

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 939 Consumer Protection

**SPONSOR(S):** Commerce Committee, Insurance & Banking Subcommittee, Griffiths and others

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 4 N, As CS	Fortenberry	Lloyd
2) State Affairs Committee	16 Y, 4 N	Villa	Williamson
3) Commerce Committee	17 Y, 0 N, As CS	Fortenberry	Hamon

### SUMMARY ANALYSIS

The bill makes changes related to consumer protection, including:

- **Form 1099-K Reporting Requirements:** third-party settlement organizations, like PayPal or Apple Pay, that conduct transactions involving a payee with a Florida address must create a method for payees to identify transactions for goods and services and report that information to the Florida Department of Revenue.
- **Bad Faith Termination of Account Access by Financial Institutions:** allows a customer or member of a financial institution who reasonably believes a financial institution has restricted account access in bad faith to file a complaint with the Office of Financial Regulation.
- **Protection of Specified Adults:** allows a financial institution to delay a disbursement or transaction from an account of a vulnerable adult for a specified time period if the financial institution suspects financial exploitation of such vulnerable adult.
- **Contracts for Roof Repairs Following Emergencies:** requires that a contractor that enters into a contract to replace or repair the roof of a residential property during a declared state of emergency by the Governor include specific language in the contract that allows the property owner to cancel the contract by the earlier of ten days following execution or the official start date that the work on the roof will commence; the property owner must send notice of cancellation by certified mail or another form that provides proof of mailing.
- **Depository Institutions:** expands the definition of depository institution in commercial financing disclosure law.
- **Continuing Education Requirements for Certified Public Accountants:** requires that the certified public accountant (CPA) that prepares the audit that an insurer submits to the Office of Insurance Regulation as part of its annual report must have completed at least four hours of insurance-related continuing education during each two-year continuing education cycle.
- **Public Adjusters:** requires that public adjusters' contracts for property and casualty claims contain the license numbers of the public adjusting firms by which they are employed.
- **Notice of Change in Policy Terms:** requires that the renewal notice sent to the named insured containing changes in policy terms must be presented in bold type face of not less than 14 points.
- **Short-term Health Insurance:** updates the disclosures that must be provided to a purchaser of a short-term plan; also requires that purchasers of short-term plans receive the required disclosures in writing or electronically, and sign them.
- **Loss Assessment Coverage:** establishes that a notice of a claim for loss assessment coverage may not occur later than 3 years after the date of loss and must be provided to the insurer no later than certain dates specified in the bill.
- **Fireworks Safety Standards:** updates the state standards for outdoor display of fireworks to the current edition of the National Fire Protection Association 1123, Code for Fireworks Displays.

The bill has no impact on local government revenues or expenditures or state revenues. It may have an indeterminate negative impact on state expenditures, and a positive or negative impact on the private sector.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Form 1099-K Reporting Requirements**

##### Background

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.<sup>1</sup> The return is Form 1099-K, and is required to be filed for each calendar year on or before the last day of February of the year following the transactions.<sup>2</sup>

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 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 over more than 200 transactions.<sup>3</sup> 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 the Form 1099-K to be filed. Examples include Alabama,<sup>4</sup> Tennessee,<sup>5</sup> North Carolina,<sup>6</sup> and New York.<sup>7</sup>

Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue (DOR) electronically within 30 days of filing the federal return.<sup>8</sup> 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 an address in Florida.<sup>9</sup>

##### Effect of the Bill

The bill provides that for the purposes of complying with a reporting requirement to the Florida Department of Revenue, third-party settlement organizations that conduct transactions involving a participating payee with an address in Florida to create a method for payees to identify whether their transactions are for goods and services or personal purposes. This will allow taxable transactions related to goods and services to be readily identifiable and help avoid overpayment or underpayment of taxes. The information submitted to DOR in Form 1099-K must be limited to transactions identified for goods and services.

#### **Bad Faith Termination of Account Access by Financial Institutions**

##### Background

##### *Financial Institutions Codes*

---

<sup>1</sup> 26 U.S. Code s. 6050W.

<sup>2</sup> <https://www.irs.gov/forms-pubs/about-form-1099-k> (last visited Jan. 15, 2024).

<sup>3</sup> <https://www.irs.gov/businesses/understanding-your-form-1099-k> (last visited Jan. 15, 2024).

<sup>4</sup> <https://www.revenue.alabama.gov/new-1099-k-filing-requirement/> (last visited Jan. 15, 2024).

<sup>5</sup> <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales16-01.pdf> (last visited Jan. 15, 2024).

<sup>6</sup> [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 Jan. 15, 2024).

<sup>7</sup> [https://www.tax.ny.gov/bus/multi/reporting\\_requirements.htm](https://www.tax.ny.gov/bus/multi/reporting_requirements.htm) (last visited Jan. 15, 2024).

<sup>8</sup> s. 212.134(1), F.S.

<sup>9</sup> *Id.*

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.<sup>10</sup> The Financial Institutions Codes apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to state-authorized and state-chartered financial institutions.<sup>11</sup> The Financial Institutions Codes define the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.<sup>12</sup>

A primary purpose of the Financial Institutions Codes is to provide for and promote the safe and sound conduct of the financial services industry in Florida.<sup>13</sup> The specific chapters under the Financial Institutions Codes are:

- Ch. 655, F.S. – Financial Institutions Generally
- Ch. 657, F.S. – Credit Unions
- Ch. 658, F.S. – Banks and Trust Companies
- Ch. 660, F.S. – Trust Business
- Ch. 662, F.S. – Family Trust Companies
- Ch. 663, F.S. – International Banking
- Ch. 665, F.S. – Associations
- Ch. 667, F.S. – Savings Banks

### *Office of Financial Regulation*

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.<sup>14</sup> OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.<sup>15</sup> OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.<sup>16</sup>

### *Bank Secrecy Act*

The federal Bank Secrecy Act (BSA)<sup>17</sup> establishes reporting, recordkeeping, and related requirements for federal and state-chartered<sup>18</sup> financial institutions to help detect and prevent money laundering.<sup>19</sup> Specifically, the BSA and other anti-money laundering regulations (BSA/AML) require financial institutions to, among other things, keep records of cash purchases of negotiable instruments and file reports of cash transactions exceeding \$10,000 (daily aggregate amount).<sup>20</sup>

Under the BSA/AML laws, financial institutions must also:

- establish effective BSA compliance programs;
- establish effective customer due diligence systems and monitoring programs;

---

<sup>10</sup> S. 655.005(1)(k), F.S.

