

Committee Substitute for Senate Bill No. 2102

An act relating to trust funds of the Agency for Health Care Administration; terminating the Florida Organ and Tissue Donor Education and Procurement Trust Fund and the Resident Protection Trust Fund; providing for the disposition of the balances in and revenues of the trust funds; prescribing procedures for the termination of the trust funds; amending s. 20.425, F.S.; providing for the administration of the Administrative Trust Fund, the Grants and Donations Trust Fund, the Health Care Trust Fund, the Medical Care Trust Fund, the Public Medical Assistance Trust Fund, the Quality of Long-Term Care Facility Improvement Trust Fund, and the Refugee Assistance Trust Fund by the Agency for Health Care Administration; providing for sources of funds and purposes; providing for annual carryforward of funds; revising the date for reversion of specified balances in the Tobacco Settlement Trust Fund; amending ss. 215.20, 320.08047, 322.08, 393.0673, and 393.0678, F.S., to conform; amending s. 394.903, F.S.; conforming a cross-reference; repealing s. 394.904, F.S., which creates the Health Care Trust Fund, to conform; amending s. 400.062, F.S., to conform; clarifying provisions with respect to amounts on deposit in the Health Care Trust Fund which control the setting of specified rates that comprise a portion of licensing fees for nursing homes and general health care licensing; removing obsolete language, to conform; amending ss. 400.063, 400.121, 400.126, 400.162, 400.966, and 765.515, F.S., to conform; repealing s. 765.52155, F.S., which creates the Florida Organ and Tissue Donor Education and Procurement Trust Fund, to conform; amending s. 765.544, F.S., to conform; providing an effective date.

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

Section 1. (1) The Florida Organ and Tissue Donor Education and Procurement Trust Fund within the Agency for Health Care Administration, FLAIR number 68-2-509, is terminated.

(2) All current balances remaining in, and all revenues of, the trust fund shall be transferred to the Health Care Trust Fund within the Agency for Health Care Administration, FLAIR number 68-2-003.

(3) The Agency for Health Care Administration shall pay any outstanding debts and obligations of the terminated fund as soon as practicable, and the Chief Financial Officer shall close out and remove the terminated fund from the various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

Section 2. (1) The Resident Protection Trust Fund within the Agency for Health Care Administration, FLAIR number 68-2-522, is terminated.

(2) All current balances remaining in, and all revenues of, the trust fund shall be transferred to the Health Care Trust Fund within the Agency for Health Care Administration, FLAIR number 68-2-003.

(3) The Agency for Health Care Administration shall pay any outstanding debts and obligations of the terminated fund as soon as practicable, and the Chief Financial Officer shall close out and remove the terminated fund from the various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

Section 3. Section 20.425, Florida Statutes, is amended to read:

20.425 Agency for Health Care Administration; trust funds Tobacco Settlement Trust Fund.—The following trust funds shall be administered by the Agency for Health Care Administration:

(1) Administrative Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of s. 215.32.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(2) Grants and Donations Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of ss. 215.32 and 409.916.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(3) Health Care Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of ss. 400.063 and 408.16.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(4) Medical Care Trust Fund.

(a) Funds to be credited to the trust fund shall consist of receipts from federal grants and shall be used for the purpose of providing health care services to individuals eligible pursuant to the requirement and limitation of Title XIX and Title XXI of the Social Security Act, as amended, and for other such purposes as may be appropriate.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(5) Public Medical Assistance Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of ss. 394.4786 and 409.918.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(6) Quality of Long-Term Care Facility Improvement Trust Fund.

(a) Funds to be credited to and uses of the trust fund shall be administered in accordance with the provisions of s. 400.0239.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(7) Refugee Assistance Trust Fund.

