

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1066

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Burton

SUBJECT: Consumer Protection

DATE: February 6, 2024

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

- Imposes a cap of 5 percent of the surplus or \$1,000, whichever is greater, on fees for mortgage and tax foreclosure surplus retrievals, and provides that only nonprofit companies can be assigned such surpluses.
- Requires third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions.
- Provides that a state agency may not enter into an agreement with any entity whose function is to advise regarding the censorship or blacklisting of news sources based upon subjective criteria or political biases, under the stated function of “fact checking” or otherwise removing “misinformation.”
- Provides that if a contractor executes a contract to replace or repair the roof of a residential property during a declaration of a state of emergency, he or she must disclose in the contract that there is a 10-day right of cancellation.
- Expands the definition of “depository institution” for purposes of the Florida Commercial Financing Disclosure Law, to include institutions chartered by another state, territory, or the federal government and authorized to do business in Florida, and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

- Provides that any certified public accountant who prepares the mandatory annual audit for an insurer must be licensed in Florida and have completed at least 4 hours of insurance-related continuing education within each 2-year continuing education cycle.
- Applies provisions limiting public adjuster compensation to insurance policies for coverages provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association.
- Provides that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.
- Provides that beginning January 1, 2025, the written notice of insurance policy changes required by s. 627.43141, F.S., must comply with certain formatting requirements.
- Provides that the disclosure requirements of contracts for short-term health insurance must be in writing and signed by the purchaser at the time of purchase; the disclosures must include the duration, any essential benefit not included, content of coverage, and exclusions within the contract.
- Provides that a claim from a condominium unit owner resulting from a loss assessment must be given to the insurer within 90 days after the date on which the condominium association or its governing board votes to levy the assessment to cover a shortfall in reserves due to a covered loss; such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.
- Adopts the 2018 edition of the National Fire Protection Association Code for Fireworks Display.

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

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

II. Present Situation:

Distribution of Surplus Funds from Foreclosure Actions

Definitions

“Surplus funds” or “surplus” means the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements.¹

“Owner of record” means the person or persons who appear to be owners of the property that is the subject of the foreclosure proceeding on the date of the filing of the lis pendens. In determining an owner of record, a person need not perform a title search and examination but may rely on the plaintiff’s allegation of ownership in the complaint when determining the owner of record.²

“Subordinate lienholder” means the holder of a subordinate lien shown on the face of the pleadings as an encumbrance on the property. The lien held by the party filing the foreclosure lawsuit is not a subordinate lien. A subordinate lienholder includes, but is not limited to, a

¹ Section 45.032(1)(c), F.S.

² Section 45.032(1)(a), F.S.

subordinate mortgage, judgment, tax warrant, assessment lien, or construction lien. However, the holder of a subordinate lien is not deemed a subordinate lienholder if the holder was paid in full from the proceeds of the sale.³

Proceedings

When distributing surplus funds from a foreclosure action, there is a rebuttable legal presumption that the owner of record on the date of the filing of the notice of the lawsuit is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim.⁴

A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove to the court that he or she is entitled to the funds. At any hearing regarding entitlement, the court must consider the following factors when determining whether an assignment is sufficient to overcome the presumption:

- If a grantee or assignee of a voluntary transfer or assignment has established a right to collect the surplus funds or any portion or percentage of the surplus funds by proving that the transfer or assignment qualifies as a voluntary transfer or assignment; or
- If a grantee or assignee proves that the grantee or assignee is a grantee or assignee by virtue of an involuntary transfer or assignment of the right to collect the surplus. An involuntary transfer or assignment may be as a result of inheritance or as a result of the appointment of a guardian.⁵

State law requires an evidentiary hearing to determine entitlement to surplus funds if any person other than the owner of record claims an interest in the proceeds prior to the date that the clerk reports the surplus as unclaimed, or if the owner of record files a claim for the surplus but acknowledges that one or more other persons may be entitled to part or all of the surplus. At the evidentiary hearing, an equity assignee has the burden of proving that he or she is entitled to some or all of the surplus funds. The court may grant summary judgment to a subordinate lienholder prior to or at the evidentiary hearing.⁶

Proceedings regarding surplus funds in a foreclosure case do not in any manner affect or cloud the title of the purchaser at the foreclosure sale of the property.⁷

Surplus Proceeds after Sale at Public Auction on Application for a Tax Deed

Real property advertised for sale to the highest bidder as a result of an application for a tax deed filed must be sold at public auction by the clerk or deputy clerk of the circuit court of the county where the property is located. The sale must be held on the date, time, and location identified in the published notice, during the regular hours the clerk's office is open.⁸

If the property is purchased for an amount in excess of the statutory bid of the certificate holder, and there is a surplus after the payment of any governmental liens, the surplus must be paid over

³ Section 45.032(1)(b), F.S.

