Navigating the Insurance Regulatory Landscape

COLODNY FASS

Introduction

- Current regulatory environment: Tough love
- 2023 Legislative Session
  - HB 837 – Tort Reform
  - SB 7052 – Insurer Accountability
- Some friendly advice regarding affiliated transactions

HB 837
TORT REFORM

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HB 837 – Attorney Fees

- Repeals sections 627.428 and 626.9373, Florida Statutes entirely
- Creates a “strong presumption that lodestar fee is sufficient and reasonable”
  - Only exception - ”rare and exceptional circumstances” w/ evidence competent counsel unavailable
- 86.121 –creates a right to attorney fees in declaratory actions to determine coverage:
  - Only after a total denial of coverage
  - Does not apply if insurer offers a defense under a ROR
  - Either party may request a summary procedure for such declaratory actions
  - Right to fees may not be assigned or transferred
  - DOES NOT APPLY to actions under a residential or commercial property insurance policy
- Section 768.79, Fla. Stat. applies to any civil action involving an insurance contract
- Attorney fees still exist for suits against sureties under performance bonds

HB 837 – Statute of Limitations

- Negligence statute of limitation changed from 4 to 2 years
  - Applies prospectively to causes of action accruing after effective date

- Stays and tolling of SOL for active duty military servicemembers

HB 837 – Bad Faith: 90-Day Cure Period

- Bars bad faith actions involving liability insurance, including common law, if carrier:
  - Tenders the lesser of policy limits or amount demanded,
  - W/in 90 days after receiving "actual notice" of a claim, and
  - Claim is accompanied by sufficient evidence to support the amount

- If two or more claimants have competing claims arising from a single occurrence:
  - Insurer is not liable for more than the policy limits (for failure to pay) if w/in 90 days:
    - Insurer files interpleader action (each entitled to pro rata share), OR
    - Insurer makes full policy limits available in arbitration (each entitled to pro rata share)
      - All parties must agree to participate
      - Claimant must sign a release

- If insurer fails to tender limits or amount demanded in 90 days:
  - Existence of 90-day period and fact insurer could have avoided bad faith are inadmissible
  - Statute of limitations is extended for 90 days

HB 837 – Bad Faith: Reform

- Reforms apply to common law and statutory bad faith claims
- “Mere negligence alone is insufficient to constitute bad faith”
- Insured, claimant, and their representatives must act in good faith in:
  - Furnishing information
  - Making demands
  - Setting deadlines
  - Attempting to settle
- Jury may reduce damages awarded for failure to act in good faith

HB 837 – Admissibility of Evidence of Past Medical Expenses

- Limited to amount actually paid, regardless of the source of payment
- Evidence offered to prove unpaid charges for incurred medical treatment shall include, but is not limited to:
  - Coverage other than Medicare and Medicaid:
    - Evidence of amount insurer is required to pay
    - Evidence of the amount of claimant's share under policy or regulation
    - Unless services obtained under "letter of protection" or not submitted to insurer, then
      - Evidence of amount insurer *would* pay under policy
      - Evidence of amount claimant would be responsible for under policy or regulation
  - No coverage, or coverage under Medicare or Medicaid:
    - Evidence of 120% of Medicare rate
    - If there is no Medicare rate, evidence of 170% of Medicaid rate
  - If services obtained under letter of protection and right to recover is transferred
    - Evidence of the amount the third party paid for the right to recover for services
  - Any evidence of reasonable amounts billed to the claimant for necessary services/treatment

HB 837 – Admissibility of Evidence of Future Medical Expenses

- Evidence shall include, but is not limited to:
  - Coverage other than Medicare and Medicaid:
    - Evidence of amount that could be satisfied by insurer under policy/regulation if submitted
    - Plus, the claimant's share under the policy or regulation
  - No coverage, or coverage under Medicare or Medicaid:
    - Evidence of 120% of Medicare rate at the time of trial
    - If there is no Medicare rate, evidence of 170% of Medicaid rate at the time of trial
  - Any evidence of reasonable future amounts to be billed for necessary services/treatment