(a) Funds to be credited to the trust fund shall consist of federal grant funds under the Refugee Resettlement Program and the Cuban/Haitian Entrant Program and shall be used for the purpose of providing medical assistance to individuals eligible pursuant to the requirements and limitations of 45 C.F.R. parts 400 and 401, as amended, or any other applicable federal requirement or limitation.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(8) Tobacco Settlement Trust Fund.

~~(a) The Agency for Health Care Administration Tobacco Settlement Trust Fund is created within the agency.~~ Funds to be credited to the trust fund shall consist of funds disbursed, by nonoperating transfer, from the Department of Financial Services Tobacco Settlement Clearing Trust Fund in amounts equal to the annual appropriations made from this trust fund.

~~(b)(2)~~ Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any unencumbered balance in the trust fund at the end of any fiscal year and any encumbered balance remaining undisbursed on September 30 ~~December 31~~ of the same calendar year shall revert to the Department of Financial Services Tobacco Settlement Clearing Trust Fund.

Section 4. Paragraph (a) of subsection (4) of section 215.20, Florida Statutes, is amended to read:

215.20 Certain income and certain trust funds to contribute to the General Revenue Fund.—

(4) The income of a revenue nature deposited in the following described trust funds, by whatever name designated, is that from which the appropriations authorized by subsection (3) shall be made:

(a) Within the Agency for Health Care Administration:

~~1. The Florida Organ and Tissue Donor Education and Procurement Trust Fund.~~

2. the Health Care Trust Fund.

~~3. The Resident Protection Trust Fund.~~

The enumeration of the foregoing moneys or trust funds shall not prohibit the applicability thereto of s. 215.24 should the Governor determine that for the reasons mentioned in s. 215.24 the money or trust funds should be exempt herefrom, as it is the purpose of this law to exempt income from its force and effect when, by the operation of this law, federal matching funds or contributions or private grants to any trust fund would be lost to the state.

Section 5. Section 320.08047, Florida Statutes, is amended to read:

320.08047 Voluntary contribution for organ and tissue donor education.—As a part of the collection process for license taxes as specified in s. 320.08, individuals shall be permitted to make a voluntary contribution of \$1, which contribution shall be deposited into the Health Care Trust Fund ~~Florida Organ and Tissue Donor Education and Procurement Trust Fund~~ for organ and tissue donor education and for maintaining the organ and tissue donor registry.

Section 6. Paragraph (b) of subsection (6) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license.—

(6) The application form for a driver's license or duplicate thereof shall include language permitting the following:

(b) A voluntary contribution of \$1 per applicant, which contribution shall be deposited into the Health Care Trust Fund ~~Florida Organ and Tissue Donor Education and Procurement Trust Fund~~ for organ and tissue donor education and for maintaining the organ and tissue donor registry.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided in s. 215.20, contributions received under paragraphs (c), (d), (e), and (f) and under s. 322.18(9)(a) are not income of a revenue nature.

Section 7. Subsection (3) of section 393.0673, Florida Statutes, is amended to read:

393.0673 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedures.—

(3) The agency, as a part of any final order issued by it under this chapter, may impose such fine as it deems proper, except that such fine may not exceed \$1,000 for each violation. Each day a violation of this chapter occurs constitutes a separate violation and is subject to a separate fine, but in no event may the aggregate amount of any fine exceed \$10,000. Fines paid by any facility licensee under the provisions of this subsection shall be deposited in the Health Care Trust Fund Resident Protection Trust Fund and expended as provided in s. 400.063.

Section 8. Subsection (11) of section 393.0678, Florida Statutes, is amended to read:

393.0678 Receivership proceedings.—

(11) Nothing in this section shall be deemed to relieve any owner, operator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee before the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the facility or any obligation of the owner, operator, or employee or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to the approval of the court which ordered the receivership. A receivership imposed under the provisions of this chapter shall be subject to the Health Care Trust Fund Resident Protection Trust Fund pursuant to s. 400.063. The owner of a facility placed in receivership by the court shall be liable for all expenses and costs incurred by the Health Care Trust Fund Resident Protection Trust Fund which occur as a result of the receivership.