⁴ Section 45.032(2), F.S.

⁵ *Id.* (citing s. 45.033(2), F.S.).

⁶ Section 45.032(3)(b), F.S.,

⁷ Section 45.032(4), F.S.

⁸ Section 197.542(1), F.S.

and disbursed by the clerk as provided in the statute.⁹ The clerk must mail notices to interested parties listed in the tax collector's statement,¹⁰ including a form for making a claim.¹¹ A determination of who is entitled to the surplus of a tax sale is made at the time of the sale.¹²

A person receiving the notice of a surplus has 120 days from the date of the notice to file a written claim with the clerk for the surplus proceeds.¹³ Within 90 days after the claim period expires, the clerk may either file an interpleader action in circuit court, if potentially conflicting claims to the funds exist, or pay the surplus funds according to the clerk's determination of the priority of claims using the information provided by the claimants.¹⁴

Form 1099-K Reporting Requirement

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third party merchants.¹⁵ The return is Form 1099-K, and it must be filed for each calendar year on or before the last day of February of the year following the transactions.¹⁶

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third party payment system (like PayPal, Venmo, or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of \$20,000 and comprising more than 200 transactions.¹⁷ These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires them to file Form 1099-K. Examples include Alabama,¹⁸ Tennessee,¹⁹ North Carolina,²⁰ and New York.²¹ Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the

⁹ Section 197.582(2)(a), F.S.

¹⁰ Section 197.582(2)(a), F.S.

¹¹ Section 197.582(2)(b), F.S.

¹² *Rahimi v. Global Discoveries, Ltd., LLC*, 252 So. 3d 804 (Fla. 3d DCA 2018).

¹³ Section 197.582(3), F.S.

¹⁴ Section 197.582(6), F.S.

¹⁵ 26 U.S.C. s. 6050W.

¹⁶ Internal Revenue Service (IRS), *About Form 1099-K, Payment Card and Third Party Network Transactions*, <https://www.irs.gov/forms-pubs/about-form-1099-k> (last visited January 29, 2024); IRS, *Form 1099-K frequently asked questions: Reporting*, <https://www.irs.gov/newsroom/form-1099-k-frequently-asked-questions-reporting> (last visited January 29, 2024).

¹⁷ IRS, *Understanding your Form 1099-K*, <https://www.irs.gov/businesses/understanding-your-form-1099-k> (last visited January 29, 2024).

¹⁸ Alabama Department of Revenue, *New 1099-K Filing Requirement*, <https://www.revenue.alabama.gov/new-1099-k-filing-requirement/> (last visited January 29, 2024).

¹⁹ Tennessee Department of Revenue, *Sales and Use Tax Notice* (Jan. 2016), available at <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales16-01.pdf>.

²⁰ North Carolina Department of Revenue, *Guidance on Information Reporting*, [https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-\(1099k\)](https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k)) (last visited January 29, 2024).

²¹ *New York State Department of Taxation and Finance, Reporting Requirements*, https://www.tax.ny.gov/bus/multi-reporting_requirements.htm (last visited January 29, 2024).

Florida Department of Revenue electronically within 30 days of filing the federal return.²² The copy can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with addresses in Florida.²³

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term “agency” is defined broadly to mean any unit of the executive branch of state government.²⁴ Every procurement for contractual services in excess of the threshold amount in category two, \$35,000, with certain exceptions, must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.²⁵ The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of \$35,000.²⁶

Prohibited Property Insurance Practices by Contractors

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

- The consumer is responsible for the payment of any deductible.
- It is insurance fraud punishable as a third-degree felony for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy.
- It is insurance fraud punishable as a third-degree felony to file intentionally an insurance claim containing false, fraudulent, or misleading information.²⁷

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

- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim.
- Offering or receiving consideration for referrals when property insurance proceeds are payable.