HB 837 – Limitations on Evidence of Medical Expenses

- No affirmative duty on any party to seek reduction in billed charges to which the party is not contractually entitled

- Individual contracts between providers and authorized commercial insurers or authorized HMOs are not subject to discovery or disclosure and are not admissible

HB 837 – Limitations on Damages for Medical Expenses

- In addition to limitations in subsection (2), damages may not exceed:

  (a) ***Amounts actually paid*** by or on behalf of the claimant to a health care provider who rendered medical treatment or services;

  (b) ***Amounts necessary to satisfy charges*** for medical treatment or services that are due and owing but at the time of trial are not yet satisfied; and

  (c) ***Amounts necessary*** to provide for any reasonable and necessary medical treatment or services the claimant ***will receive in the future***.

HB 837 – Letters of Protection

- As a condition to asserting a claim under a letter of protection, a claimant must disclose:
  - A copy of the letter of protection
  - All billings, itemized and, to extent applicable, coded (CPT/HCPCS/DRG/ICD)
  - If provider sells accounts receivable to factoring company or 3rd party:
    - Name of factoring company or 3rd party and amount paid (including any discounts)
  - Whether the patient had health care coverage and identity of coverage
  - Whether patient was referred, and if so, by whom
    - **If referral is by attorney, evidence of referral by attorney is admissible**
    - **Relationship between attorney and provider is relevant to bias of provider**
      - Includes number of referrals, frequency, any financial benefit obtained

HB 837 – Premises Liability: Criminal Acts of Third Parties

- Newly enacted s. 768.0701, Fla. Stat. applies:
  - In an action against an owner, lessor, operator or manager
  - Brought by a person lawfully on the property
  - Who is injured by a criminal act of a third party

- Jury must consider fault of all persons who contributed to injury
  - *Comparative fault amended elsewhere in the legislation*

HB 837 – Presumption Against Liability for Criminal Acts of Third Parties if Multi-Family Property Owner/Operator Implements Security Measures

- Owner/operator must:
  - Substantially implement following security measures:
    - Security cameras on entrances/exits with footage retained for 30 days
    - Lighted parking, walkways, laundry rooms, common areas, porches - dusk to dawn
    - 1-inch deadbolts in unit doors
    - Locking windows, exterior sliding doors, and other doors; locked pool gates
    - Peephole/door viewer on all unit doors which do not have windows
  - By 1/1/25, complete a "crime prevention through environmental design assessment"
    - Not more than 3 years old
    - Completed by law enforcement or designated practitioner
    - Remain in substantial compliance
  - By 1/1/25, provide crime deterrence and safety training to employees
    - Thereafter, must train within 60 days of hiring

HB 837 – Presumption Against Liability if Multi-Family Property Owner/Operator Implements Security Measures

- Burden of proof on owner/operator to demonstrate implementation
- Florida Crime Prevention Training Institute of the Department of Legal Affairs shall develop a curriculum or best practices
- Does not establish a private cause of action

HB 837 – Changes to Comparative Fault

(6) GREATER PERCENTAGE OF FAULT.—In a negligence action to which this section applies, ***any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages.*** This subsection does not apply to an action for damages for personal injury or wrongful death arising out of medical negligence pursuant to chapter.

HB 837 – Prospective or Retroactive?

- Statute of limitations is expressly prospective, not retroactive
  - Applies to causes of action accruing after March 24, 2023

- “This act shall not be construed to impair any right under an insurance contract in effect on or before the effective date of this act. To the extent that this act affects a right under an insurance contract, this act applies to an insurance contract issued or renewed after the effective date of this act.”

- “Except as otherwise expressly provided in this act, this act shall apply to causes of action filed after the effective date of this act.”

SB 7052
INSURER ACCOUNTABILITY

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SB 7052 – “Insurer Accountability”

- The bill passed on May 3, 2023
- The effective date was July 1, 2023, with certain exceptions discussed below

SB 7052 – Key Provisions

- Key provisions of the legislation included:
  - Legislative intent regarding effective date of SB 2-A
  - Claims-handling manuals
  - Insurer financial exams
  - Insurer market conduct exams
  - Liability insurer claim handling practices
  - Information requests from DFS Consumer Services
  - Notice of temporary discontinuance of new residential property business
  - Hurricane mitigation discount website disclosures
  - New unfair trade practices
  - Increased administrative fines
  - Limitations on cancellation of property policies
  - Rate filings
  - Roof deductibles
- SB 7052 contains other provisions – this presentation does not cover every section of the bill

SB 7052 – Legislative intent regarding effective date of SB 2-A

SB 7052 provides that Chapter 2022-271, Laws of Florida, the litigation reform bill (SB 2-A) which was signed into law on **December 16, 2022**, shall not be construed to impair any right under an insurance contract in effect on or before the effective date of that chapter law. To the extent the changes made by SB 2-A affects a right under an insurance contract, those changes apply to insurance contracts issued or renewed after the applicable effective date. This clarification of the effective date of SB 2-A could apply to:

- Provisions providing that there is no right to attorney fees pursuant to section 627.428 in property insurance cases.
- Prohibitions on assignments of benefits of property insurance policies.
- Provisions requiring that certain bad faith actions shall not lie until there is an adverse adjudication in court.
- Property claim notice provisions in section 627.70132, Florida Statutes, which shortened initial and reopened claim reporting from 2 years to 1 year after date of loss and from 3 years to 18 months for supplemental claims

SB 7052 – Claims-handling manuals

- Creates a new section 627.4108, Florida Statutes

- Requires each authorized residential property insurer conducting business in Florida to **create and use a claims-handling manual** that provides guidelines and procedures and that complies with the requirements of the Insurance Code and, at a minimum, comports to usual and customary industry claims-handling practices.
  - Applies to foreign and domestic insurers
  - Residential property insurers – other lines of business not referenced
  - Applies to “authorized” residential property insurers – no express mention of surplus lines insurers

SB 7052 – Claims-handling manuals

Claims-handling manuals must include guidelines and procedures for:

- Initially receiving and acknowledging a claim and reviewing and evaluating the claim.
- Communicating with policyholders, from receipt of claim to closure
- Setting the claim reserve
- Investigating the claim, including conducting inspections of the subject property
- Making preliminary estimates and estimates of the covered damages to the insured property *and communicating such estimates to the policyholder*.
- Payment, partial payment, or denial of a claim and communicating same to policyholder.
- Closing claims
- Other provisions the OIR determines should be included to:
  - Comply with laws, rules or orders of OIR or DFS
  - Ensure the manual, at a minimum, comports with usual and customary claims-handling guidelines, or
  - Protect policyholders of the insurer or general public

SB 7052 – Claims-handling manuals

- Authorizes the OIR to request claims-handling manuals “at any time.”
- An insurer must provide a true and correct copy of its manual(s) within 5 business days of receipt of the request from OIR.
- The insurer must also provide an attestation that certifies:
  - Insurer has provided a true and correct copy of each currently applicable, or otherwise specifically requested, claims-handling manual; and
  - The timeframe for which each submitted manual was or is in effect.
- NO SPECIFIC PUBLIC RECORDS EXEMPTION
  - Insurers should be careful to seek trade secret protection pursuant to section 624.4213, Florida Statutes

SB 7052 – Claims-handling manuals

- Each year, each authorized residential property insurer must certify and attest:
  - Each current manual complies with the requirements of this code and comports to, at a minimum, usual and customary industry claims-handling practices; and
  - The insurer maintains adequate resources available to implement the requirements of each of its claims-handling manuals at all times, including during natural disasters and catastrophic events.
- **The first attestation was required to be submitted to the OIR on or before August 1, 2023**, and subsequent annual attestations must be submitted on or before **May 1 of each calendar year**.
- The Financial Services Commission adopted attestation and submission forms by emergency rule 69OER-23-2, effective July 2023.

SB 7052 – Insurer financial exams

- Pursuant to s. 624.316, Fla. Stat., the OIR is currently required to examine insurers at least once every 5 years.
  - The legislation requires OIR to create a risk-based selection methodology for scheduling financial examinations of insurers by determining whether they are “high-risk” or “average” or “low-risk” insurers.
  - High-risk insurers must be examined at least once every 3 years.
  - Average and low-risk insurers must be examined at least once every 5 years.
  - The OIR’s selection methodology must be adopted by rule which must be presented to the Financial Services Commission by **October 1, 2023**, and will consider various factors, including:
    - Level of capitalization and identification of unfavorable trends;
    - Negative trends in profitability or cash flow from operations;
    - NAIC IRIS ratios
    - Risk-based capital and trend test results
    - Structure and complexity of insurer
    - Changes in Board/Officers or business strategy or operations
    - Market conduct exam findings or other regulatory actions by OIR or other regulators or rating agencies
    - Solvency concerns

SB 7052 – Insurer financial exams

- Rule 69O-138.004 Risk-Based Selection Methodology for Scheduling Financial Examinations
  - Proposed rule published September 19, 2023
  - Methodology essentially restates the statute, but also adopts the NAIC Financial Analysis Handbook (2023)
  - Risk-focused analysis performed in substantial conformity with the methodology outlined in the Handbook, so long as that methodology is consistent with statutory accounting principles and the Florida Insurance Code
  - The Handbook is 917 pages – there are a couple of pages establishing a “Prioritization Framework” and “Prioritization Factors”
    - Priority 1 (Troubled) – significant financial solvency risks
    - Priority 2 (Priority) – not yet troubled
    - Priority 3 (Non-Priority) – moderate priority with some need for additional monitoring
    - Priority 4 (Non-Priority) – fundamentally sound with no material regulatory concerns and remote solvency risk

SB 7052 – Insurer market conduct exams

- Section 624.3161, Florida Statutes, is amended to provide that an authorized **residential** property insurer ***may*** be subject to an additional market conduct examination after a hurricane if, at any time more than 90 days after the end of a hurricane, the insurer is among the top 20% of insurers based on ratio of hurricane claim-related property insurance claims to the number of property insurance policies in force.

- Section 624.3161 is amended to provide that an authorized **residential** property insurer ***must*** be subject to an additional market conduct examination if, at any time more than 90 days after the end of a hurricane, the insurer:

  - Is among the top 20% of insurers based upon a calculation of the ratio of hurricane claim-related consumer complaints made about that insurer to the DFS to the insurer's total number of hurricane-related claims.

  - Is among the top 20% of insurers based upon a calculation of the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims on policies providing wind or windstorm coverage.

  - Has made significant payments to its managing general agent since the hurricane.

  - Or for any other reason identified by the OIR

- The OIR is not required to conduct multiple market conduct exams of the same insurer when multiple hurricanes make landfall in Florida in a single calendar year.

SB 7052 – Insurer market conduct exams

- The OIR is required to create a selection methodology for scheduling and conducting market conduct exams. This section of the legislation is **not** limited to residential property insurers.
- The selection methodology must prioritize examination of insurers where:
  - Another state regulator has initiated or taken action against an insurer that would also violate Florida law;
  - Considering the insurer's market share in Florida, DFS or OIR has received a disproportionate number of claims-handling complaints against the insurer;
  - Insurer is a "negative outlier" based on results of the NAIC Market Conduct Annual Statement (MCAS)
  - Evidence of violation of unfair trade practices;
  - Catchall category where OIR determines an exam in needed to protect the public.
- The selection methodology must be adopted by rule and presented to the Financial Services Commission no later than **October 1, 2023**. The rule must provide criteria for how OIR in coordination with DFS will determine what constitutes a disproportionate number of claims-handling complaints.

