

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1066

INTRODUCER: Senator Burton

SUBJECT: Consumer Protection

DATE: January 12, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

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

- Prohibits bringing a Qui Tam action where such action is based upon allegations or transactions arising from, or to otherwise enforce, the provisions of the Florida Disposition of Unclaimed Property Act;
- Provides that a state agency may not enter into a contract or other agreement with any entity whose function is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases, under the stated function of “fact checking” or otherwise removing “misinformation”;
- Provides for the retirement of the title to a mobile home by the Department of Highway Safety and Motor Vehicles (DHSMV) if the owner of the real property records a mortgage against the owner's mobile home and real property in the official records of the clerk of court in the county in which the real property is located;
- Provides that a contractor executing a contract during a declaration of a state of emergency to replace or repair a roof of a residential property must include disclosure language in the contract of the right of cancellation of the contract within 10 days;
- 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 authorized to do business in Florida;
- Provides that the certified public accountant that prepares the mandatory annual audit for an insurer must be Florida licensed and must have completed at least 4 hours of continuing education that is insurance-related as a condition of license renewal; the continuing education must be approved by the Department of Business and Professional Regulation, based on the recommendations of the Department of Financial Services;
- 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 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 is considered to have occurred on the date of the notice of loss assessment sent by a unit owner's condominium association;
- Provides that the requirements placed on insurers to notify applicants and policyholders of the availability of each premium discount, credit, and other rate differential for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm can be or have been installed or implemented also apply to policies offering commercial residential or commercial insurance coverage;
- Adopts the 2018 edition of the National Fire Protection Association Code for Fireworks Display;
- Provides a criminal penalty for fraud related to grants or contracts with the state or any agency of the state; and
- Provides a criminal penalty for the act of knowingly making statements or communications, or disseminating such statements or communications, that have the intent of falsely representing that such communication originated from a bank or lending institution.

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:

### The Florida False Claims Act

#### *Qui Tam Actions and the Relator*

The Florida False Claims Act<sup>1</sup> authorizes two entities, either a private individual or the state,<sup>2</sup> to sue someone who allegedly files a false claim seeking payment or approval for payment from the state. The person who brings a false claims suit is referred to as the “relator.” The action filed by the relator on behalf of the state is referred to as a “qui tam” proceeding.<sup>3</sup> Relators are entitled to a significant share of the settlement or proceeds when a recovery is made against a defendant.

The relator does not need to demonstrate that he or she has been harmed by the violator's actions to adequately state a cause of action. Quite often, the relator is aware of the false claim because

<sup>1</sup> Sections 68.081-68.092, F.S.

<sup>2</sup> For purposes of this act, the Department of Legal Affairs is authorized to bring an action, and in some limited circumstances, the Division of Financial Services may bring an action. See s. 68.083(1), (2), and (4), F.S.

<sup>3</sup> “Qui tam” is an abbreviated phrase from the larger Latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*.” According to Black's Law Dictionary, it means “who as well for the king as for himself sues in this matter.” A qui tam action is a statutory action that permits a private individual to sue for a penalty, which will be divided between the government or some other public institution and the person who initiates the suit. BLACK'S LAW DICTIONARY (10th ed. 2014).

he or she was employed by the defendant or has knowledge of industry standards that were violated.

At the core of the Florida False Claims Act is the relator's right to earn a substantial portion of the recovery against a defendant. This provides a relator tremendous financial incentive to report misconduct. It also provides the state an opportunity to be made whole when damaged by fraudulent actions it did not know were occurring. An individual who successfully brings an action is entitled to receive a portion of the proceeds or settlement of the claim.<sup>4</sup>

### ***Florida Disposition of Unclaimed Property Act***

Chapter 717, F.S., details how to determine whether property held by a person belonging to another is unclaimed and how to dispose of it. Any intangible property or income held in the possession of a "holder"<sup>5</sup> for the benefit of another is presumed unclaimed if the owner fails to claim such property for more than 5 years after the property becomes payable or distributable.<sup>6</sup>

Once the 5-year period elapses, the holder may file a petition with the Department of Financial Services (DFS) and request that the DFS accept custody of the property.<sup>7</sup> Upon delivery of property to the DFS, the state assumes custody and responsibility for the safekeeping of the property. So long as the person who delivers the property to the DFS has done so in good faith, he or she is relieved of any liability to manage the property.<sup>8</sup>

### **Agreements Funded with Federal or State Assistance**

An agency agreement that provides state financial assistance to a recipient or subrecipient, or that provides federal financial assistance to a subrecipient, must include the following:

- A provision specifying scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform;
- A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment;
- A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required in the agreement;
- A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period;
- A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the state agency;
- A provision specifying that any funds paid in excess of the amount to which the recipient or subrecipient is entitled must be refunded to the state agency; and

<sup>4</sup> Section 68.085(1)(a), F.S.