<sup>11</sup> S. 655.001(1), F.S.

<sup>12</sup> S. 655.005(i), F.S.

<sup>13</sup> S. 655.001(2), F.S.

<sup>14</sup> Office of Financial Regulation (OFR), *About Our Agency*, <https://flofr.gov/sitePages/AboutOFR.htm> (last visited Dec. 4, 2023).

<sup>15</sup> *Id.*

<sup>16</sup> Department of Financial Services, *Financial Services Commission*, <https://www.myfloridacfo.com/about/about-dfs/commission> (last visited Dec. 4, 2023). *See also*, s. 655.012, F.S.

<sup>17</sup> 31 U.S.C. § 5311 et seq.

<sup>18</sup> *See*, 12 C.F.R. § 326.8 (sets forth requirements for state-chartered banks to establish and maintain procedures to ensure and monitor their compliance with the BSA). *See also*, 12 C.F.R. § 353 (establishes requirements for state-chartered banks to file a suspicious activity report under certain circumstances).

<sup>19</sup> U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, <https://www.fincen.gov/resources/fincens-legal-authorities> (last visited Dec. 6, 2023).

<sup>20</sup> *Id.*

- screen against Office of Foreign Assets Control lists and other government lists;
- establish an effective suspicious activity monitoring and reporting process; and
- develop risk-based anti-money laundering programs.<sup>21</sup>

The U.S. Office of the Comptroller of Currency regularly conducts examinations of national banks, federal branches, federal savings associations, and agencies of foreign banks in the U.S. to determine compliance with BSA/AML laws.<sup>22</sup>

## SUSPICIOUS ACTIVITY REPORTS

In addition to the other requirements under the BSA/AML laws, financial institutions are also required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.<sup>23</sup> These types of reports are known as “suspicious activity reports” (SAR) and are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, using FinCEN’s BSA E-filing system.<sup>24</sup>

Under this requirement, a financial institution is required to file an SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing an SAR.<sup>25</sup> For instances where no suspect was identified on the date of the incident requiring the filing, a financial institution may delay filing an SAR for an additional 30 calendar days to identify a suspect.<sup>26</sup> However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.<sup>27</sup>

### *Federal Trade Commission Act*

Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, prohibits “unfair or deceptive acts or practices in or affecting commerce.”<sup>28</sup> The prohibition applies to all persons engaged in commerce, including state-chartered banks.<sup>29</sup> The Board of Governors of the Federal Reserve System have authority under federal law<sup>30</sup> to take appropriate action when unfair or deceptive acts or practices are discovered, regardless of state authorities having primary responsibility for enforcing state statutes against unfair or deceptive acts or practices.<sup>31</sup>

Under the FTC Act, an act or practice is considered unfair if it:

- Causes or is likely to cause substantial injury to consumers;
- Cannot be reasonably avoided by consumers; and
- Is not outweighed by countervailing benefits to consumers or to competition.<sup>32</sup>

According to the Board of Governors of the Federal Reserve System, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as the BSA/AML laws.<sup>33</sup> Moreover, the policies behind the BSA/AML laws could arguably outweigh a finding that a financial institution committed an unfair act under section 5 of the FTC Act.

<sup>21</sup> U.S. Office of the Comptroller of the Currency, *Bank Secrecy Act*, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html> (last visited Dec. 5, 2023).

<sup>22</sup> *Id.*

<sup>23</sup> U.S. Treasury Financial Crimes Enforcement Network, *supra* note 19.

<sup>24</sup> U.S. Office of the Comptroller of the Currency, *Suspicious Activity Report Program*, <https://www.occ.treas.gov/publications-and-resources/forms/sar-program/index-sar-program.html> (last visited Dec. 5, 2023).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Board of Governors of the Federal Reserve System (Board of Governors), Division of Consumer and Community Affairs, *Federal Trade Commission Act* (last updated Dec. 2016), p. 1, <https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf> (last visited Feb. 6, 2024).

<sup>29</sup> *Id.*

<sup>30</sup> Section 8 of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1811, et seq.

<sup>31</sup> Board of Governors, Division of Consumer and Community Affairs, *supra* note 28, p. 1.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 7.

## *Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act*

The purpose of the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act<sup>34</sup> (Act), s. 655.50, F.S., is to require submission to OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if:<sup>35</sup>

- such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities; or
- such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

The Act requires financial institutions to designate and retain a BSA/AML compliance officer, which is defined as an officer that is responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of the Act and BSA/AML laws.<sup>36</sup> Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.<sup>37</sup>

Additionally, the Act requires financial institutions to maintain:<sup>38</sup>

- full and complete records of all financial transactions, including all records required by the BSA/AML laws, for a minimum of 5 years;
- a copy of all reports filed with OFR as required under the Act for a minimum of 5 years after submission of the report; and
- a copy of all records of exemption for each qualified business customer<sup>39</sup> for a minimum of 5 calendar years after termination of exempt status of such customer.

The Act also requires financial institutions to keep a record of each financial transaction which involves currency or other monetary instrument that has a value greater than \$10,000, involves the proceeds of specified unlawful activity, or is designed to evade the reporting requirements of the Act or other state or federal laws, or which the financial institution reasonably believes is suspicious activity.<sup>40</sup>

A financial institution, or officer, employee, or agent thereof, which files a report in good faith pursuant to the Act is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.<sup>41</sup>

### OFR ENFORCEMENT

In addition to any other powers conferred by the Financial Institutions Codes, OFR may bring an action in court to enforce or administer the Act, as well as issue and serve upon any person an order of removal if OFR determines such person is violating, has violated, or is about to violate any provisions of the Act or any similar state or federal law.<sup>42</sup>

---

<sup>34</sup> S. 655.50, F.S.

<sup>35</sup> S. 655.50(2), F.S.

<sup>36</sup> S. 655.50(4), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 655.50(8), F.S.

