

(6) Any fiscal intermediary services organization, other than a fiscal intermediary services organization owned, operated, or controlled by a hospital licensed under chapter 395, an insurer licensed under chapter 624, a third-party administrator licensed under chapter 626, a prepaid limited health service organization licensed under chapter 636, a health maintenance organization licensed under this chapter, or physician group practices as defined in s. ~~455.654(3)(h)~~ 455.654(3)(f), must register with the department and meet the requirements of this section. In order to register as a fiscal intermediary services organization, the organization must comply

with ss. 641.21(1)(c) and (d) and 641.22(6). Should the department determine that the fiscal intermediary services organization does not meet the requirements of this section, the registration shall be denied. In the event that the registrant fails to maintain compliance with the provisions of this section, the department may revoke or suspend the registration. In lieu of revocation or suspension of the registration, the department may levy an administrative penalty in accordance with s. 641.25.

Reviser's note.—Amended to conform to the redesignation of s. 455.654(3)(f) as s. 455.654(3)(h) by s. 1, ch. 99-356, Laws of Florida.

Section 4. Section 658.26, Florida Statutes, is reenacted to read:

658.26 Places of transacting business; branches; facilities.—

(1) Any bank or trust company heretofore or hereafter incorporated pursuant to this chapter shall have one main office, which shall be located within the state.

(2)(a) In addition, with the approval of the department and upon such conditions as the department prescribes, any bank or trust company may establish branches within or outside the state. With the approval of the department upon a determination that the resulting bank or trust company will be of sound financial condition, any bank or trust company incorporated pursuant to this chapter may establish branches by merger with any other bank or trust company.

(b) An application for a branch shall be in writing in such form as the department prescribes and be supported by such information, data, and records as the department may require to make findings necessary for approval. Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120. Upon the filing of an application and a nonrefundable filing fee for the establishment of any branch permitted by paragraph (a), the department shall make an investigation with respect to compliance with the requirements of paragraph (a) and shall investigate and consider all factors relevant to such requirements, including the following:

1. The sufficiency of capital accounts in relation to the deposit liabilities of the bank, or in relation to the number and valuation of fiduciary accounts of the trust company, including the proposed branch, and the additional fixed assets, if any, which are proposed for the branch and its operations, without undue risk to the bank or its depositors, or undue risk to the trust company or its fiduciary accounts;

2. The sufficiency of earnings and earning prospects of the bank or trust company to support the anticipated expenses and any anticipated operating losses of the branch during its formative or initial years;

3. The sufficiency and quality of management available to operate the branch;

4. The name of the proposed branch to determine if it reasonably identifies the branch as a branch of the main office and is not likely to unduly confuse the public; and

5. Substantial compliance by the applicants with applicable law governing their operations.

(c) As provided by departmental rule, a financial institution operating in a safe and sound manner may establish a branch by filing a written notice with the department at least 30 days before opening that branch. In such case, the financial institution need not file a branch application or pay a branch application fee.

(3)(a) An office in this state may be relocated with prior written approval of the department. An application for relocation shall be in writing in such form as the department prescribes and shall be supported by such information, data, and records as the department may require to make findings necessary for approval.

(b) Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120. However, an application for the relocation of a main office that has not been in operation for at least 24 months shall be published in the Florida Administrative Weekly. Upon the filing of a relocation application and a nonrefundable filing fee, the department shall investigate to determine substantial compliance by the financial institution with applicable law governing its operations. Additional investments in land, buildings, leases, and leasehold improvements resulting from such relocation shall comply with the limitations imposed by s. 658.67(7)(a). A main office may not be moved outside this state unless expressly authorized by the financial institutions codes or by federal law.

(c) A relocation application, filed by a strong, well-managed state bank or trust company, which is not denied within 10 working days after receipt shall be deemed approved unless the department notifies the financial institution in writing that the application was not complete.

(d) In addition to the application required by paragraph (a), a financial institution whose main office in this state has been in operation less than 24 months must provide evidence that the criteria of s. 658.21(1) will be met.