<sup>5</sup> Section 717.101(12), F.S., defines "holder" as a person, wherever organized or domiciled, who is:

- In possession of property belonging to another;
- A trustee in case of a trust; or
- Indebted to another on an obligation.

<sup>6</sup> Section 717.102(1), F.S.

<sup>7</sup> Section 717.117(5), F.S.

<sup>8</sup> Section 717.1201(5), F.S.

- Any additional information required pursuant to the Florida Single Audit Act.<sup>9</sup>

For each agreement funded with federal or state financial assistance, the agency must designate an employee to serve as the grant manager, be responsible for enforcing performance of the agreement's terms and conditions, and serve as a liaison with the recipient or subrecipient.<sup>10</sup> After execution of any such agreement, the Chief Financial Officer must perform audits of the agreement documents and grant manager's records in order to ensure that adequate internal controls are in place for complying with the terms and conditions of the agreement and for validation and receipt of goods and services.<sup>11</sup>

### **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.<sup>12</sup> Every procurement for contractual services in excess of the threshold amount in category two, \$35,000, with certain exceptions<sup>13</sup>, must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.<sup>14</sup> 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.<sup>15, 16</sup>

### **Real Property Transactions – Mobile Homes**

Section 319.261, F.S., was created during the 2003 Regular Session to provide a mechanism by which the owner of a mobile home which is permanently affixed to real property owned by that same person may permanently retire the title to the mobile home. The Department of Highway Safety and Motor Vehicles is authorized to retire the title to the mobile home if the owner records the following documents with the clerk of court in the county in which the real property is located:

- The original title to the mobile home, or for a new home the manufacturers' certificate of origin, which includes a description of the mobile home, including model year, make, width, length, vehicle identification number, and a statement by any recorded lien holder on the title that the security interest in the home has been released, or that such security interest will be released upon retirement of the title;
- The legal description of the real property, and in the case of a leasehold interest, a copy of the lease agreement; and

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<sup>9</sup> Section 215.971(1)(a)-(g), F.S.

<sup>10</sup> Section 215.971(2), F.S.

<sup>11</sup> Section 215.971(3), F.S.

<sup>12</sup> 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."

<sup>13</sup> Excepting 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 the Workers' Compensation Law.

<sup>14</sup> Section 287.058(1), F.S.

<sup>15</sup> There is an exception in the case of a valid emergency as certified by the agency head.

<sup>16</sup> Section 287.058(2), F.S.

- A sworn statement by the owner that he or she is the owner of the mobile home and that the home is permanently affixed to the real property in accordance with state law.<sup>17</sup>

The clerk of the court is responsible for recording the documents and providing to the owner of the real property a copy of the recorded title or manufacturers' certificate of origin and a copy of all the documents recorded.<sup>18</sup> The owner or lien-holder must then submit these documents with the appropriate application to DHSMV in order to retire the title.<sup>19</sup>

### **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; and
- It is insurance fraud punishable as a third-degree felony to file intentionally an insurance claim containing false, fraudulent, or misleading information.<sup>20</sup>

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;
- 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; and
- Providing an authorization agreement to the insured without providing a good faith estimate.<sup>21</sup>

The above acts are subject to discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation.<sup>22</sup> The law provides 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.<sup>23</sup>

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<sup>17</sup> Section 319.261(2), F.S.

<sup>18</sup> Section 319.261(3), F.S.

<sup>19</sup> Section 319.261(4), F.S.

<sup>20</sup> Section 489.147(2), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 489.147(3), F.S.

<sup>23</sup> Section 489.147(5), F.S.

## 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.<sup>24</sup> The Law provides that a provider's characterization of 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.<sup>25</sup> "Provider" means:

a person who consummates more than five commercial financing product transactions to a business located in the state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange for the extension of a commercial financing product by the depository institution to a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing product 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.<sup>26</sup>

"Depository institution" means a Florida state-chartered bank, savings bank, credit union, or trust company, or a federal savings or thrift association, bank, credit union, savings bank, or thrift.<sup>27</sup>

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.
- 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 or licensed as a money transmitter by any other state, district, territory, or commonwealth of the United States.

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<sup>24</sup> Section 559.9613, F.S.

<sup>25</sup> Section 559.9611(1), F.S.

<sup>26</sup> Section 559.9611(10), F.S.

