

THE FLORIDA SENATE  
2021 SUMMARY OF LEGISLATION PASSED  
**Committee on Banking and Insurance**

**CS/CS/CS/SB 76 — Property Insurance**

by Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senators Boyd and Brandes

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

The bill prohibits contractors, and persons acting on behalf of 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.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation. The bill provides that 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 the contractor's prohibited practices.

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.

The bill prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The bill 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 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.

***Regulatory Oversight of Property Insurers***

The bill requires insurers to annually file, with the Office of Insurance Regulation (OIR), specified data on residential and commercial property insurance closed claims.

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

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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.

The bill removes the underwriting exemption for a contract between an insurer and a managing general agent (MGA) when the MGA is controlled by, or a controlling person of, an insurer with which it contracts. The bill removes the examination exemption for an MGA that represents a single domestic insurer, allowing the OIR to examine such MGA as if the MGA were the insurer.

The bill specifies that when OIR examines an insurer that is part of an insurance holding company, the insurer must pay the expense of examination and the OIR may retain at the insurer's expense attorneys, actuaries, accountants, and other experts reasonably necessary to assist in the examination. The OIR may require such insurers to produce records, books, and other information in the possession of the insurer or its affiliates as are reasonably necessary. The OIR may examine the insurer's affiliates to obtain reasonably necessary information; however, such examination may not extend to the passive investors of affiliates in the holding company system which do not provide services to, or have relationships with, the insurer.

### ***Citizens Property Insurance Corporation***

The bill provides that a personal lines residential risk seeking to be newly insured by Citizens Property Insurance Corporation (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, rather than the current 15 percent eligibility threshold for new policyholders.

The bill 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. The bill specifies 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.

The bill requires that 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. The bill requires Citizens to have an overall employee compensation plan approved by the board of governors.

### ***Notice of Property Insurance Claims***

The bill specifies a property insurance claim or reopened claim must be provided to the authorized or surplus lines insurer within 2 years of the date of loss. A supplemental claim is barred unless notice is provided to the insurer within 3 years after the date of loss. The bill clarifies that the date of loss for claims resulting from hurricanes, tornadoes, windstorms, severe rain, or weather-related events is the date a hurricane makes landfall or when the tornado, windstorm, severe rain, or another type of weather-related event is verified by the National Oceanic and Atmospheric Administration (NOAA).

### ***Lawsuits Arising Under Property Insurance Policies***

The bill creates a framework for all suits not brought by an assignee arising under a residential or commercial property insurance policy, including surplus lines policies.

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

The insurer must respond in writing within 10 business days after receiving notice of intent to initiate litigation. If the insurer denied coverage, the insurer must either accept coverage, deny coverage, or assert the right to re-inspect the property within 14 business days. If the notice alleges the insurer did an act other than denying coverage, the insurer must respond by making a settlement offer or requiring the claimant to participate in an appraisal or another method of alternative dispute resolution (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.

The bill provides that, for lawsuits under surplus lines and authorized residential and commercial property insurance policies not brought by an assignee, attorney fees may only be awarded using the methodology created by the bill or when the court imposes sanctions under s. 57.105, F.S. Accordingly, claimants may no longer obtain attorney fees under s. 627.428, F.S., or s. 626.9373, F.S., nor may insurers recover attorney fees using an offer of judgment under s. 768.79, F.S.

Attorney fees and costs are awarded based on a formula that compares the amount obtained by the claimant in excess of the insurer's presuit settlement offer (exclusive of attorney fees and costs) with the disputed amount between the two parties (the difference between the claimant's presuit settlement demand and the insurer's presuit settlement offer, also exclusive of attorney fees and costs). If the amount obtained by the claimant in excess of the insurer's presuit settlement offer is:

- Less than 20 percent of the disputed amount, each party pays its own attorney fees and costs.
- At least 20 percent but less than 50 percent of the disputed amount, the insurer pays the claimant's attorney fees equal to the percentage of the disputed amount obtained times the total attorney fees and costs.
- At least 50 percent of the disputed amount, the insurer pays the claimant's full attorney fees and costs.

***Consolidation of Multiple Residential Property Suits***

The bill requires each party that is aware of ongoing multiple actions, based upon coverage provided under the same residential property insurance policy for the same property and owners, must provide written notice to the court of the multiple actions. Once the court receives notice, it may order that the actions be consolidated and transferred to the court having jurisdiction based on the total amount in controversy of all consolidated claims. If multiple cases are pending in circuit courts, the cases may be consolidated based on the date the first case was filed.

If approved by the Governor, these provisions take effect July 1, 2021.

*Vote: Senate 35-5; House 75-41*