
2021 Florida Legislative Session Report: Key Insurance Reforms



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Florida's diverse geographic, economic and demographic characteristics, coupled with a highly motivated trial bar, have made Florida one of the most challenging insurance marketplaces in the United States for quite some time. In an effort to address some of the industry-related issues that exist in the Sunshine State, the Florida Legislature focused on two key concerns during the 2021 session: (i) the repeal of Florida's No-Fault Motor Vehicle Law and (ii) the rising property insurance rates caused by aggressive litigation and inappropriate solicitation practices by certain contractors. These measures are discussed below.

Repeal of No-Fault Auto Coverage

One of the more controversial initiatives before the legislature — the repeal of the state's Motor Vehicle No-Fault Law — has been attempted without success over the last several sessions. After substantial debate, the Legislature passed SB 54 by Sen. Danny Burgess (R-Zephyrhills) repealing Florida's No-Fault law and replacing it with a mandatory bodily injury system.

If SB 54 ultimately becomes the law in Florida it will require Bodily Injury (BI) coverage in the amount of \$25,000 for the injury or death of one person in an accident; \$50,000 for the injury or death of two or more people in one crash; and \$10,000 for property damage (PD), beginning on January 1, 2022. Insurers also must offer medical payment (MedPay) coverages of \$5,000 and \$10,000, from which the insured may opt-out of, and the coverage must include a \$5,000 death benefit. Further, for injuries caused by an uninsured driver, there is a \$10,000 setoff of noneconomic damages unless the at-fault driver was driving under the influence, acting recklessly or with gross negligence, or fled the scene.

Perhaps the most controversial and debated portion of the bill relates to bad faith reform. An early version of the bill included several provisions which aimed to modify

how bad faith claims are adjudicated. The language was substantially diluted down before passage. The final language requires any third-party claimant to demonstrate that the insurer violated its duty of good faith and failed to settle, resulting in a claim of bad faith. The measure also prohibits punitive damages in third-party bad faith failure to settle actions.

The bill also establishes claims handling and investigation, defense of the insured, and settlement negotiation best practices required of insurers. Further, an insurer will not be liable for bad faith if it tendered policy limits in exchange for a release of its insured from further liability within 60 days after receiving a demand for settlement from a single claimant. Lastly, excluded drivers are subject to financial responsibility requirements and the exclusion remains valid even if they do not maintain financial responsibility.

Although the bill has not been delivered to the governor at the time of this publication, several major businesses, trade groups, and members of the insurance industry are calling for him to veto the measure. A veto is likely given the potential that this legislation would have the effect of increasing insurance rates for Florida insureds.

The Residential Property Insurance Crisis

Florida property insurance carriers lost more than \$1.6 billion in 2020 due, in large part, to unnecessary litigation, aggressive solicitation by certain contractors and public adjusters, higher reinsurance costs, and increasing catastrophic occurrences. In particular, the impact of litigation cannot be understated. Florida Insurance Commissioner David Altmaier underscored the issue in a 2021 letter to the Florida Legislature where he quoted data produced by the National Association of Insurance Commissioners (NAIC), which found that Florida accounted for 76.45 percent of all homeowners' suits opened against insurers in the country despite only accounting for



8.16 percent of all homeowners' claims opened by insurance companies in the United States in 2019.

To stem losses, companies restricted coverages, including limiting new business and renewals based on the locale or the age of the home or the roof. Additionally, insurers filed rate increase requests with the Florida Office of Insurance Regulation (OIR). During March 2021, Altmaier commented that, in 2020, 105 homeowners multi-peril rate filings for increases of 10 percent or more were submitted to the OIR; of which 55 were approved.

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Increasing rates and nonrenewals push more policyholders into the state's insurer of last resort — Citizens Property Insurance Corporation. At a rate hearing before OIR in March 2021, Citizens President and CEO Barry Gilway told

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regulators that Citizens is growing by 5,000 new policies per week and is expected to reach a policy count of 700,000 by the end of the year as carriers continue to raise rates and cut back on capacity. Pursuant to the most recent figures made available by Citizens, that number rose to 609,805 by May 31, 2021.

Demotech President and Founder Joseph Petrelli prior to the session warned that several companies would find it difficult to sustain their "A" rating if the Legislature did not pass meaningful reform.