<sup>27</sup> Section 559.9611(9), F.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.<sup>28</sup>

**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; and
- 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.<sup>29</sup>

**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 a preclude a business from paying for, actual services necessary to apply for commercial financial product, 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 engage 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 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.<sup>30</sup>

**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.<sup>31</sup> 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

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<sup>28</sup> Section 559.9612, F.S.

<sup>29</sup> Section 559.9613, F.S.

<sup>30</sup> Section 559.9614, F.S.

<sup>31</sup> Section 559.9615(2)(a), F.S.

arising from the use of the transaction documentation or materials found to be in violation.<sup>32</sup> The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.<sup>33</sup>

### **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 data.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup> 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 with regard to 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 the OIR to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.<sup>37</sup>

### **Public Adjusters**

A public adjuster is any person, except a duly licensed attorney-at-law as exempted under s. 626.860, F.S., 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, or who, 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 who, advertises for employment as an adjuster of such claims.<sup>38</sup> 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.<sup>39</sup>

The substantive provisions within the definition of “public adjuster”, found in subsections (5) through (18), apply only to residential property insurance policies and condominium unit owner

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<sup>32</sup> Section 559.9615(2)(b), F.S.

<sup>33</sup> Section 559.9615(1), F.S.

<sup>34</sup> Section 624.424, F.S.

<sup>35</sup> Section 624.424(1)(a), F.S.

<sup>36</sup> Section 624.424(8), F.S.

<sup>37</sup> Section 624.424(8)(c), F.S.

<sup>38</sup> Section 626.854(1), F.S.

<sup>39</sup> *Id.*

policies.<sup>40</sup> The definition excludes several categories of persons who do not fall within the definition, such as licensed health care providers or employees thereof who prepares or files health insurance claim forms on behalf of a patient.<sup>41</sup> Subsection (11) limits 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.<sup>42</sup>
- 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 applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.<sup>43</sup>
  - 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.<sup>44</sup>
  - 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.<sup>45</sup>
  - 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.<sup>46</sup>
- For purposes of calculating permissible compensation, compensation may not be based on the deductible portion of a claim.<sup>47</sup>
- 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).”<sup>48</sup>

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<sup>40</sup> Section 626.854(19), F.S.

<sup>41</sup> Section 626.854(2)(a), F.S.

<sup>42</sup> Section 626.854(11)(a), F.S.

<sup>43</sup> Section 626.854(11)(b)1., F.S.

<sup>44</sup> Section 626.854(11)(b)2., F.S.

<sup>45</sup> Section 626.854(11)(b)3., F.S.

<sup>46</sup> Section 626.854(11)(b)4., F.S.

<sup>47</sup> Section 626.854(11)(c), F.S.

<sup>48</sup> Section 626.854(11)(d), F.S.

- The rate of compensation may not be increased based solely on the fact that the claim is litigated.<sup>49</sup>
- Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of the chapter and is punishable as provided under s. 626.8698.<sup>50</sup>

### ***Contracts and Disclosures***

All contracts for public adjuster services and proof-of-loss statements must be in at least 12-point font, and be titled “Public Adjuster Contract.”<sup>51</sup> Public adjuster contracts relating to property and casualty claims must include the public adjuster’s and insured’s phone number and e-mail addresses.<sup>52</sup> The contract language must state the percentage of compensation in a minimum of 18-point bold type before the space reserved for the insured’s signature.<sup>53</sup> The insured is required to initial each page that does not have his or her signature.<sup>54</sup> 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.<sup>55</sup>

### **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.<sup>56</sup> 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.”<sup>57</sup>

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<sup>49</sup> Section 626.854(11)(e), F.S.

<sup>50</sup> Section 626.854(11)(f), F.S.

<sup>51</sup> Section 626.8796(1), F.S.

<sup>52</sup> Section 626.8796(2), F.S.

<sup>53</sup> *Id.*

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

<sup>55</sup> *Id.*

<sup>56</sup> Section 627.6426(1), F.S.

<sup>57</sup> Section 627.6426(2), F.S.

### **Notice of Property Insurance Claim**

Section 627.70132, F.S., requires insureds to notify an insurer of a claim or reopened claim,<sup>58</sup> within 1 year after the date of loss.<sup>59</sup> Notice of a supplemental claim<sup>60</sup> 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. Section 627.706(5), F.S., requires insureds to notify an 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.

### **Notice of Premium Discounts for Hurricane Loss Mitigation**

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses and windstorm losses.<sup>61</sup> Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.<sup>62</sup> Upon their filing by an insurer or rating organization, the OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,<sup>63</sup> which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance wind uplift prevention, roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength.<sup>64</sup>

Insurers must clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation at the time the policy is issued and at each renewal.<sup>65</sup> Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.<sup>66</sup> An insurer may, at its own expense, require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid.<sup>67</sup>

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<sup>58</sup> 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.

