

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 939 Consumer Protection  
**SPONSOR(S):** Insurance & Banking Subcommittee, Griffiths, and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 1066

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		Villa	Williamson
3) Commerce Committee			

### 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.
- **Mobile Home Titles:** revises 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; also makes the retirement of mobile home titles by DHSMV mandatory rather than permissive.
- **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; establishes 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.
- **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 claim resulting from a loss assessment is considered to have occurred on the date that condominium association sends a loss assessment notice to a unit owner.
- **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 also prohibits 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.

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.

# 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.

#### **Agency Contracts**

##### Background

Chapter 286, F.S., contains requirements for, and prohibitions on, state and local agencies entering into contracts or other agreements and prohibits the use of state funds for certain purposes.<sup>10</sup> For example, certain disclosures are required to be made before a contract to convey property to the state or a local

<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.*

<sup>10</sup> See, e.g., ss. 286.31 and 286.311, F.S.

governmental entity may be executed and state funds may not be used to convey holiday greeting cards.<sup>11</sup>

The Department of Management Services (DMS) oversees state purchasing activities and registers vendors that wish to provide goods or services to the state.<sup>12</sup> DMS also maintains lists of vendors who may not submit bids, proposals, or replies to agency requests for proposals. Vendors who are in default of or otherwise repeatedly demonstrate an inability to fulfill the terms and conditions of state contracts are placed on the suspended vendor list. Contracts cannot be awarded to such vendors until the vendor reimburses the agency for the costs of re-procurement.<sup>13</sup> Currently, there are five vendors on the suspended vendor list.<sup>14</sup>

Over the past several years, a multitude of companies whose stated purpose is to rate the credibility and transparency of news sources and counter misinformation have been established. These include NewsGuard,<sup>15</sup> AdFontes Media,<sup>16</sup> and Cyabra.<sup>17</sup> Among other things, subscribers to these services may rely on them when considering where to place advertisements or in other business decision-making.

The National Defense Authorization Act for Fiscal Year 2024 requires an entity to certify to the Secretary of Defense that the entity does not place advertisements in news sources based on personal or institutional political preferences or biases, or determination of misinformation, before the Department of Defense may enter into a contract with the entity for placing military recruitment advertisements. In addition, each time the Department of Defense enters into such a contract with NewsGuard or a similar entity the Secretary of Defense must submit a notification to the congressional defense committees and congressional leadership explaining how the entities are used.<sup>18</sup>

Currently, there does not appear to be any state contracts with NewsGuard or a similar entity.<sup>19</sup>

### Effect of the Bill

The bill prohibits an agency from entering into a contract or other 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.<sup>20</sup> The bill does not define the term “agency.” As such, it is unclear whether the contracting prohibition applies to state agencies only or to local governments, too.

## **Mobile Home Titles**

### Background

Florida law contains a process by which the owner of a mobile home that is permanently affixed to real property owned by the same person may permanently retire the title to the mobile home that is issued

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<sup>11</sup> Ss. 286.23 and 286.27, F.S.

<sup>12</sup> Ss. 287.032 and 287.042, F.S. See also Department of Management Services, *Vendor Registration and Vendor Lists*, [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists) (last visited February 8, 2024).

<sup>13</sup> S. 287.1351, F.S.

<sup>14</sup> Department of Management Services, *Suspended Vendor List*, [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists/suspended\\_vendor\\_list](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list) (last visited February 12, 2024).

<sup>15</sup> NewsGuard’s website states that it “provides transparent tools to counter misinformation for readers, brands, and democracies.” NewsGuard, *About NewsGuard*, <https://www.newsguardtech.com/about-newsguard/> (last visited Jan. 15, 2024).

<sup>16</sup> AdFontes Media advertises that it helps users “know the reliability and bias of the news” and is the “home of the media bias chart,” a trademarked tool for evaluating the news. AdFontes Media, <https://adfontesmedia.com/> (last visited Jan. 15, 2024).