<sup>39</sup> See, 31 U.S.C. § 5313(e), providing that the U.S. Secretary of Treasury (Secretary) may exempt a depository institution from BSA/AML reporting requirements for transactions between the institution and a "qualified business customer" (QBC) of the institution on the basis of information submitted to the Secretary. QBC is defined as a business that:

- maintains a transaction account at the depository institution;
- frequently engages in transactions with the institution which are subject to BSA/AML reporting requirements; and
- meets criteria which the Secretary determines is sufficient to ensure the purposes of the BSA/AML laws are carried out without requiring a report for such transactions.

<sup>40</sup> S. 655.50(5), F.S.

<sup>41</sup> S. 655.50(5)(c), F.S.

<sup>42</sup> Ss. 655.50(9)(a)-(c), F.S.

OFR may also impose and collect an administrative fine against any person found to have violated any provision of the Act or similar state or federal law in an amount up to \$10,000 per day for each willful violation or \$500 per day for each negligent violation.<sup>43</sup>

## VIOLATIONS OF THE ACT

A person who willfully violates the Act commits a misdemeanor of the first degree,<sup>44</sup> unless the violation involves financial transactions of certain amounts, in which case the criminal penalties vary by first, second, and third-degree felonies depending on the amount and timing of such transactions.<sup>45</sup> In addition to the criminal penalties, a person who violates the Act may be subject to a fine of up to \$250,000 or twice the value of the financial transaction, whichever is greater, and a subsequent violation could result in a fine up to \$500,000 or quintuple the value of the financial transaction, whichever is greater.<sup>46</sup>

A person or financial institution who violates the Act may also be liable for a civil penalty of not more than the greater of the value of the financial transaction involved or \$25,000.<sup>47</sup>

### *Effects of Banks' Termination of Account Access*

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.<sup>48</sup> Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.<sup>49</sup> A New York Times study of over 500 cases of financial institutions "dropping" their customers, including interviews with current and former bank industry staffers, revealed the negative effects of a bank's decision to remove a customer's account access:

Individuals can't pay their bills on time. Banks often take weeks to send them their balances. While the institutions close their credit cards, their credit scores suffer. Upon cancellation, small businesses often struggle to make payroll – and must explain to vendors and partners that they don't have a bank account for the time being... [And] once customers have moved on, they don't know whether there is a black mark somewhere on their permanent records that will cause a repeat episode at another bank. If the bank has filed an SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs.<sup>50</sup>

As a result, customers do not know why they were ever under suspicion.<sup>51</sup> Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.<sup>52</sup> Specifically, a few of the interviews revealed the following:<sup>53</sup>

---

<sup>43</sup> S. 655.50(9)(d), F.S.

<sup>44</sup> S. 655.50(10)(a), F.S.

<sup>45</sup> S. 655.50(10)(b), F.S. See also, s. 775.082, F.S. A person who willfully violates or knowingly causes another to violate the Act and the violation involves financial transactions of certain amounts:

- financial transactions totaling or exceeding \$300 but less than \$20,000 in any 12-month period, commits a felony of the third degree;
- financial transactions totaling or exceeding \$20,000 but less than \$100,000 in any 12-month period, commits a felony of the second degree; or
- financial transactions totaling or exceeding \$100,000 in any 12-month period, commits a felony of the first degree.

<sup>46</sup> S. 655.50(10)(c), F.S.

<sup>47</sup> Ss. 655.50(10)(d)-(e), F.S.

<sup>48</sup> Ron Lieber and Tara Seigel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, Thomson Reuters (Nov. 5, 2023), [https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked\\_article\\_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nycore-android-share](https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked_article_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nycore-android-share) (last visited Dec. 5, 2023).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

- Unusual Cash Deposits: When a bar owner’s weekly cash deposits fell just below the federal currency reporting thresholds, the bank closed the bar’s account and the personal checking and credit card accounts of the owner and his spouse.
- A Marijuana Connection: A married couple’s accounts at a bank were shut down after the husband started receiving direct deposits from a cannabis company that had recently acquired his employer.
- Criminal History: A man who had served 5 years in prison for stealing a car from a dealership and using a counterfeit bill (among other crimes) had his accounts shut down at three different banks. His personal banker from the third bank hinted it was because of his criminal record.

### *Qualified Public Depositories*

Unless a specific exemption applies, state and local governments must deposit public funds in a bank or savings association that has been designated as a qualified public depository (QPD) under the Florida Security for Public Deposits Act (FSPD).<sup>54</sup>

To be designated as a QPD by the CFO, a bank, savings bank, or savings association must:

- Have a federal or state charter;
- Have authority to accept deposits in Florida;
- Have its principal place of business in Florida, or a branch office in Florida;
- Have deposit insurance pursuant to the Federal Deposit Insurance Act;<sup>55</sup>
- Have procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Annually attest to the CFO that the QPD has not engaged in an “unsafe and unsound practice” by denying or cancelling services based on environmental, social, or governance factors, as required by s. 280.025, F.S.; and
- Meet all the requirements of ch. 280, F.S., relating to security for public deposits.<sup>56</sup>

Under the FSPD, a QPD may be suspended or disqualified or both if the CFO determines that the QPD has engaged in certain activities that are listed in s. 280.051, F.S.

Additionally, if the CFO finds that one or more grounds exist for the suspension or disqualification of a QPD, the CFO may, in lieu of suspension or disqualification, impose an administrative penalty upon the QPD.<sup>57</sup> Specifically, with respect to any knowing and willful violation by the QPD of a lawful order or rule, the CFO may impose a penalty not exceeding \$1,000 for each violation.<sup>58</sup> Currently, only failure to timely file the attestation required under s. 280.025, F.S., is deemed a knowing and willful violation by a QPD.<sup>59</sup>

### Effect of the Bill

#### *Complaints by Customers or Members of a Financial Institution Alleging Bad Faith*

The bill amends Florida’s Financial Institutions Codes to allow a customer or member of a financial institution who reasonably believes that a financial institution has terminated, suspended, or taken similar action restricting access to the customer’s or member’s account in bad faith to file, within 30 calendar days of such action, a complaint with OFR alleging a violation of proposed s. 655.49, F.S. Such complaint is barred if not timely filed.

The bill requires OFR, by July 1, 2024, to make available on its website information necessary for a customer or member of a financial institution to file a complaint with OFR pursuant to the bill’s provisions.

<sup>54</sup> S. 280.01, F.S. The Florida Security for Public Deposits Act is codified under ch. 280, F.S.

<sup>55</sup> 12 U.S.C.A. Ch. 16.

<sup>56</sup> S. 280.02(26), F.S.

<sup>57</sup> S. 280.054(1), F.S.

<sup>58</sup> S. 280.054(1)(b), F.S.

<sup>59</sup> *Id.*

If a financial institution's termination, suspension, or similar action restricting account access was due to any of the following, the bill's provisions do not apply:

- The customer or member initiated the access change themselves;
- There was a lack of activity in the account; or
- The property is presumed unclaimed pursuant to ch. 717, F.S.<sup>60</sup>

#### TERMINATION-OF-ACCESS REPORT

Upon OFR's receipt of a complaint filed by a customer or member, within 30 calendar days, OFR must notify the financial institution that a complaint has been filed. Within 30 calendar days of the financial institution receiving notice from OFR, the financial institution must file with OFR a termination-of-access report containing such information as the commission requires by rule.

#### OFR INVESTIGATION AND DETERMINATION

Within 90 calendar days after receiving the termination-of-access report, OFR must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action.

Within 30 calendar days after making a bad faith determination, OFR must report to the AG and the CFO such bad faith termination, suspension, or similar action. The report to the AG must describe the findings of the investigation, provide a summary of the evidence, and state whether the financial institution violated the Financial Institutions Codes. Upon reporting to the AG, OFR must also send a copy of the report to the aggrieved customer or member by certified mail, return receipt requested.

The bill provides that a financial institution's termination, suspension, or similar action restricting a customer's or member's account access in bad faith (as determined by OFR), or a financial institution's failure to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failure to timely file a termination-of-access report), constitutes a violation of Florida's Financial Institutions Codes and subjects the financial institution to the applicable sanctions and penalties provided therein.

The bill requires OFR to provide any filed termination-of-access report, and any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

#### PRIVATE CAUSE OF ACTION

The bill provides a private cause of action to the aggrieved customer or member against the financial institution that, pursuant to a finding by OFR, acted in bad faith in terminating, suspending, or taking similar action restricting account access. The aggrieved customer or member may recover damages in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court.

To recover damages, however, the customer or member must establish that, beyond a reasonable doubt, the financial institution acted in bad faith in terminating, suspending, or taking similar action restricting access to the customer's or member's account. The bill provides that OFR's determination that the financial institution has acted in bad faith does not, in and of itself, establish beyond a

---

<sup>60</sup> Ch. 717, F.S. is the Florida Disposition of Unclaimed Property Act (FDUP Act). Unclaimed property is a financial asset that is unknown or lost, or has been left inactive, unclaimed, or abandoned by its owner. Under the FDUP Act, unclaimed property is held by business or government entities (known as "holders") for a set period of time, usually 5 years. If the holder is unable to locate the owner, re-establish contact, and return the asset, it is reported and remitted to the Florida Department of Financial Services' Division of Unclaimed Property. See, Florida Department of Financial Services, Division of Unclaimed Property, *About*, <https://ftreasurehunt.gov/UP-Web/sitePages/About.jsp> (last visited Dec. 5, 2023).



reasonable doubt that the financial institution acted in bad faith in the termination, suspension, or similar action restricting account access.

The bill provides that a customer's or member's failure to initiate a cause of action within 12 months of OFR making a bad faith determination shall bar recovery of any filed claims thereafter.

### *Qualified Public Depositories*

The bill also amends the list of activities that are grounds for suspension or disqualification or both for a QPD. Specifically, the bill provides that a QPD who is found by OFR to have acted in bad faith when terminating, suspending, or taking similar action restricting a customer's or member's account, or who has failed to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failing to timely file a termination-of-access report), is grounds for suspension or disqualification or both.

The bill provides that, with respect to administrative penalties imposed in lieu of suspension or disqualification, a QPD's bad faith termination, suspension, or similar action restricting a customer's or member's account access (as determined by OFR), or a QPD's failure to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failure to timely file a termination-of-access report), are each deemed a knowing and willful violation by the QPD.

## **Protection of Specified Adults**

### Background

#### *Elder Population in Florida*

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 54.1 million in 2019<sup>61</sup> to 80.8 million by 2040.<sup>62</sup> Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the nation.<sup>63</sup> In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21 percent of the state's population.<sup>64</sup> By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.<sup>65</sup>

#### *Adult Protective Services Act*

The Adult Protective Services Act, ch. 415, F.S. (Act), codifies Florida's laws relating to the protection of vulnerable adults. The Act defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability, or brain damage, or the infirmities of aging.<sup>66</sup> The term implicitly includes elderly persons, but also incorporates disabled adults and other adults whom the Legislature has determined to be at risk of abuse, neglect, and exploitation, and in need of protective services.<sup>67</sup>

---

<sup>61</sup> U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age* (June 25, 2020), Release Number: CB20-99, <https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html> (last visited Jan. 10, 2024).

<sup>62</sup> U.S. Department of Health and Human Services Administration on Aging, *2020 Profile of Older Americans* (May 2021), [https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final\\_.pdf](https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf) (last visited Jan. 10, 2024).

<sup>63</sup> *Id.*

<sup>64</sup> U.S. Census Bureau, *Quick Facts— Florida*, <https://www.census.gov/quickfacts/fact/table/FL#> (last visited Jan. 10, 2024).

<sup>65</sup> Florida Office of Economic & Demographic Research, *Florida Population by Age Group*. Available at [http://edr.state.fl.us/Content/population-demographics/data/pop\\_census\\_day-2020.pdf](http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2020.pdf) (last visited Jan. 10, 2024).

<sup>66</sup> S. 415.102(28), F.S.

<sup>67</sup> S. 415.101(2), F.S.