<sup>59</sup> 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.

<sup>60</sup> 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.

<sup>61</sup> Section 627.062(2)(j), F.S.

<sup>62</sup> Section 627.0629(1), F.S.

<sup>63</sup> *Id.*

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

<sup>65</sup> Section 627.711(1), F.S.

<sup>66</sup> Section 627.711(2)(a), F.S.

<sup>67</sup> Section 627.711(9), F.S.

### **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 ch. 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement departments.<sup>68</sup> The statutes prohibit the retail sale and use of fireworks<sup>69</sup> by the public. However, provisions of ch. 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban.

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.<sup>70</sup> However, the most recent Florida Fire Prevention Code references the 2018 edition of the NFPA 1123 Code.<sup>71</sup>

### **Grant and Contract Fraud**

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.<sup>72</sup> In the context of contracts, Fraud is an act that causes an error bearing on a material part of a contract that is "created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other."<sup>73</sup>

No specific statute exists creating a crime of grant or contract fraud. However, individuals perpetrating such fraud could possibly face prosecution for violations of section 817.034(4)(a), F.S., Organized Scheme to Defraud, section 812.014(2)(a), F.S., Theft, and section 838.022, F.S., Official Misconduct, among other possible crimes, depending on the facts of each case.

### **Deceptive Advertising**

Several existing statutes address false, misleading, and deceptive advertising. Section 817.40, F.S., contains the definitions for use in construing the statutes involving false, misleading, and deceptive advertising and sales. Misleading advertising is prohibited by s. 817.41, F.S. Advertising "containing any assertion, representation, or statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance

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<sup>68</sup> Section 791.001, F.S.

<sup>69</sup> Florida Statutes provide specific definitions of what are and are not fireworks, which is outlined in later sections of the analysis.

<sup>70</sup> Section 791.012, F.S.

<sup>71</sup> 8<sup>th</sup> Edition of the Florida Fire Prevention Code (2023) <https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code> (last visited January 9, 2024).

<sup>72</sup> Black's Law Dictionary, <https://thelawdictionary.org/fraud/> (last visited January 9, 2024).

<sup>73</sup> *Id.*

guaranties where such insurance is nonexistent or does not in fact insure against the risks covered” is prohibited by section 817.411, F.S. Advertising that offers “for sale or to issue invitations for offers for the sale of any property, real or personal, tangible or intangible, or any services, professional or otherwise, by placing or causing to be placed before the general public, by any means whatever, an advertisement describing such property or services as part of a plan or scheme with the intent not to sell such property or services so advertised, or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public” is prohibited by s. 817.44, F.S.

Penalties for violations of these statutes are provided in s. 817.45, F.S. For a first violation, a violator is guilty of a misdemeanor of the first degree.<sup>74</sup> For a second or subsequent violation, the violator is guilty of a misdemeanor of the first degree, but may be subject to a fine not to exceed \$10,000.

### **III. Effect of Proposed Changes:**

#### **The Florida False Claims Act**

**Section 1** amends s. 68.087, F.S., to prohibit bringing a Qui Tam action under s. 68.083(2), F.S., based upon allegations or transactions arising from, or to otherwise enforce, the provisions of the Florida Disposition of Unclaimed Property Act.

#### **Agreements Funded with Federal or State Assistance**

**Section 2** amends s. 215.971, F.S., to provide that an agency may not enter into an agreement under ch. 215, F.S., if the vendor fits any criteria outlined in s. 287.058(8), F.S., as created by this bill (see **Section 3** below).

#### **Procurement of Commodities and Services**

**Section 3** amends s. 287.058, F.S., to provide that an agency may not enter into any contract or other agreement with any entity whose function is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases, under the stated function of “fact checking” or otherwise removing “misinformation”.

#### **Real Property Transactions – Mobile Homes**

**Section 4** amends s. 319.261, F.S., to provide for the retirement of the title to a mobile home by the Department of Highway Safety and Motor Vehicles if the owner of the real property records a mortgage against the owner's mobile home and real property in the official records of the clerk of court in the county in which the real property is located.

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<sup>74</sup> Punishment may include a term of imprisonment not exceeding 1 year, a fine not to exceed \$1,000, court costs. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

### **Prohibited Property Insurance Practices by Contractors**

**Section 5** amends s. 489.147, F.S., to provide that a contractor may not enter into a contract to replace a roof on residential property during a declaration of a state of emergency unless the contract includes the following notice 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.”

