

## **Chapter 7 Insurance Updates & Current Events**

The insurance industry is continually changing to make improvements to its products and operations and to reflect legislative developments. Every year, insurance-related laws at both the state and federal levels are modified to improve the regulatory process. It is therefore critically important for licensees to understand new laws and regulations, industry trends, and state requirements to ensure that they continue to comply with these laws and are able to best serve their clients.

The state of Florida made several changes to its insurance laws during its recently concluded legislative session. However, none of these were aimed specifically at all-lines adjusters. Therefore, we will present the changes affecting Florida property and casualty in general.

### **Office of Financial Regulation Public Record Exemption Extended**

Personal financial and health information held by the Office during an investigation or examination of any insurer or agent is confidential. This is because under the Florida Consumer Collection Practices Act, this information holds a public records exemption. The exemption was scheduled for repeal on October 2, 2019. However, H.B. 7049 removed the scheduled repeal.

The continuation of the public records exemption will prevent the release of sensitive personal medical information and financial information of individuals.

This change is effective October 1, 2019.

### **Right of Contribution Among Liability Insurers**

H.B. 301 brought about new legislation covering liability insurers' defense costs. Liability insurers that defend their insureds against a claims and suits now have a right of contribution for defense costs against other liability insurers.

The court will allocate defense costs among the insurers involved in the claim and will use any equitable factors it determines are appropriate in making an allocation.

Contributions for defense costs may not be sought from an insurer for defense costs that are incurred before the insurer's receipt of notice of the claim or suit. The new law does not apply to motor vehicle liability insurance or medical professional liability insurance.

The new law is effective July 1, 2019, and applies to any claim, suit, or other action initiated on or after January 1, 2020.

### **Civil Remedy Limited**

Florida law sets forth the procedures for bringing a civil action against an insurer for violating certain parts of the Insurance Code, primarily committing unfair or deceptive practices and failing to return unearned premiums. One of the conditions of bringing suit is that the Department and the insurer be given 60 days' written notice of the insurer's violation. New language to the statute provides that the notice may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

The new law was also brought about by H.B. 301 and is effective July 1, 2019.

### **Surplus Lines Changes**

#### **Diligent Effort Threshold**

Florida's Surplus Lines Law requires that before coverage can be placed with a surplus lines

insurer, the producer must make a diligent effort to place coverage through authorized insurers writing the same kind and class of business.

Under the previous law, "diligent effort" was defined to mean seeking coverage from, and having been rejected by, at least three authorized insurers and documenting the rejections. An exception was made for residential structures with a replacement cost of \$1 million or more, in which case the producer was required to seek coverage from, and be rejected by, only one authorized insurer.

The replacement cost threshold for residential structures has been reduced from \$1 million to \$700,000 with the requirement to seek coverage from one authorized insurer remaining in place.

### **Per Policy Fee Eliminated**

Under the previous law, a reasonable per policy fee, not to exceed \$35, was permitted by the filing surplus lines agent for each policy certified for export. The \$35 fee limit has been eliminated, and new language here requires that any per policy fee must be itemized separately to the customer before purchasing the policy and must be enumerated in the policy.

Both of these changes resulted from H.B. 301 and are effective July 1, 2019.

### **Unfair Insurance Trade Practices Act Amended**

Florida's Unfair Insurance Trade Practices Act regulates insurance trade practices by defining unfair methods of competition and unfair or deceptive acts or practices and prohibiting them.

The law was recently changed to allow insurers and their agents to give certain items to insureds and prospective insureds, as long as the value does not exceed \$100. The law is specific in naming the types of items allowed in any calendar year:

- Any article of merchandise
- Goods
- Wares
- Store gift cards
- Gift certificates
- Event tickets
- Anti-fraud or loss mitigation services
- Charitable contributions made on behalf of insureds or prospective insureds

H.B. 301 added new language to this statute making clear that insurers are not prohibited from offering or giving, for free or at a discounted price, services or other offerings that relate to loss control or loss mitigation with respect to the risks covered under a policy. For example, an insurer might offer free smoke detectors for every room with the purchase of a fire policy.

This change is effective July 1, 2019.

### **Multi-Line Discounts Expanded**

When calculating premiums, insurers often take into consideration discounts based on the fact that an insured has purchased one or more other policies. H.B. 301 brought about legislation that now allows insurers to offer multi-line discounts when any of these conditions are present:

- Insurers are operating under a joint marketing agreement.

-A policy is removed from Citizens Property Insurance Corporation through the policyholder eligibility clearinghouse program.

-The same agent is servicing the policies from different insurers.

This change is effective July 1, 2019.

