

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1066

INTRODUCER: Banking and Insurance and Senator Burton

SUBJECT: Consumer Protection

DATE: February 2, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 amends various statutes in the area of consumer protection. Specifically, the bill:

- Prohibits bringing a Qui Tam action where the action is based upon allegations or transactions arising from, or intended to enforce, the provisions of the Florida Disposition of Unclaimed Property Act.
- Requires third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions.
- Provides that a state agency may not enter into an agreement with any entity whose function is to advise regarding the censorship or blacklisting of news sources based upon subjective criteria or political biases, under the stated function of “fact checking” or otherwise removing “misinformation.”
- Provides for the retirement of the title to a mobile home by the Department of Highway Safety and Motor Vehicles (DHSMV), if the owner of the real property records a mortgage against the owner’s mobile home and real property in the official records of the clerk of court in the county in which the real property is located.
- Provides that if a contractor executes a contract to replace or repair the roof of a residential property during a declaration of a state of emergency, he or she must disclose in the contract that there is a 10-day right of cancellation.
- Expands the definition of “depository institution” for purposes of the Florida Commercial Financing Disclosure Law, to include institutions chartered by another state, territory, or the federal government and authorized to do business in Florida, and whose deposits or share

accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

- Provides that any certified public accountant who prepares the mandatory annual audit for an insurer must be licensed in Florida and have completed at least 4 hours of insurance-related continuing education as a condition of license renewal; the continuing education must be approved by the Department of Business and Professional Regulation, based on the recommendations of the Department of Financial Services.
- Applies provisions limiting public adjuster compensation to insurance policies for coverages provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association.
- Provides that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.
- Provides that the disclosure requirements of contracts for short-term health insurance must be in writing and signed by the purchaser at the time of purchase; the disclosures must include the duration, any essential benefit not included, content of coverage, and exclusions within the contract.
- Provides that a claim from a condominium unit owner resulting from a loss assessment must be given to the insurer within 90 days after the date on which the condominium association or its governing board votes to levy the assessment to cover a shortfall in reserves due to a covered loss; such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.
- Adopts the 2018 edition of the National Fire Protection Association Code for Fireworks Display.
- Provides a criminal penalty for fraud related to grants or contracts with the state or any agency of the state.
- Provides a criminal penalty for the act of knowingly making statements or communications, or disseminating such statements or communications, that have the intent of falsely representing that such communication originated from a bank or lending institution.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2024.

II. Present Situation:

The Florida False Claims Act

Qui Tam Actions and the Relator

The Florida False Claims Act¹ authorizes two entities, either a private individual or the state,² to sue someone who allegedly files a false claim seeking payment, or approval for payment, from the state. The person who brings a false claims suit is referred to as the “relator.” The action filed

¹ Sections 68.081-68.092, F.S.

² For purposes of this act, the Department of Legal Affairs is authorized to bring an action, and in some limited circumstances, the Division of Financial Services may bring an action. See s. 68.083(1), (2), and (4), F.S.

by the relator on behalf of the state is referred to as a “qui tam” proceeding.³ Relators are entitled to a significant share of the settlement or proceeds when a recovery is made against a defendant. The relator does not need to demonstrate that he or she has been harmed by the violator’s actions to adequately state a cause of action. Quite often, the relator is aware of the false claim because he or she was employed by the defendant or has knowledge of industry standards that were violated.

At the core of the Florida False Claims Act is the relator’s right to earn a substantial portion of the recovery against a defendant. This provides a relator tremendous financial incentive to report misconduct. It also provides the state an opportunity to be made whole when damaged by fraudulent actions it did not know were occurring. An individual who successfully brings an action is entitled to receive a portion of the proceeds or settlement of the claim.⁴

Florida Disposition of Unclaimed Property Act

Chapter 717, F.S., details how to determine whether property held by a person belonging to another is unclaimed and how to dispose of it. Any intangible property or income held in the possession of a “holder”⁵ for the benefit of another is presumed unclaimed if the owner fails to claim such property for more than 5 years after the property becomes payable or distributable.⁶

Once the 5-year period elapses, the holder may file a petition with the Department of Financial Services (DFS) and request that the DFS accept custody of the property.⁷ Upon delivery of property to the DFS, the state assumes custody and responsibility for the safekeeping of the property. So long as the person who delivers the property to the DFS has done so in good faith, he or she is relieved of any liability to manage the property.⁸