Such notice of cancellation must be sent to the contractor by mail that provides proof thereof, at the address specified in the contract.

### **Florida Commercial Financing Disclosure Law**

**Section 6** amends s. 559.9611, F.S., 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. 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 7** amends s. 624.424, F.S., 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 continuing education that is insurance-related as a condition of license renewal. The continuing education must be approved by the Department of Business and Professional Regulation, based on the recommendations of the Department of Financial Services.

### **Public Adjusters**

**Section 8** amends s. 626.854, F.S., to apply provisions providing limits on 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.

**Section 9** amends s. 626.8796(2), F.S., to provide that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.

### **Health Insurance Policies – Short Term Health Insurance**

**Section 10** amends s. 627.6426, F.S., 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, any essential benefit not included, content of coverage, and exclusions within the contract. 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.

### **Notice of Property Insurance Claim**

**Section 11** amends s. 627.70132, F.S., to provide that a claim from a condominium unit owner resulting from a loss assessment is considered to have occurred on the date of the notice of loss assessment sent by a unit owner's condominium association.

### **Notice of Premium Discounts for Hurricane Loss Mitigation**

**Section 12** amends s. 627.711, F.S., to provide that the requirements placed on insurers to notify applicants and policyholders of the availability of each premium discount, credit, other rate differential for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm can be or have been installed or implemented also apply to policies offering commercial residential or commercial insurance coverage.

### **Minimum Fireworks Safety Standards**

**Section 13** amends s. 791.012, F.S., to adopt the 2018 edition of the National Fire Protection Association Code for Fireworks Display, which will replace the 1995 edition.

### **Grant and Contract Fraud**

**Section 14** creates s. 817.153, F.S., to provide new criminal penalties for fraud related to grants or contracts with the state or any agency of the state. The penalties apply to all grant agreements, state contracts, or other agreements with the state, regardless of whether the funds being provided are state funds or federal pass-through funds. A person violates this section if the person:

- Knowingly presents or causes to be presented a claim related to a grant agreement, contract, or other agreement with the state, or any agency thereof, that the person knows or should know is false or fraudulent.
- Knowingly makes, uses, or causes to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, budget, financial statement, audit, or other document that is required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part pursuant to a state grant agreement, state contract, or other agreement with the state.
- Knowingly makes, uses, or causes to be made or used false records or statements material to false or fraudulent claims under a grant agreement, state contract, or other agreement with the state.

- Knowingly conceals, avoids, or decreases an obligation to pay or transmit funds or property with respect to a state grant agreement, state contract, or other agreement with the state, or knowingly makes, uses, or causes to be made or used a false record or statement material to such an obligation.

Proof of specific intent to defraud is not required, however, innocent mistake is a defense to an action brought under this section. Penalties for a violation are based on the value of the property involved as follows:

- Less than \$20,000, the offender commits a felony of the third degree.<sup>75</sup>
- At least \$20,000, but less than \$100,000, the offender commits a felony of the second degree.<sup>76</sup>
- At least \$100,000, the offender commits a felony of the first degree.<sup>77</sup>

### **Deceptive Advertising**

**Section 15** creates s. 817.4112, F.S., to provide that that a person or business may not knowingly make statements, or disseminate any communication that has the intent of falsely representing that such communication originated from a bank or lending institution.

**Section 16** amends s. 817.45, F.S., to provide a penalty for the new crime created in Section 15 of the bill. A person violating the new crime is guilty of a first degree misdemeanor<sup>78</sup> for a first offence. A second or subsequent conviction is also a first degree misdemeanor but the fine may be up to \$10,000.

### **Effective Date**

**Section 17** provides the bill is effective July 1, 2024.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

<sup>75</sup> Punishment may include a term of imprisonment not exceeding 5 years, a fine not to exceed \$5,000, court costs. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>76</sup> Punishment may include a term of imprisonment not exceeding 15 years, a fine not to exceed \$10,000, court costs. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

<sup>77</sup> Punishment may include a term of imprisonment not exceeding 30 years, a fine not to exceed to \$10,000, court costs. Sections 775.082(3)(b)1. and 775.083(1)(b), F.S.

<sup>78</sup> Punishment may include a term of imprisonment not exceeding 1 year, a fine not to exceed \$1,000, court costs. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

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:

None. .

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 68.087, 215.971, 287.058, 319.261, 489.147, 559.9611, 624.424, 626.854, 626.8796, 627.6426, 627.70132, 627.711, 791.012, and 817.45.

This bill creates the following sections of the Florida Statutes: 817.153 and 817.4112.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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