²² Section 212.134, F.S.

²³ Section 212.134(1), F.S.

²⁴ Section 287.012(1), F.S. The term “agency” is defined as “any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.” *Id.*

²⁵ *See* s. 287.058(1), F.S. (excepting the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by ch. 440, F.S., which is the Workers’ Compensation Law); *see also* s. 287.017(2), F.S. (providing a threshold amount of \$35,000 for category two).

²⁶ Section 287.058(2), F.S. There is an exception in the case of a valid emergency as certified by the agency head. *Id.*

²⁷ Section 489.147(2), F.S.

- Interpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds a license as a public adjuster.
- Providing an authorization agreement to the insured without providing a good faith estimate.²⁸

The above acts are subject to discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation.²⁹ State law provides that the residential property owner may void the contract with the contractor within 10 days of its execution, if the contractor fails to provide notice to the residential property owner of these prohibited practices.³⁰

Florida Commercial Financing Disclosure Law

The Florida Commercial Financing Disclosure Law (Law) requires a provider that consummates a commercial financing transaction of \$500,000 or less to give the business certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment.³¹ The Law provides that a provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money.³² "Provider" means:

a person who consummates more than five commercial financing transactions with a business located in this state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing transaction on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.³³

"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.³⁴

The Law does not apply to:

- A provider that is a federally insured depository institution, or an affiliate or holding company of such institution; or a subsidiary or service corporation that is owned and controlled by a federally insured depository institution or under common ownership with such institution.
- A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.

²⁸ *Id.*

²⁹ Section 489.147(3), F.S.

³⁰ Section 489.147(5), F.S.

³¹ Section 559.9613, F.S.; *see also* s. 559.9612(7), F.S. (providing that the Law does not apply to commercial financing transactions of more than \$500,000).

³² Section 559.9611(1), F.S.

³³ Section 559.9611(10), F.S.

³⁴ Section 559.9611(9), F.S.

- A commercial financing product transaction that is:
 - Secured by real property;
 - A lease; or
 - A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used.
- A commercial financing transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least \$50,000; or a commercial financing transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.
- A provider that is licensed as a money transmitter under chapter 560, F.S., or licensed as a money transmitter by any other state, district, territory, or commonwealth of the U.S.
- A provider that consummates no more than five commercial financing transactions in this state in a 12-month period.
- A commercial financing transaction of more than \$500,000.³⁵

Disclosures

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

- The total amount of funds provided to the business under the terms of the commercial financing transaction agreement.
- The total amount of funds disbursed to the business under the terms of the commercial financing transaction agreement, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business.
- The total amount to be paid to the provider pursuant to terms of the commercial financing transaction agreement.
- The total dollar cost of the commercial financing transaction under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments.
- The manner, frequency, and amount of each payment.
- A statement of whether there are any costs or discounts associated with prepayment of the commercial financing transaction including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.³⁶

Prohibited Acts

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

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for

³⁵ Section 559.9612, F.S.

³⁶ Section 559.9613(2), F.S.

commercial financial products, such as a credit check or an appraisal of security, if certain conditions are met.

- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker, or engaging in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence of reliance by the business.
- Making or using any false or deceptive representation in its business dealings.
- Offering the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.³⁷

Enforcement

The Law provides that violations are punishable by a fine of \$500 per incident, not to exceed \$20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation.³⁸ Any person who violates any provision of the Law after receiving written notice of a prior violation from the Attorney General may be subject to a fine of \$1,000 per incident, not to exceed \$50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation.³⁹ The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.⁴⁰

Insurer Reporting of Property Insurance Data

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the Office of Insurance Regulation (OIR) containing various financial data, including audited financial statements, actuarial opinions, and certain claims dates.⁴¹ Each year, insurers must file an annual statement covering the preceding calendar year on or before March 1. Quarterly statements covering each period ending on March 31, June 30, and September 30 must be filed within 45 days after each such date.⁴²

In addition to each authorized insurer having to file with the OIR statements of its financial condition, transactions, and affairs, each authorized insurer must also hire a certified public accountant to prepare an audit.⁴³ The board of the insurer is required to establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee is responsible for discussing audit findings and interacting with the certified public accountant regarding his or her findings. The audit committee must be comprised solely of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit committee must report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request

³⁷ Section 559.9614, F.S.