Form 1099-K Reporting Requirement

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third party merchants.⁹ The return is Form 1099-K, and it must be filed for each calendar year on or before the last day of February of the year following the transactions.¹⁰

³ “Qui tam” is an abbreviated phrase from the larger Latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*.” According to Black’s Law Dictionary, it means “who as well for the king as for himself sues in this matter.” A qui tam action is a statutory action that permits a private individual to sue for a penalty, which will be divided between the government or some other public institution and the person who initiates the suit. BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴ Section 68.085(1)(a), F.S.

⁵ Section 717.101(12), F.S., defines “holder” as a person, wherever organized or domiciled, who is:

- In possession of property belonging to another;
- A trustee in case of a trust; or
- Indebted to another on an obligation.

⁶ Section 717.102(1), F.S.

⁷ Section 717.117(5), F.S.

⁸ Section 717.1201(5), F.S.

⁹ 26 U.S.C. s. 6050W.

¹⁰ Internal Revenue Service (IRS), *About Form 1099-K, Payment Card and Third Party Network Transactions*, <https://www.irs.gov/forms-pubs/about-form-1099-k> (last visited January 29, 2024); IRS, *Form 1099-K frequently asked questions: Reporting*, <https://www.irs.gov/newsroom/form-1099-k-frequently-asked-questions-reporting> (last visited January 29, 2024).

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third party payment system (like PayPal, Venmo, or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of \$20,000 and comprising more than 200 transactions.¹¹ These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires them to file Form 1099-K. Examples include Alabama,¹² Tennessee,¹³ North Carolina,¹⁴ and New York.¹⁵ Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue electronically within 30 days of filing the federal return.¹⁶ The copy can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with addresses in Florida.¹⁷

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.¹⁸ Every procurement for contractual services in excess of the threshold amount in category two, \$35,000, with certain exceptions, must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.¹⁹ The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of \$35,000.²⁰

¹¹ IRS, *Understanding your Form 1099-K*, <https://www.irs.gov/businesses/understanding-your-form-1099-k> (last visited January 29, 2024).

¹² Alabama Department of Revenue, *New 1099-K Filing Requirement*, <https://www.revenue.alabama.gov/new-1099-k-filing-requirement/> (last visited January 29, 2024).

¹³ Tennessee Department of Revenue, *Sales and Use Tax Notice* (Jan. 2016), available at <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales16-01.pdf>.

¹⁴ North Carolina Department of Revenue, *Guidance on Information Reporting*, [https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-\(1099k\)](https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k)) (last visited January 29, 2024).

¹⁵ [New York State Department of Taxation and Finance, Reporting Requirements](https://www.tax.ny.gov/bus/multi-reporting_requirements.htm), https://www.tax.ny.gov/bus/multi-reporting_requirements.htm (last visited January 29, 2024).

¹⁶ Section 212.134, F.S.

¹⁷ Section 212.134(1), F.S.

¹⁸ Section 287.012(1), F.S. The term "agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges." *Id.*

¹⁹ *See* s. 287.058(1), F.S. (excepting the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by ch. 440, F.S., which is the Workers' Compensation Law); *see also* s. 287.017(2), F.S. (providing a threshold amount of \$35,000 for category two).

²⁰ Section 287.058(2), F.S. There is an exception in the case of a valid emergency as certified by the agency head. *Id.*

Real Property Transactions – Mobile Homes

Section 319.261, F.S., was created during the 2003 Regular Session to provide a mechanism by which the owner of a mobile home, which is permanently affixed to real property that is also owned by that same person, may permanently retire the title to the mobile home.

The Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to retire the title to the mobile home if the owner records the following documents with the clerk of court in the county in which the real property is located:

- The original title to the mobile home, or for a new home the manufacturers' certificate of origin, which includes a description of the mobile home, including model year, make, width, length, vehicle identification number, and a statement by any recorded lien holder on the title that the security interest in the home has been released, or that such security interest will be released upon retirement of the title;
- The legal description of the real property, and in the case of a leasehold interest, a copy of the lease agreement; and
- A sworn statement by the owner that he or she is the owner of the mobile home and that the home is permanently affixed to the real property in accordance with state law.²¹

The clerk of the court is responsible for recording the documents and providing to the owner of the real property a copy of the recorded title or manufacturers' certificate of origin and a copy of all the documents recorded.²² The owner or lien-holder must then submit these documents with the appropriate application to DHSMV in order to retire the title.²³

Prohibited Property Insurance Practices by Contractors

Contractors are prohibited from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purpose of making a property insurance claim for roof damage, unless such solicitation provides notice in a prescribed format that:

- The consumer is responsible for the payment of any deductible.
- It is insurance fraud punishable as a third-degree felony for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy.
- It is insurance fraud punishable as a third-degree felony to file intentionally an insurance claim containing false, fraudulent, or misleading information.²⁴

Contractors, and persons acting on behalf of contractors, are prohibited from engaging in the following practices:

- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim.

²¹ Section 319.261(2), F.S.

²² Section 319.261(3), F.S.

²³ Section 319.261(4), F.S.

²⁴ Section 489.147(2), F.S.

- Offering or receiving consideration for referrals when property insurance proceeds are payable.
- Interpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds a license as a public adjuster.
- Providing an authorization agreement to the insured without providing a good faith estimate.²⁵

The above acts are subject to discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation.²⁶ State law provides that the residential property owner may void the contract with the contractor within 10 days of its execution, if the contractor fails to provide notice to the residential property owner of these prohibited practices.²⁷

Florida Commercial Financing Disclosure Law

The Florida Commercial Financing Disclosure Law (Law) requires a provider that consummates a commercial financing transaction of \$500,000 or less to give the business certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment.²⁸ The Law provides that a provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money.²⁹ "Provider" means:

a person who consummates more than five commercial financing transactions with a business located in this state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing transaction on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.³⁰

"Depository institution" means a Florida state-chartered bank, savings bank, credit union, or trust company, or a federal savings or thrift association, bank, credit union, savings bank, or thrift.³¹

The Law does not apply to:

- A provider that is a federally insured depository institution, or an affiliate or holding company of such institution; or a subsidiary or service corporation that is owned and controlled by a federally insured depository institution or under common ownership with such institution.

²⁵ *Id.*

²⁶ Section 489.147(3), F.S.

²⁷ Section 489.147(5), F.S.

²⁸ Section 559.9613, F.S.; *see also* s. 559.9612(7), F.S. (providing that the Law does not apply to commercial financing transactions of more than \$500,000).

²⁹ Section 559.9611(1), F.S.

³⁰ Section 559.9611(10), F.S.

³¹ Section 559.9611(9), F.S.

- A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.
- A commercial financing product transaction that is:
 - Secured by real property;
 - A lease; or
 - A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used.
- A commercial financing transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least \$50,000; or a commercial financing transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.
- A provider that is licensed as a money transmitter under chapter 560, F.S., or licensed as a money transmitter by any other state, district, territory, or commonwealth of the U.S.
- A provider that consummates no more than five commercial financing transactions in this state in a 12-month period.
- A commercial financing transaction of more than \$500,000.³²

Disclosures

The provider must disclose in writing the following at or before consummation of a commercial financing product transaction:

- The total amount of funds provided to the business under the terms of the commercial financing transaction agreement.
- The total amount of funds disbursed to the business under the terms of the commercial financing transaction agreement, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business.
- The total amount to be paid to the provider pursuant to terms of the commercial financing transaction agreement.
- The total dollar cost of the commercial financing transaction under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments.
- The manner, frequency, and amount of each payment.
- A statement of whether there are any costs or discounts associated with prepayment of the commercial financing transaction including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.³³

Prohibited Acts

The Law prohibits a broker from engaging in any of the following acts:

³² Section 559.9612, F.S.

³³ Section 559.9613(2), F.S.