The Department of Children and Families (DCF) protects vulnerable adults from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse pursuant to the Act.<sup>68</sup> In 2022, DCF received 30,581 reports of abuse, neglect, or exploitation of persons aged 60 or older.<sup>69</sup>

### *Financial Abuse in Elder Populations*

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.<sup>70</sup> Common types of elderly abuse include neglect, physical abuse, psychological abuse, and financial abuse.<sup>71</sup> Up to 5 million older Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least \$36.5 billion.<sup>72</sup>

Financial abuse occurs when someone takes or misuses another person's money or property for the benefit of someone other than that person.<sup>73</sup> For example, neighbors, caregivers, professionals, and even family or friends may take money without permission, fail to repay the money they owe, charge too much for services, or not even do what they were paid to do.<sup>74</sup>

### *Financial Scams*

Fraudulent scams that target elderly individuals are on the rise.<sup>75</sup> The most common fraudulent scams targeting these populations include:

- **Government impersonation scams**, in which scammers call unsuspecting older adults and pretend to be from the Internal Revenue Service, Social Security Administration, or Medicare. They may say the older adult has unpaid taxes and threaten arrest if they do not pay immediately. Alternatively, the scammers may say Social Security or Medicare benefits will be cut off if the older adult does not provide personal identifying information, which can later be used to commit identity theft.<sup>76</sup>
- **Sweepstakes scams**, in which scammers call an older adult to tell them they have won a lottery or prize of some kind. If the older adult wants to claim their winnings, the older adult must send money, cash, or gift cards to cover supposed taxes and processing fees, or the older adult must send their bank account information to receive the alleged winnings.<sup>77</sup>
- **Computer tech support scams**, which prey on older people's lack of knowledge about computers and cybersecurity. A pop-up message or blank screen usually appears on a computer or phone, telling the user their device is damaged and needs fixing. When the older person calls the support number for help, the scammer may either request remote access to the older person's computer and/or demand they pay a fee to have it repaired.<sup>78</sup>
- **"Grandparent" scams**, in which a scammer calls a would-be grandparent and says something along the lines of: "Hi, Grandma, do you know who this is?" When the unaware grandparent guesses the name of the grandchild the scammer most sounds like, the scammer is able to instantly secure their trust. The fake grandchild then asks for money to solve some urgent financial problem (such as overdue rent, car repairs, or jail bond).<sup>79</sup>

---

<sup>68</sup> *Id.*

<sup>69</sup> Email from Tarah Yeager, Gubernatorial Fellow, Department of Children and Families, Re: APS Statistics Info Request (March 22, 2023). On file with the Health and Human Services Committee.

<sup>70</sup> U.S. Department of Justice, *About Elder Abuse*, <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited Jan. 10, 2024).

<sup>71</sup> U.S. Department of Justice, *Types of Elder Abuse*, <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited Jan. 10, 2024).

<sup>72</sup> National Council on Aging, *Get the Facts on Elder Abuse*, <https://www.ncoa.org/article/get-the-facts-on-elder-abuse> (last visited Jan. 10, 2024).

<sup>73</sup> Consumer Financial Protection Bureau, *Reporting Elder Financial Abuse*, <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/reporting-elder-financial-abuse-guide/> (last visited Jan. 10, 2024).

<sup>74</sup> *Id.*

<sup>75</sup> U.S. Department of Justice: Office of Victims of Crime, *National Elder Fraud Hotline*, <https://ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope#financial-scams-and-abuses-that-target-older-people-are-happenin> (last visited Jan. 29, 2024).

<sup>76</sup> National Council on Aging, *supra* note 72.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

In 2022, there were 88,262 complaints of fraud from people aged 60 years or older, resulting in \$3.1 billion in losses.<sup>80</sup> This was a 82.35percent increase in losses compared to 2021.<sup>81</sup> Financial scams are devastating to many older adults and can leave them in a vulnerable position, with limited ability to recover their losses.<sup>82</sup>

### *Florida's Laws Regarding Books and Records of Financial Institutions*

Under Florida law, the books and records of a financial institution are confidential and shall be made available for inspection and examination only:

- To OFR or its duly authorized representative;
- To any person duly authorized to act for the financial institution;
- To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- With respect to an international banking corporation or international trust entity, to the home-country supervisor of the international banking corporation or international trust entity, provided certain conditions are met;
- As compelled by legislative subpoena as provided by law;
- As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to certain rules,<sup>83</sup> or pursuant to a subpoena issued in accordance with state or federal law;<sup>84</sup>
- Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;
- As authorized pursuant to the board of directors of the financial institution;
- As otherwise provided by law.<sup>85</sup>

A person who willfully violates the provisions of Florida law described above relating to unlawful disclosure of confidential information is guilty of a felony of the third degree, punishable as provided by Florida's criminal laws.<sup>86</sup>

### Effect of the Bill

The bill amends the Act to create definitions for the following terms:

- "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any or omission by a person,

---

<sup>80</sup> Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Internet Crime Report*, [https://www.ic3.gov/Media/PDF/AnnualReport/2022\\_IC3Report.pdf](https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf) (last visited Jan. 10, 2024). See also, National Council on Aging, *supra* note 72.

<sup>81</sup> *Id.*

<sup>82</sup> National Council on Aging, *supra* note 72.

<sup>83</sup> Specifically, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure. See s. 655.059(1)(e), F.S.

<sup>84</sup> Before the production of the books and records of a financial institution under these circumstances, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court or agency having jurisdiction to set the amount of reimbursement.

<sup>85</sup> S. 655.059(1), F.S. See s. 655.059(2) for a list of other persons that are authorized by Florida law to inspect the books and records of a financial institution.

<sup>86</sup> S. 655.059(1)(c), F.S. The specific provisions of Florida's criminal laws under which a person may be punished for a violation includes ss. 755.802, 755.083, and 755.084, F.S.

including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

- Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property;
- Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.
- "Financial institution" means a state financial institution or a federal financial institution as those terms are defined under s. 655.005(1), F.S.<sup>87</sup>
- "Specified adult" means a natural person 70 years of age or older, or a vulnerable adult as defined in s. 415.102, F.S.<sup>88</sup>
- "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

The bill provides that if a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, F.S.,<sup>89</sup> it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if two conditions are met. First, the financial institution must immediately initiate an internal review of the facts and circumstances that caused the employee of the financial institution to report the suspected financial exploitation.