³⁸ Section 559.9615(2)(a), F.S.

³⁹ Section 559.9615(2)(b), F.S.

⁴⁰ Section 559.9615(1), F.S.

⁴¹ Section 624.424, F.S.

⁴² Section 624.424(1)(a), F.S.

⁴³ Section 624.424(8), F.S.

the OIR to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.⁴⁴

Public Adjusters

A public adjuster is any person, except a duly licensed attorney-at-law as exempted under state law,⁴⁵ who:

- For money, commission, or any other things of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant;
- For money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for, or effecting the settlement of, a claim or claims for loss or damage covered by an insurance contract; or
- Advertises for employment as an adjuster of such claims.⁴⁶

The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of the public adjuster, as insured, or a third-party claimant.⁴⁷

The substantive provisions within the definition of “public adjuster,” found in certain subsections of the statute,⁴⁸ apply only to residential property insurance policies and condominium unit owner policies.⁴⁹ The definition excludes several categories of persons who do not fall within the definition, such as licensed health care providers or employees thereof who prepare or file health insurance claim forms on behalf of a patient.⁵⁰

One subsection of the statute⁵¹ limits the compensation a public adjuster may charge. These limits are:

- If a public adjuster enters into a contract with an insured or claimant to reopen a claim, or file a supplemental claim, that seeks additional payments for a claim that has been previously paid, the public adjuster may not charge based on a previous claim payment for the same cause of loss. The charge must be based only on the claim payments or settlements obtained through the work after entering into the contract. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment.⁵²
- A public adjuster may not charge in excess of:
 - Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision

⁴⁴ Section 624.424(8)(c), F.S.

⁴⁵ Section 626.860, F.S.

⁴⁶ Section 626.854(1), F.S.

⁴⁷ *Id.*

⁴⁸ Section 626.854(5)-(18), F.S.

⁴⁹ Section 626.854(19), F.S.

⁵⁰ Section 626.854(2)(a), F.S.

⁵¹ Section 626.854(11), F.S.

⁵² Section 626.854(11)(a), F.S.

- applies to claims made during the year after the declaration of emergency. After that year, the limitations in the following bullet points apply.⁵³
- Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.⁵⁴
 - One percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or agreement to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days after the date of loss or within 10 days after the date on which the contract is executed, whichever is later.⁵⁵
 - Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or agreement to pay occurs before the date on which the contract is executed.⁵⁶
 - For purposes of calculating permissible compensation, compensation may not be based on the deductible portion of a claim.⁵⁷
 - Compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: “I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit).”⁵⁸
 - The rate of compensation may not be increased based solely on the fact that the claim is litigated.⁵⁹
 - Any maneuver, shift, or device through which the limits on compensation set forth in the subsection are exceeded is a violation of the chapter⁶⁰ and is punishable as provided under state law.⁶¹

Contracts and Disclosures

All contracts for public adjuster services and proof-of-loss statements must be in at least 12-point font, be titled “Public Adjuster Contract,” and prominently display a particular statement provided in the statute.⁶² Public adjuster contracts relating to property and casualty claims must include the public adjuster’s and insured’s phone number, e-mail addresses, and other information.⁶³ The contract language must state the percentage of compensation in a minimum of

⁵³ Section 626.854(11)(b)1., F.S.

⁵⁴ Section 626.854(11)(b)2., F.S.

⁵⁵ Section 626.854(11)(b)3., F.S.

⁵⁶ Section 626.854(11)(b)4., F.S.

⁵⁷ Section 626.854(11)(c), F.S.

⁵⁸ Section 626.854(11)(d), F.S.

⁵⁹ Section 626.854(11)(e), F.S.

⁶⁰ Section 626.854(11)(f), F.S.

⁶¹ See s. 626.8698, F.S. (providing disciplinary guidelines for public adjusters and public adjuster apprentices).

⁶² Section 626.8796(1), F.S.