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for commercial financial products, such as a credit check or an appraisal of security, if certain conditions are met.
- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker, or engaging in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence of reliance by the business.
- Making or using any false or deceptive representation in its business dealings.
- Offering the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.³⁴

Enforcement

The Law provides that violations are punishable by a fine of \$500 per incident, not to exceed \$20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation.³⁵ Any person who violates any provision of the Law after receiving written notice of a prior violation from the Attorney General may be subject to a fine of \$1,000 per incident, not to exceed \$50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation.³⁶ The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.³⁷

Insurer Reporting of Property Insurance Data

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the Office of Insurance Regulation (OIR) containing various financial data, including audited financial statements, actuarial opinions, and certain claims dates.³⁸ Each year, insurers must file an annual statement covering the preceding calendar year on or before March 1. Quarterly statements covering each period ending on March 31, June 30, and September 30 must be filed within 45 days after each such date.³⁹

In addition to each authorized insurer having to file with the OIR statements of its financial condition, transactions, and affairs, each authorized insurer must also hire a certified public accountant to prepare an audit.⁴⁰ The board of the insurer is required to establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee is responsible for discussing audit findings and interacting with the certified public accountant regarding his or her findings. The audit committee must be comprised solely of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit

³⁴ Section 559.9614, F.S.

³⁵ Section 559.9615(2)(a), F.S.

³⁶ Section 559.9615(2)(b), F.S.

³⁷ Section 559.9615(1), F.S.

³⁸ Section 624.424, F.S.

³⁹ Section 624.424(1)(a), F.S.

⁴⁰ Section 624.424(8), F.S.

committee must report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request the OIR to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.⁴¹

Public Adjusters

A public adjuster is any person, except a duly licensed attorney-at-law as exempted under state law,⁴² who:

- For money, commission, or any other things of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant;
- For money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for, or effecting the settlement of, a claim or claims for loss or damage covered by an insurance contract; or
- Advertises for employment as an adjuster of such claims.⁴³

The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of the public adjuster, as insured, or a third-party claimant.⁴⁴

The substantive provisions within the definition of “public adjuster,” found in certain subsections of the statute,⁴⁵ apply only to residential property insurance policies and condominium unit owner policies.⁴⁶ The definition excludes several categories of persons who do not fall within the definition, such as licensed health care providers or employees thereof who prepare or file health insurance claim forms on behalf of a patient.⁴⁷

One subsection of the statute⁴⁸ limits the compensation a public adjuster may charge. These limits are:

- If a public adjuster enters into a contract with an insured or claimant to reopen a claim, or file a supplemental claim, that seeks additional payments for a claim that has been previously paid, the public adjuster may not charge based on a previous claim payment for the same cause of loss. The charge must be based only on the claim payments or settlements obtained through the work after entering into the contract. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment.⁴⁹
- A public adjuster may not charge in excess of:
 - Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that

⁴¹ Section 624.424(8)(c), F.S.

⁴² Section 626.860, F.S.

⁴³ Section 626.854(1), F.S.

⁴⁴ *Id.*

⁴⁵ Section 626.854(5)-(18), F.S.

⁴⁶ Section 626.854(19), F.S.

⁴⁷ Section 626.854(2)(a), F.S.

⁴⁸ Section 626.854(11), F.S.

⁴⁹ Section 626.854(11)(a), F.S.

- are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in the following bullet points apply.⁵⁰
- Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.⁵¹
 - One percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or agreement to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days after the date of loss or within 10 days after the date on which the contract is executed, whichever is later.⁵²
 - Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or agreement to pay occurs before the date on which the contract is executed.⁵³
 - For purposes of calculating permissible compensation, compensation may not be based on the deductible portion of a claim.⁵⁴
 - Compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: “I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit).”⁵⁵
 - The rate of compensation may not be increased based solely on the fact that the claim is litigated.⁵⁶
 - Any maneuver, shift, or device through which the limits on compensation set forth in the subsection are exceeded is a violation of the chapter⁵⁷ and is punishable as provided under state law.⁵⁸

Contracts and Disclosures

All contracts for public adjuster services and proof-of-loss statements must be in at least 12-point font, be titled “Public Adjuster Contract,” and prominently display a particular statement provided in the statute.⁵⁹ Public adjuster contracts relating to property and casualty claims must include the public adjuster’s and insured’s phone number, e-mail addresses, and other information.⁶⁰ The contract language must state the percentage of compensation in a minimum of

⁵⁰ Section 626.854(11)(b)1., F.S.

⁵¹ Section 626.854(11)(b)2., F.S.

⁵² Section 626.854(11)(b)3., F.S.

