

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 939 Consumer Protection

SPONSOR(S): Insurance & Banking Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Fortenberry	Lloyd

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.
- **State Agency Contracts:** prohibits a state 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.
- **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 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 has no impact on local government revenues or expenditures or state revenues. It may have an indeterminate negative impact on state expenditures, and a positive or negative impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Form 1099-K Reporting Requirements

Background

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third-party merchants.¹ 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.²

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.³ 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,⁴ Tennessee,⁵ North Carolina,⁶ and New York.⁷

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.⁸ 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.⁹

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.

¹ 26 U.S. Code s. 6050W(e).

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

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

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

⁵ <https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales-16-01.pdf> (last visited Jan. 15, 2024).

⁶ [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).

⁷ https://www.tax.ny.gov/bus/multi/reporting_requirements.htm (last visited Jan. 15, 2024).

⁸ s. 212.134, F.S.

⁹ s. 212.134(1), F.S.

State Agency Contracts

Background

Chapter 286, F.S., contains requirements for, and prohibitions on, state agencies entering into contracts or other agreements with various private entities. It also prohibits the use of state funds for certain purposes.¹⁰

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,¹¹ AdFontes Media,¹² and Cyabra.¹³ Among other things, subscribers to these services may rely on them when considering where to place advertisements or in other business decision-making. There does not appear to be any current state contracts with these entities.¹⁴

Effect of the Bill

The bill prohibits a state agency from entering into a contract or another 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.¹⁵

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 by the Florida Department of Highway Safety and Motor Vehicles (DHSMV).¹⁶ 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 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.¹⁷

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.¹⁸

¹⁰ See, e.g., ss. 286.31 and 286.311, F.S.

¹¹ 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).

¹² 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).

¹³ 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).

¹⁴ See Department of Financial Services, *My Florida Market Place Vendor Search*,

¹⁵ This prohibition would apply to entities like NewsGuard and its competitors.

¹⁶ 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).

¹⁷ S. 319.261(2), F.S.

Effect of the Bill

The bill adds an alternative to the current retirement criteria. It authorizes the DHSMV to retire the title of a mobile home by when there is a recorded mortgage against the owner's mobile home and real property. Adding this criteria 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.¹⁹ 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.²⁰ As such, the Legislature limited certain insurance practices by contractors and unlicensed persons acting on their behalf.²¹

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 the interpretation of policy provisions, adjusting a claim without being licensed as a public adjuster, or failing to provide an insured with an itemized estimate for repairs.²² If the contractor fails to include the notice in the contract, the property owner may void the contract within 10 days of its execution.²³ 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 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.

¹⁸ S. 319.261(5), F.S.

¹⁹ 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).

²⁰ *Id.* A "free" roof replacement maybe achieved by giving a residential propertyowner whose policyprovides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential propertyowner.

²¹ See ch. 2021-77, Laws of Fla.

²² S. 489.147, F.S.

²³ *Id.*

Depository Institutions

Background

In 2023, the Legislature enacted a definition of depository institution for commercial financing disclosure,²⁴ which defines such institutions as Florida state-chartered bank, savings banks, credit unions, or trust companies, or federal savings or thrift associations, banks, credit unions, savings bank or thrift.²⁵ This statutory definition inadvertently excluded certain types of state-chartered banks.

Effect of the Bill

The bill changes the definition of depository institution in ch. 559, part XIII, F.S., to a more comprehensive definition that includes banks, credit unions, savings banks, savings and loan associations, savings or thrift associations, trust companies, or industrial loan companies doing business under the authority of the United States, Florida, or any other state, district, territory or commonwealth of the United States that is authorized to do business in Florida.

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 30.²⁶ Such statements must conform with the requirements established by the National Association of Insurance Commissioners, which OIR adopts by rule.²⁷ 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.²⁸

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.²⁹ 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 that the CPA that prepares the audit that an insurer submits to OIR 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

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.³⁰ In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.³¹

²⁴ The commercial financing disclosure law is ch. 559, part XIII, F.S.

²⁵ S. 559.9611, F.S.

²⁶ S. 624.424(1), F.S.

²⁷ S. 624.424(1), F.S., and R. [69O-137](#), F.A.C.

²⁸ S. 624.424(8), F.S.

²⁹ S. 473.312, F.S. CPAs are licensed under ch. 473, F.S., and must renew their licenses every two years.

³⁰ S. 626.854, F.S. Public adjusters are regulated under ch. 626, part VI, F.S.

³¹ See *id.*

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.³² However, such contracts are not required to contain the license number of the public adjusting firm.

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

- One 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.
- No fees or commission when the payment or agreement to pay by the insurer to the insured occurs before the date that the public adjusting contract is signed.³³

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.

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.³⁴ 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.³⁵ 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.³⁶ 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.³⁷
- 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).³⁸ 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.³⁹ 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

³² S. 626.8796(2), F.S.

³³ S. 626.854(11), F.S.

³⁴ 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).

³⁵ 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%20coverag](https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20(81%20FR%2075316,replacement%20for%20traditional%20health%20coverag) e. (last visited Jan. 15, 2024).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ch. 2019-129, Laws of Fla.

³⁹ *Id.*

of 36 months.⁴⁰ 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.⁴¹ 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;⁴²
- The content of coverage; and
- Any exclusions of preexisting conditions.

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

Loss Assessment Coverage

Background

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

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.⁴³

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.⁴⁴ 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.⁴⁵ This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.⁴⁶

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

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⁴¹ S. 627.6426(2), F.S.

⁴² Essential health benefits can be found in 42 U.S.C. § 18022(b).

⁴³ The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 13, 2024).

⁴⁴ S. 627.714(1), F.S.

⁴⁵ S. 627.714(2), F.S.

⁴⁶ *Id.*

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).⁴⁷

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.

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.

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

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. The bill does not appear to affect county or municipal governments.

2. Other:

The use of the word advise in section 2 of the bill regarding limitations on state contracting is confusing. It is unclear whether an agency is prohibited from entering 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. The way the language is written, it is possible that an agency could enter into a contract with such an entity for another service besides censorship and blacklisting. An amendment may clarify the intent.

The censorship or blacklisting of news materials could have first amendment implications. Additionally, there could be invalid delegation of legislative authority because the interpretation of censorship and blacklisting would be left up to the contracting state agency without any guidelines or rulemaking authority.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 (Lines 97-102): The use of the word advise in section 2 of the bill regarding limitations on state contracting is confusing. It is unclear whether an agency is prohibited from entering 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. The way the language is written, it is possible that an agency could enter into a contract with such an entity for another service besides censorship and blacklisting. An amendment may clarify the intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES