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"SUPPORT" Assignment of Benefits "AOB" Reform

Protect Your Rights - Assignment of Benefits (AOB) abuse is a costly scheme that hurts consumer's pocketbook. While AOB is a legal tool that **CAN** be used appropriately, it also provides an opportunity for fraud that in turn drastically inflates consumers home repair costs. This practice encourages the homeowner to sign over the benefits of their insurance policies so that the costs can be run up and overbilled. This increase in costs (and attorneys' fees) leads to an increase in premiums for which consumers are left on the hook. This epidemic is causing drastic insurance availability and affordability problems.

SB 1038 by Senator's Hukill & Passidomo - Relating to Assignment Property Insurance Benefits

- Require vendors accepting an assignment of benefit to adhere to the same policy requirements to which a policyholder must comply.
- Prohibit vendors working under an assignment of benefits (or any variation) from seeking fees under the one-way attorney fee statute when litigation occurs.
- Require that the assignment agreement contain a written, itemized, per unit cost estimate of the work to be performed by the assignee.
- Require that an assignment agreement be provided to the insurer no later than three (3) business days after an assignment of benefits is executed by the policyholder.
- Limit assignments to only the work being performed (not the entire claim).
- Provide consumer protections including the ability to revoke the assignment and notice in writing as to what insureds are signing and what rights they are giving up.
- Prohibit an assignment from containing cancellation fees, check processing fees or overhead and profit charges in estimates.
- By accepting an assignment of benefit, a vendor agrees to have no recourse against a policyholder, including the placement of a lien on the property, for services rendered under the contract. A vendor's only recourse is through the insurance company.

HB 1421 by Representative's Grant & Plasencia - Relating to Property Insurance Assignment Agreements

The bill codifies in statute the case law that states an insurance policy, limited to a residential property insurance policy, cannot prohibit the assignment of post-loss benefits.

In addition, the bill defines "assignment agreement" and establishes requirements related to the execution, validity, effect, and enforcement of an assignment agreement. Specifically, the bill requires a written agreement, a 7-day period within which the policyholder may rescind the agreement, an estimate of services, notice to the insurer when an assignment agreement has been executed, and notice to the policyholder regarding the legal implications of an assignment agreement. The bill prohibits specified fees in connection with an assignment agreement and prohibits an assignment agreement from altering a policy provision related to managed repair. The bill creates a rebuttable presumption that an insurer is prejudiced if the assignee fails to abide by specified duties of the contract which shifts the burden of proof to the assignee to prove otherwise. The bill also limits an assignee's ability to recover certain costs directly from the policyholder. The new requirements apply to assignment agreements executed after July 1, 2017.

If an assignee intends to file suit against an insurer to enforce an assignment agreement, the bill requires that the assignee give the insurer 21-days' prior notice. If the parties fail to settle and litigation results in a judgment, the bill provides the exclusive means for either party to recover attorney's fees. Fees and costs are recoverable under s. 57.105, F.S., or:

- By the assignee, if the amount awarded to the assignee is equal to or greater than the amount the assignee requested to settle the claim prior to litigation.

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- By the insurer, if the amount awarded to the assignee is less than or equal to the amount offered by the insured to settle the claim prior to litigation.
- By neither party, if the amount awarded is less than the assignee's request for settlement, but more than the insurer's offer of settlement.

 **"SUPPORT" Workers Compensation Reform**

Prior to the workers compensation reforms of 2003, we had an availability and affordability issue in the workers compensation market in Florida. According to a 2016 Oregon study (highlighted by the National Council on Compensation Insurance), after the December 2016 14.5 percent rate increase went into effect, Florida has jumped 10 states and is ranked 23 out of 51 states in terms of workers compensation rates, with the primary cost driver being the Florida Supreme Court's decision on attorney's fees. This is comparable to 2000 and 2002, before the 2003 reforms, where Florida was ranked first and second highest for workers compensation rates in the country. Following the 2003 reforms, Florida's rates began decreasing, and in 2010, Florida had the 40th lowest workers compensation rates in the country. Two Supreme Court decisions Castellanos and Westphal have retroactively changed Florida's workers compensation law. The Court's decision prompted a filing for a 20% rate increase and OIR only approved a 14.5% rate increase. NCCI has estimated that the combined total statewide-unfunded Liability related to the Florida Supreme Court's decision in Emma Murray, Castellanos and Westphal could potentially exceed $1B.

We need to support efforts to address these issues at a minimum:

- Employees are free to retain their own attorneys;
- The Workers' Compensation Act will remain intact, expediting resolution of outstanding cases/issues to avoid costly and prolonged litigation process;
- Injured workers will be attended to by the appropriate medical providers quicker based on mandatory state oversight;
- Unnecessary litigation will be avoided; and
- Personal information of injured workers would not be publicized.

 **"SUPPORT" Commercial Residential Export Eligibility**

First, the Diligent Effort process is antiquated and counterproductive. The only commercial lines policy that still requires a Diligent Effort Form is Commercial Residential and it's been seen that the form has been abused by some agents who use prefilled forms. Replacing the DEF with an Acknowledgement of Surplus Lines placement form signed by the insured; a similar form is used today for the other Commercial lines policies. Also, we feel that the consumer should be provided with all insurance options available by their agent. Currently, if an insured has coverage through an admitted carrier, their agent can shop the insurance for them but cannot offer them coverage offered by the surplus lines carriers. In some cases, the financial stability of the surplus lines carrier is better and might offer a broader policy and even more affordable premiums. A competing agent can offer the surplus lines coverage if they can prove that they don't have an admitted market to offer. ***Consequently, the trusted insurance advisor can't offer all available options to their client. Therefore there isn't any transparency or real choices for the consumer.***

SB 208 by Senator Passidomo - Relating to Surplus Lines Insurance
HB 191 by Representative Beshears - Relating to Commercial Lines Residential Coverage

These bills amend the law to remove the diligent effort requirement, as is the case for most types of commercial insurance, and instead require an agent wishing to export a commercial residential policy to the surplus lines market to obtain the insured's signature on a disclosure form. This encourages an agent to discuss *all* available insurance options with his client, including those offered by admitted and non-admitted carriers.

 **"SUPPORT" Insurer Anti Fraud Efforts**

SB 1012 by Senator Brandes - Relating to Investigative and Forensic Services
HB 1007 by Representative Raschein - Relating to Insurer Anti-Fraud Efforts

These bills seek to strengthen the state's efforts to fight insurance fraud. They require the development of anti-fraud plans by insurance companies to be submitted to the Division of Investigative and Forensic Services. Require in-house fraud-fighting units within insurance companies to be trained by the Department's insurance fraud investigators. They require reporting of anti-fraud statistics to the division annually, so that the division can better track the changing trends of fraud statewide. The Chief Financial Officer of Florida, based on the annual fraud statistics submitted to the division, may assign and re-assign the dedicated prosecutors as needed to address the changing trends of insurance fraud.

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