

THE FLORIDA SENATE
2022-A SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

SB 2-A — Property Insurance

by Senator Boyd

Senate Bill 2-A is a comprehensive bill intended to ensure policyholders in this state have access to quality, affordable private market property insurance. The bill also requires insurers to more promptly communicate with the insureds, investigate and pay valid claims. Anticipated shortages in the reinsurance market are addressed through a new optional state reinsurance program. Excessive litigation is addressed by eliminating one-way attorney fees for property insurance and instead allowing both parties to obtain fees through the offer of judgment statute. The bill strengthens the regulatory authority of the Office of Insurance Regulation over property insurers. Specifically, the bill:

Florida Optional Reinsurance Assistance Program

The bill establishes the Florida Optional Reinsurance Assistance (FORA) Program for the 2023 hurricane season, which:

- Creates an optional hurricane reinsurance program that insurers can purchase at “reasonable” rates. Rates vary by tier level purchased and will range from 50% to 65% rate on-line.
- Provides purchase tiers that begin at the Florida Hurricane Catastrophe Fund (FHCF) attachment point and cumulatively are limited to no more than \$5 billion below the FHCF attachment point.
- Allows insurers that purchase FORA coverage or receive free Reinsurance to Assist Policyholders (RAP) coverage at each tier to have the option to purchase the next tier down.
- Maintains the Reinsurance to Assist Policyholders (RAP) program, thus allowing those insurers and their policyholders that could not participate during 2022-2023, to receive and benefit from RAP reinsurance in 2023-2024.
- Funds FORA coverage with \$1 billion in general revenue funds and the premiums insurers pay for FORA coverage.
- Returns remaining revenue to general revenue after the FORA program ends.

Claim Filing Deadline

The bill reduces the deadline for policyholders to report a claim under the policy from 2 years to 1 year for a new or reopened claim, and from 3 years to 18 months for a supplemental claim.

Regulation of Insurance in Florida

The bill authorizes the Office of Insurance Regulation (OIR) to subject any authorized insurer to a market conduct examination after a hurricane under certain conditions relating to property insurance claims.

The bill ensures that insurers do not abuse the appraisal process under property insurance policies by:

- Specifying the OIR has discretionary authority to suspend or revoke an insurer's certificate of authority or issue administrative fines and restitution upon if the insurer engages in a general business practice of, without just cause, compelling insureds to participate in appraisal in order for the insured to secure the full payment or settlement of a property insurance claims.
- Adding additional elements to the mandated insurer's quarterly reports filed with the OIR related to claims.
- Authorizing the OIR, based on finding that the insurer had exhibited a pattern or practice of one or more willful unfair insurance trade practice violations with regard to its use of appraisal, to withdraw OIR approval of the property insurer's forms and, in addition to any other authorized regulatory action, issue an order that prohibits the insurer from invoking appraisal for up to two years.
- Adding an element to the Property Insurer Stability Unit's required semiannual report on the status of the homeowners' and condominium homeowners' insurance market to include the name of any insurer found to have exhibited a pattern or practice of one or more willful unfair insurance trade practice violations with regard to its use of appraisal. The bill also requires the OIR to publish this same information on its internet webpage.

Prompt Pay Laws for Property Insurance

The bill amends the prompt pay laws to encourage the prompt payments of claims, as follows:

- Reduces the time for insurers to pay or deny the claim from 90 to 60 days. Allows the Florida Office of Insurance Regulation (OIR) to extend the 60 day period up to 30 additional days if a state of emergency, cyberattack, or computer systems failure prevents the insurer from meeting the time frames of the prompt-pay law.
- Reduces the time for insurers to review and acknowledge a claim communication from 14 days to 7 days.
- Reduces the time for insurer to begin an investigation from 14 days to 7 days.
- Reduces the time for insurer to conduct a physical inspection from 45 days to 30 days, and applies this requirement to hurricane claims.
- Specifies insurers may use electronic methods to investigate the loss and allows policyholders to participate in the use of such methods.
- Requires insurers to send any adjuster's report estimating the loss to the policyholder within 7 days after it is created.
- Requires that the insurer's claim records include various parts of the claim investigation and their dates.
- Provides that the prompt pay requirements of the section are tolled: during the pendency of any mediation or alternative dispute resolution procedure provided in the insurance contract and upon failure of a policyholder or representative to provide material claim information within 10 days, if the request for such information was made within the first 45 days after notice of the claim.