### **Disclosure of Mediation Procedures**

Florida law requires that property insurers notify policyholders of their right to participate in a mediation procedure when a claim is under dispute. This procedure is a non-adversarial alternative dispute resolution process prompted by the need for effective, fair, and timely handling of property insurance claims.

Under previous law, the disclosure was required at the time a first-party claim was filed. As a result of H.B. 301, the disclosure can be made at the time a first-party claim is filed or at the time coverage is applied and payment is determined.

This change is effective July 1, 2019.

### **First Auto Policy Premium Requirement Reduced to One Month's Premium**

As a result of H.B. 301, auto policies and binders may be issued with the payment of one month's premium. Under the previous law, at least two months' premium was required.

This change is effective July 1, 2019.

### **False Workers Compensation Application Penalty Downgraded**

In Florida, submitting an application that contains false, misleading, or incomplete information for the purpose of avoiding or reducing the amount of premiums for workers compensation coverage is a felony. As of July 1, 2019, H.B. 301 made this crime a third-degree felony, downgraded from a second-degree felony under the previous law.

### **Workers Compensation PTSD Benefits for First Responders**

In 2017, Florida's Workers' Compensation Law was amended to provide that, under certain circumstances, post-traumatic stress disorder (PTSD) suffered by a first responder is an occupational disease covered by workers compensation benefits. With the amended language, benefits do not require a physical injury.

A law enforcement officer, firefighter, emergency medical technician, or paramedic is entitled to workers compensation benefits for a mental or nervous injury if both of these conditions are met:

1.The mental or nervous injury resulted while the first responder was acting within the course of his or her employment.

2.The first responder is examined and diagnosed with PTSD as a result of one of the following events:

- Seeing a deceased minor or witnessing the death of a minor

- Witnessing an injury to, participating in the treatment of, or manually transporting a minor who later died before or upon arriving at an emergency room

- Seeing a decedent or witnessing a death that involved grievous bodily harm of a nature that shocks the conscience

- Witnessing a homicide

The law became effective October 1, 2018. However, the administrative rule implementing the law was filed by the Department of Financial Services (DFS) in December 2018, and it was estimated that the regulatory costs of the proposed rule would increase in excess of \$1 million within five years after implementation. Florida's Administrative Procedures Act requires that a rule that will likely increase regulatory costs in excess of \$1 million within five years be ratified by the Legislature before it can go into effect. H.B. 983 was enacted solely to ratify Rule 64L-3.009 so that these expanded benefits for first responders became effective June 25, 2019.

## **Hurricane and Flood Loss Projection Models Remain Trade Secrets**

Florida is known for its deadly hurricanes and flood waters. Hurricane and flood loss models are used to manage and predict these disasters. Models are complex methodologies used to estimate economic and social losses. They are developed by, and belong to, private companies. They help determine actuarially sound pricing of homeowners insurance and help determine premium discounts for mitigation features in structures.

H.B. 7091 extended the current exemption from public records disclosure for trade secrets used in designing and constructing hurricane and flood loss models provided by private companies. The methodology may be shared with the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, and the Office of the Consumer Advocate, but it is to remain confidential.

The previous statute was scheduled for automatic repeal on October 2, 2019, if the law had not been changed.

This change is effective October 1, 2019.

## **Insurance Assignment Agreements**

Under the assignment of benefits provision of insurance policies, a policyholder can assign his or her insurance claim benefits directly to a home repair contractor. While this can be convenient and reduce stress for homeowners, it has led to unscrupulous contractors abusing the practice by inflating claims. H.B. 7065 brought about new legislation to help address this issue.

### **Duties of Assignee/Contractor**

The bill establishes the duties of assignees (contractors). An assignee:

- Must provide the assignor (insured) with accurate and up-to-date revised estimates of the scope of work to be performed when supplemental or additional repairs are required
- Must perform the work in accordance with accepted industry standards
- May not seek payment from the insured exceeding the deductible under the policy unless the insured has chosen to have additional work performed at his or her own expense

The contractor and its subcontractors may not attempt to collect money from an insured, bring any action against an insured, file a lien on an insured's property, or report an insured to a credit agency for payments arising from the assignment agreement.

The contractor must provide the insurance company and the insured with a 10-day written notice of its intent to initiate litigation before filing a suit under the policy and make a pre-suit demand. The insurer must respond with a pre-suit settlement offer or require the contractor to participate in any dispute resolution process required by the policy.

The bill requires contractors to comply with some of the insured's duties under the policy, for example, cooperating with the claims investigation, submitting to examinations under oath,

providing recorded statements that are reasonably necessary, and participating in alternative dispute resolution methods in accordance with the terms of the policy.

