

THE FLORIDA SENATE
2023 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/CS/HB 1185 — Consumer Protection

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Giallombardo and others (CS/CS/SB 1398 by Appropriations Committee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator DiCeglie)

The bill revises consumer protection laws, including, but not limited to, those related to public adjusters, annuity investments, insurance provisions, and mortgage loan regulations.

Public Adjusters

The bill amends the definition of “public adjuster” to specify that it applies to any person who meets the definition, regardless of how that person describes or presents their services.

Regarding public adjuster compensation, the bill:

- Limits a public adjuster’s compensation to no more than one percent of a payment or commitment to pay at least policy limits made within the later of 14 days after the date of loss or 10 days after the public adjusting contract is executed.
- Requires a written contract with the insured for a public adjuster to receive fees for payments to the named insured, and prohibits a public adjuster from receiving compensation based upon a claim payment or written agreement to pay that occurs before the public adjuster contract is executed.
- Provides that a public adjuster may not charge a named insured for fees incurred by a third-party that public adjuster contracted with to assist with the claim settlement unless the public adjuster first obtains the named insured’s written consent.

Regarding rescission of contracts for public adjusting services, the bill:

- Allows the insured or claimant to cancel a contract with a public adjuster that was entered into based on events that are the subject of a state of emergency for up to 30 days after the loss or 10 days after the date on which the contract is executed, whichever is longer.
- Specifies an insured may cancel a public adjuster’s contract without penalty or obligation if a written estimate is not received within 60 days unless the failure to provide the estimate is caused by factors beyond the control of the public adjuster.

Regarding contracts for public adjusting services, the bill:

- Requires the inclusion of certain contract details and compensation, amends the font type for certain contract provisions and the proof-of-loss statement, and requires initials of the insured to be on each page that does not contain the insured’s signature.
- Provides that a public adjuster must provide an unaltered copy of the contract to the insured at execution and to the insurer or insurer’s representative within seven days after execution.
- Provides a public adjuster may not receive compensation for services before the date the insured receives an unaltered copy of the executed contract or the date the contract is submitted to the insurer.

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- Requires the public adjuster to provide to and obtain a signed separate disclosure statement from the insured with specified information.
- Provides that a public adjuster contract which does not comply with s. 626.8796, F.S., regarding public adjuster contracts, is invalid and unenforceable.
- Provides rulemaking authority to the Department of Financial Services (DFS).

Annuity Investments

As it relates to annuity investments, the bill:

- Amends s. 627.4554, F.S., to adopt, with minimal exceptions, the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation (2020).
- Broadens the scope of the section to apply to any sale or recommendation of an annuity.
- Amends the duties of insurers and agents to require the agent to act in the consumer's best interest which includes satisfying obligations regarding care, disclosure, conflict of interest, and recordkeeping.
- Specifies transactions for which an agent does not have an obligation to a consumer;
- Revises an insurer's obligation to establish a supervision system to provide additional consumer protections.
- Prohibits insurers from dissuading, or attempting to dissuade, a consumer from providing truthful information, filing complaints, or cooperating with a complaint investigation.
- Provides any sale in compliance with comparable standards satisfies the requirements of the section, and provides this provision does not limit an insurer's care obligation.
- Provides for training requirements for agents who engage in the sale of annuities.

Insurance Provisions

As it relates to other insurance provisions, the bill:

- Provides adjusting firms must comply with the same requirements an insurance agency must comply with regarding firm names, and repeals the grace period for using the terms "Medicare" or "Medicaid" that expires on July 1, 2023.
- Requires an independent or public adjuster to post their license in the principal place of business or have it in the public adjuster's actual possession in certain circumstances.
- Specifies independent adjusters and public adjusters must retain certain records for five years and requires such records must be available for inspection by the DFS.
- Provides it is an unfair method of trade for an agent to fail to disclose a third party that receives remuneration for specified marketing practices for a health insurance policy.
- Provides the timeframe during which a residential property insurance hurricane deductible can be applied to a claim begins only upon the issuance of a hurricane warning, but not a hurricane watch, and defines the term "hurricane deductible."
- Reduces the underwriting timeframe on property insurance from 90 days to 60 days.
- Provides Citizens Property Insurance Corporation may cancel policies covering risks that were most recently insured by an insurer in receivership within 90 days or less for

misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

Mortgage Loans

As it relates to mortgage loan regulations, the bill:

- Expands the options of where a mortgage lender may transact business.
- Specifies a remote location must be operated under the full charge, control, and supervision of the licensee.
- Provides when a licensee may allow loan originators to work from a remote location.
- Amends the definition of “branch office” and defines the term “remote location.”

Money Services Businesses

As it relates to money services businesses, the bill:

- Specifies a licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee’s workers’ compensation policy coverage amount during the same policy coverage period.
- Provides a person who violates this provision commits a felony of the third degree.

Crowd-funding Campaigns

As it relates to crowd-funding campaigns, the bill:

- Requires organizers of crowd-funding campaigns related to disasters to take certain steps relating to collecting and retaining certain information, disclosing specified information, cooperating with law enforcement, and displaying and directing donors to certain fundraisers.
- Requires an organizer to attest to the accuracy and completeness of specified information.
- Defines several terms, including “crowd-funding campaign,” “crowd-funding platform,” “disaster,” and “organizer.”

Distributed Energy Generation Platforms

As it relates to distributed energy generation platforms, the bill:

- Adds three disclosures related to the sale or lease of a distributed energy generation system which must be separate from the agreement between the seller or lessor and buyer and lessee.
- Requires a sale or lease agreement to include the customer contact center phone number for the Department of Business and Professional Regulation.

Warranty Associations

The bill provides that motor vehicle service agreement companies that maintain a contractual liability insurance policy in lieu of maintaining unearned premium reserve, may have such a

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policy that pays 100 percent of claims as they are incurred or upon the failure of the service agreement policy to pay such claims when due.

The bill revises the definition of the term “manufacturer” for purposes of service warranty associations, to apply to an entity or affiliate that maintains a minimum net worth of at least \$100 million, rather than \$10 million under current law. The definition also eliminates reference to an entity or affiliate that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.

Vote: Senate 38-0; House 113-0