



LAAIA Post 2021 Legislative Session Quick Brief

The 2021 version of the Florida Legislature was all about surprises...

Given the fact that COVID had literally caused the crash of Florida's vital economy the previous year, prognosticators were thinking this was going to be another reduced, challenging budget year, and Covid induced Capitol Complex protocols reduced public and business interactions with legislators to the world of virtual contact, it was not expected the Legislature would come in for a smooth landing right on schedule.

Yet, on the last regularly scheduled day of session...April 30th, both the House and the Senate passed the budget shortly after the requisite 72-hour cooling-off period, passed the last of the "must-pass" bills and went "Sine Die" by mid-afternoon instead of the expected late evening timeframe.

In their 60-days in Tallahassee, Legislators dealt with 3,140 filed bills, of which 275 bills passed to the Governor. In the process, however, legislators filed 2,632 amendments, met in 39 Floor sessions and voted 3,788 times.

This session we monitored 98 pieces of legislation impacting the insurance industry, actively tracking 38 and of those 10 bills ultimately passed to the Governor.

Below you will find a quick brief of the PIP bill, Civil Liability for Damages Relating to COVID-19, a detailed analysis of the Property Insurance legislation and a list of the additional bills that passed. Stay tuned for the detailed report of all of our monitored bills in "LAAIA 2021 Legislative Session Summary".

SB 54 Motor Vehicle Insurance (Subject to the Governor's veto powers, the effective date of the bill is January 1, 2022) – The bill repeals Florida's Motor Vehicle No-Fault Law and its Personal Injury Protection (PIP) insurance requirement, replacing it with mandatory bodily injury coverage of 25/50, a

mandatory death benefit and an “opt-out” medical payments coverage of \$5,000 and \$10,000 with no deductible. Establishes framework governing actions for bad faith failure to settle third-party claims, including the establishment of claim handling best practices for insurers.

SB 72 - Civil Liability for Damages Relating to COVID-19 (Signed by the Governor and effective 3/29/21)

– The bill provides immunity from COVID-19 related claims for individuals, businesses, schools, and houses of worship if a good faith effort was made to comply with health standards and guidance related to COVID-19. The bill also creates strong affirmative defenses for health care providers that substantially complied with and relied upon health standards.

SB 76 – Insurance (Subject to the Governor’s veto powers, the effective date of the bill is July 1, 2021) – The bill makes the following changes:

Prohibited Property Insurance Practices by Contractors makes several revisions to ch. 489, F.S., governing contractor licensure. The newly created section prohibits contractors from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- 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;
- Unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

Contractors must provide notice to residential property owners of duties under this section. The prohibitions and duties created by the section apply to people acting on behalf of contractors and unlicensed persons. Violations are subject to license discipline by the Department of Business and Professional Regulation (DBPR) and a \$10,000 fine per violation.

Examination of Insurer Affiliates the bill specifies that the Office of Insurance Regulation (OIR) has financial examination authority over insurer affiliates, and thus must examine them at least once every five years. It further specifies that affiliates must make information freely available to OIR examiners.

Insurer Reporting of Residential property Insurance Closed Claims Data the bill requires insurers to annually file with OIR, specified data on residential and commercial property insurance closed claims. For each closed claim the insurer must report the:

- Claim ID number;
- Policy type;
- Claim location;
- Date of loss;
- Type of loss;
- Names and types of vendors used for mitigation, repair, or replacement;
- Date the claim was reported;
- Date(s) the claim was closed;

- Whether the claim was closed with or without payment;
- Dates of reopened or supplemental claims;
- The public adjuster;
- Claimant attorney;
- The amounts paid by the insurer for indemnity, loss adjustment expenses, and plaintiff's attorney fees;
- Information on contingency fee multiplier requests and awards; and
- Other information the Financial Services Commission (FSC)/OIR deems necessary.

Insurer Payments to Insurer Affiliates the bill requires that any fee, commission, or consideration paid to an affiliate must be fair and reasonable. In determining whether the consideration is "fair and reasonable," the OIR must consider the actual cost of the service being provided and may consider other factors. Companies that pay affiliates must provide to OIR any information the office deems necessary.