<sup>17</sup> Cyabra “uncovers threats to...[companies, products,] people and places by exposing malicious actors, disinformation, and bot networks.” Cyabra, <https://cyabra.com/> (last visited Jan. 15, 2024).

<sup>18</sup> National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31 (12/22/2023), § 1555.

<sup>19</sup> See Florida Accountability Contract Tracking System, *Main Search*, <https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited February 7, 2024).

<sup>20</sup> This prohibition would apply to entities like NewsGuard and its competitors.

by the Florida Department of Highway Safety and Motor Vehicles (DHSMV).<sup>21</sup> The title may be retired if the owner of the real property records the following documents in the official records of the clerk of court in the county in which the real property is located:

- Original title to the mobile home, including a description of the mobile home with the model, year, make, width, length and vehicle identification number, and a statement from any recorded lienholder on the title that the lien has been released or will be released upon retirement of the title;
- A legal description of the real property and a copy of any lease agreements for that real property; and
- A sworn statement by the owner of the real property, as shown on the deed or lease, that he or she is the owner of the mobile home and that the mobile home is permanently affixed to the real property.<sup>22</sup>

A mobile home whose title has been retired shall be conveyed by deed or real estate contract and transferred with the property to which it is affixed.<sup>23</sup>

### Effect of the Bill

The bill adds an alternative to the current retirement criteria. It requires the DHSMV to retire the title of a mobile home when there is a recorded mortgage against the owner's mobile home and real property. Adding this provision may provide mobile home owners with access to more lenders that are willing to provided mortgages for mobile homes by consolidating proof of ownership into a single document, i.e., the deed, rather than the deed and a mobile home title.

The bill also makes the retirement of mobile home titles by the DHSMV mandatory rather than permissive.

### 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>24</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>25</sup> As such, the Legislature limited certain insurance practices by contractors and unlicensed persons acting on their behalf.<sup>26</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>27</sup> If the contractor fails to include the notice in the contract, the property owner may void the contract within 10 days of its execution.<sup>28</sup> However, current law does not provide any requirements regarding cancellation of a contract executed during a declared state of emergency.

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<sup>21</sup> S. 319.261, F.S. For a typical "stick-built" home a deed transfers title from one owner to another. However, a mobile home generally has a Certificate of Title issued by the DHSMV. See, e.g., Lee County Tax Collector, *Mobile Home Titles and Registrations*, <https://leetc.com/mobile-home-titles-and-registrations/#:~:text=Proof%20of%20ownership%20to%20a.the%20title%20has%20been%20retired> (last visited Jan. 15, 2024).

<sup>22</sup> S. 319.261(2), F.S.

<sup>23</sup> S. 319.261(5), F.S.

<sup>24</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>25</sup> *Id.* A "free" roof replacement may be achieved by giving a residential property owner whose policy provides 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 property owner.

<sup>26</sup> See ch. 2021-77, Laws of Fla.

<sup>27</sup> S. 489.147(2), F.S.

<sup>28</sup> S. 489.147(2)(b) and (5), F.S.

## 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>29</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>30</sup> This law requires certain disclosures by commercial financing transaction<sup>31</sup> providers. However, it exempted certain state and federally chartered depository institutions from its application.<sup>32</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.

## **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>33</sup> Such statements must conform with the requirements established by the National Association of Insurance

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<sup>29</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>30</sup> Ch. 2023-290, L.O.F. The commercial financing disclosure law is ch. 559, part XIII, F.S.

<sup>31</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>32</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.

<sup>33</sup> S. 624.424(1), F.S.

Commissioners, which OIR adopts by rule.<sup>34</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>35</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>36</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>37</sup> In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.<sup>38</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>39</sup> However, such contracts are not required to contain the license number of the public adjusting firm.