SB 7052 – Insurer market conduct exams

- Rule 69O-138.003 Market Conduct Exam Methodology
- Published September 19, 2023
- Selection methodology:
  - Priority 1 – Statutorily required examinations (PBMs, Citizens, Premium Finance Companies)
  - Priority 2 – Post-hurricane required examinations
  - Priority 3 – Identified Market Concerns
    - Potentially hazardous business practice identified to negatively affect consumers
    - Companies for re-examinations
    - Multi-state examinations
  - Priority 4 – Non-statutory examinations
    - Complaint data analysis
    - Other state actions
    - Market Conduct Annual Statement (MCAS) data
    - Anything OIR thinks is a problem (catchall)

SB 7052 – Liability insurer claim handling practices

- A new subsection (9) of section 624.3161, Florida Statutes, creates a detailed framework for the OIR's review of claims handling practices of **liability insurers**.
- The term "liability insurer" is not defined, but the lead-in paragraph of subsection (9) refers to "an insurer providing liability coverage in this state. . . ."
- The OIR is required to review a liability insurer's claims-handling practices to determine if the insurer should be subject to ***enhanced enforcement penalties*** if the OIR concludes through a market conduct exam that the insurer exhibits a ***pattern or practice of violations of the Florida Insurance Code***.
- Enhanced enforcement penalties would be applicable if OIR finds a pattern or practice of the insurer failing to adhere to a detailed list of standards (discussed below) when responding to ***covered liability claims*** under an insurance policy, after receiving ***actual notice*** of such claims.
    - "Actual notice" means the insurer's actual receipt of notice of an incident or a loss that could give rise to a covered claim that is communicated to the insurer or its agent by any manner permitted under the policy, through the claims link on the insurer's website or through the e-mail address designated by the insurer under 624.422.

SB 7052 – Liability insurer claim handling practices

- Subsection (9)(a) of 624.3161 establishes a detailed list of claims-handling standards that OIR is to evaluate, where a liability insurer ***as a pattern or practice*** fails to:
  - Assign a licensed and appointed adjuster to investigate whether coverage is provided under the policy and diligently attempt to resolve any questions concerning the extend of the insured's coverage.
  - Evaluate the claim fairly, honestly, and with due regard for the interests of the insured based on available information.
  - Request for the insured or claimant additional relevant information the insurer reasonably deems necessary to evaluate whether to settle a claim.
  - Conduct all oral and written communications with the insured with honesty and candor.
  - Make reasonable efforts to explain to persons not represented by counsel matters requiring expertise beyond the level normally expected of a layperson with no training in insurance or claims-handling issues.
  - Retain all written and recorded communications and create and retain a summary of al verbal communications in a reasonable manner for a period of not less than 2 years after the later of the entry of a final judgment against the insured in excess of policy limits or, if an extracontractual claim is made, the conclusion of that claim and any related appeals.

SB 7052 – Liability insurer claim handling practices

- (**CONTINUED**) Subsection (9)(a) of 624.3161 establishes a detailed list of claims-handling standards that OIR is to evaluate, where a liability insurer ***as a pattern or practice*** fails to:
  - Within 30 days after a request, provide the insured with all communications related to the insurer's handling of the claim which are not privileged as to the insured.
  - Provide, upon request and at the insurer's expense, reasonable accommodations necessary to communicate effectively with an insured covered under the ADA.
  - When handling a third-party claim, communicate each of the following to the insured:
    - Identity of any other person or entity the insurer has reason to believe may be liable.
    - The insurer's final and completed estimate of the claim.
    - The possibility of an excess judgment.
    - The insured's right to secure personal counsel at his or her own expense.
    - That the insured should cooperate with the insurer, including providing information required by the insurer because of a settlement opportunity or in accordance with the policy.
    - Any formal settlement demands or offers to settle by the claimant and any offers to settle on behalf of the insured.