The bill amends the Homeowner Claim Bill of Rights to conform to the changes made to the prompt pay laws. The bill also conforms the Unfair Insurance Trade Practices Act to changes made to the prompt pay laws by reducing the requirement to pay undisputed amounts of benefits from 90 days to 60 days and revising the factors that excuse failure to perform.

Awards of Attorney Fees in Litigation under Property Insurance Contracts

The bill provides that the one-way attorney fee provisions of s. 627.428, s. 626.9373, and s. 627.70152 are not applicable in a suit arising under a residential or commercial property insurance policy.

The bill reinstates application of the civil offer of judgment statute to civil actions arising under a residential or commercial property insurance policy.

- Allows joint offers of settlement in property insurance litigation contingent on acceptance of all joint offerees.

The bill removes provisions regarding attorney fees relating to the alternative procedure for resolution of disputed sinkhole insurance claims.

Assignments of Benefits

The bill prohibits the assignment, in whole or in part, of any post-loss insurance benefit under any residential property insurance policy or under any commercial property insurance policy issued on or after January 1, 2023.

Bad Faith Failure to Settle Actions against Property Insurers

The bill provides that bad faith litigation for failure to settle a property insurance claim may not be filed until after the insured has established, through adverse adjudication by a court, that the insurer breached the insurance contract and a final judgment or decree has been rendered against the insurer.

Citizens Property Insurance Corporation (Citizens)

The bill increases the eligibility threshold for Citizens renewal personal lines residential risk policyholders that renew on or after April 1, 2023, and renewal commercial lines residential risk policyholders upon becoming law. Under the bill, such policyholders are ineligible for Citizens coverage at renewal upon receiving an offer of comparable coverage from an authorized insurer for a premium that is not more than 20 percent greater than the Citizens renewal premium. The bill also increases the eligibility threshold for Citizens new policies for commercial lines residential risk from 15 percent to 20 percent, which is consistent with the current threshold for new policies of personal residential coverage. The bill amends provisions on take-out offers and Citizens Clearinghouse to conform to these increased eligibility thresholds.

The bill requires that Citizens' rates be non-competitive with the approved rates charged in the admitted market, in addition to being actuarially sound. Rate increases in excess of the Citizens glidepath are authorized for coverage of non-primary residences. The bill repeals language allowing policyholders to return to Citizens as a renewal if the take-out carrier increases their rates above the Citizens' glidepath.

The bill combines Citizens three accounts into a single account upon Citizens eliminating all outstanding financing obligations. A single account structure will allow Citizens to access its entire surplus to pay claims. Currently, surplus in a particular account may only be used to pay claims in that account. The bill also revises the Citizens policyholder surcharge imposed in the event of a deficit from 15 percent per account (maximum 45 percent) to 15 percent for the single account.

The bill provides that Citizens personal lines residential policyholders must secure and maintain flood insurance that meets certain requirements as a condition of eligibility for Citizens coverage. The bill provides the following timetable for which flood insurance coverage must be implemented for personal lines residential Citizens policyholders:

- For risks located in areas designated by the Federal Emergency Management Agency as special flood hazard areas, flood insurance must be secured for new Citizens policies with an effective date on or after April 1, 2023, and at renewal for Citizens policies that renew on or after July 1, 2023.
- For all other risks, the requirement to obtain flood insurance at policy issuance or renewal is effective:
 - March 1, 2024, for policies insuring property to a limit of \$600,000 or more.
 - March 1, 2025, for policies insuring property to a limit of \$500,000 or more.
 - March 1, 2026, for policies insuring property to a limit of \$400,000 or more.
 - March 1, 2027, for all other policies.

Flood Notice

The bill amends the mandatory flood insurance notice by requiring it to be part of the declarations page and makes revisions to the content of notice to encourage purchase of flood insurance.

Arbitration

The bill provides conditions whereby a property insurer may include mandatory binding arbitration in its policies. The insurer may not require a policyholder to participate in mandatory binding arbitration unless specified conditions are met, including that the insurer also offer a policy that does not have a mandatory binding arbitration clause. Insurers must also provide an appropriate premium discount in exchange for the rights ceded by the policyholder.

Continuation of Coverage

The bill authorizes the OIR to extend the 30-day coverage period for policies of insolvent insurers by an additional 15 days if the OIR reasonably believes that market conditions are such that the policies cannot be placed with an authorized insurer within the 30-day period.

If approved by the Governor, these provisions take effect upon becoming law except as otherwise provided.

Vote: Senate 27-13; House 84-33