Section 9. Subsection (11) of section 394.903, Florida Statutes, is amended to read:

394.903 Receivership proceedings.—

(11) Nothing in this section shall be construed to relieve any owner, operator, or employee of a unit or facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the unit or facility or of the owner, operator, or employee or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any unit or facility under receivership, subject to approval of the court which ordered the receivership. Receivership imposed under the provisions of this chapter shall be subject to the Health Care Trust Fund pursuant to s. ~~408.16~~ 394.904. The owner of a facility placed in receivership by the court shall be liable for all expenses and costs incurred by the Health Care Trust Fund which occur as a result of the receivership.

Section 10. Section 394.904, Florida Statutes, is repealed.

Section 11. Subsection (3) of section 400.062, Florida Statutes, is amended to read:

400.062 License required; fee; disposition.—

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The license fee shall be comprised of two parts. Part I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established biennially and shall be \$100 per bed unless modified by rule. Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less than 50 cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed adopted by rule by the agency pursuant to this part. At such time as the amount on deposit in the Health Care Trust Fund Resident Protection Trust Fund for resident protection is less than \$1 million, the agency may adopt rules to establish a rate which may not exceed \$20 per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Health Care Trust Fund ~~Resident Protection Trust Fund~~ reaches \$1 million, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of \$2 million shall revert to the ~~Health Care Trust Fund~~ and may not be expended without prior approval of the Legislature. The agency may prorate the biennial license fee for those licenses which it issues under this part for less than 2 years. The resident protection fee collected shall be deposited in the Health Care Trust Fund ~~Resident Protection Trust Fund~~ for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

Section 12. Section 400.063, Florida Statutes, is amended to read:

400.063 Resident protection ~~Trust Fund~~.—

(1) ~~The Health Care Trust Fund~~ ~~A Resident Protection Trust Fund~~ shall be used ~~established~~ for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673~~(3)~~(2), 400.062(3), 400.121(2), and 400.23(8). Such funds shall be for the sole purpose of paying for the appropriate alternate placement, care, and treatment of residents who are removed from a facility licensed under this part or a facility specified in s. 393.0678(1) in which the agency determines that existing conditions or practices constitute an immediate danger to the health, safety, or security of the residents. If the agency determines that it is in the best interest of the health, safety, or security of the residents to provide for an orderly removal of the residents from the facility, the agency may utilize such funds to maintain and care for the residents in the facility pending removal and alternative placement. The maintenance and care of the residents shall be under the direction and control of a receiver appointed

pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may be expended in an emergency upon a filing of a petition for a receiver, upon the declaration of a state of local emergency pursuant to s. 252.38(3)(a)5., or upon a duly authorized local order of evacuation of a facility by emergency personnel to protect the health and safety of the residents.

(2) The agency is authorized to establish for each facility, subject to intervention by the agency, a separate bank account for the deposit to the credit of the agency of any moneys received from the Health Care Trust Fund Resident Protection Trust Fund or any other moneys received for the maintenance and care of residents in the facility, and the agency is authorized to disburse moneys from such account to pay obligations incurred for the purposes of this section. The agency is authorized to requisition moneys from the Health Care Trust Fund Resident Protection Trust Fund in advance of an actual need for cash on the basis of an estimate by the agency of moneys to be spent under the authority of this section. Any bank account established under this section need not be approved in advance of its creation as required by s. 17.58, but shall be secured by depository insurance equal to or greater than the balance of such account or by the pledge of collateral security in conformance with criteria established in s. 18.11. The agency shall notify the Chief Financial Officer of any such account so established and shall make a quarterly accounting to the Chief Financial Officer for all moneys deposited in such account.

