



## **2021 Florida Legislative Session Property & Casualty Bills Analysis**

### **Senate Bill 76: “Property Insurance”**

Senate Bill 76 passed the House with a vote of 75 to 41, and the Senate with a vote of 35 to 5 on the last day of the legislative session, April 30, 2021. The bill differs significantly from its original form and is the result of compromise after weeks of negotiations between the Florida House and Senate. It is expected to be signed into law by Governor DeSantis. If signed, most of the changes made will go into effect on July 1, 2021. Overall, the bill aims to address several of the major problems in Florida’s property insurance market, such as, contractor solicitation fraud, widespread claims litigation, the growing cost of this litigation, and years of underwriting losses by insurers – all of which have contributed to the rising cost of property insurance and premiums for consumers.

#### **Section I: Prohibited Property Insurance Practices:**

Contractors across the state have been canvassing neighborhoods searching for damaged roofs or potential claims, offering to inspect homeowners’ roofs in exchange for a gift card, a new roof, etc. They then encourage the homeowner to submit an insurance claim and sue insurance companies that refuse to pay the costs of a new roof. Section I of SB 76 works to address this problem by identifying prohibited insurance practices and creating new, relevant definitions. Specifically, the bill prohibits any contractor or persons working on behalf of a contractor from making a “prohibited advertisement,” which is defined as any form of communication designed to encourage, “a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage.” In addition, the bill prohibits contractors, or anyone working on their behalf, from offering a residential property owner anything of value in exchange for a roof inspection, making an insurance claim for damage to the residential property owner’s roof, “offering, delivering, receiving, or accepting any compensation for a referral of any serves for which property insurance proceeds are payable,” interpreting or adjusting an insurance policy or claim on behalf of the insured, and from providing a contract for repairs that does not include an itemized cost of services and materials. Contractors who violate these prohibitions may receive a fine up to \$10,000 for each violation.

#### **Section II: Property Insurance Claims Litigation Data Collection:**

In an effort to gather more information about claims litigation and increase transparency about attorney fees, section II of SB 76 stipulates that starting January 1, 2022 all authorized insurer and insurer groups issuing personal lines or commercial lines residential property insurance in Florida will have to file a specific data report about the litigation of personal and commercial residential property insurance claims with the Office of Insurance Regulation (OIR) annually.



### Section III and Section IV: Managing General Agents:

Section III deletes an exception in current law for a managing general agent that is controlled by or is a controlling person of the insurer it contracts from, from requirements that their contract must meet certain underwriting guidelines. Section IV removes an exemption to part of OIR's authority to examine a managing general agent that represents a single domestic insurer.

### Section V: Public Adjuster Prohibitions:

With the goal to further protect consumers from falling victim to solicitation schemes, section V creates similar prohibition for public adjusters that it does for contractors. Specifically, prohibiting a public adjuster from offering a residential property owner anything of value in exchange for a roof inspection, making an insurance claim for damage to the residential property owner's roof, and from offering or accepting compensation for the referral of services which would use property insurance for roofing repairs or replacement. Public adjusters, or any persons acting on their behalf, may be fined up to \$10,000 for each violation.

In addition, the bill states that companies or individuals who illegally engage in activities that, according to Florida law, are limited to licensed public adjusters can be fined up to \$10,000 per violation. However, this section specifies that this prohibition does not include a contractor suggesting that a consumer consider contacting their insurance provider to see if the repair is covered by their policy. Further, contractors and subcontractors, and any individual or company who assist others in committing prohibited acts can be fined or charged with third-degree felony.

### Section VI: Attorney Fees:

Attorney fees shall only be awarded as established by s. 57.105 or section XII of this bill.

### Section VII: Citizens Property Insurance:

Citizens Property Insurance was created with the intent to be an insurer of last resort for Floridians. However, in recent years more and more Florida residents have been obtaining insurance through Citizens rather than the private market. Note, Citizens often offers premiums at a discounted rate that are lower than those offered by the private market. The changes in this section attempt to address this problem by changing eligibility requirements and establishing a glide path for rate increase caps. Specifically, residents would not be eligible for a Citizens policy if comparable coverage in the private market is within 20% of the price (the current rule is 15%), and Citizens may now add 1% to its current 10% rate cap each year until the cap reaches 15% in 2026.



The bill also establishes that Citizens' "actuarial sound" rate indication must include the cost of reinsurance up to the 110-year event, even if that reinsurance is not actually purchased. Today, the rate indication only includes the amount spent on reinsurance each year. Finally, the legislation establishes that Citizens' budget for employee salaries and any proposed raises for an individual employee that exceeds 10% of that employee's current salary will need to be approved by the Board of Governors.

#### Section VIII: Citizens Property Insurance Clearinghouse Program:

No significant changes in this section.

#### Section IX: Attorney Fees:

Attorney fees shall only be awarded as established by s. 57.105 or section XII of this bill.

#### Section X: Notice of Claims:

Section X of SB 76 amends current statute about the notice of a claim. Currently, hurricane claims can be filed within three years of the date of loss, and non-hurricane claims can be filed within five year of the date of loss. This bill amends this time limit for filing the first notice for all property insurance claims, including those issued by an eligible surplus lines insurer, to two years from the date of loss. Supplemental claims need to be filed within three years of the date of loss. Date of loss for weather-related claims is clarified to be the date of landfall verified by the National Oceanic Atmospheric Administration.

#### Section XI: Alternative Procedure for Resolution:

No significant changes in this section.