Managing General Agents the bill deletes current law that exempts a managing general agent (MGA) that is controlled by, or a controlling person of, an insurer it contracts with, from the requirement that the contract between the insurer and MGA specify appropriate underwriting guidelines. The bill further deletes current law exempting an MGA that represents a single domestic insurer from OIR's general authority to examine an MGA as if the MGA were the insurer.

Public Adjusting the bill prohibits licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending that the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance. However, the contractor may not violate s. 489.147, F.S.

The bill prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for (1) allowing a roof inspection of residential property, or (2) making an insurance claim for roof damage. It also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a \$10,000 fine. Unlicensed persons who are not otherwise exempted from PA licensure commit the unlicensed practice of public adjusting when they do these prohibited acts and are subject to a \$10,000 fine per act and the criminal penalty for unlicensed activity (3rd degree felony).

Citizens Property Insurance Corporation the bill makes several revisions to s. 627.351, F.S., governing Citizens Property Insurance Corporations (Citizens):

- Provides that a personal lines residential risk seeking to be newly insured by Citizens is ineligible for coverage if it receives an offer of comparable coverage from an authorized insurer that is not more than 20 percent higher than the Citizens premium. Current law has a 15 percent eligibility threshold for new policyholders.
- Specifies that Citizens need not purchase reinsurance when it is not available at reasonable rates, but requires that Citizens' rate calculations must include the cost of reinsurance to cover its projected 100-year probable maximum loss, even when Citizens does not purchase reinsurance.
- Increases the 10 percent cap (the "glide path") on Citizens rate increases by 1 percent annually beginning in 2022, until the cap reaches 15 percent in 2026.

- Requires that the Citizens budget allocations for employee compensation and all proposed raises for an employee exceeding 10 percent of their current salary must be approved by the Citizens board of governors. It also requires Citizens to have an employee compensation plan approved by the board of governors.
- Makes additional conforming changes.

Actual Cash Value Coverage the bill creates notice requirements when homeowners insurance provides actual cash value (ACV) reimbursement for any loss under a property insurance policy. The insurer must provide to the policyholder an OIR approved form that fully advises the policyholder of the nature of the coverage. The policyholder must sign the form before the ACV policy or reimbursement schedule is issued. The insurer must also include with the policy or reimbursement schedule a notice that ACV coverage "...MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR PROPERTY. PLEASE DISCUSS WITH YOUR INSURANCE AGENT." At least once every 3 years the insurer must notify a policyholder that provides ACV coverage that replacement cost coverage is available. Unless the insurer obtains the policyholder's written acceptance of ACV coverage, the policy or reimbursement schedule is deemed to include replacement cost coverage.

Notice of Property Insurance Claims the bill makes several revisions to s. 627.70132, F.S., governing notice of property insurance claims:

- A property insurance claim or reopened claim must be provided to the insurer within 2 years of the date of loss.
- A supplemental claim is not barred if notice is given while the claim it supplements remains open.
- Specifies that the date of loss for claims resulting from weather-related events are the date a hurricane makes landfall or when different types of weather related events are verified by National Oceanic and Atmospheric Administration (NOAA) in the location of the property.
- Defines a reopened claim as a claim that was previously closed but has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.
- Defines a supplemental claim as a claim for additional loss or damage from the same peril the insurer has previous adjusted discovered while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.
- Makes additional conforming changes.

Property Insurance Litigation the bill creates the following framework to governing property insurance litigation:

Notice of Intent to Initiate Litigation

A claimant must provide DFS with written notice of intent to initiate litigation on a form provided by DFS. Notice must be provided at least 10 business days before filing suit, but may not be given before the earlier of the insurer's denial of coverage or that the 90-day period to adjust a claim under s. 627.70131, F.S. Notice must detail the alleged acts or omissions of the insurer giving rise to the suit and either (1) [if the insurer denied coverage] an estimate of damages; or (2) [if the insurer did not deny coverage] a presuit settlement demand that itemizes damages, attorney fees, costs, and the disputed amount. Notice may include supporting documents. Notice and supporting documents are admissible only in a proceeding regarding attorney fees.

Abatement or Dismissal Without Prejudice of Actions

The court must dismiss without prejudice any claimant's suit if the claimant has not complied with the requirement to provide 10 business days' notice of intent to initiate litigation.

Claimant Duties

A claimant must timely (1) cooperate with the insurer in the claim investigation; (2) provide requested records and documents related to any services that have been provided; (3) provide the insurer with accurate and up-to-date estimates of the scope of work needed to be performed; and (4) allow the insurer to inspect, photograph, or evaluate, in a reasonable manner and time, the property.

Insurer Duties

The insurer must have a procedure for the prompt investigation, review, and evaluation of the noticed dispute and must investigate each claim in accordance with the Florida Insurance Code. An insurer must respond in writing within 10 business days after receiving notice of intent to initiate litigation. If the insurer denied coverage, the response must: (1) accept coverage, (2) deny coverage, or (3) assert the right to re-inspect the property, which it has 14 business days to do. If the notice alleges the insurer did an act other than denying coverage, the insurer must respond by (1) making a settlement offer; or (2) requiring the claimant to participate in appraisal or another method of ADR. If appraisal or ADR is not concluded within 90 days after the 10-day notice of intent to initiate litigation, the claimant may immediately file suit.

Award of Attorney Fees in Property Insurance Litigation

Claimant attorney fee awards for residential or commercial property insurance policies, excluding assignment litigation, are governed by dividing the claimant's recovery above the insurer's settlement offer by the disputed amount (difference between the claimant's and insurer's settlement offers). If the claimant's recovery above the insurer's settlement offer is at least 50% of the disputed amount, the insurer pays all the claimant's fees. If the recovery above the insurer's settlement offer is at least 20% but less than 50% of the disputed amount, then the insurer must pay the same percentage of the claimant's attorney fees and costs. If the claimant's recovery above the insurer's settlement offer is less than 20% of the disputed amount, there is no fee award. Attorney fees may not be awarded for those attorney fees incurred before a suit is dismissed for failure to provide the notice of intent to initiate litigation.

Tolling

Tolls statute of limitations under s. 95.11, F.S., for 30 days if (1) the claim is not resolved in the presuit notice process and (2) the statute of limitations expires within 30 days of the conclusion of the presuit notice process.

Insurance Holding Companies the bill specifies that when OIR examines an insurer that is part of an insurance holding company:

- OIR may require insurers that are members of an insurance holding company to produce records, books, and other information in the possession of the insurer or its affiliates as are reasonably necessary.

- OIR may retain at the insurer's expense attorneys, actuaries, accountants, and other experts reasonably necessary to assist in conducting exams of the insurer.
- The insurer must pay the expense of examination per s. 624.320, F.S.
- OIR may examine the affiliates of the insurer to obtain reasonably necessary information; however, such examination of an affiliate may not extend to the passive investors of affiliates in the holding company system which do not provide services to the insurer or have relationships with the insurer.

SB 420 - Motor Vehicle Insurance Coverage Exclusions (Subject to the Governor's veto powers, the effective date of the bill is July 1, 2021)

HB 467 - Insurance Adjuster Examination Requirements (Subject to the Governor's veto powers, the effective date of the bill is July 1, 2021)

SB 566 - Motor Vehicle Rentals (Subject to the Governor's veto powers, the effective date of the bill is January 1, 2022)

SB 630 - Community Associations (Subject to the Governor's veto powers, the effective date of the bill is July 1, 2021)

SB 728 - Credit for Reinsurance (Subject to the Governor's veto powers, the effective date of the bill is July 1, 2021)

HB 1209 - Department of Financial Services (Subject to the Governor's veto powers: Except as otherwise expressly provided, the bill has an effective date of July 1, 2021)

SB 1598 - Consumer Protection (Subject to the Governor's veto powers; except as otherwise expressly provided in this act, this act shall take effect upon becoming a law)