SB 7052 – Liability insurer claim handling practices

- (**CONTINUED**) Subsection (9)(a) of 624.3161 establishes a detailed list of claims-handling standards that OIR is to evaluate, where a liability insurer ***as a pattern or practice*** fails to:
  - Respond to any request for insurance information in compliance with s. 626.9372 or s. 627.4137, as applicable.
  - Seek to obtain a general release of each insured in making any settlement offer to a third-party claimant.
  - Take reasonable measures to preserve any documentary, photographic, and forensic evidence as needed for the defense of the liability claim if it appears likely that the insured's liability exposure is greater than policy limits and the insurer fails to secure a general release in favor of the insured.
  - Comply with subsections (1) and (2) of 624.3161, if applicable.
  - Comply with the Unfair Insurance Trade Practices Act.

SB 7052 – Liability insurer claim handling practices

- ***Cooperation of Insured/Claimant***: In reviewing claims-handling practices, it is relevant whether the insured, claimant, and any representative of the insured or claimant were acting reasonably toward the insurer in furnishing information regarding the claim, in making demands of the insurer, in setting deadlines, and in attempting to settle the claim.

- Includes a non-exhaustive list of examples of insured/claimant cooperation, including:

  - Insured's cooperation with insurer in defense of claim, such as executing affidavits, and providing documents and information;

  - Whether the claimant and representative acted honestly in furnishing information, reasonably in setting deadlines, and refrained from taking actions that may reasonably be expected to prevent an insurer from accepting the settlement demand, such as providing insufficient detail in the demand or including unreasonable conditions to settlement.

SB 7052 – Liability insurer claim handling practices

- Enhanced Enforcement Penalties
  - In addition to other penalties authorized by law, the OIR may impose enhanced enforcement penalties for liability insurer claims-handling practices that fail to meet the review standards discussed above.
  - Such enhanced enforcement penalties include, but are not limited to, administrative fines that are subject to a 2.0 multiplier and fines that exceed the limits on fine amounts and aggregate fine amounts provided for under the Insurance Code.
- Not a Basis for Civil Liability
  - The following language is included in the statute:

"***This subsection does not create a civil cause of action, a civil remedy under 624.155, or an unfair trade practice under s. 626.9541***."

SB 7052 – Information requests from DFS Consumer Services

- Section 624.307(10)(b), Florida Statutes, is amended to require any person licensed by OIR or DFS to respond to the DFS Division of Consumer Services ***within 14 days*** after receipt of a written request from the Division regarding a consumer complaint.
  - Reduced from 20 days to 14 days
  - Response may be transmitted electronically

SB 7052 – Notice of temporary discontinuance of new residential property business

- SB 7052 creates a new section 624.4301, Florida Statutes, that will require any ***authorized*** insurer to give notice to the OIR before temporarily suspending writing new ***residential property insurance*** policies in Florida.
  - The notice to OIR must give reasons for such action, effective dates of the temporary suspension, and proposed communication to agents.
  - Notice must be given to OIR on a form to be approved by OIR and adopted by the Commission, which would require rulemaking.
  - Notice must be given **the *earlier of* 20 business days before the effective date of the temporary suspension or 5 business days before notifying agents of temporary suspension**.
- The notice requirements ***do not apply*** to temporary suspensions made in response to:
  - A hurricane that may make landfall in Florida if such temporary suspension ceases within 72 hours after hurricane conditions are no longer present in Florida; or
  - Any other natural emergency as defined in 252.34(8), Fla. Stat., which impacts one or more counties and is subject of a declared state of emergency by any local, state, or federal authority, if such suspension applies only to the affected counties and ceases within 72 hours after such nature emergency is no longer present in those counties.
- **Notice Only**: Insurers are not required to obtain OIR approval prior to implementing temporary suspensions of new residential property insurance policies.