(e) With 30 days' prior written notice, an established branch office may be consolidated with another established branch office when the two offices are located within a 1-mile radius. The notice shall include any information the department may prescribe by rule.

(f) A branch office may be closed with 30 days' prior written notice to the department. The notice shall include any information the department may prescribe by rule.

(4) With prior written notification to the department, any bank may operate facilities which are not physically connected to the main or branch office of the bank, provided that the facilities are situated on the property of the main or branch office or property contiguous thereto. Property which is separated from the main or branch office of a bank by only a street, and one or more walkways and alleyways are determined to be, for purposes of this subsection, contiguous to the property of the main or branch office.

(5) A bank may provide, directly or through a contract with another company, off-premises armored car service to its customers. Armored car services shall not be considered a branch for the purposes of subsection (2).

(6)(a) Any state bank that is a subsidiary of a bank holding company may agree to receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations, as an agent for an affiliated depository institution.

(b) The term “close loan” does not include the making of a decision to extend credit or the extension of credit.

(c) As used in this section, “receive deposits” means the taking of deposits to be credited to an existing account and does not include the opening or origination of new deposit accounts at an affiliated institution by the agent institution.

(d) Under this section, affiliated banks may act as agents for one another regardless of whether the institutions are located in the same or different states. This section applies solely to affiliated depository institutions acting as agents, and has no application to agency relationships concerning non-depositories as agent, whether or not affiliated with the depository institution.

(e) In addition, under this section, agent banks may perform ministerial functions for the principal bank making a loan. Ministerial functions include, but are not limited to, such activities as providing loan applications, assembling documents, providing a location for returning documents necessary for making the loan, providing loan account information, and receiving payments. It does not include such loan functions as evaluating applications or disbursing loan funds.

For the purposes of this section, a strong, well-managed state bank or trust company is an institution that has been in operation for at least 24 months, is well capitalized, has received a satisfactory rating at the institution's most recent state or federal safety and soundness examination, and is not the object of any enforcement action.

Reviser's note.—Section 3, ch. 99-138, Laws of Florida, purported to amend paragraph (2)(c), but failed to republish the flush left language at the end of the section. In the absence of affirmative evidence that the Legislature intended to repeal the flush left language, s. 658.26 is reenacted to confirm that the omission was not intended.

Section 5. Section 663.066, Florida Statutes, is amended to read:

663.066 Acquisition or ownership of state banks by international banking corporations.—~~Notwithstanding the provisions of s. 658.29,~~ An international banking corporation may, with the approval of the department pursuant to s. 658.28, acquire control over or organize a state bank organized under the laws of this state. For the purposes of this section, the word “bank” shall have the meaning given in s. 2(c) of the Bank Holding Company Act of 1956, 12 U.S.C. s. 1841(c).

Reviser's note.—Amended to conform to the repeal of s. 658.29 by s. 15, ch. 96-168, Laws of Florida.

Section 6. Paragraphs (b) and (c) of subsection (2) of section 671.304, Florida Statutes, are amended to read:

671.304 Laws not repealed; precedence where code provisions in conflict with other laws; certain statutory remedies retained.—

(2) The following laws and parts of laws are specifically not repealed and shall take precedence over any provisions of this code which may be inconsistent or in conflict therewith:

(b) Chapter 687—Interest and usury; lending practices.

(c) Chapter 516—Florida Consumer Finance Act ~~Small loan business~~.

Reviser's note.—Paragraph (2)(b) is amended to conform to changes in the chapter title made incident to the compilation of Florida Statutes 1991 and Florida Statutes 1999. Paragraph (2)(c) is amended to conform to the designation of chapter 516 as the Florida Consumer Finance Act by s. 1, ch. 73-192, Laws of Florida.

Section 7. Subsection (2) of section 741.29, Florida Statutes, is amended to read:

741.29 Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.—

(2) When a law enforcement officer investigates an allegation that an incident of domestic violence has occurred, the officer shall handle the incident pursuant to the arrest policy provided in s. 901.15(7) ~~901.15(7)(a)~~, and as developed in accordance with subsections (3), (4), and (5). Whether or not an arrest is made, the officer shall make a written police report that is complete and clearly indicates the alleged offense was an incident of domestic violence. Such report shall be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. Such report must include:

(a) A description of physical injuries observed, if any.

