

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 7065 PCB COM 23-04 Insurer Accountability
SPONSOR(S): Appropriations Committee and Commerce Committee, Duggan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7052

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 7065 passed the House on May 3, 2023, as CS/SB 7052, as amended.

The bill makes various changes designed to increase insurer accountability in the following ways:

- **Criminal Violations:** requires the Office of Insurance Regulation (OIR) to refer records and information to the Division of Investigative and Forensic Services (DIFS) or other appropriate law enforcement agency or prosecutor when OIR has reason to believe a crime has occurred.
- **Agent Licensing:** allows the Department of Financial Services (DFS) to deny licensure to an applicant who has committed certain misdemeanors.
- **Examination of Insurers:** requires a risk-based assessment for scheduling insurer financial examinations and post-hurricane market conduct examinations; provides for enhanced penalties for poor claims-handling identified during any market conduct examination.
- **Hazardous Financial Condition:** codifies portions of the National Association of Insurance Commissioners hazardous financial condition model act.
- **Insurance Policy/Claims Handling:** identifies two new acts that constitute unfair methods of competition or unfair or deceptive acts by an insurer or agent; prohibits Citizens Property Insurance Corporation from declaring a property ineligible if there is unrepaired damage being serviced by the Florida Insurance Guaranty Association; requires reporting of temporary suspension policy writing in certain circumstances; limits form review exemptions for 36 months following an Insurance Code violation; requires creation, use, and reporting of claims-handling manuals in certain circumstances; limits cancellation or nonrenewal of residential property insurance policies in certain situations following damage repair (the period varies depending on source of the damage); clarifies applicability of other deductibles when a roof deductible is applied; gives servicemembers deployed to combat zones/combat support postings more time to file property claims; clarifies applicability of SB 2A (2022A).
- **Fines:** increases certain fines; creates fines for insurer violations of the Insurance Code related to a declared state of emergency; increases the maximum fines that may be assessed for unfair methods of competition or unfair or deceptive acts or practices by any individual or company transacting insurance.
- **Reporting:** requires OIR to create annual and quarterly reports of compliance enforcement actions against insurers; requires DIFS to create an annual report regarding investigations and prosecutions of insurance fraud.
- **Rates/Premiums:** provides OIR with funding to engage a vendor to develop methodology and data to assist in determining the impact of recent bills on motor vehicle and residential property insurance rate filings; requires residential property insurers to post hurricane mitigation discount information on their websites; requires OIR to reevaluate fixtures or construction techniques demonstrated to reduce windstorm losses, and associated insurance premium discounts every five years.
- **Agency Staffing:** appropriates positions to DFS and OIR to implement the bill.

The bill was approved by the Governor on May 31, 2023, ch. 2023-172, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Insurance Agent Licensing

Background

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.¹ DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters and conducts insurance-related consumer outreach through its Division of Consumer Services (Consumer Services). The Division of Workers' Compensation within DFS administers the workers' compensation system through enforcement of coverage requirements,² administration of workers' compensation health care delivery system,³ data collection,⁴ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities.⁵ DFS also administers the rehabilitation and liquidation of insolvent insurers.

Effect of the Bill – Licensure

The bill provides that DFS may deny licensure to an applicant who, within seven years of application, has been found guilty of, or pleaded guilty or nolo contendere to a misdemeanor that is also a violation of the Florida Insurance Code (Insurance Code).

Examination of Insurers

Background

The Office of Insurance Regulation (OIR) provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.⁶ The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the FSC appoints the commissioner of the Florida Office of Insurance Regulation.

As part of their regulatory oversight, OIR may suspend or revoke an insurer's certificate of authority under certain conditions.⁷ OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.⁸ As part of the examination process, all persons being examined must make available to OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.⁹ OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.¹⁰

¹ See, e.g., Florida Department of Financial Services, *What is the Purpose of the Department*, <https://opaga.fl.gov/> (last visited Apr. 2, 2023).

² S. 440.107(3), F.S.

³ S. 440.13, F.S.

⁴ Ss. 440.185 and 440.593, F.S.

⁵ S. 440.191, F.S.

⁶ S. 20.121(3)(a), F.S.

⁷ S. 624.418, F.S.

⁸ S. 624.316(1)(a), F.S.

⁹ S. 624.318(2), F.S.

¹⁰ S. 624.3161, F.S.

Financial Examinations

OIR is responsible for all activities concerning insurers and other risk-bearing entities such as licensing, solvency, rates, and policy forms. The law requires OIR to conduct financial examinations of insurers. The scope of the financial examination includes a review of the affairs, records, transactions, accounting procedures and financial condition of an insurer.¹¹ OIR is charged with conducting an exam once every five years, with the exception of domestic insurers that have held a certificate of authority for less than three years, which are required to be examined on an annual basis.¹² OIR is required to examine an insurer applying for an initial certificate of authority prior to issuing the certificate of authority.¹³

Effect of the Bill – Financial Examinations

The bill changes OIR's mandatory financial examination schedule to the following risk-based schedule:

- High-risk insurers must be examined at least once every three years.
- Average-risk insurers and low-risk insurers must be examined at least once every five years.