The gravity of the situation becomes even more evident when one considers the more extreme measures that OIR has found it necessary to take to protect the overall marketplace. Between May 2020 and May 2021, OIR issued orders approving the nonrenewal or cancellation of nearly 85,000 homeowner policies in the aggregate, spread across five insurers. In one of its orders, OIR acknowledged the significance of these actions when it noted that early cancellations and nonrenewals are "an extraordinary statutory remedy reserved to address insurers which are or may be in hazardous financial condition." In that regard,



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allowing insurers to cancel large blocks of policies is viewed as a method of avoiding the severe market disruption that would occur if one or more carriers becomes insolvent and must be placed into liquidation.

Given the dire circumstances facing Florida's residential property insurance market, it was not surprising that property insurance once again took center stage in the Florida Legislature. Sen. Jim Boyd (R-Bradenton), an insurance agent, aimed to address the host of issues facing the property insurance marketplace when he introduced SB 76. The bill was introduced in the Senate and a companion measure, HB 305 by Rep. Bob Rommel (R-Naples), was introduced in the House. Thereafter, significant negotiations took place between the chambers. Ultimately, an altered version of SB 76 passed on April 30, 2021. The bill is described in greater detail below.

Among the bill's various elements were measures that were aimed at curtailing the rising legal expenses associated with property insurance claims. Specifically, to stem the tide of lawsuits, SB 76 required that claimants must file a pre-suit demand at least 10 days before suing an insurer. Importantly, the pre-suit demand must specify the demand estimate, the amount of attorney fees and costs demanded, and the total amount in dispute. Further, the bill provided that a demand cannot be filed until the insurer has been given an opportunity to make a determination regarding coverage, and further provided that insurers may require mediation or other form of alternative dispute resolution after receiving the demand.

The bill also sought to address one of the more unique elements of Florida law that has been credited by many observers as being the primary driver behind Florida's litigious environment: the provision of Florida law which provides one-way attorneys' fees for policyholders in lawsuits against insurers. The bill addressed one-way attorneys' fees by revising the manner in which attorneys' fees are awarded in connection with residential property insurance disputes:

- If the difference between the amount of damages awarded to the claimant and the pre-suit settlement offer (excluding reasonable attorneys' fees and costs) is less than 20 percent of the disputed amount, each party pays its own attorneys' fees and costs and a claimant may not be awarded one-way attorneys' fees.
- If the difference between the amount of damages awarded to the claimant and the pre-suit settlement offer (excluding reasonable attorneys' fees and costs) is at least 20 percent but less than 50 percent of the disputed amount, the insurer pays the claimant's attorneys' fees and costs equal to the percentage of the disputed amount obtained multiplied by the total attorneys' fees and costs.
- If the difference between the amount of damages awarded to the claimant and the pre-suit settlement offer (excluding reasonable attorneys' fees and costs) is at least 50 percent of the disputed amount, the insurer pays the claimant's full attorneys' fees and costs.

In determining whether attorneys' fees are appropriate under this new fee-shifting analysis, the "disputed amount" is defined as the difference between the claimant's pre-suit settlement demand (not including attorneys' fees and costs), and the insurer's pre-suit settlement offer (also not including attorneys' fees or costs).

The bill further clarified that neither party in a suit may use a proposal for settlement or offer of judgement, and it required the consolidation of multiple suits filed under the same policy.

To limit escalating roofing claims, SB 76 prohibits contractors and public adjusters from soliciting for repairs to damaged properties. Contractors cannot repair an insured's property without a contract that includes a detailed cost estimate of the labor and materials required to complete the repairs. Violators could be fined \$10,000.

Additionally, the bill reduces the deadline for filing claims for initial and reopened claims for all losses from three to two years from the date of loss. Supplemental claims must be filed three years from the date of loss.

Several provisions address concerns raised over the artificially lower cost policies written by Citizens Property Insurance Corporation. SB 76 prohibits Citizens from writing a policy if coverage is available from an authorized insurer within 20 percent of the quoted premium. The measure also increases the 10 percent Citizens glide path by 1 percent each year, beginning in 2022, until it reaches a maximum of 15 percent by 2026.

The governor signed SB 76 on June 11, 2021 and it will become effective on July 1, 2021. While the legislation's impact on the residential property insurance market remains to be seen, many insurance industry observers believe the bill will help stem the rise of unreasonable residential roof claims and excessive attorneys' fee awards. Members of the plaintiffs' bar disagree and view the bill as an erosion of the rights of insureds to recover under their residential property insurance policies, despite the fact that the bill did nothing to abrogate the obligation of insurers to pay covered claims under the insurance policies they issue. With all the uncertainty that exists in the current marketplace, one thing remains crystal clear: Something needs to be done to address the residential property insurance crisis in Florida. Revising Florida's one-way attorneys' fee provision is an important first step, but more work remains. [🔗](#)

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