⁵³ Section 626.854(11)(b)4., F.S.

⁵⁴ Section 626.854(11)(c), F.S.

⁵⁵ Section 626.854(11)(d), F.S.

⁵⁶ Section 626.854(11)(e), F.S.

⁵⁷ Section 626.854(11)(f), F.S.

⁵⁸ See s. 626.8698, F.S. (providing disciplinary guidelines for public adjusters and public adjuster apprentices).

⁵⁹ Section 626.8796(1), F.S.

⁶⁰ Section 626.8796(2), F.S. The statement provides: “Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or

18-point bold type before the space reserved for the insured's signature.⁶¹ The insured is required to initial each page that does not have his or her signature.⁶² An unaltered copy of the contract must be remitted to the insured at the time of execution and to the insurer within seven days after execution, and an unaltered copy may be provided to the insurer's representative.⁶³

Health Insurance Policies – Short Term Health Insurance

Section 627.6426, F.S., provides for short-term health insurance contracts. "Short term health insurance" is health insurance coverage provided by an issuer with an expiration date that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months.⁶⁴ Such contracts must include the following disclosure:

This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage.⁶⁵

Notice of Property Insurance Claim

Section 627.70132, F.S., requires insureds to notify an insurer of a claim or reopened claim,⁶⁶ within 1 year after the date of loss.⁶⁷ Notice of a supplemental claim⁶⁸ must be given to the insurer within 18 months of the date of loss or such claim is barred. The time period is tolled for filing a property insurance claim during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember to file a claim,

estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Section 627.6426(1), F.S.

⁶⁵ Section 627.6426(2), F.S.

⁶⁶ Section 627.70132(1)(a), F.S., defines "reopened claim" as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

⁶⁷ Section 627.70132(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

⁶⁸ Section 627.70132(1)(b), F.S., defines "supplemental claim" as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

supplemental claim, or reopened claim.⁶⁹ Section 627.706(5), F.S., requires insureds to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.

Minimum Fireworks Safety Standards

Chapter 791, F.S., sets forth the framework for the regulation of fireworks in Florida under the State Fire Marshal's office within the DFS. While chapter 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement agencies.⁷⁰ The statutes prohibit the retail sale and use of fireworks⁷¹ by the public. However, provisions of chapter 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban.⁷²

Section 791.02, F.S., allows counties and cities to adopt reasonable rules and regulations for the granting of permits for the supervised public display of fireworks within their boundaries. Display operators must apply for a permit at least 15 days in advance and obtain approval from municipal chiefs of police and fire departments. The outdoor display of fireworks is governed by the National Fire Protection Association (NFPA 1123) Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute, which establishes minimum safety standards for outdoor public displays.⁷³ However, the most recent Florida Fire Prevention Code references the 2018 edition of the NFPA 1123 Code.⁷⁴

Grant and Contract Fraud

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.⁷⁵ In the context of contracts, fraud is an act that causes an error bearing on a material part of a contract that is "created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other."⁷⁶

No specific statute exists creating a crime of grant or contract fraud. However, individuals perpetrating fraud could possibly face prosecution for violations of section 817.034(4)(a), F.S. (Organized Scheme to Defraud); section 812.014(2)(a), F.S. (Theft); or section 838.022, F.S. (Official Misconduct), among other possible crimes, depending on the facts of each case.

⁶⁹ Section 627.70132(2), F.S.

⁷⁰ Section 791.001, F.S.

⁷¹ Florida Statutes provide specific definitions of what are and are not fireworks. *See* s. 791.01(4), F.S.

⁷² *See* s. 791.04, F.S.

⁷³ Section 791.012, F.S.

⁷⁴ FLORIDA FIRE PREVENTION CODE S. 65.2.1 (8th ed. 2023), available at <https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code>.

⁷⁵ BLACK'S LAW DICTIONARY (11th ed. 2019).

⁷⁶ The Law Dictionary, *Fraud Definition & Legal Meaning*, <https://thelawdictionary.org/fraud/> (last visited Jan. 29, 2024).