Second, not later than 3 business days after the date on which the delay was first placed, the financial institution must:

- Notify in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult (the notice, which may be provided electronically, must provide the reason for the delay); and
- Create and maintain for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at a minimum, the following information:
  - The date on which the delay was first placed;
  - The name and address of the specified adult;
  - The business location of the financial institution;
  - The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034, F.S.;<sup>90</sup> and
  - The facts and circumstances that caused the employee to report suspected financial exploitation.

The financial institution must make the required information available for review upon request by DCF, any law enforcement agency conducting an investigation under s. 417.104, F.S., or any state or federal agency with regulatory authority over the financial institution. This proposed requirement appears to

---

<sup>87</sup> S. 655.005(1) defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. "State financial institution" means a state-chartered or state-organized financial institution, and "federal financial institution" means a federally or nationally chartered or organized financial institution. See ss. 655.005(1)(h), (i), and (w), F.S.

<sup>88</sup> S. 415.102, F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

<sup>89</sup> S. 415.1034, F.S., relates to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults, and other mandatory reports of death.

<sup>90</sup> S. 415.104, F.S., relates to protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults, and the transmittal of records to state attorneys pursuant to such investigations.

eliminate the necessity for a subpoena under certain circumstances.<sup>91</sup> While law enforcement is generally required to obtain a subpoena to access books and records,<sup>92</sup> the bill requires financial institutions to make these records available for review by law enforcement agencies that are engaged in an investigation under s. 417.104, F.S., regardless of whether the law enforcement agency has a subpoena or search warrant.<sup>93</sup>

The bill provides that a delay on a disbursement or transaction expires 5 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 7 additional calendar days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. However, a financial institution is not prevented from terminating a delay after communicating with the parties authorized to transact business on the account and any trusted contact on the account.

Before placing a delay on **any** disbursement or transaction pursuant to the bill, a financial institution must:

- Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults;
- Conduct training for all employees at least annually and maintain a written record of all trainings conducted; and
- Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

The bill provides that, absent a reasonable belief of financial exploitation, a financial institution's obligations to parties authorized to transact business on an account or any trusted contact named on such account are not otherwise altered. Further, the bill does not create new rights for or impose new obligations on financial institutions under other applicable law.

The bill also provides legislative intent.

## **Contracts for Roof Repairs Following Emergencies**

### **Background**

The Florida Office of Insurance Regulation (OIR) reported a significant increase in the number of roof damage claims, many of which include litigation.<sup>94</sup> These roof damage claims include claims made by residential property owners after being solicited to file an insurance claim that they may not otherwise have filed but for the promise of a new roof at no cost to the property owner.<sup>95</sup> As such, the Legislature limited certain insurance practices by contractors and unlicensed persons acting on their behalf.<sup>96</sup>

A contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice in the contract that the contractor is prohibited from engaging in certain acts, including offering a rebate or other thing of value in exchange for making an insurance claim for damage to the property owner's roof.<sup>97</sup> If the contractor fails to include the notice in the contract, the

---

<sup>91</sup> OFR, Agency Analysis of 2024 House Bill 515, p. 4 (Jan. 4, 2024).

<sup>92</sup> See s. 655.059(1)(e), F.S.

<sup>93</sup> OFR, *supra* note 100, p. 4.

<sup>94</sup> Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 7 (Feb. 24, 2021), <https://www.floir.com/siteDocuments/CommerceCommitteeDataRequest.pdf> (last visited February 7, 2024).

<sup>95</sup> *Id.* A "free" roof replacement maybe achieved by giving a residential propertyowner whose policyprovides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential propertyowner.

<sup>96</sup> See ch. 2021-77, Laws of Fla.

<sup>97</sup> S. 489.147(2), F.S.

property owner may void the contract within 10 days of its execution.<sup>98</sup> However, current law does not provide any requirements regarding cancellation of a contract executed during a declared state of emergency.

### Effect of the Bill

The bill requires that a contractor that enters into a contract to replace or repair the roof of a residential property during a declared state of emergency by the Governor<sup>99</sup> must include specific language in the contract that allows the residential property owner to cancel the contract by the earlier of:

- Ten days following the contract execution; or
- The official start date that the work on the roof will commence.

If the contract does not contain an official start date, it may be canceled within ten days following execution.

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

### Depository Institutions

#### Background

In 2023, the Legislature enacted the Florida Commercial Financing Disclosure Law.<sup>100</sup> This law requires certain disclosures by commercial financing transaction<sup>101</sup> providers. However, it exempted certain state and federally chartered depository institutions from its application.<sup>102</sup> However, a depository institution operating in Florida, but under the authority of a state charter issued by another state was not included in this exemption, nor were industrial loan companies and savings and loan associations operating in this state under a license, e.g., charter, issued under the law of Florida, the federal government, or another state. Accordingly, while such institutions are analogous to the exempted depository institutions, they are not exempted and must comply with the disclosure requirements.

#### Effect of the Bill

The bill makes additional depository institutions exempt from the Florida Commercial Financing Disclosure Law. It exempts depository institutions operating in Florida, but under the authority of a state charter issued by another state and industrial loan companies and savings and loan associations operating in this state under a license, e.g., charter, issued by Florida, the federal government, or another state.

---

<sup>98</sup> S. 489.147(2)(b) and (5), F.S.

<sup>99</sup> The State Emergency Management Act empowers the Governor to declare a state of emergency and provides specified powers the Governor may exercise during a declared state of emergency. "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. See ss. 252.31-252.60, F.S.

<sup>100</sup> Ch. 2023-290, L.O.F. The commercial financing disclosure law is ch. 559, part XIII, F.S.

<sup>101</sup> "Commercial financing transaction" means a commercial loan, an accounts receivable purchase transaction, or a commercial open-end credit plan to the extent the transaction is also a business purpose transaction. As used in this subsection, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not to be used for personal, family, or household purposes. For purposes of determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner. S. 559.9611(6), F.S.

<sup>102</sup> "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. S. 559.9611(9), F.S.

## **Continuing Education Requirements for Certified Public Accountants**

### **Background**

Every insurer authorized to do business in Florida must file an annual financial statement with OIR on or before March 1, and quarterly financial statements on March 31, June 30, and September 30.<sup>103</sup> Such statements must conform with the requirements established by the National Association of Insurance Commissioners, which OIR adopts by rule.<sup>104</sup> As part of the annual statement, all authorized insurers must have an annual audit conducted by an independent certified public accountant (CPA) and must file an audited financial report by June 1 each year.<sup>105</sup>

All CPAs licensed in Florida are required to complete 80 hours of continuing education during the two years prior to the conclusion of each license-renewal cycle.<sup>106</sup> However, there are no requirements regarding the completion of any continuing education related to audits of insurance companies.

### **Effect of the Bill**

The bill requires the CPA that prepares the audit an insurer submits to OIR as part of its annual report to have completed at least four hours of insurance-related continuing education during each two-year continuing education cycle.

## **Public Adjusters**

### **Background**

Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.<sup>107</sup> In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.<sup>108</sup>

Public adjusters' contracts relating to property and casualty claims must contain the full name, permanent business address, phone number, email address, and license number of the public adjuster; and the full name of the public adjusting firm for whom the public adjuster works.<sup>109</sup> However, such contracts are not required to contain the license number of the public adjusting firm.

### **Effect of the Bill**

The bill requires that public adjusters' contracts relating to property and casualty claims contain the license numbers of the public adjusting firms by which they are employed.

## **Notice of Change in Policy Terms**

### **Background**

An insurer has the authority to modify the terms of a policy upon its renewal. In case of such changes, the insurer must provide the named insured with advance written notice that summarizes the modifications.<sup>110</sup> This notice can be included with the notice of renewal premium or sent separately

---

<sup>103</sup> S. 624.424(1), F.S.

<sup>104</sup> *Id.* and R. 69O-137, F.A.C.

<sup>105</sup> S. 624.424(8), F.S.

<sup>106</sup> See s. 473.312, F.S. CPAs are licensed under ch. 473, F.S., and must renew their licenses every two years.

<sup>107</sup> S. 626.854, F.S. Public adjusters are regulated under ch. 626, part VI, F.S.

<sup>108</sup> See *id.*

<sup>109</sup> S. 626.8796(2), F.S.

<sup>110</sup> S. 627.43141(2), F.S.

within the specified timeframe.<sup>111</sup> Prior to, or concurrently with, providing the insured with the notice, the insurer must furnish a sample copy of the notice to the insured's insurance agent. The notice itself must be titled "Notice of Change in Policy Terms."<sup>112</sup>

For renewal policies incorporating optional coverage leading to a premium increase, the insurer cannot use the Notice of Change in Policy Terms to introduce the optional coverage without the policyholder's approval.<sup>113</sup> The insured's payment of the renewal premium is considered acceptance of the new policy terms.<sup>114</sup> Failure to furnish the required notice means the original policy terms remain in effect until the subsequent renewal with proper notice, or until the effective date of replacement coverage obtained by the named insured, whichever happens first.<sup>115</sup>

### Effect of the Bill

The bill requires that the renewal notice sent to the named insured containing changes in policy terms must be presented in bold type face of not less than 14 points. Additionally, the notice may extend beyond a single page if needed.

### **Short-term Health Insurance (short-term plans)**

#### Background

Short-term plans are a health insurance product purchased only for limited time periods, usually under one year, during periods of transition, such as unemployment.<sup>116</sup> Beginning in 2016, federal rules related to the Patient Protection and Affordable Care Act (PPACA) limited short-term health plans to no more than three months.<sup>117</sup> In 2018, the Trump administration adopted a rule that allows short-term health plans to be issued for a period of up to 12 months.<sup>118</sup> The new rule also allows the plans to be renewed upon expiration, up to a total coverage period of 36 months. Short-term plans are not subject to the following PPACA requirements:

- Coverage of essential health benefits.
- Prohibition on pre-existing conditions.<sup>119</sup>
- Guaranteed issue of coverage.

As with Association Health Plans (AHPs), the authority to regulate short-term plans remains with the state. In response to the 2018 Department of Labor rules on AHPs and short-term health plans, the Legislature passed SB 322 (2019).<sup>120</sup> The law allows employers from disparate trades to participate in a single AHP, if they are located in the state, and allows AHPs to include out-of-state employers who share a trade or purpose, consistent with the revised federal rules.<sup>121</sup> Following the federal rule for short term plans, the law allows them to be issued for up to 12 months, renewable for a total coverage period of 36 months.<sup>122</sup> In practice, this change allows individuals to purchase short-term health insurance during longer periods of transition. Both changes increase the availability of lower-cost alternatives to comprehensive coverage.

---

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> S. 627.43141(3), F.S.

<sup>114</sup> S. 627.43141(5), F.S.

<sup>115</sup> S. 627.43141(6), F.S.

<sup>116</sup> See s. 627.6426, F.S.; Florida Department of Financial Services, *Short-term Limited Duration Insurance*, <https://www.myfloridacfo.com/division/consumers/consumerprotections/stdipolicies> (last visited Jan. 15, 2024).

<sup>117</sup> National Association of Insurance Commissioners, *Short-term Limited-duration Health Plans*, [https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20\(81%20FR%2075316,replacement%20for%20traditional%20health%20coverage](https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20(81%20FR%2075316,replacement%20for%20traditional%20health%20coverage)

(last visited Feb. 8, 2024).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Ch. 2019-129, Laws of Fla.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*



All short-term plans must include disclosures to the purchaser explaining that the plan is not required to comply with certain federal requirements and may exclude certain coverage.<sup>123</sup> However, the law does not specify the method by which these disclosures must be provided.

### Effect of the Bill

The bill updates the disclosures that must be provided to a purchaser of a short-term plan to include the following additional items:

- The duration of the plan, including any waiting period;
- Any essential health benefits that the plan does not provide;<sup>124</sup>
- The content of coverage;<sup>125</sup> and
- Any exclusions of preexisting conditions.

The bill also requires that purchasers of short-term plans receive the required disclosures in writing or electronically, and sign them.

### Loss Assessment Coverage

#### Background

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.<sup>126</sup>

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made because of the same direct loss to the condominium property.<sup>127</sup> The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence that gave rise to the loss.<sup>128</sup> This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.<sup>129</sup>

---

<sup>123</sup> S. 627.6426(2), F.S.

<sup>124</sup> Essential health benefits can be found in 42 U.S.C. § 18022(b).