Current law prohibits the following payments or commissions payable to a public adjuster:

- An amount exceeding 1 percent of the amount of the insurance claim payments or settlements that an insurer pays to an insured for any coverage under the policy where the claim payment or insurer's agreement to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written agreement to pay is provided by the latter of:
  - Fourteen days after the date of loss; or
  - Ten days after the date that the public adjusting contract is signed.
- Fees or commissions when the payment or agreement to pay by the insurer to the insured occurs before the date that the public adjusting contract is signed.<sup>40</sup>

### 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.

The bill also establishes that restrictions on public adjusters' 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.

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<sup>34</sup> *Id.* and R. 69O-137, F.A.C.

<sup>35</sup> S. 624.424(8), F.S.

<sup>36</sup> *See* s. 473.312, F.S. CPAs are licensed under ch. 473, F.S., and must renew their licenses every two years.

<sup>37</sup> S. 626.854, F.S. Public adjusters are regulated under ch. 626, part VI, F.S.

<sup>38</sup> *See id.*

<sup>39</sup> S. 626.8796(2), F.S.

<sup>40</sup> S. 626.854(11), F.S.

## 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>41</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>42</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>43</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>44</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>45</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>46</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>47</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.

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>48</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>49</sup>
- The content of coverage;<sup>50</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.

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<sup>41</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>42</sup> National Association of Insurance Commissioners, *Short-term Limited-duration Health Plans*, [https://content.naic.org/cjpr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20\(81%20FR%2075316,replacement%20for%20traditional%20health%20coverage](https://content.naic.org/cjpr-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>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Ch. 2019-129, Laws of Fla.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> S. 627.6426(2), F.S.

<sup>49</sup> Essential health benefits can be found in 42 U.S.C. § 18022(b).

<sup>50</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).



## **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>51</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>52</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>53</sup> This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.<sup>54</sup>

### **Effect of the Bill**

The bill establishes that a claim resulting from a loss assessment is considered to have occurred on the date a notice of loss assessment is sent by a condominium association to a unit owner. Establishing a date of loss for such claims will help insurers determine whether a loss assessment claim has been timely made.

## **Fireworks Safety Standards**

### **Background**

Florida law establishes the requirements for the outdoor display of fireworks in the state. 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>55</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.

#### **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.** Creates s. 286.312, F.S. relating to prohibited use of state funds; censorship or blacklisting of news sources.

**Section 3.** Amends s. 319.261, F.S., relating to real property transactions; retiring title to mobile home.

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<sup>51</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>52</sup> S. 627.714(1), F.S.

<sup>53</sup> S. 627.714(2), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> S. 791.012, F.S. The Code cited in this statute has not been updated since this statute was first enacted in 1996.



**Section 4.** Amends s. 489.147, F.S., relating to prohibited property insurance practices.

**Section 5.** Amends s. 559.9611, F.S., relating to definitions.

**Section 6.** Amends s. 624.424, F.S., relating to annual statement and other information.

**Section 7.** Amends s. 626.854, F.S., relating to “public adjuster” defined; prohibitions.

**Section 8.** Amends s. 626.8796, F.S., relating to public adjuster contracts; disclosure statement; fraud statement.

**Section 9.** Amends s. 627.6426, F.S., relating to short-term health insurance.

**Section 10.** Amends s. 627.70132, F.S., relating to notice of property insurance claims.

**Section 11.** Amends s. 791.012, F.S., relating to minimum fireworks safety standards.

**Section 12.** Provides an effective date of July 1, 2024.

## **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 may have an indeterminate positive impact on those condominium associations, cooperative associations, apartment communities, and homeowners associations that contract for the services of public adjusters because they may not have to pay as much compensation to the public adjusters for services rendered. Correspondingly, the bill may have an indeterminate negative impact on public adjusters.

