

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

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

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

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**FINAL HOUSE FLOOR ACTION:** 111 Y's      0 N's      **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/CS/HB 939 passed the House on March 4, 2024, as amended. The bill was amended in the Senate on March 5, 2024, and was returned to the House. The House concurred in the Senate amendments and passed the bill as amended on March 8, 2024.

The bill makes changes related to consumer protection, including:

- **Form 1099-K Reporting Requirements:** 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 senders to identify transactions for goods and services and report that information to the Florida Department of Revenue.
- **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.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2024.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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 senders 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.

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<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.*

## **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>10</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>11</sup> As such, the Legislature limited certain insurance practices by contractors and unlicensed persons acting on their behalf.<sup>12</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>13</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>14</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>15</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>16</sup> This law requires certain disclosures by commercial financing transaction<sup>17</sup> providers. However, it exempted certain state

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<sup>10</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>11</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>12</sup> See ch. 2021-77, Laws of Fla.

<sup>13</sup> S. 489.147(2), F.S.

<sup>14</sup> S. 489.147(2)(b) and (5), F.S.

<sup>15</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>16</sup> Ch. 2023-290, L.O.F. The commercial financing disclosure law is ch. 559, part XIII, F.S.

<sup>17</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

and federally chartered depository institutions from its application.<sup>18</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>19</sup> Such statements must conform with the requirements established by the National Association of Insurance Commissioners, which OIR adopts by rule.<sup>20</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>21</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>22</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

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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>18</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>19</sup> S. 624.424(1), F.S.

<sup>20</sup> *Id.* and R. 69O-137, F.A.C.

<sup>21</sup> S. 624.424(8), F.S.

<sup>22</sup> See s. 473.312, F.S. CPAs are licensed under ch. 473, F.S., and must renew their licenses every two years.

such claims.<sup>23</sup> In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.<sup>24</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>25</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>26</sup> This notice can be included with the notice of renewal premium or sent separately within the specified timeframe.<sup>27</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>28</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>29</sup> The insured's payment of the renewal premium is considered acceptance of the new policy terms.<sup>30</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>31</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>32</sup> Beginning in 2016, federal rules related to the Patient Protection and Affordable Care Act (PPACA) limited short-term health plans to no more

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<sup>23</sup> S. 626.854, F.S. Public adjusters are regulated under ch. 626, part VI, F.S.

<sup>24</sup> See *id.*

<sup>25</sup> S. 626.8796(2), F.S.

<sup>26</sup> S. 627.43141(2), F.S.

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

<sup>28</sup> *Id.*

<sup>29</sup> S. 627.43141(3), F.S.

<sup>30</sup> S. 627.43141(5), F.S.

<sup>31</sup> S. 627.43141(6), F.S.

<sup>32</sup> See s. 627.6426, F.S.; Florida Department of Financial Services, *Short-term Limited Duration Insurance*, <https://www.myfloridacfo.com/division/consumers/consumerprotections/stldipolicies> (last visited Jan. 15, 2024).

than three months.<sup>33</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>34</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>35</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>36</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>37</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>38</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>39</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>40</sup>
- The content of coverage;<sup>41</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>33</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>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Ch. 2019-129, Laws of Fla.

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

<sup>38</sup> *Id.*

<sup>39</sup> S. 627.6426(2), F.S.

<sup>40</sup> Essential health benefits can be found in 42 U.S.C. § 18022(b).

<sup>41</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>42</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>43</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>44</sup> This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.<sup>45</sup>

### **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>46</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>47</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.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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<sup>42</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>43</sup> S. 627.714(1), F.S.

<sup>44</sup> S. 627.714(2), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> S. 791.01, F.S.

<sup>47</sup> S. 791.012, F.S. The Code cited in this statute has not been updated since this statute was first enacted in 1996.

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:

Indeterminate.

D. FISCAL COMMENTS:

None.