⁶³ Section 626.8796(2), F.S. The statement provides: “Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to

18-point bold type before the space reserved for the insured's signature.⁶⁴ The insured is required to initial each page that does not have his or her signature.⁶⁵ An unaltered copy of the contract must be remitted to the insured at the time of execution and to the insurer within seven days after execution, and an unaltered copy may be provided to the insurer's representative.⁶⁶

Health Insurance Policies – Short Term Health Insurance

Section 627.6426, F.S., provides for short-term health insurance contracts. "Short term health insurance" is health insurance coverage provided by an issuer with an expiration date that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months.⁶⁷ Such contracts must include the following disclosure:

This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage.⁶⁸

Notice of Property Insurance Claim

Section 627.70132, F.S., requires insureds to notify an insurer of a claim or reopened claim,⁶⁹ within 1 year after the date of loss.⁷⁰ Notice of a supplemental claim⁷¹ must be given to the insurer within 18 months of the date of loss or such claim is barred. The time period is tolled for filing a property insurance claim during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember to file a claim, supplemental claim, or reopened claim.⁷² Section 627.706(5), F.S., requires insureds to notify an

the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Section 627.6426(1), F.S.

⁶⁸ Section 627.6426(2), F.S.

⁶⁹ Section 627.70132(1)(a), F.S., defines "reopened claim" as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

⁷⁰ Section 627.70132(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

⁷¹ Section 627.70132(1)(b), F.S., defines "supplemental claim" as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

⁷² Section 627.70132(2), F.S.

insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.

Minimum Fireworks Safety Standards

Chapter 791, F.S., sets forth the framework for the regulation of fireworks in Florida under the State Fire Marshal's office within the DFS. While chapter 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement agencies.⁷³ The statutes prohibit the retail sale and use of fireworks⁷⁴ by the public. However, provisions of chapter 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban.⁷⁵

Section 791.02, F.S., allows counties and cities to adopt reasonable rules and regulations for the granting of permits for the supervised public display of fireworks within their boundaries. Display operators must apply for a permit at least 15 days in advance and obtain approval from municipal chiefs of police and fire departments. The outdoor display of fireworks is governed by the National Fire Protection Association (NFPA 1123) Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute, which establishes minimum safety standards for outdoor public displays.⁷⁶ However, the most recent Florida Fire Prevention Code references the 2018 edition of the NFPA 1123 Code.⁷⁷

III. Effect of Proposed Changes:

Surplus from Mortgage and Tax Foreclosures

Section 1 amends s. 45.032, F.S., regarding the disbursement of surplus funds after a judicial sale, to define:

- “Nonprofit organization” to mean a charitable organization that:
 - Is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code; and
 - Is a Florida entity formed under the Florida Revised Limited Liability Company Act,⁷⁸ the Florida Business Corporation Act,⁷⁹ or the Florida Not for Profit Corporation Act,⁸⁰ and whose principal office is located in this state.

The bill also provides that during the period that the clerk holds the surplus pending a court order, any person representing an owner of record in claiming the surplus must disclose to the court the total amount of compensation and other fees to be paid to himself or herself. This compensation, however, may not exceed 5 percent of the surplus or \$1,000, whichever is greater.

⁷³ Section 791.001, F.S.

⁷⁴ Florida Statutes provide specific definitions of what are and are not fireworks. *See* s. 791.01(4), F.S.

⁷⁵ *See* s. 791.04, F.S.

⁷⁶ Section 791.012, F.S.

⁷⁷ FLORIDA FIRE PREVENTION CODE S. 65.2.1 (8th ed. 2023), available at <https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code>.

⁷⁸ Chapter 605, F.S.

⁷⁹ Chapter 607, F.S.

⁸⁰ Chapter 617, F.S.

Additionally, the court must consider certain factors, which are identified in the statute governing the sale or assignment of rights to surplus funds in a property subject to foreclosure,⁸¹ at evidentiary hearings to determine entitlement to the surplus. When hearing a claim that any person other than a subordinate lienholder or the owner of record is entitled to the surplus funds, the court must hold any such claim that fails to qualify under that statute invalid.