Financial examinations must cover the preceding fiscal years since the last examination, except for examinations of low-risk insurers, in which case the examination must cover the preceding three fiscal years. The bill requires that OIR create, and that FSC must adopt by rule, a risk-based selection methodology for scheduling and conducting financial exams, which must include:

- Use of required risk-focused analysis to prioritize financial examinations of insurers when reporting indicated that the insurer's financial condition has declined.
- Consideration of the following:
 - Level of capitalization and identification of unfavorable trends;
 - Negative trends in profitability or cash flow or operations;
 - National Association of Insurance Commissioners Insurance Regulatory Information System ratio results;
 - Risk-based capital and risk-based trend test results;¹⁴
 - The structure and complexity of the insurer;
 - Changes in the insurer's officers or board of directors;
 - Changes in the insurer's business strategy or operations;
 - Findings and recommendations from a financial or market conduct examination;
 - Current or pending regulatory actions by OIR or DFS;
 - Information obtained from other regulatory agencies or independent organization ratings and reports;
 - The impact of an insurer's insolvency on the insurer's policyholders and the public.
- Prioritization of property insurers for which OIR identifies significant solvency concerns.
- Any other conditions OIR deems necessary for the protection of the public.

In addition to the methodology, the rule must include a plan to implement the risk-based examination schedule. OIR must present the proposed rule to the FSC no later than October 1, 2023.

¹¹ S. 624.316, F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Risk-based capital is a statutory minimum level of capital that is based on an insurance company's size and the inherent riskiness of its financial assets and operations. NAIC, *Risk-based Capital*, <https://content.naic.org/cipr-topics/risk-based-capital> (last visited Apr. 7, 2023).

Market Conduct Exams

OIR is authorized to perform a market conduct examination of insurers and other related entities.¹⁵ The purpose of the examination is to determine the entity's compliance with Florida law.¹⁶ The costs of the examination are paid by the subject entity.¹⁷ OIR is may conduct a market conduct of any authorized insurer after a hurricane, if the insurer:

- Is among the top 20 percent of insurers based upon the ratio of hurricane-related claims to the property insurance policies in force;
- Is among the top 20 percent of insurers based upon of the ratio of consumer complaints to hurricane-related claims;
- Has made significant payments to its managing general agent since the hurricane; or
- As determined by OIR for any other reason.

During a market conduct examination, OIR may examine the affairs, records, transactions, accounting procedures and financial condition of an insurer as relevant to the actions that gave rise to the examination.¹⁸ The market conduct examination, when conducted post hurricane, must be started within 18 months after the storm's landfall. The insurer's managing general agent must be included in the market conduct examination, as if it were the insurer.

If a market conduct examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," OIR may order the insurer to file its claims-handling practices and procedures with OIR for review and inspection.¹⁹ The practices and procedures are to be held by OIR for 36 months and are considered public records, not trade secrets, during such period.²⁰ The term "claims-handling practices and procedures" is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."²¹

Effect of the Bill – Market Conduct Examinations

The bill removes some of OIR's discretion to conduct post-hurricane market conduct examinations that was established in SB 2A (2022A) and makes such examinations mandatory in certain circumstances. It narrows the post-hurricane examination authority to apply only to residential property insurers. The bill specifies that OIR may conduct a post-hurricane market conduct examination, if at any time more than 90 days after the end of a hurricane, an insurer is among the top 20 percent of insurers based upon the ratio of hurricane-related property insurance claims filed to the number of property insurance policies in force. However, OIR must conduct a post-hurricane market conduct exam if the insurer:

- Is among the top 20 percent of insurers based upon the ratio of hurricane claim-related consumer complaints about the insurer to DFS to the insurer's total number of hurricane claims;
- Is among the top 20 percent of insurers based upon the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims on policies providing wind or windstorm coverage;

¹⁵ S. 624.3161(1), F.S.

¹⁶ *Id.*

¹⁷ S. 624.3161(4), F.S.

¹⁸ See ss. 624.316 and 624.3161, F.S.

¹⁹ S. 624.3161(6), F.S.

²⁰ *Id.*

²¹ *Id.*

- Has made significant payments to its managing general agent since the hurricane; or
- As determined by OIR for any other reason.