(3) Funds authorized under this section shall be expended on behalf of all residents transferred to an alternate placement, at the usual and customary charges of the facility used for the alternate placement, provided no other source of private or public funding is available. However, such funds may not be expended on behalf of a resident who is eligible for Title XIX of the Social Security Act, if the alternate placement accepts Title XIX of the Social Security Act. Funds shall be utilized for maintenance and care of residents in a facility in receivership only to the extent private or public funds, including funds available under Title XIX of the Social Security Act, are not available or are not sufficient to adequately manage and operate the facility, as determined by the agency. The existence of the Health Care Trust Fund Resident Protection Trust Fund shall not make the agency liable for the maintenance of any resident in any facility. The state shall be liable for the cost of alternate placement of residents removed from a deficient facility, or for the maintenance of residents in a facility in receivership, only to the extent that funds are available in the Health Care Trust Fund Resident Protection Trust Fund.

(4) The agency is authorized to adopt rules necessary to implement this section.

Section 13. Subsection (2) of section 400.121, Florida Statutes, is amended to read:

400.121 Denial, suspension, revocation of license; administrative fines; procedure; order to increase staffing.—

(2) Except as provided in s. 400.23(8), a \$500 fine shall be imposed for each violation. Each day a violation of this part or part II of chapter 408

occurs constitutes a separate violation and is subject to a separate fine, but in no event may any fine aggregate more than \$5,000. A fine may be levied pursuant to this section in lieu of and notwithstanding the provisions of s. 400.23. Fines paid shall be deposited in the Health Care Trust Fund Resident Protection Trust Fund and expended as provided in s. 400.063.

Section 14. Subsection (11) of section 400.126, Florida Statutes, is amended to read:

400.126 Receivership proceedings.—

(11) Nothing in this section shall be deemed to relieve any owner, administrator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or of any duty imposed by law, by reason of acts or omissions of the owner, administrator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, administrator, or employee for payment of taxes or other operating and maintenance expenses of the facility, or of the owner, administrator, employee, or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to approval of the court which ordered the receivership. A licensee that is placed in receivership by the court is liable for all expenses and costs incurred by the Health Care Trust Fund Resident Protection Trust Fund that are related to capital improvement and operating costs and are no more than 10 percent above the facility's Medicaid rate which occur as a result of the receivership.

Section 15. Subsection (6) of section 400.162, Florida Statutes, is amended to read:

400.162 Property and personal affairs of residents.—

(6) In the event of the death of a resident, a licensee shall return all refunds and funds held in trust to the resident's personal representative, if one has been appointed at the time the nursing home disburses such funds, and if not, to the resident's spouse or adult next of kin named in a beneficiary designation form provided by the nursing home to the resident. In the event the resident has no spouse or adult next of kin or such person cannot be located, funds due to the resident shall be placed in an interest-bearing account in a bank, savings association, trust company, or credit union located in this state and, if possible, located within the same district in which the facility is located, which funds shall not be represented as part of the assets of the facility on a financial statement, and the licensee shall maintain such account until such time as the trust funds are disbursed pursuant to the provisions of the Florida Probate Code. All other property of a deceased resident being held in trust by the licensee shall be returned to the resident's personal representative, if one has been appointed at the time the nursing home disburses such property, and if not, to the resident's spouse or adult next of kin named in a beneficiary designation form provided by the nursing home to the resident. In the event the resident has no spouse or adult next of kin or such person cannot be located, property being held in trust shall be safeguarded until such time as the property is disbursed pursuant to the provisions of the Florida Probate Code. The trust funds and

property of deceased residents shall be kept separate from the funds and the property of the licensee and from the funds and property of the residents of the facility. The nursing home needs to maintain only one account in which the trust funds amounting to less than \$100 of deceased residents are placed. However, it shall be the obligation of the nursing home to maintain adequate records to permit compilation of interest due each individual resident's account. Separate accounts shall be maintained with respect to trust funds of deceased residents equal to or in excess of \$100. In the event the trust funds of the deceased resident are not disbursed pursuant to the provisions of the Florida Probate Code within 2 years of the death of the resident, the trust funds shall be deposited in the Health Care Trust Fund Resident Protection Trust Fund and expended as provided for in s. 400.063, notwithstanding the provisions of any other law of this state. Any other property of a deceased resident held in trust by a licensee which is not disbursed in accordance with the provisions of the Florida Probate Code shall escheat to the state as provided by law.