(b) If a law enforcement officer decides not to make an arrest or decides to arrest two or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two or more parties.

(c) A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.

Whenever possible, the law enforcement officer shall obtain a written statement from the victim and witnesses concerning the alleged domestic violence. The officer shall submit the report to the supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made. The law enforcement agency shall,

without charge, send a copy of the initial police report, as well as any subsequent, supplemental, or related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report. The report furnished to the domestic violence center must include a narrative description of the domestic violence incident.

Reviser's note.—Amended to conform to the removal of paragraph designations from s. 901.15(7) by s. 57, ch. 99-193, Laws of Florida.

Section 8. Subsection (9) of section 744.444, Florida Statutes, is amended to read:

744.444 Power of guardian without court approval.—Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(9) Elect whether to dissent from a will under the provisions of s. 732.2125(2) ~~732.210(2)~~ or assert any other right or choice available to a surviving spouse in the administration of a decedent's estate.

Reviser's note.—Amended to conform to the redesignation of s. 732.210(2) as s. 732.2125(2) by s. 12, ch. 99-343, Laws of Florida.

Section 9. Paragraph (c) of subsection (10) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(10)

(c) For purposes of this section, regional poison control centers created in accordance with s. 395.1027 and coordinated and supervised under the Division of Children's Medical Services Prevention and Intervention of the Department of Health, or any of their employees or agents, shall be considered agents of the State of Florida, Department of Health. Any contracts with poison control centers must provide, to the extent permitted by law, for the indemnification of the state by the agency for any liabilities incurred up to the limits set out in this chapter.

Reviser's note.—Amended to improve clarity, facilitate correct interpretation, and conform to amendments to s. 20.43 relating to the Department of Health by s. 2, ch. 99-397, Laws of Florida.

Section 10. Section 938.07, Florida Statutes, is amended to read:

938.07 Driving under the influence.—Notwithstanding any other provision of s. 316.193, a court cost of \$135 shall be added to any fine imposed pursuant to s. 316.193, of which \$25 shall be deposited in the Emergency Medical Services Trust Fund, \$50 shall be deposited in the Criminal Justice

Standards and Training Trust Fund of the Department of Law Enforcement to be used for operational expenses in conducting the statewide criminal analysis laboratory system established in s. 943.32, and \$60 shall be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund created in s. 381.79 ~~413.613~~.

Reviser's note.—Amended to conform to the redesignation of s. 413.613 as s. 381.79 by s. 23, ch. 99-240, Laws of Florida.

Section 11. Paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is amended to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted to the department:

1. Assault, as defined in s. 784.011.
2. Battery, as defined in s. 784.03.
3. Carrying a concealed weapon, as defined in s. 790.01(1).
4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).
5. Negligent treatment of children, as defined in s. 827.05.
6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).
7. Open carrying of a weapon, as defined in s. 790.053.
8. Exposure of sexual organs, as defined in s. 800.03.
9. Unlawful possession of a firearm, as defined in s. 790.22(5).
10. Petit theft, as defined in s. 812.014(3).
11. Cruelty to animals, as defined in s. 828.12(1).
12. Arson, as defined in s. 806.031(1).
13. Unlawful possession or discharge of ~~or~~ a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

Reviser's note.—Amended to conform to context, improve clarity, and facilitate correct interpretation.

Section 12. Section 943.0535, Florida Statutes, is amended to read:

943.0535 Aliens, criminal records.—It shall be the duty of the clerk of court to furnish without charge a certified copy of the complaint, information, or indictment and the judgment and sentence and any other record pertaining to the case of any alien to the United States immigration officer in charge of the territory or district in which the court is located in every case in which an alien is convicted of a felony or misdemeanor or enters a plea of guilty or nolo contendere to any felony or misdemeanor charge. The state attorney shall assist the clerk of the court in determining if a defendant entering a plea or is convicted is an alien.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 13. Subsection (4) of section 943.0544, Florida Statutes, is amended to read:

943.0544 Criminal justice information network and information management.—

(4) In carrying out its duties under this section, the department may enter into contracts; conduct pilot studies and projects; and assess and collect fees, commissions, royalties, or other charges from entities approved for special presence on the Criminal Justice Network in consideration for such presence. The department may enter into agreements by which products, programs, or services of value to the department or the information needs of criminal justice agencies are provided in lieu of all or a part of a fee, commission, royalty, or charge that might otherwise be assessed by the department upon an entity granted special limited presence as provided in this subsection.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 14. Subsection (1) of section 943.1702, Florida Statutes, is amended to read:

943.1702 Collection of statistics on domestic violence.—

(1) In compiling the Department of Law Enforcement Crime in Florida Annual Report, the department shall include the results of the arrest policy provided for under s. 901.15(7) ~~901.15(7)(a)~~ with respect to domestic violence to include: separate statistics on occurrences of and arrests for domestic versus nondomestic violence, such as battery, aggravated battery, assault, aggravated assault, sexual battery, the illegal use of firearms, arson, homicide, murder, manslaughter, or the attempt of any of the above.

Reviser's note.—Amended to conform to the removal of paragraph designations from s. 901.15(7) by s. 57, ch. 99-193, Laws of Florida.

Section 15. Subsection (1) of section 943.25, Florida Statutes, is amended to read:

943.25 Criminal justice trust funds; source of funds; use of funds.—

(1) The Department of Community Affairs may approve, for disbursement from ~~its~~ the Operating Trust Fund established pursuant to s. 290.034, those appropriated sums necessary and required by the state for grant matching, implementing, administering, evaluating, and qualifying for such federal funds. Disbursements from the trust fund for the purpose of supplanting state general revenue funds may not be made without specific legislative appropriation.

Reviser's note.—Amended to conform to the repeal of s. 290.034 by s. 14, ch. 99-4, Laws of Florida.

Section 16. Section 946.205, Florida Statutes, is amended to read:

946.205 Institutional work.—The department may cause to be cultivated by the inmates of the adult correctional institutions that are under the control and supervision of the department such food items as are grown on farms or in gardens generally, and as are needed and used in the state institutions. The department may sell any surplus food items to the corporation authorized under part II of this chapter. Any proceeds received from such sales by the department shall be deposited into the Correctional Work Program Trust Fund. The department may also use the services of inmates of the adult correctional institutions that are under the control and supervision of the department to perform such work as is needed and used within the state institutions.

Reviser's note.—Amended to improve clarity and facilitate correct interpretation.

Section 17. Subsection (7) of section 946.515, Florida Statutes, is amended to read:

946.515 Use of goods and services produced in correctional work programs.—

(7) The provisions of ~~s. ss. 946.21~~ and 946.518 do not apply to this section.

Reviser's note.—Amended to conform to the repeal of s. 946.21 by s. 12, ch. 99-260, Laws of Florida.

Section 18. Section 946.518, Florida Statutes, is amended to read:

946.518 Sale of goods made by prisoners; when prohibited, when permitted.—Goods, wares, or merchandise manufactured or mined in whole or in part by prisoners (except prisoners on parole or probation) may not be sold or offered for sale in this state by any person or by any federal authority or state or political subdivision thereof; however, this section does and s. 946.21 ~~do~~ not forbid the sale, exchange, or disposition of such goods within the limitations set forth in ~~s. 946.006(3), s. 946.515, or s. 946.519.~~

Reviser's note.—Amended to conform to the repeal of ss. 946.006, 946.21, and 946.519 by s. 12, ch. 99-260, Laws of Florida.

Section 19. Subsection (4) of section 960.045, Florida Statutes, is amended to read:

960.045 Department of Legal Affairs; powers and duties.—It shall be the duty of the department to assist persons who are victims of crime.

(4) The department shall establish criteria governing awards for catastrophic injury as a direct result of a crime.

Reviser's note.—Amended to conform to the context of the section, improve clarity, and facilitate correct interpretation.

Approved by the Governor May 25, 2000.

Filed in Office Secretary of State May 25, 2000.