### **Attorney Fees**

Attorney fees may be awarded if a suit goes to court. The court will compare the difference between the demand and the offer with the judgment obtained. If the difference between the judgment obtained by the insured and the pre-suit settlement offer is:

- Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees
- At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees
- At least 50 percent of the disputed amount, the insured is entitled to an award of reasonable attorney fees

### **Required Disclosure**

An assignment of benefits agreement must contain the following notice:

*"You are agreeing to give up certain rights you have under your insurance policy to a third party, which may result in litigation against your insurer. Please read and understand this document before signing it. You have the right to cancel this agreement without penalty within 14 days after the date this agreement is executed, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property. However, you are obligated for payment of any contracted work performed before the agreement is rescinded. This agreement does not change your obligation to perform the duties required under your property insurance policy."*

### **Policies May Prohibit or Restrict Assignment**

The bill allows insurers to offer property insurance policies that prohibit or restrict assignment of post-loss benefits. However, if an insurer offers a policy with a prohibition or restrictions, it must offer a policy with the same coverage that does not restrict or prohibit the right to assign benefits. When purchasing a policy that prohibits or restricts assignments of post-loss benefits, the insured must affirmatively reject the fully assignable policy. Policies prohibiting or restricting assignment of benefits must be offered at a lower cost.

The new law is effective July 1, 2019.

### **Fraud-Related Statistics Reporting Begins**

On March 1, 2019, all insurers are required to report fraud-related data to the Department's Division of Investigative and Forensic Services (DIFS) for each line of insurance written in the prior calendar year. The data must be submitted annually thereafter and must include:

- The number of policies in effect
- The amount of premiums written for policies
- The number of claims received
- The number of claims referred to the anti-fraud investigative unit
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim-related
- The number of claims investigated or accepted by the anti-fraud investigative unit
- The number of other insurance matters investigated or accepted by the anti-fraud investigative unit that were not claim-related

- The number of cases referred to the DIFS
- The number of cases referred to other law enforcement agencies
- The number of cases referred to other entities
- The estimated dollar amount or range of damages on cases referred to the DIFS or other agencies

An administrative fine of up to \$2,000 per day may be imposed on insurers who fail to report the required data or to comply with the other anti-fraud requirements of the law.

## **Current Scams**

The Division of Consumer Services warns that there are many scams being perpetrated against Florida's consumers. The Division continuously monitors the insurance and financial industry to inform and protect consumers from various financial scams designed to steal hard earned money. Some of the scams currently circulating the state are presented here. Producers can help fight scams and other types of fraud by practicing awareness and educating their clients.

### **Check Scam Involving DFS**

Consumers have received fraudulent checks that are made to appear as if they have been issued by the Florida Department of Financial Services. In some cases, checks appear to be signed with the signature of the Chief Financial Officer. These fraudulent checks have been received and reported by consumers who were not expecting to receive funds from the Department.

Checks have been reported to the Department from consumers in Illinois, New York, Pennsylvania, and South Carolina. The checks, with values varying between \$1,900 and \$4,000, have all been deemed fraudulent by the Department's Office of Fiscal Integrity, which investigates the misuse of state funds.

The Department frequently issues checks for a host of reasons, including unclaimed property payments, but the Department will not distribute checks to consumers without first notifying them.

A consumer who receives an unexpected check from the Department of Financial Services that seems suspicious should not attempt to cash it but should report it to Department's Office of Fiscal Integrity by calling 850-413-5514.

### **Policy Cancellation Email Scam**

The DFS and OIR have received calls from consumers who have received scam emails, appearing to come from the Insurance Commissioner, informing them that their insurance has been cancelled. The fraudulent email indicates that it is coming from the Office of U.S. Insurance Regulation and references the DFS mailing address. The unauthorized email includes a link for consumers to view their policy information. The OIR does not send notices of cancellation, and those who receive them should disregard the information. Anyone who receives this type of email should not open any links and should not provide any personal information. Instead, the email should be immediately deleted. Consumers who are concerned about their insurance coverage should contact their insurance companies directly using a number they know to be legitimate, such as the number found on insurance cards, bills, and policies.

Consumers should report this scam and all fraudulent activity to the Department of Financial Services' Insurance Consumer Helpline by calling 877-693-5236.

### **Office of Financial Regulation Scam**

Florida consumers should be wary of fake emails that claim to be from the Office of Financial Regulation. These email messages indicate that the consumer is behind on a payday loan, and threats of legal action are often made.

Scammers often identify themselves as “Officer Joel Winston” or “John Smith.” These individuals will use official logos without permission to create falsified emails that appear to be very authentic. They claim the consumers have outstanding payments. Consumers are instructed to call a number, which typically contains a 904 area code, in order to resolve the issue.

Consumers who respond and provide personal and financial information through email or phone risk having their identities stolen and fraudulent purchases made using their accounts.