Section 16. Subsection (14) of section 400.966, Florida Statutes, is amended to read:

400.966 Receivership proceeding.—

(14) This section does not relieve any owner, operator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee before the appointment of a receiver, and this section does not suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the facility or any obligation of the owner, operator, or employee or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to the approval of the court that ordered the receivership. A receivership imposed under this section is subject to the Health Care Trust Fund Resident Protection Trust Fund pursuant to s. 400.063. The owner of a facility placed in receivership by the court is liable for all expenses and costs incurred by the Health Care Trust Fund Resident Protection Trust Fund which occur as a result of the receivership.

Section 17. Subsection (4) of section 765.515, Florida Statutes, is amended to read:

765.515 Delivery of document; organ and tissue donor registry.—

(4) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement an organ and tissue donor registry which shall record, through electronic means, organ and tissue donation documents submitted through the driver license identification program or by other sources. The registry shall be maintained in a manner which will allow, through electronic and telephonic methods, immediate access to organ and tissue donation documents 24 hours a day, 7 days a week. Hospitals, organ and tissue procurement agencies, and other parties identified by the agency by rule shall be allowed access through coded means to the information stored in the registry. Costs for the organ

and tissue donor registry shall be paid from the Health Care Trust Fund Florida Organ and Tissue Donor Education and Procurement Trust Fund created by s. 765.52155. Only those funds deposited into the Health Care Trust Fund pursuant to ss. 320.08047 and 322.08 Florida Organ and Tissue Donor Education and Procurement Trust Fund shall be used utilized by the Agency for Health Care Administration for maintaining the organ and tissue donor registry and for organ and tissue donor education.

Section 18. Section 765.52155, Florida Statutes, is repealed.

Section 19. Section 765.544, Florida Statutes, is amended to read:

765.544 Fees; Florida organ and tissue donor education and procurement Trust Fund.—

(1) In accordance with s. 408.805, an applicant or a certificateholder shall pay a fee for each application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be as follows:

(a) An initial application fee of \$1,000 from organ procurement organizations and tissue banks and \$500 from eye banks.

(b) Annual fees to be used, in the following order of priority, for the certification program, the advisory board, maintenance of the organ and tissue donor registry, and the organ and tissue donor education program in the following amounts, which may not exceed \$35,000 per organization:

1. Each general organ procurement organization shall pay the greater of \$1,000 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

2. Each bone and tissue procurement agency or bone and tissue bank shall pay the greater of \$1,000 or 0.25 percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

3. Each eye bank shall pay the greater of \$500 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(2) The Agency for Health Care Administration shall specify by rule the administrative penalties for the purpose of ensuring adherence to the standards of quality and practice required by this chapter, part II of chapter 408, and applicable rules of the agency for continued certification.

(3)(a) Proceeds from fees, administrative penalties, and surcharges collected pursuant to this section must be deposited into the Health Care Trust Fund Florida Organ and Tissue Donor Education and Procurement Trust Fund created by s. 765.52155.

(b) Moneys deposited in the trust fund pursuant to this section must be used exclusively for the implementation, administration, and operation of

the certification program and the advisory board, for maintaining the organ and tissue donor registry, and for organ and tissue donor education.

(4) As used in this section, the term “procurement activity in this state” includes the bringing into this state for processing, storage, distribution, or transplantation of organs or tissues that are initially procured in another state or country.

Section 20. This act shall take effect July 1, 2008.

Approved by the Governor April 21, 2008.

Filed in Office Secretary of State April 21, 2008.