SB 7052 – Notice of temporary discontinuance of new residential property business

- Rule 69O-137.014 Notice of Temporary Discontinuance of Writing New Residential Property Insurance Policies
- Proposed rule published September 19, 2023
- Adopts Form OIR-A1-1500, “Notice of Temporary Discontinuance of Writing New Residential Property Insurance Policies” – required to be submitted via the Insurance Regulation Filing System (IRFS) portal
    - County
    - Zip Codes
    - Reason For Temporary Suspension
    - Effective Date of Suspension
    - End Date of Suspension (if this changes, form to be refiled with corrected end date)
    - Date Notification Sent to Agents
    - Line of Business
    - Form (type of forms listed in Valid Values tab)
    - Specific Programs
    - Will Current Quotes Be Honored?
    - How Long Will Current Quotes Be Honored?

SB 7052 – Hurricane mitigation discount website disclosures

- **Effective October 1, 2023**, section 627.0629(1), Florida Statutes, is amended to require residential property insurers to provide information in the insurers website describing hurricane mitigation discounts available to policyholders.
    - Information must be accessible on or through a hyperlink on the home page of the website or primary page of website for property insurance policyholders or applicants.
- On or before January 1, 2025, and every 5 years thereafter, OIR shall reevaluate and update fixtures or construction techniques demonstrated to reduce amount of loss in a windstorm and the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect full actuarial value of such fixtures or techniques.
    - OIR to adopt rules and forms necessitated by such reevaluation.

SB 7052 – New unfair trade practices

- **Unfair Claim Settlement Practices**, 626.9541(1)(i), Florida Statutes

  3. Committing or performing with such frequency as to indicate a **general business practice** any of the following:

  j. **Altering or amending an insurance adjuster's report** without:

  (I) Providing a detailed explanation as to why any change that has the effect of reducing the estimate of the loss was made; and

  (II) Including on the report or as an addendum to the report a detailed list of all changes made to the report and the identity of the person who ordered each change; or

  (III) Retaining all versions of the report, and including within each such version, for each change made within such version of the report, the identity of each person who made or ordered such change;

- This new unfair claim settlement practice is **not** expressly limited to residential property insurance claims

SB 7052 – New unfair trade practices

- Receipt of Certain Bonuses by an Officer or Director of an Insolvent Insurer, s. 626.9541(1)(w), Fla. Stat.

  2. Regardless of whether delinquency proceedings as to the insurer have been or are to be initiated, but while such insolvency or impairment exists, a **director or officer of an impaired insurer may not receive a bonus from such insurer**, nor may such director or officer receive a bonus **from a holding company or an affiliate that shares common ownership or control with such insurer**.

  3. As used in this paragraph, the term:

  a. "Bonus" means a payment, in addition to an officer's or a director's **usual compensation**, which is in addition to any amounts **contracted for** or otherwise legally due.

  b. "Impaired" includes impairment of capital or surplus, as defined in s. 631.011(12) and (13).

- This new unfair claim settlement practice is **not** expressly limited to residential property insurance claims

SB 7052 – Increased administrative fines

SB 7052 increases fines:

- For Insurance Code violations where the OIR has the discretionary power to suspend or revoke a certificate of authority to:
  - $25,000 per violation ($100,000 aggregate) for each nonwillful violation related to a covered loss for which the Governor declared a state of emergency.
  - $12,500 per violation ($50,000 aggregate) for other nonwillful violations.
  - $200,000 ($1 million aggregate) for all knowing and willful violations related to covered loss for which the Governor declared a state of emergency.
  - $100,000 ($500,00 aggregate) for all other knowing and willful violations.
- For failure to respond to information requests from the DFS Division of Consumer Services to a maximum of $5,000 per violation by entities and $1,000 per violation by individuals.
- For violations of the Unfair or Deceptive Practice Act, maximum fines are increased to $12,500 for nonwillful violations and $50,000 for willful violations.

SB 7052 – Limitations on cancellation of property policies

- Amends section 627.4133(2)(d), Florida Statutes, regarding cancellation or nonrenewal of damaged properties covered by personal lines or commercial residential property insurance policies issued by an **authorized** insurer.