#### Section XII: Pre-Suit Notice and Attorney Fees:

This section of SB 76 establishes new statutory requirements that dictate a pre-suit notice must be sent to the insurer prior to a lawsuit being filed on a residential or commercial property insurance claim. This notice must be sent at least 10 business days before filing the suit and may not be sent before the issuer has made a determination of coverage. Current law allows the insurance company 90 days to make that determination. The notice must include why the suit is being filed, a complete estimate of the indemnity demanded, including itemize damages, attorney fees, and costs, and the total amount in dispute.

On the side of the insurer, SB 76 establishes that an issuer must have a procedure to promptly investigate, review and evaluate the dispute in the notice. The insurer must then also respond within 10 business days by either accepting the coverage, denying the coverage, or asserting



the right to reinspect the damaged property. If the issuer is responding to a claim that alleges an act or omission by the insurer other than the denial of coverage, the issuer must respond with either a settlement offer or require appraisal, mediation or another form of alternative dispute resolution. Litigation cannot be commenced prior to the completion of the alternative dispute resolution process, if required.

In addition, section XII makes changes to how attorney fees are calculated with the goal of decreasing the incentive for attorneys to file legal claims. It replaces the current fee shifting statute with a new statute that makes the recovery of attorney fees and costs contingent on obtaining a final judgement for indemnity that exceeds the pre-suit offer made by the insurance company. In the event of a trial, the bill requires the plaintiff to obtain a damage award (excluding attorney fees and costs) of at least 50% of the “disputed amount” (the difference between the offered indemnity payment and the indemnity amount demanded) in order to be entitled to 100% of reasonable attorney fees. A recovery of less than 20% of the disputed amount will result in no fee recovery by the plaintiff attorney. Recoveries of between 20% and 50% result in a proportionate recovery of attorney fees and costs. This change only applies to lawsuits brought on behalf of the insured.

#### Section XIII: Consolidation:

Today, there are cases in which one property has multiple claims and lawsuits filed with the same owners for the same insurance policy. To reduce the costs to the court system caused by this issue, this section dictates that a party that is aware of multiple actions involving coverage provided under the same residential property insurance policy, for the same property, with the same owners must notify the fourth of multiple actions. The court may then order these actions be consolidated.

#### Section XIV: Insurance Company Registration:

This section expands and clarifies OIR’s ability to evaluate the financial status of a registered insurers and clarifies who will pay the costs associated with this evaluation.

#### Summary of Impact:

Overall, SB 76 is viewed as an important step towards stabilizing the property and casualty insurance market in Florida. It takes critical actions to try and lower the amount of litigation and fraudulent claims filed each year, to address solicitation, strengthen the power of the state to punish bad actors, and reform attorney fees. These changes will hopefully bring some much-needed relief to the market. However, this bill is clearly the result of a compromise between the House and the more aggressive reforms proposed by the Senate. Some of the more aggressive provisions proposed were mandatory actual cash value policies for roofs older than 10 years, using a contingency risk multiplier for attorney fees, and requiring Citizens to provide



actuarially sound rates for new properties or second homes. In addition, this bill does not make any changes regarding assignment of benefits. In sum, this bill is a start towards stabilizing and reforming the market, but there is still much work to be done to create an affordable and sustainable property insurance market in Florida.

### **SB 1598: “Consumer Protection”**

SB 1598, a consumer protection bill, passed the Senate with a vote of 34 to 3 on April 22, 2021. It passed the House with a vote of 114 to 1 on April 28, 2021. The legislation aims to reduce fraud committed by unlicensed and unregulated contractors. As such, the legislation requires any entity provided public adjuster services to be licensed by the state prior to soliciting for or providing services. Therefore, contractors cannot continue to inspect damages to identify whether a property could be covered by an insurance claim. This should reduce the number of property owners that submit fraudulent claims at the urging of unlicensed contractors. In addition, current law, which does not require public adjuster firms to be licensed, permits individuals who have lost their individual public adjuster license to continue in business by simply owning a public adjusting firm and hiring licensed individuals to work on their behalf. The bill prohibits public adjusters from offering anything of value in exchange for a free roof inspection, which will further reduce the pipeline of roof claims. The Florida Department of Financial Services is empowered to take action against unlicensed entities soliciting claims.

Furthermore, public adjusters are also barred from being paid by contractors or attorneys. This is a new provision of the law designed to eliminate “loss consultants.” In a nod to consumers, the legislation extends the period to rescind a contract with a public adjuster to 10 days, requires standard disclosure language in all public adjuster contracts, requires a detailed cost estimate within 60 days, requires timely communication to insureds, and requires insurer to pay the insured interest on undisputed payments made after 90 days of the date of loss. These requirements should increase consumer transparency while providing a mechanism to reduce fraudulent activity encouraged by unlicensed contractors, strengthening the prohibition of unlicensed insurance activities.

### **HB 1209: “Department of Financial Services”**

HB 1209 passed the House with a vote of 119 to 0 on April 21, 2021. It passed the Senate with a vote of 39 to 1 on April 26, 2021. This bill from the Department of Financial Services addresses a wide variety of topics. The relevant aspects address certain disclosures, and the diligent search requirement for flood insurance products.

Surplus lines insurance generally provides coverage for consumers that ordinary cannot get covered due to being high risk. When entering a policy with a surplus lines insurer, policy holders must be given notice that they can potentially obtain less expensive coverage from Citizens. HB1209 removes that requirement.



HB1209 contains a provision that exempts flood insurance products and indemnity deductible insurance products from the diligent effort requirement to export risks to the excess and surplus marketplace. This exemption was reinstated to allow a surplus lines agent to export a contract without making a diligent effort to seek coverage from multiple insurers.