The bill also provides that any nonprofit organization has unconditional standing to appear in any matter to oppose agreements that do not comply with s. 45.032, F.S., or the statute referenced in the previous paragraph. If it is the prevailing party, the nonprofit organization is entitled to fees and costs, payable from the surplus, equal to the lesser of 5 percent of the surplus, or the fee stated in the opposed agreement.

Section 2 amends s. 45.033, F.S., which governs the sale or assignment of rights to surplus funds in a property subject to foreclosure. With respect to the voluntary transfer or assignment of all or a portion of surplus funds, the bill requires that the transfer or assignment to be in writing, and that the instrument be executed after the foreclosure sale.

Section 3 amends s. 197.582, F.S., regarding the disbursement of tax deed sale proceeds, to provide that within 90 days after the claim period for surplus proceeds expires, the clerk must file an interpleader action in the circuit court if a claim is made by the property owner, an alleged assignee or transferee of the property owner, or any party purporting to represent the property owner. If any other person described in s. 197.502(7), F.S.,⁸² files a claim, and no claim is filed by the property owner, the clerk may either file an interpleader action in circuit court, if potentially conflicting claims to the funds exist, or pay the surplus funds according to the clerk's determination of the priority of claims.

Additionally, the bill provides that a property owner may not transfer or assign its interest in surplus funds to any party, except a nonprofit organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code, and is a Florida entity formed under the Florida Revised Limited Liability Company Act,⁸³ the Florida Business Corporation Act,⁸⁴ or the Florida Not for Profit Corporation Act,⁸⁵ and whose principal office is located in this state. Any assignment or transfer that does not conform with this requirement is deemed invalid.

⁸¹ Section 45.033, F.S.

⁸² This subsection provides that "On county-held or individually held certificates for which there are no bidders at the public sale and for which the certificateholder fails to timely pay costs of resale or fails to pay the amounts due for issuance of a tax deed within 30 days after the sale, the clerk shall enter the land on a list entitled "lands available for taxes" and shall immediately notify the county commission that the property is available. During the first 90 days after the property is placed on the list, the county may purchase the land for the opening bid or may waive its rights to purchase the property. Thereafter, any person, the county, or any other governmental unit may purchase the property from the clerk, without further notice or advertising, for the opening bid, except that if the county or other governmental unit is the purchaser for its own use, the board of county commissioners may cancel omitted years' taxes, as provided under s. 197.447. Interest on the opening bid continues to accrue through the month of sale as prescribed by s. 197.542."

⁸³ Chapter 605, F.S.

⁸⁴ Chapter 607, F.S.

⁸⁵ Chapter 617, F.S.

Any person representing a property owner in claiming the surplus funds must disclose to the court the total amount of compensation and other fees to be paid to himself or herself. This compensation, however, may not exceed 5 percent of the surplus or \$1,000, whichever is greater.

The bill also provides that any nonprofit organization has unconditional standing to appear in any matter to oppose agreements that do not comply with this section. If it is the prevailing party, the nonprofit organization is entitled to fees and costs, payable from the surplus, equal to the lesser of 5 percent of the surplus, or the fee stated in the opposed agreement.

Form 1099-K Reporting Requirement

Section 4 amends s. 212.134, F.S., regarding information returns relating to payment-card and third-party network transactions, to provide that:

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

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

The bill provides that these requirements do not apply to a third party settlement organization if a contractual agreement or arrangement to provide a third party payment network to a participating payee requires the third party settlement organization solely to settle third party network transactions for the provision of goods and services.

Procurement of Commodities and Services

Section 5 creates s. 286.312, F.S., entitled “Prohibited use of state funds; censorship or blacklisting of news sources,” to provide that an agency may not enter into a contract or other agreement with an entity whose function is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases under the stated goal of fact-checking or removing misinformation.

Prohibited Property Insurance Practices by Contractors

Section 6 amends s. 489.147, F.S., regarding prohibited property insurance practices, to provide that an insured or a claimant may cancel a contract to replace or repair a roof without penalty or obligation until 10 days following the execution of the contract or until the official start date, whichever comes first, if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor. For the purposes of this provision, the term “official start date” is the date on which the work on the roof commences.