### **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:

#### Single Subject

The Florida Constitution provides that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."<sup>56</sup> As applied by the Florida Supreme Court, the subject of the act is stated in its "relating to" clause.<sup>57</sup> The Legislature can make the relating to clause broad and a bill may contain various subtopics without violating the single subject requirement.<sup>58</sup> However, if the subject mentioned in the title is restricted, only provisions that are reasonably related to and included within that restricted subject can be legally included in the body of the act. This holds true even if there could have been additional provisions in a single act with a broader subject expressed in its title.<sup>59</sup> The test is whether the bill is designed to accomplish separate objectives with no natural or logical connection to each other.<sup>60</sup>

The subject of the bill is consumer protection, as expressed in its relating to clause; however, section 2 of the bill prohibits agencies from contracting with certain entities. Accordingly, the relating to clause may be too narrow to provide sufficient guidance about the scope of the act.

#### Separation of Powers

The Florida Constitution provides for separation of powers between the legislative, executive, and judicial branches of government, and strictly prohibits one branch from exercising the powers of another unless expressly provided in the Constitution.<sup>61</sup> The separation of powers doctrine prevents the Legislature from delegating its constitutional duty to exercise policy related discretion over the law.<sup>62</sup> The Florida Supreme Court provides a framework for measuring the constitutionality of such delegation: "[W]here the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine."<sup>63</sup> However, "[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the Legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law."<sup>64</sup>

Section 2 of the bill does not define the terms "agency," "entity," "censorship," "blacklisting," "news sources," "subjective criteria," "political biases," "fact-checking," or "misinformation" in the context of the prohibited activity, leaving each agency to interpret these terms and decide what conduct precludes them from entering into a contract. Accordingly, section 2 could be interpreted as providing the executive branch with unbridled discretion to exercise the legislative authority to create and determine the law.

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<sup>56</sup> Art. III, s. 6, Fla. Const.

<sup>57</sup> *Franklin v. State*, 887 So. 2d 1063 (Fla. 2004). In the opinion the Court refers to the "relating to" clause as the "short title."

<sup>58</sup> See *Burch v. State*, 558 So. 2d 1 (Fla. 1990) (statute did not violate single-subject rule, although statute dealt with comprehensive criminal regulations and procedures, moneylaundering, and safe neighborhoods, as each of the provisions bore a logical relationship to the single subject of crime control).

<sup>59</sup> *Ex parte Knight*, 41 So. 786 (Fla. 1906).

<sup>60</sup> See *Ex parte Knight*, 41 So. 786, 788 (Fla. 1906); *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

<sup>61</sup> Art. II, s. 3, Fla. Const.

<sup>62</sup> See *Fla. State Bd. of Architecture v. Wasserman*, 377 So. 2d 653, 655 (Fla. 1979); *Sarasota County v. Barg*, 302 So. 2d 737 (Fla. 1974); *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008). See also *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719, 720-721 (Fla. 1937).

<sup>63</sup> *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978).

<sup>64</sup> *Id.*

## Freedom of Speech

Applying the Florida constitutional guarantee of freedom of speech<sup>65</sup> follows federal First Amendment judicial decisions.<sup>66</sup> Determining whether a potential contractor provides or blocks access to a news source requires an agency to examine the contractor's decisions about acceptable subject matter and news presentation, raising concerns about governmental approval or disapproval of speech content.

### B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

**Line 21:** In the context of the title, the word “proving” should be corrected to read “providing,” so that this clause of the title reads “providing requirements for notices of contract cancellations...”

**Section 2 (lines 98-105):** The use of the word “advise” in section 2 of the bill regarding limitations on public contracting could be vague and confusing. The bill is unclear whether an agency is prohibited from entering into a contract with an entity that advises others on censorship and blacklisting, or is prohibited only from entering into a contract with an entity for such services to be provided to the agency. As written, the bill creates the possibility that an agency could enter into a contract with such an entity for another service besides censorship and blacklisting. Additionally, as currently drafted, the bill is unclear whether this prohibition applies only to state agencies or also applies to local governments.

## 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 PCS 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 PCS 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, the PCS eliminated the Department of Business and Professional Regulation's and DFS's involvement in the approval process of the insurance related continuing education hours that CPAs must complete if they are auditing insurance companies.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

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<sup>65</sup> Art. I, s. 4, Fla. Const.

<sup>66</sup> See *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 461 (Fla. 1982).