<sup>125</sup> The term content of coverage describes the scope of coverage and includes special restrictions on covered benefits. These restrictions may eliminate coverage for: specific medical conditions, body parts, or body systems; certain drugs; or certain cost-sharing options like deductibles or co-pays. The Henry J. Kaiser Family Foundation, *How Accessible is Individual Health Insurance for Consumers in Less-than-perfect Health?*, <https://www.kff.org/wp-content/uploads/2013/01/how-accessible-is-individual-health-insurance-for-consumer-in-less-than-perfect-health-report.pdf> (last visited Jan. 19, 2024).

<sup>126</sup> The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 13, 2024).

<sup>127</sup> S. 627.714(1), F.S.

<sup>128</sup> S. 627.714(2), F.S.

<sup>129</sup> *Id.*

## Effect of the Bill

The bill establishes that a notice of claim for loss assessment coverage must occur not later than 3 years after the date of loss and must be provide to the insurer by the later of:

- One year after the date of loss; or
- Within 90 days after the date on which the condominium association or its governing board votes to levy an assessment resulting from a covered loss.

The bill defines the date of loss as the date of the covered loss event that created the need for an assessment.

## Fireworks Safety Standards

### Background

Florida law establishes the requirements for the outdoor display of fireworks in the state, including specifying relevant definitions.<sup>130</sup> At present, such display of fireworks is controlled by the 1995 edition of the National Fire Protection Association 1123, Code for Fireworks Displays (Code).<sup>131</sup>

### Effect of the Bill

The bill updates the outdoor fireworks safety standards in Florida to the 2018 Code, which is the most current edition of the code. The bill also removes an offensive term for a certain type of firework from law.

## B. SECTION DIRECTORY:

- Section 1.** Amends s. 212.134, F.S., relating to information returns relation to payment-card and third-party network transactions.
- Section 2.** Amends s. 280.051, F.S., relating to grounds for suspension or disqualification of a qualified public depository.
- Section 3.** Amends s. 280.54, F.S., relating to administrative penalty in lieu of suspension or disqualification.
- Section 4.** Creates s. 415.10341, F.S., relating to protection of specified adults.
- Section 5.** Amends s. 489.147, F.S., relating to prohibited property insurance practices.
- Section 6.** Amends s. 559.9611, F.S., relating to definitions.
- Section 7.** Amends s. 624.424, F.S., relating to annual statement and other information.
- Section 8.** Amends s. 626.8796, F.S., relating to public adjuster contracts; disclosure statement; fraud statement.
- Section 9.** Amends s. 627.43141, F.S., relating to notice of change in policy terms.
- Section 10.** Amends s. 627.6426, F.S., relating to short-term health insurance.
- Section 11.** Amends s. 627.70132, F.S., relating to notice of property insurance claims.
- Section 12.** Creates s. 655.49, F.S., relating to bad faith termination or restriction of account access; investigation by the office.
- Section 13.** Amends s. 791.01, F.S., relating to definitions.
- Section 14.** Amends s. 791.012, F.S., relating to minimum fireworks safety standards.
- Section 15.** Provides an effective date of July 1, 2024.

---

<sup>130</sup> S. 791.01, F.S.

<sup>131</sup> S. 791.012, F.S. The Code cited in this statute has not been updated since this statute was first enacted in 1996.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an indeterminate negative impact on state expenditures if state agencies are required to update systems or hire additional staff to implement the statutory changes made by the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on specified adults to the extent the bill allows financial institutions to delay a financial transaction if an employee at the institution reasonably suspects financial abuse of a specified adult. Accordingly, it is foreseeable that fewer specified adults will be able to effectuate a financial transaction procured by improper methods.

The bill may also lead to fewer financial institutions suspending, terminating, or taking similar action restricting customers' or members' account access in bad faith, which may have a positive economic impact.

The bill has an indeterminate negative impact on financial institutions to the extent that such institutions decide to delay disbursements as provided by the bill. Further, if the financial institution does decide to delay disbursements, the institution must first comply with the conditions provided by the bill.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

## B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2024, the Insurance & Banking Subcommittee considered the bill as a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The committee substitute eliminated the sections of the original bill that:

- Prohibited lawsuits regarding DFS's handling of unclaimed property.
- Created criminal penalties for committing grand and contract fraud in conjunction with grants received from, or contracts with, the state, and for falsely representing that an advertisement or communication came from a particular bank or lending institution.

The committee substitute also added a section to the bill that requires third-party settlement organizations, like PayPal or Apple Pay, that conduct transactions involving a payee with a Florida address to create a method for payees to identify transactions for goods and services and report that information to the Florida Department of Revenue. Additionally, it eliminated the Department of Business and Professional Regulation's and DFS's involvement in the approval process related continuing education hours that CPAs must complete if they are auditing insurance companies.

On February 22, 2024, the Commerce Committee considered the bill as a PCS, adopted three amendments, and reported the bill favorably as a committee substitute. The committee substitute:

- Allowed a customer or member of a financial institution who reasonably believes a financial institution has restricted account access in bad faith to file a complaint with OFR.
- Permitted a financial institution to delay a disbursement or transaction from an account of a vulnerable adult for a specified time period if the financial institution suspects financial exploitation of such vulnerable adult.
- Defined the term "residential property owner" (RPO); and, modified what can be considered the official start date for determining whether an RPO can cancel a contract for roof repairs without penalty;
- Provided that a notice of claim for loss assessment coverage may not occur later than 3 years after the date of loss and must be provided to the insurer no later than certain dates;
- Removed sections from the bill that:
  - Revised the criteria for retirement of a mobile home title by the Department of Highway Safety and Motor Vehicles (DHSMV) to include retiring the title when there is a recorded mortgage against the owner's mobile home and real property;
  - Established that restrictions on public adjuster compensation apply to coverages provided by condominium associations, cooperative associations, apartment buildings, and similar policies, including those that cover the common elements of a homeowners' association.
  - Prohibited an agency from entering into a contract or agreement with an entity that advises censorship or blacklisting of news sources based on subjective criteria or political biases with the stated goal of fact-checking or removing misinformation.
- Removed an offensive term for a certain type of firework from law; and
- Made clarifying, technical, and conforming changes.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.