The bill also provides that a contractor who executes a contract to replace or repair a roof of a residential property during the declaration of a state emergency must include in the contract the following language, in bold type of not less than 18 points, immediately before the space reserved for the signature of the residential property owner:

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

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

Florida Commercial Financing Disclosure Law

Section 7 amends s. 559.9611, F.S., which provides the definitions for the Florida Commercial Financing Disclosure Law, to expand the definition of “depository institution” to include institutions chartered by another state, territory, or the federal government authorized to do business in Florida and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Presently, the definition is limited to state-chartered institutions. The Florida Commercial Financing Disclosure Law requires “providers” to make certain disclosures of the terms of a commercial financing transaction. The definition of “provider” includes a person who enters into a written agreement with a “depository institution” to arrange a commercial financing transaction. Expanding the definition of “depository institution” expands the applicability of the disclosure requirements.

Insurer Reporting of Property Insurance Data

Section 8 amends s. 624.424, F.S., regarding insurer’s annual statements and other information, to provide that the certified public accountant that prepares the mandatory annual audit must be Florida licensed and must have completed at least 4 hours of insurance-related continuing education during each 2-year continuing education cycle. This requirement becomes effective once the courses have been created.

Public Adjusters

Section 9 amends s. 626.854, F.S., which defines “public adjuster” and identifies certain prohibitions, to apply provisions providing limits on public adjuster compensation to insurance policies to coverages provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners’ association.

Section 10 amends s. 626.8796(2), F.S., regarding public adjuster contracts and associated disclosure and fraud statements, to provide that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.

Notice of Change in Policy Terms

Section 11 amends s. 627.43141, F.S., regarding notices of change in insurance policy terms, to require, beginning January 1, 2025, the “Notice of Change in Policy Terms” to be in bold type of not less than 14 points and included as a single page or consecutive pages, as necessary, within the written notice.

Health Insurance Policies – Short Term Health Insurance

Section 12 amends s. 627.6426, F.S., regarding short-term health insurance, to provide that the disclosure requirements of contracts for short-term health insurance must be in writing and signed by the purchaser at the time of purchase. The disclosures must include the duration of the contract, including any waiting period; any essential health benefit⁸⁶ that the contract does not provide; the content of coverage; and any exclusion of preexisting conditions. The disclosures must be printed in at least 12-point type and in a color that is readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase. Disclosures provided by electronic means must include the content required by this provision.

Notice of Property Insurance Claim

Section 13 amends s. 627.70132, F.S., regarding notices of property insurance claims, to provide that a notice of claim from a condominium unit owner resulting from a loss assessment for loss assessment coverage under state law⁸⁷ must be given to the insurer within 90 days after the date on which the condominium association or its governing board votes to levy an assessment to cover a shortfall in reserves due to a covered loss. Such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.

If the condominium association votes to levy an assessment more than 9 months after the underlying loss – for example, a hurricane or tornado – that gives rise to the assessment, the bill will expand the time frame for filing a loss assessment claim with an insurer, which is one year after such weather-related event. If, however, the vote was taken within the first nine months

⁸⁶ See 42 U.S.C. s. 18022(b).

⁸⁷ Section 627.714, F.S.

following the storm, the unit owner would need to file the notice prior to the expiration on the one-year period under current law.

Minimum Fireworks Safety Standards

Section 14 amends s. 791.012, F.S., regarding minimum fireworks safety standards, to replace the reference to the 1995 edition of the National Fire Protection Association Code for Fireworks Display with a reference to the 2018 edition of same.

Effective Date

Section 15 provides the bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Financial Services:⁸⁸

- Because of the bill's amendments to s. 626.854, F.S., some public adjusters may see a reduction to their fees for claims adjusted on behalf of condominium association policies if they are currently basing their fees off the deductible for a condo

⁸⁸ Department of Financial Services, *2024 Legislative Bill Analysis for SB 1066*, Jan. 29, 2024 (on file with the Senate Committee on Judiciary).

association policy or charging more than the applicable fee limits set in subsection 626.854(11), F.S.