Deceptive Advertising

Several existing statutes address false, misleading, and deceptive advertising. Section 817.40, F.S., contains the definitions for use in construing the statutes involving false, misleading, and deceptive advertising and sales. Misleading advertising is prohibited by s. 817.41, F.S. Advertising “containing any assertion, representation, or statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance guaranties where such insurance is nonexistent or does not in fact insure against the risks covered” is prohibited by section 817.411, F.S. Additionally, subsection 817.44(1), F.S., provides that:

[i]t is unlawful to offer for sale or to issue invitations for offers for the sale of any property, real or personal, tangible or intangible, or any services, professional or otherwise, by placing or causing to be placed before the general public, by any means whatever, an advertisement describing such property or services as part of a plan or scheme with the intent not to sell such property or services so advertised, or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public.

Penalties for violations of these statutes are provided in s. 817.45, F.S. For a first violation, a violator is guilty of a misdemeanor of the first degree.⁷⁷ For a second or subsequent violation, the violator is guilty of a misdemeanor of the first degree, but may be subject to a fine not to exceed \$10,000.

III. Effect of Proposed Changes:

The Florida False Claims Act

Section 1 amends s. 68.087, F.S., to prohibit bringing a Qui Tam action under the statute governing civil actions for false claims,⁷⁸ based upon allegations or transactions arising from, or to otherwise enforce, the provisions of the Florida Disposition of Unclaimed Property Act.

Form 1099-K Reporting Requirement

Section 2 amends s. 212.134, F.S., to provide that:

- “Participating payee” has the same meaning as in s. 6050W of the Internal Revenue Code.
- “Return” or “information return” means IRS Form 1099-K required under s. 6050W of the Internal Revenue Code.
- “Third party network transaction” has the same meaning as in s. 6050W of the Internal Revenue Code.
- “Third party settlement organization” has the same meaning as in s. 6050W of the Internal Revenue Code.

⁷⁷ Punishment may include a term of imprisonment not exceeding 1 year, a fine not to exceed \$1,000, and court costs. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁷⁸ Section 68.083(2), F.S.

The bill also requires third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions. The mechanism must clearly indicate the participating payee's requirement to indicate the appropriate transaction type. The participating payee is responsible for indicating the appropriate transaction type. All third party settlement organizations must maintain records that clearly identify whether a transaction, as designated by the participating payee, is a transaction for goods and services or is personal. The information in the return submitted to the Department of Revenue for such entities must be limited to transactions for goods and services.

Procurement of Commodities and Services

Section 3 creates s. 286.312, F.S., to provide that an agency may not enter into a contract or other agreement with an entity whose function is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases under the stated goal of fact-checking or removing misinformation.

Real Property Transactions – Mobile Homes

Section 4 amends s. 319.261, F.S., to provide for the retirement of the title to a mobile home by the Department of Highway Safety and Motor Vehicles if the owner of the real property records a mortgage against the owner's mobile home and real property in the official records of the clerk of court in the county in which the real property is located.

Prohibited Property Insurance Practices by Contractors

Section 5 amends s. 489.147, F.S., to provide that a contractor may not enter into a contract to replace a roof on residential property during a declaration of a state of emergency, unless the contract includes the following notice in bold type of not less than 18 points immediately before the space reserved for the signature of the residential property owner:

You, the residential property owner, may cancel this contract without penalty or obligation up until the 10 day after the execution of the contract or until the official start date, whichever comes first, because this contract was entered into during a declaration of a state of emergency by the Governor. It is the responsibility of your contractor to include an official start date clause in your contract. This clause must state the official start date and the work that will be commenced on that date. If there is no official start date clause in the contract, the contract may be voided within 10 days following the execution of the contract.

The residential property owner must send the notice of cancellation to the contractor by certified mail, return receipt requested, or by another form of mailing that provides proof thereof, to the address specified in the contract.

Florida Commercial Financing Disclosure Law

Section 6 amends s. 559.9611, F.S., to expand the definition of “depository institution” to include institutions chartered by another state, territory, or the federal government authorized to do business in Florida and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Presently, the definition is limited to state-chartered institutions. The Florida Commercial Financing Disclosure Law requires “providers” to make certain disclosures of the terms of a commercial financing transaction. The definition of “provider” includes a person who enters into a written agreement with a “depository institution” to arrange a commercial financing transaction. Expanding the definition of “depository institution” expands the applicability of the disclosure requirements.