The office must create, and FSC must adopt by rule, a risk-based selection methodology for scheduling and conducting market conduct examinations. Under this methodology, OIR must initiate a market conduct examination against an insurer if the following conditions exist:

- An insurance regulator in another state has initiated or taken regulatory action against the insurer or entity regarding an act or omission that would constitute a violation of the Insurance Code.
- DFS and OIR have received a disproportionate number of certain claims-handling complaints against the insurer based on its market share.
- The results of a NAIC Market Conduct Annual Statement indicate the insurer is a negative outlier with regard to particular metrics.²²
- There is evidence the insurer is engaged in a pattern or practice of violations of the Unfair Insurance Trade Practices Act.
- Any other conditions that OIR deems necessary for the protection of the public.

In addition to the methodology, the rule must provide criteria for how OIR will determine that it has received a disproportionate number of claims-handling complaints. OIR must present the proposed rules to FSC no later than October 1, 2023.

The bill provides for enhanced penalties for poor claims-handling practices that OIR identifies during any market conduct examination, including, but not limited to those following a hurricane. If a pattern or practice of certain behaviors is found, the insurer's claims-handling practices must be reviewed to determine whether enhanced penalties apply. Up to a 2.0 multiplier on the normal administrative fines is permitted and the fine assessed against an insurer may exceed normal aggregate fine caps.

In reviewing the claims-handling practices, it is relevant whether the insured, claimant, or representative thereof were acting reasonably or unreasonably toward the insurer.

The bill specifies that the provisions regarding enhanced penalties do not create a civil cause of action, a civil remedy, or an unfair trade practice.

Hazardous Financial Condition of Insurers

Background

NAIC has issued the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition (Hazardous Financial Condition Model Act).²³ Current law provides the authority for FSC to adopt rules to define standards of hazardous financial condition and corrective action similar to those contained in the Hazardous Financial Condition Model Act.²⁴ However, OIR has expressed concern regarding its authority to effectively deal with insurers in a hazardous financial condition.²⁵

²² See drafting comment in Part III. of this analysis.

²³ National Association of Insurance Commissioners, *Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition*, <https://content.naic.org/sites/default/files/MO385.pdf> (last visited Apr. 23, 2023).

²⁴ S. 624.81, F.S. See R. 69O-193.033, F.A.C.

²⁵ Senate Committee on Banking and Insurance, *Presentation by Mike Yaworsky of OIR*, https://www.flsenate.gov/media/videoplayer?EventID=1_nty0d3lq-202303290830&Redirect=true (last visited Apr. 8, 2023).

Effect of the Bill – Hazardous Financial Condition

The bill codifies portions of the Hazardous Financial Condition Model Act. In determining whether the continued operation of any authorized insurer selling insurance in Florida is hazardous to policyholders, creditors, or the general public, OIR may consider:

- Adverse findings reported in financial or market conduct examination reports, audits, or actuarial opinions, reports, or summaries.
- NAIC Regulatory Information System financial analysis solvency tools and reports.
- Whether the insurer has made adequate provisions for cash flows necessary to cover its contractual obligations and expenses.
- The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program is sufficient.
- Whether the insurer's operating loss in the last 12-month period exceeds a certain amount of its surplus in excess of its required minimum surplus.
- Whether an entity within the insurer's holding company is insolvent, threatened with insolvency, or delinquent in obligations.
- Contingent liabilities, pledges, or quantities that may affect the solvency of the insurer.
- Whether an affiliate is delinquent in paying premiums to the insurer.
- The age and collectability of the insurer's receivables.
- Whether the insurer meets statutory requirements applicable to management.
- Whether the insurer's management has failed to respond to questions from OIR.
- Whether the insurer has failed to meet financial and holding comp[any filing requirements without good reason.
- Whether the insurer or its management has filed any false or misleading financial reports or made false entries on the insurer's books.
- Whether the insurer has grown so rapidly that it lacks adequate capacity to timely meet its obligations
- Whether the insurer has experienced, or will experience, cash flow or liquidity problems.
- Whether management has established reserves that do not comply with minimum standards.
- Whether management routinely engaged in material under-reserving.
- Whether transactions for which the insurer received assets or capital gains do not provide sufficient value to ensure the insurer's ability to meet its outstanding obligations.
- The ratio of annual premium volume to surplus or liabilities to surplus in relation to loss experience, kinds or risks insured, or both.
- Whether the insurer's asset portfolio is sufficient to insure the company's ability to meet its outstanding obligations.
- As to a residential property insurer, whether it has sufficient capital, surplus, and reinsurance to withstand significant weather events, including hurricanes.
- Whether the insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law.
- Whether the insurer continues to write new business when it has not maintained the required surplus or capital.
- Whether the insurer moves to dissolve or liquidate without first making provisions with OIR for liabilities arising from policies it has issued.
- Whether the insurer has incurred substantial new debt, has had to rely on frequent or substantial capital infusions, or has a highly leveraged balance sheet.
- Whether the insurer relies increasingly on other entities.
- Whether the insurer meets one or more of the grounds for the appointment of DFS as a receiver.
- Any other finding by OIR determined to be hazardous to the insurer's policyholders, creditors, or the general public.