- This statute currently restricts cancellation/nonrenewal of hurricane-damaged properties until 90 days after repairs completed, where a state of emergency was declared and an order issued by OIR, but the amendment broadens the restriction.

- In addition to prohibiting cancellation/nonrenewal of hurricane-damaged properties, insurers will be prohibited from canceling or nonrenewing policies covering a dwelling or residential property if such property was damaged by ***any covered peril*** (other than a hurricane for which emergency declared and OIR order issued) until the earlier of:

  - When the dwelling or residential property has been repaired; or

  - 1 year after the insurer issues the final claim payment

- Exceptions provided for nonpayment, fraud, unreasonable delay in repair or payment of policy limits

SB 7052 – Rate Filings

- SB 7052 requires that every residential property insurer and motor vehicle insurer rate filing **made or pending with the OIR on or after July 1, 2023**, reflect the projected savings or reduction in claim frequency, claim severity, and loss adjustment expenses, including for attorney fees, payment of attorney fees to claimants, and any other reduction actuarially indicated, due to the combined effect of litigation reform provisions and assignment of benefits reform in legislation passed in 2021, 2022, and 2023.

- The OIR must consider projected savings or reductions that are actuarially indicated. The OIR may develop a methodology and data that incorporate generally accepted actuarial techniques and standards to be used in its review of rate filings subject to this requirement.

    - OIR may contract with an outside vendor to advise them in developing a methodology and data to consider.

    - Such methodology and data are not intended to create a mandatory minimum rate decrease for all residential property insurers and motor vehicle insurers, i.e. ***no presumed factor***.

    - ***This does not apply to reinsurance-only filings made by residential property insurers*** pursuant to section 627.062(2)(k), Florida Statutes.

SB 7052 – Roof deductibles

SB 7052 amends s. 627.701, Fla. Stat. to provide that, if a roof deductible under a personal lines residential policy is applied to a loss, no other deductible may be applied the loss **or to any other loss to the property caused by the same covered peril**.

HB 1185 – Hurricane deductibles

- HB 1185, the DFS Consumer Protection bill, amends 627.4025, Florida Statutes, to define “hurricane deductible” in policies providing residential coverage as the “deductible applicable to loss caused by a hurricane.”
- HB 1185 also changes the definition of “hurricane” to provide that the duration of the hurricane includes the time period in Florida beginning at the time a hurricane **warning** is issued for any part of Florida and ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida.
  - Duration would no longer commence upon issuance of a hurricane watch issued for Florida
  - Deletes language referring to “the time period during which hurricane conditions exist anywhere in Florida”
- If it becomes law, this provision would be **effective July 1, 2023** (after the start of hurricane season)

SB 418 – Alternative Hurricane deductibles

- SB 418 amends 627.701 to authorize (not require) alternative hurricane deductible amounts for personal lines residential property insurance policies:
    - With respect to a policy covering a risk with dwelling limits of $250,000 or more, the insurer need not offer the $500 hurricane deductible but must offer the other hurricane deductibles (2%, 5% and 10%).
    - With respect to a policy covering a risk with dwelling limits of $1 million or more, but less than $3 million, the insurer may, in lieu of offering the 2% deductible, offer a deductible amount applicable to hurricane losses equal to 3% of the policy dwelling limits.
    - With respect to a policy covering a risk with dwelling limits of $3 million or more, the insurer need not offer the 2% deductible but must offer the other required hurricane deductibles.

Affiliated Transactions

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Affiliated Transactions

- Form D – Prior Notice of a Transaction
  - Rule 69O-143.047, Florida Administrative Code
  - Form OIR-A1-2117 (5/16)
  - Form over substance – it matters!
- Be sure to provide a robust description of the terms of the agreement/transaction
  - Don’t just refer to the attached agreement
  - Help OIR help you – provide a good narrative that analyst can use
- “Fair and reasonable” standard
  - You will be required to provide support for fees/consideration
  - Market vs. cost

QUESTIONS?

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