Insurer Reporting of Property Insurance Data

Section 7 amends s. 624.424, F.S., to provide that the certified public accountant that prepares the mandatory annual audit must be Florida licensed and must have completed at least 4 hours of continuing education that is insurance-related as a condition of license renewal. The continuing education must be approved by the Department of Business and Professional Regulation, based on the recommendations of the Department of Financial Services. This requirement becomes effective once the courses have been created and approved.

Public Adjusters

Section 8 amends s. 626.854, F.S., to apply provisions providing limits on public adjuster compensation to insurance policies for coverages provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners’ association.

Section 9 amends s. 626.8796(2), F.S., to provide that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.

Health Insurance Policies – Short Term Health Insurance

Section 10 amends s. 627.6426, F.S., to provide that the disclosure requirements of contracts for short-term health insurance must be in writing and signed by the purchaser at the time of purchase. The disclosures must include the duration of the contract, including any waiting period; any essential benefit that the contract does not provide; the content of coverage; and any exclusion of preexisting conditions. The disclosures must be printed in at least 12-point type and in a color that is readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase.

Notice of Property Insurance Claim

Section 11 amends s. 627.70132, F.S., to provide that a notice of claim from a condominium unit owner resulting from a loss assessment for loss assessment coverage under state law⁷⁹ must be given to the insurer within 90 days after the date on which the condominium association or its

⁷⁹ Section 627.714, F.S.

governing board votes to levy an assessment to cover a shortfall in reserves due to a covered loss. Such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.

If the condominium association votes to levy an assessment more than 9 months after the underlying loss – for example, a hurricane or tornado – that gives rise to the assessment, the bill will expand the time frame for filing a loss assessment claim with an insurer, which is one year after such weather-related event. If, however, the vote was taken within the first nine months following the storm, the unit owner would need to file the notice prior to the expiration on the one-year period under current law.

Minimum Fireworks Safety Standards

Section 12 amends s. 791.012, F.S., to replace the reference to the 1995 edition of the National Fire Protection Association Code for Fireworks Display with a reference to the 2018 edition.

Grant and Contract Fraud

Section 13 creates s. 817.153, F.S., to provide new criminal penalties for fraud related to grants or contracts with the state or any agency of the state. The penalties apply to all grant agreements, state contracts, or other agreements with the state, regardless of whether the funds being provided are state funds or federal pass-through funds.

The bill provides that for purposes of the new statute:

- “Claim” means an application, request, or demand for money or property under a state grant agreement, state contract, or other agreement with the state for money or property, whether or not the U.S. or a specified state agency has title to the money or property, presented or caused to be presented to any officer, employee, or agent of a state agency, as well as any request for a drawdown or other payment that is made to a computerized payment administration system.
- “Other agreement” includes a loan, subsidy, and payment for a specified use; an award; and subaward, regardless of whether one or more persons entering into the agreement is a contractor or subcontractor.

Under the bill, a person commits grant or contract fraud if he or she:

- Knowingly presents or causes to be presented a claim related to a grant agreement, contract, or other agreement with the state, or any agency thereof, which the person knows or should know is false or fraudulent.
- Knowingly makes, uses, or causes to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, budget, financial statement, audit, or other document that is required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part pursuant to a state grant agreement, state contract, or other agreement with the state.
- Knowingly makes, uses, or causes to be made or used false records or statements material to false or fraudulent claims under a grant agreement, state contract, or other agreement with the state.

- Knowingly conceals, avoids, or decreases an obligation to pay or transmit funds or property with respect to a state grant agreement, state contract, or other agreement with the state, or knowingly makes, uses, or causes to be made or used a false record or statement material to such an obligation.

Proof of specific intent to defraud is not required. Innocent mistake is a defense to actions brought under the new statute.

Penalties for a violation are based on the value of the property involved as follows:

- Less than \$20,000, the offender commits a felony of the third degree.⁸⁰
- At least \$20,000, but less than \$100,000, the offender commits a felony of the second degree.⁸¹
- At least \$100,000, the offender commits a felony of the first degree.⁸²

Deceptive Advertising

Section 14 creates s. 817.4112, F.S., to provide that a person or business may not knowingly make statements or disseminate any advertisement or communication that has the intent of falsely representing that such advertisement or communication originated from a bank or lending institution.