If OIR determines that an insurer's continued operations may be hazardous, it may issue an order requiring the insurer to do any of the following:

- Reduce the total amount of present and potential liability for policy benefits by purchasing additional reinsurance.
- Reduce, suspend, or limit the volume of business being accepted or renewed.
- Reduce expenses.
- Increase its capital and surplus.
- Suspend or limit the declaration and payment of dividends.
- File reports with OIR concerning the market value of its assets.
- Limit or withdraw from certain investments or discontinue certain investment practices.
- Document the adequacy of premium rates in relation to the risks insured.
- File interim financial reports.
- Correct corporate governance practice deficiencies.
- Provide a business plan to OIR in order to continue to transact insurance business in Florida.
- Adjust rates for any non-life product written that OIR considered necessary to improve the insurer's financial condition.

The bill authorizes OIR to issue an immediate final order to any insurer requiring these actions. It provides OIR with rulemaking authority to implement the bill.

Insurance Policy/Claims Handling

Background

Florida law prohibits a person from engaging in an unfair or deceptive act or practice involving the business of insurance.²⁶ The definition of unfair or deceptive acts or practices includes, in part, the following unfair claim settlement practices:

- Attempting to settle claims on the basis of a document that was altered without knowledge or consent of the insured;
- A material misrepresentation made to an insured for the purpose and with the intent of effecting settlement on less favorable terms than provided under the contract or policy;
- Committing or performing with such frequency as to indicate a general business practice certain acts, such as failing to adopt and implement standards for the proper investigation of claims;
- Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after an insurer received notice of a residential property insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by "an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed."²⁷

Currently nothing in Florida law requires that an insurer notify OIR before it temporarily suspends writing policies. There is a concern that OIR is not finding out about insurers that have stopped residential property insurance policies with sufficient time to assist policyholders who may be left without insurance coverage due to nonrenewals or limited options due to carriers that have stopped issuing new business.

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.²⁸ Citizens is not a private insurance

²⁶ S. 626.9521(1), F.S.

²⁷ S. 626.9541(1)(i), F.S.

²⁸ The term "admitted market" means insurance companies licensed to transact insurance in Florida.

company.²⁹ It was statutorily created in 2002 when the Florida Legislature combined the state's two property insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).³⁰ Citizens offers property insurance through three different accounts: a personal lines account, a commercial lines account, and a coastal account.

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors (Board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.³¹ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the Board.³² Citizens is subject to regulation by OIR in the same fashion as other insurers.

Under federal law, insurance companies cannot file for bankruptcy.³³ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers³⁴ in Florida and sets up guaranty payments where necessary.³⁵ Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.³⁶

A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.³⁷ Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)³⁸ and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA).³⁹

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid" delay and financial loss due to the financial insolvency of an insurer.⁴⁰ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.⁴¹ When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation within DFS and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.⁴² If an insurer's assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.⁴³

²⁹ S. 627.351(6)(a)1., F.S.

³⁰ S. 2, ch. 2002-240, Laws of Fla.

³¹ S. 627.351(6)(a)2., F.S.

³² S. 627.351(6)(c)4.a., F.S.

³³ 11 U.S.C. § 109(b)(2).

³⁴ An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.

³⁵ Ch. 631, F.S.

³⁶ *Id.*

³⁷ See *e.g.*, ss. 631.51 and 631.902, F.S.

³⁸ Ch. 631, part II, F.S.

³⁹ Ch. 631, part V, F.S.

⁴⁰ S. 631.51, F.S.

⁴¹ S. 631.52, F.S.

⁴² See s. 631.061, F.S. for grounds for liquidation. See s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

⁴³ S. 631.57, F.S.

OIR generally has authority to review and approve insurer's policy forms, either before they are used (file and use) or afterwards (use and file).⁴⁴ Personal lines residential property insurers are required to file their policy forms with OIR and have them approved before using them to issue policies.⁴⁵ OIR may, for cause, withdraw previous approval of forms.⁴⁶ If OIR issues an order withdrawing its approval of previously approved forms, an insurer may no longer use those forms to issue policies.⁴⁷

Florida insurers are not required to maintain or use claims-handling manuals to adjust and close claims. Concerns have arisen, particularly based on insurers' handling of claims following hurricanes, that insurers may not be following the Insurance Code and usual and customary insurance practices when handling claims.⁴⁸ Some insurers have indicated that they do not have claims handling manuals, but only informal guidelines, while others have comprehensive claims-handling practices set forth in sophisticated computer programs.

An insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property, including but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:⁴⁹

- Upon the declaration of an emergency and the filing of an order by the Insurance Commissioner;
- For property located in Florida; and
- Which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency.

If an insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90-days' notice that the insurer intends to nonrenew the policy 90 days after the property has been repaired.⁵⁰ Because of these existing statutory provisions, insurers are unable to cancel or nonrenew personal residential or commercial residential policies when the policyholder never repairs the property.