- Because of the bill’s amendments to s. 627.6426, F.S., short-term limited duration health insurers may experience a decrease in sales of these policies with the additional information provided to consumers. On the other hand, consumers will experience fewer surprise bills for treatments they thought were covered, but were not.
- Due to s. 627.711, F.S., there will be fewer expenditures for insurance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The notice provided in Section 6 of the bill for roof contracts entered into during a declared state of emergency appears to have an internal inconsistency. The second line of the notice references the right to cancel the contract “until 10 days following the execution of the contract[.]” On the next-to-last line of the notice, it references that the contract “may be voided within 10 days following the execution of the contract.” One phrase provides for “until 10 days following,” and the other provides for “within 10 days.” It appears they should both use the phrase “within” the 10 days.

VII. Related Issues:

Section 6 of the bill amends s. 489.147, F.S., regarding prohibited property insurance practices, to provide that an insured or a claimant may cancel a contract to replace or repair a roof without penalty or obligation until 10 days following the execution of the contract or until the official start date, whichever comes first, if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor. It is unclear whether the mere “declaration of a state of emergency by the Governor,” without further qualification, is an appropriate standard in this context. Sometimes the Governor declares a state of emergency for reasons that do not implicate roof repair or replacement.⁸⁹ And even if the state of emergency is for a natural disaster like a storm or tornado, the emergency may have been declared for other reasons not having to do with potential wind damage to roofs (*e.g.* risk of storm surge or flooding).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 45.032, 45.033, 197.582, 212.134, 489.147, 559.9611, 624.424, 626.854, 626.8796, 627.43141, 627.6426, 627.70132, and 791.012.

⁸⁹ For example, the Governor issued Executive Order 20-52 on March 9, 2020 (declaring a state of emergency due to COVID-19), which the Governor extended through Executive Order 21-94 on Apr. 27, 2021. Without further extension, the state of emergency, which had lasted for over a year, lapsed 60 days later on June 26, 2021. Office of Florida Governor Ron DeSantis, *Executive Order 21-94* (Apr. 27, 2021), available at https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-94.pdf.

This bill creates section 286.312 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on February 5, 2024:

The committee substitute makes the following changes:

- Removes Section 1 from the bill, which prohibited the bringing of Qui Tam actions based on the provisions of the Florida Disposition of Unclaimed Property Act.
- Imposes a cap of 5 percent of the surplus or \$1,000, whichever is greater, on fees for mortgage and tax foreclosure surplus retrievals, and provides that only nonprofit companies can be assigned such surpluses.
- Replaces several references to “participating payee” with “sender of the payment” in Section 4 of the bill regarding third party settlement organizations.
- Removes Section 6 from the bill, which authorized the Department of Highway Safety and Motor Vehicles to retire the titles of mobile homes upon the recordation of mortgages containing certain information.
- Clarifies that an insured can cancel a contract for a roof replacement or repair during a declared state of emergency up to 10 days after execution or until the official start date, whichever comes first, and that the official start date is the date when work on the roof commences.
- Clarifies that certified public accountants must complete 4 hours of insurance-related continuing education during each 2-year continuing education cycle, and removes requirement that the Department of Business and Professional Regulation has to approve the continuing education.
- Requires “Notice of Change in Policy Terms” notices to satisfy new formatting requirements beginning January 1, 2025.
- Removes Section 13 from the bill, which created a new statute prohibiting grant and contract fraud.
- Removes Sections 14 and 15 from the bill, which created a new statute prohibiting falsely representing that the origin of an advertisement or communication is a bank or lending institution, and which provided for penalties for violating the new statute.

CS by Banking and Insurance Committee on January 16, 2024:

The committee substitute makes the following changes:

- Amends s. 212.134, F.S., to require third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions;
- Removes the provision prohibiting state agencies from contracting with entities whose function is “fact checking” and places them in a newly created statute instead;
- Revises the proposed definition of “depository institution” for purposes of the Florida Commercial Financing Disclosure Law to remove certain terms and adds the requirement “authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund”;

- Revises the proposed continuing education requirement for CPAs by adding “Upon creation of the continuing education” to give the Department of Business and Professional Regulation time to create the courses;
- Revises the provision regarding the time for a condominium unit owner to file a notice of a property insurance claim resulting from a loss assessment; and
- Removes Section 12 from the bill that added commercial residential or commercial (business) insurance policies to the requirement that the insurer must clearly notify the applicant or policyholder of the availability of certain premium discounts.

B. Amendments:

None.