Section 15 amends s. 817.45, F.S., to provide a penalty for the new crime created in Section 14 of the bill. A person violating the new crime is guilty of a first degree misdemeanor⁸³ for a first offence. A second or subsequent conviction is also a first degree misdemeanor but the fine may be up to \$10,000.

Effective Date

Section 16 provides the bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁸⁰ Punishment may include a term of imprisonment not exceeding 5 years, a fine not to exceed \$5,000 and court costs, and enhanced penalties under the habitual offender statute. Sections 775.082(3)(e), 775.083(1)(c), and 775.084, F.S.

⁸¹ Punishment may include a term of imprisonment not exceeding 15 years, a fine not to exceed \$10,000 and court costs, and enhanced penalties under the habitual offender statute. Sections 775.082(3)(d), 775.083(1)(b), and 775.084, F.S.

⁸² Punishment may include a term of imprisonment not exceeding 30 years, a fine not to exceed to \$10,000 and court costs, and enhanced penalties under the habitual offender statute. Sections 775.082(3)(b)1., 775.083(1)(b), and 775.084, F.S.

⁸³ Punishment may include a term of imprisonment not exceeding 1 year, a fine not to exceed \$1,000, and court costs. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Financial Services:⁸⁴

- Mortgage lenders, banks, and credit unions will benefit from the bill's amendments to s. 319.261, F.S. The bill will expand their ability to provide mortgages to homeowners. Mobile home makers, land developers, and assemblers will have expanded market access because consumers will have more financing options.
- Because of the bill's amendments to s. 626.854, F.S., some public adjusters may see a reduction to their fees for claims adjusted on behalf of condominium association policies if they are currently basing their fees off the deductible for a condo association policy or charging more than the applicable fee limits set in subsection 626.854(11), F.S.
- Because of the bill's amendments to s. 627.6426, F.S., short-term limited duration health insurers may experience a decrease in sales of these policies with the additional information provided to consumers. On the other hand, consumers will experience fewer surprise bills for treatments they thought were covered, but were not.
- Because of the bill's amendments to s. 627.711, F.S., there will be fewer expenditures for insurance.

C. Government Sector Impact:

The bill creates two new first degree misdemeanors. The new misdemeanors may increase state court revenues and expenditures, if prosecuted. In addition, the bill may have an indeterminate negative jail bed impact.

⁸⁴ Department of Financial Services, *2024 Legislative Bill Analysis for SB 1066*, Jan. 29, 2024 (on file with the Senate Committee on Judiciary).

VI. Technical Deficiencies:

The notice provided in Section 5 of the bill for roof contracts entered into during a declared state of emergency appears to have an internal inconsistency. On lines 157 and 158, the notice references the right to cancel the contract “up until the 10 [sic] day after the execution of the contract”. On lines 167 and 168, the notice references that the contract “may be voided within 10 days after the execution of the contract.” One phrase provides for “up until the 10 [sic] day” and the other provides for “within 10 days.” It appears they should both use the phrase “within” the 10 days. Also, the term “10 day” on lines 157 and 158 should read “10th day”.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 68.087, 212.34, 319.261, 489.147, 559.9611, 624.424, 626.854, 626.8796, 627.6426, 627.70132, 791.012, and 817.45.

This bill creates the following sections of the Florida Statutes: 286.312, 817.153, and 817.4112.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance Committee on January 16, 2024:**

The committee substitute makes the following changes:

- Amends s. 212.134, F.S., to require third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions;
- Removes the provision prohibiting state agencies from contracting with entities whose function is “fact checking” and places them in a newly created statute instead;
- Revises the proposed definition of “depository institution” for purposes of the Florida Commercial Financing Disclosure Law to remove certain terms and adds the requirement “authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund”;
- Revises the proposed continuing education requirement for CPAs by adding “Upon creation of the continuing education” to give the Department of Business and Professional Regulation time to create the courses;
- Revises the provision regarding the time for a condominium unit owner to file a notice of a property insurance claim resulting from a loss assessment; and
- Removes Section 12 from the bill that added commercial residential or commercial (business) insurance policies to the requirement that the insurer must clearly notify the applicant or policyholder of the availability of certain premium discounts.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