An insurer issuing a personal lines residential property insurance policy may include in such policy a separate roof deductible that meets all of the following requirements:⁵¹

- Allows property insurers to include in the policy a separate roof deductible of up to two percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by OIR. If a roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible.
- Requires that policyholders that select a roof deductible must receive an actuarially sound premium credit or discount.
- Provides that the roof deductible does not apply to:
 - A total loss to the primary structure in accordance with the valued policy law,⁵² which is caused by a covered peril.
 - A loss caused by a hurricane.

⁴⁴ S. 627.410, F.S.

⁴⁵ S. 627.410(1), F.S.

⁴⁶ S. 627.210(3), F.S.

⁴⁷ *Id.*

⁴⁸ See, e.g., Washington Post, *Insurers Slashed Hurricane Ian Payouts far Below Damages Estimates, Documents and Insiders Reveal*, <https://www.washingtonpost.com/climate-environment/2023/03/11/florida-insurance-claims-hurricane-ian/> (last visited Apr. 23, 2023).

⁴⁹ S. 627.4133(2)(d)1. F.S.

⁵⁰ *Id.*

⁵¹ S. 672.701(10), F.S.

⁵² S. 627.702, F.S.

- A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
- A roof loss requiring the repair of less than 50 percent of the roof.
- Specifies that when a roof deductible is applied, no other deductibles under the policy may be applied.
- Specifies that a roof deductible only applies to a claim adjusted on a replacement cost basis.
- Authorizes an insurer to limit the claim payment for a roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.
- Requires a roof deductible provision to be clear and unambiguous.
- Requires the inclusion of the following disclosures:
 - On the page immediately behind the declarations page, notice that a roof deductible may result in high out-of-pocket expenses to the policyholder.
 - On the policy declarations page, prominent display of the actual dollar value of the roof deductible at issuance and renewal.
- Allows an insurer to limit payment on a roof claim to actual cash value until the policyholder pays the roof deductible.

Law requires insureds to notify an insurer of a claim or reopened claim,⁵³ within 1 year after the date of loss.⁵⁴ Notice of a supplemental claim⁵⁵ must be given to the insurer within 18 months of the date of loss or such claim is barred. Insureds are also required to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.⁵⁶ The law does not currently contain any tolling of these time limits for military service members.

Effect of the Bill – Insurance Policy/Claims Handling

The bill adds two new acts that constitute unfair methods of competition or unfair or deceptive acts by an insurer or agent. They are:

- Altering or amending an insurance adjuster’s report without including:
 - A detailed list of all changes made to the report.
 - The identity of the person who ordered each change.
 - A detailed explanation of why a change was made if the change reduces an estimate of a loss.
- Authorizing or permitting an insurer to pay a bonus to an officer or director of an insurer while the insurer is impaired or insolvent, regardless of whether delinquency proceedings have been, or will be, initiated.

The bill requires that, before an insurer temporarily suspends writing new residential property insurance policies, it must notify OIR of:

- Its proposed reasons for suspension of writing;
- The effective dates of the suspension;
- The proposed communication to its agents.

The insurer must notify OIR by the earlier of:

⁵³ S. 627.70132(1)(a), F.S., defines “reopened claim” as a claim that an insurer has previously closed, but that has been reopened upon an insured’s request for additional costs for loss or damage previously disclosed to the insurer.

⁵⁴ S. 627.702(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

⁵⁵ S. 627.70132(1)(b), F.S., defines “supplemental claim” as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

⁵⁶ S. 627.706(5), F.S.

- 20 business days before the effective date of the suspension; or
- Five business days before notifying its agents of the suspension.

However, the insurer need not notify OIR of the suspension if it is due to an approaching hurricane or another natural emergency impacting more than one county, including a storm, flood, severe wave, drought, or earthquake. Additionally, an insurer's temporary suspension of writing is not subject to OIR's approval.

The bill prohibits Citizens from determining that a property risk is ineligible for coverage solely because the property risk has unrepaired damage that is the subject of a claim being serviced by the Florida Insurance Guaranty Association (FIGA). This prohibition applies to a property until the earlier of 24 months from the date FIGA starting servicing the claim or the date that FIGA closes the claim.

The bill prohibits OIR from exempting an insurer from the forms review requirements for 36 months following a violation of the Insurance Code.

The bill requires all authorized residential property insurers writing policies in Florida to create and use claims-handling manuals that provide guidelines and procedures that comply with the Insurance Code and usual and customary insurance claims-handling practices. Each claims-handling manual must include guidelines and procedures for:

- Receiving and acknowledging initial receipt of claims, and reviewing and evaluating those claims.
- Communicating with policyholders.
- Setting the claim reserves.
- Investigating the claim, including conducting inspections of the property that is the subject of the claim.
- Making preliminary estimates of the covered damages to the insured property and communicating them to the policyholder.
- The payment, partial payment, or denial of the claim and communicating such decisions to the policyholder.
- Closing the claim.
- Other aspects of the claims-handling process as determined by OIR.

OIR may request that a residential property insurer submit a copy of its claims-handling manual at any time, and the insurer must submit it to OIR within five business days of the request. Additionally, on an annual basis, the insurer must submit to OIR an attestation that its current claims-handling manuals meet the requirements of the Insurance Code and usual and customary insurance claims-handling practices and that it maintains adequate resources to meet the requirements of the manuals at all times, including during natural disasters and catastrophic events. The bill provides OIR with rulemaking authority to implement the claims-handling manual requirements.

The bill provides that an authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy on a dwelling or residential property located Florida:

- For 90 days after the dwelling or residential property has been repaired, if the property was damaged by a hurricane that resulted in the declaration of a state of emergency; or
- Until the earlier of when the dwelling or residential property has been repaired or one year after the insurer issues a final claim payment, if the property was damaged by a peril other than a hurricane.

The bill establishes that a structure is considered repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in Florida.

The bill clarifies that if a roof deductible is applied to a loss that is the subject of a claim under a residential property insurance policy, no other deductible may be applied to any other loss to the property caused by the same covered peril.

The bill provides tolling of the time limitations for providing notice of a property insurance claim to an insurer during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember⁵⁷ to file a claim.

The bill clarifies that nothing in SB 2A (2022A) shall be construed to impair any right under any insurance contract in effect on or before that bill became law.⁵⁸

Fines Against Insurers, Agencies, and Agents

Background

DFS provides education, information, and assistance to consumers for all products or services regulated by DFS or FSC.⁵⁹ DFS' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation of consumer and insurance company disputes; and
- Serving as a conduit for referrals for further legal action by DFS.⁶⁰

DFS may impose an administrative penalty on a person who holds a license or certificate of authority from DFS if that person fails to respond to DFS' request for information within 20 days.⁶¹ A licensed individual must produce any requested documents not subject to attorney-client or work product privilege.

OIR, through its ongoing oversight and examination process, determines whether insurance companies are operating in compliance with the Insurance Code. OIR is authorized to impose administrative fines in lieu of suspension or revocation if it finds that one or more grounds exist for the discretionary revocation or suspension of the certificate of authority.⁶² OIR may impose an administrative fine as follows:

- A maximum of \$5,000, per non-willful violation, with an aggregate limit of \$20,000 for all non-willful violations arising out of the same action.
- A maximum of \$40,000 per violation, with a \$200,000 aggregate limit for all willful violations arising out of the same action.
- If an insurer owes restitution due to a violation, the insurer must provide the restitution and include 12 percent interest from the date of the violation or the inception of the insured's policy.

The Insurance Code also authorizes fines for engaging in an unfair or deceptive act or practice involving the business of insurance.⁶³ An insurer that commits such violations is subject to a fine of:

⁵⁷ A servicemember is defined in s. 250.01(19), F.S., as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

⁵⁸ SB 2A was the property insurance bill that was passed during the 2022A Special Session. It became ch. 2022-271, Laws of Fla. This provision applies to SB 2A from the date it became law.

⁵⁹ Florida Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2023-24 through 2027-28*, p. 12 (Oct. 17, 2022),

<http://floridafiscalportal.state.fl.us/Document.aspx?ID=24407&DocType=PDF> (last visited Apr. 2, 2023). See also Florida Department of Financial Services, Consumer Guides, <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm> (last visited Apr. 2, 2023).

⁶⁰ S. 624.307(10)(a), F.S.

⁶¹ S. 624.307(10)(b), F.S.

⁶² S. 624.4211, F.S.

⁶³ S. 626.9521, F.S.

- A maximum of \$5,000 for each non-willful violation, not to exceed an aggregate amount of \$20,000.
- A maximum of \$40,000 for each willful violation arising from the same action, not to exceed an aggregate amount of \$200,000.⁶⁴

Effect of the Bill – Fines

Consumer Services – Fines

The bill reduces the time that insurers and agents have to respond to Consumer Services regarding consumer complaints from 20 days to 14 days, but allows them to respond electronically instead of solely in writing. It also increases the fines for an insurer's failure to respond to such complaints from \$2,500 per violation to \$5,000 per violation.

OIR – Fines

The bill creates the following fines for violations of the Insurance Code by an insurer related to a covered loss or claim related to a declared a state of emergency:

- \$25,000 per violation, up to an aggregate amount of \$100,000 for all nonwillful violations arising out of the same action.
- \$200,000 per violation, up to an aggregate amount of \$1,000,000 for all willful violations arising out of the same action.

The bill increases the current maximum fines for all other violations of the Insurance Code by an insurer, as follows:

Type of Violation	Current Fine Individual Violation	Increased Fine Individual Violation	Current Fine Aggregate Violations	Increased Fine Aggregate Violations
Non-willful	\$5,000	\$12,500	\$20,000	\$50,000
Willful	\$40,000	\$100,000	\$200,000	\$500,000

Unfair Methods of Competition or Unfair or Deceptive Acts or Practices – Fines

The bill establishes that anyone who engages in an unfair method of competition or unfair or deceptive act or practice related to a covered loss or claim caused by a declared state of emergency is subject to the following fines:

- For any person,⁶⁵ up to \$25,000 for each nonwillful violation and \$200,000 for each willful violation.
- For an insurer, an aggregate maximum of \$100,000 for all nonwillful violations and \$1,000,000 for all willful violations arising out of the same action.

The maximum fine for engaging in twisting,⁶⁶ churning,⁶⁷ or willfully submitting fraudulent signatures on an application or policy-related document are increased from \$5,000 to \$12,500 for each nonwillful

⁶⁴ S. 626.9521(2), F.S.

⁶⁵ Person in connection with unfair methods of competition and unfair or deceptive acts or practices means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or business trust or any entity involved in the business of insurance. S. 626.9511(1), F.S.

⁶⁶ "Twisting" is defined as knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer. S. 626.9541(1)(l), F.S.

⁶⁷ "Churning" is a practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used

violation and from \$75,000 to \$187,500 for each willful violation. The aggregate maximum fines for this conduct are increased from \$50,000 to \$125,000 for all nonwillful violations and from \$250,000 to \$625,000 for all willful violations arising out of the same actions.

The bill increases the maximum fines for all other instances of unfair methods of competition or unfair or deceptive acts or practices by a person as follows:

Type of Violation	Current Fine Individual Violation	Increased Fine Individual Violation	Current Fine Aggregate Violations by an Insurer	Increased Fine Aggregate Violations by an Insurer
Non-willful	\$5,000	\$12,500	\$20,000	\$50,000
Willful	\$40,000	\$100,000	\$200,000	\$500,000

Reporting Requirements

Background

OIR is required to submit an annual report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chairs of the legislative committees with jurisdiction over matters of insurance, and the Governor.⁶⁸ The report is to cover the following information from the preceding calendar year:

- Names of the authorized insurers transacting insurance in this state, with abstracts of their financial statements including assets, liabilities, and net worth.
- Names of insurers whose business was closed during the year, the cause thereof, and amounts of assets and liabilities as ascertainable.
- Names of insurers against which delinquency or similar proceedings were instituted and related information.
- The receipts and estimated expenses of OIR.
- Other pertinent information as OIR deems to be in the public interest.
- A compilation of the laws passed by the Legislature relating to insurance.
- An analysis and summary report of the state of the insurance industry in Florida.

The Division of Investigative and Forensic Services (DIFS) investigates various types of insurance fraud including Personal Injury Protection fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.⁶⁹ DIFS is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,⁷⁰ false and fraudulent insurance claims,⁷¹ and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.⁷² DIFS includes a Bureau of Insurance Fraud (Bureau) and employs sworn law enforcement officers to investigate insurance fraud.

Effect of the Bill – Reporting

The bill requires that OIR provide quarterly and annual reports to the Governor, President of the Senate, Speaker of the House, FSC, and legislative committees with jurisdiction over insurance matters on its actions to enforce insurer compliance with the Insurance Code (compliance report). OIR must

to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation. S. 626.9541(1)(aa), F.S.

⁶⁸ S. 624.315, F.S. As of the date of this analysis, OIR has not provided its annual report to the Legislature since its 2021 Annual Report, which contained data from calendar year 2020.

⁶⁹ See <https://myfloridacfo.com/Division/DIFS/> (last visited Apr. 2, 2023).

⁷⁰ S. 626.9541, F.S.

⁷¹ S. 817.234, F.S.

⁷² S. 624.15, F.S.

also publish the compliance reports on its website. The compliance reports must contain information regarding:

- Revocation, denial, or suspension of any license or registration issued by OIR.
- Fines imposed by OIR for violations of the Insurance Code.
- Consent orders entered into by OIR.
- Examinations and investigations conducted and completed for which OIR found violations of law or rule, but did not take enforcement action.

The annual compliance report must be submitted by January 31 each year and cover the previous calendar year. The quarterly compliance reports must be submitted on or before April 30, July 31, October 31, and January 31, and cover the immediately preceding quarter.

The bill requires that the Bureau submit a performance report to the President of the Senate and Speaker of the House by September 1 each year, which includes at least the following information:

- Total number of initial referrals received, cases opened, cases presented for prosecution, cases closed, and convictions resulting from cases presented for prosecution by the Bureau.
- Number of referrals received from insurers, OIR, and Consumer Services, and the outcome of those referrals.
- Number of investigations undertaken by the Bureau which were not the result of a referral from an insurer and the outcome of those investigations.
- Number of investigations that resulted in a referral to a regulatory agency and the disposition of those referrals.
- Number of cases presented by the Bureau which local or statewide prosecutors declined to prosecute with the reasons why they declined.
- A summary of the annual report containing the data collected from fraud prosecutors.⁷³
- The total number of employees assigned to the Bureau, broken down by location.
- Average caseload and turnaround time for each investigator.

The bill clarifies that, in addition to reporting to other agencies, DIFS may report alleged insurance-related crimes that impact two or more Florida judicial circuits to the statewide prosecutor.

The bill also requires OIR to refer records and information to DIFS or other appropriate law enforcement agency or prosecutor when OIR has reason to believe a crime has occurred.

Rates/Premiums

Background

In general, insurers must file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by OIR.⁷⁴ OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.⁷⁵ In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience both inside and outside of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.

⁷³ S. 626.9896, F.S. requires such a report be prepared annually by the Bureau and presented to the Governor, President of the Senate, and Speaker of the House of Representatives.

⁷⁴ S. 627.062(2)(a), F.S.

⁷⁵ S. 627.062(1), F.S.

- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.⁷⁶ Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.⁷⁷ Upon their filing by an insurer or rating organization, OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,⁷⁸ which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength.⁷⁹

In recent sessions, the Legislature has passed several bills intended to reduce litigation and address other practices related to motor vehicle and property insurance in an effort to reduce the rates charged for these types of insurance policies.⁸⁰

Effect of the Bill – Rates/Premiums

The bill establishes that each residential property insurer and motor vehicle insurer rate filing made, or pending, with OIR on after July 1, 2023, must reflect projected savings or reduction in claim frequency and 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 certain bills passed in 2021 and 2022.⁸¹ In reviewing these rate filings, OIR must consider the effect of these bills. It may develop methodology and data that incorporate generally accepted actuarial techniques and standards to be used in reviewing the filings. To assist with the development of the methodology and data, OIR may contract with an appropriate vendor and \$500,000 in nonrecurring funds is appropriated for the contract.

The methodology and data are not intended to create a mandatory minimum rate decrease for all property and motor vehicle insurers, but to ensure that the rates meet the rating standards set forth in Florida law.

The bill also requires all residential property insurers to provide information on their websites describing hurricane mitigation premium discounts available to policyholders. Additionally, beginning on January 1, 2025, and every five years thereafter, OIR must reevaluate the fixtures or construction techniques demonstrated to reduce windstorm losses, and the discounts, credits, other rate differentials, and reductions in deductibles that correspond to these fixtures and techniques.

⁷⁶ S. 627.062(2)(j), F.S.

⁷⁷ S. 627.0629(1), F.S.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ These bills include those enacted in chs. 2021-77, 2022-268, 2022-271, and 2023-15, Laws of Fla., which correspond to insurance bills passed during the 2021 and 2022 regular legislative sessions and special sessions 2022D and 2022A.

⁸¹ *Id.*

Agency Staffing

Background

DFS and OIR have both expressed to the Legislature that they have difficulty recruiting and retaining qualified staff due to their inability to compete with the salaries paid by the private sector for similar work. During a presentation to the Senate Banking and Insurance Committee on March 29, 2023, the Director of DFS Consumer Services explained that there is currently a 55 percent vacancy rate in the positions for the telephone helpline.⁸²

Effect of the Bill – Agency Staffing

The bill appropriates recurring and nonrecurring funds from the Insurance Regulatory Trust Fund to create the following full-time positions to implement this bill:

- 7 positions within DFS.
- 18 positions within OIR.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If the bill results in DFS and OIR assessing newly created or increased fine amounts against insurers, insurance agents and agencies, or others, it may result in additional revenues for the state.

2. Expenditures:

The bill provides for appropriation of funds from the Insurance Regulatory Trust Fund:

- \$574,036 in recurring funds and \$33,467 in nonrecurring funds for seven additional full-time positions within DFS.
- \$1,879,129 in recurring funds and \$185,086 in nonrecurring funds for 18 additional full-time positions within OIR.
- \$500,000 in nonrecurring funds for OIR to develop a methodology and data to review the impact of certain chapters of law on residential property insurance and motor vehicle insurance rate filings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁸² Senate Committee on Banking and Insurance, *Presentation by Greg Thomas from DFS*, https://www.flsenate.gov/media/videoplayer?EventID=1_nty0d3lq-202303290830&Redirect=true (last visited Apr. 8, 2023).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a negative economic impact on insurers if they are assessed new or increased fine amounts and if they have to expend additional funds to pay for more frequent examinations by OIR.⁸³

D. FISCAL COMMENTS:

None.

⁸³ Insurers are responsible for paying OIR for the cost of their examinations. S. 624.320, F.S.