The Division of Consumer Services instructs consumers to not respond to emails that claim to be from the Office of Financial Regulation. Recipients can inspect the author’s email address to determine if the email is an official state government email address.

### **Division of Insurance Fraud Scam**

This scam claims to come from the director or assistant director of the Department of Financial Services’ Division of Insurance Fraud. It requests personal information to help with an investigation or to avoid criminal prosecution. The message will include the Division of Insurance Fraud’s physical address and logo, but it is not legitimate.

The email may claim that an item of great value was being sent and had been confiscated or cannot be delivered because it lacks the proper insurance. The email directs the consumer to contact the Tucson International Airport and provide personal information to avoid prosecution or confiscation of the item. The Division of Insurance Fraud will not ask that confidential information be sent over email, nor does it direct consumers to contact a third party to provide this information.

Consumers who respond to this message risk compromising their confidential, personal information and becoming victims of identity theft. The Division recommends that people do not respond to any unsolicited emails asking for personal information and refrain from calling phone numbers provided. Those who receive email claiming to be from the Department of Financial Services’ Division of Insurance Fraud and asking for personal information should call 850-413-3115 to report it.

### **Fraud Free Florida Initiative**

In response to the state’s ongoing fraud epidemic, Florida’s Chief Financial Officer launched a new initiative, Fraud Free Florida, in March 2019. The new initiative is aimed at better coordinating collective investigative efforts to protect Florida’s population, especially seniors, from scam artists.

The initiative will bring together statewide law enforcement officials, local state attorneys, private sector stakeholders, and members of the OIR fraud investigative teams. Its goal is to help Florida stay ahead of new scams and to take on rampant fraud already taking place. Targets will be fraud at unscrupulous opioid treatment centers, public assistance fraud, identity theft, and cybersecurity issues.

The new Fraud Free Florida initiative joins the ranks of the Office’s already robust Division of Investigative and Forensic Services. The Division is one of the top law enforcement agencies in the state dedicated to rooting out fraud and investigating financial crimes. Fraud Free Florida will help agencies better collaborate on fraud cases and identify law changes needed to make Florida the toughest state in the nation on fraud.

FraudFreeFlorida.com serves as a one-stop-shop for reporting fraud and learning about ways to protect from scams. The Web site allows visitors to report:

- Insurance fraud
- Identity theft
- Workers compensation fraud

- Arson
- Public assistance fraud
- Scam telephone calls

The site is also a center for learning more about fraud and scams and offers a means for consumers to report businesses and offers that appear to be illegal schemes and fraud. Reports help the Office to investigate and warn others of potential fraud.

## **CFO Calls for Insurers to Step Up**

The state's Chief Financial Officer and Insurance Commissioner spoke with insurance company executives recently and called on the industry to step up more to aid in Hurricane Michael recovery.

CFO Patronis was quoted as saying, "Before Hurricane Michael hit, I put Florida's insurance industry on notice that I expected they would move quickly to help residents recover. Unfortunately, this hasn't been the case all around. My office has noticed several alarming trends since the storm made landfall, including delays in processing claims. What is even more troubling is that 13 percent of complaints to my office were related to claim denials.

"To put this into perspective, Hurricane Irma touched almost every county in our state, impacting millions. Thirty days after Irma, we had approximately 200 consumer complaints. Hurricane Michael impacted 12 counties. Thirty days later, we have received more than 100 consumer complaints. There is no reason that we should have this many complaints for an impacted area that is a small fraction of Irma's. It's completely unacceptable.

"My expectations have not changed. In fact, they are even higher. I expect insurers will step it up so that families and businesses can get back to normal. If insurers don't step up, not only will recovery be delayed but consumers will be even more vulnerable to fraud."

The Commissioner agreed that all insurance-related needs of impacted consumers must be addressed swiftly and without delay. The two will continue to monitor the progress of post-storm responses to ensure residents impacted by hurricanes are protected throughout their path to recovery. The Commissioner said, "Insurance companies must fulfill the promises they've made to their policyholders."

## **Reminder to Check MyProfile for Messages**

The Department highly recommends that licensees routinely check their MyProfile accounts for messages. The Department sends email notifications when messages have been sent to MyProfile accounts reminding licensees to check their accounts. Because email addresses change, the Department suggests that licensee add these domains to their software's trusted or safe senders list to ensure they receive important email notifications:

- [www.dfs.state.fl.us](http://www.dfs.state.fl.us)
- [www.MyFloridaCFO.com](http://www.MyFloridaCFO.com)

Licensees who have valid email addresses on file with the Department, as required by law, are sent important email notifications when something affecting an application, license, continuing education, or appointments occurs. Additionally, licensees are kept informed with warnings regarding new schemes and scams circulating in the state.

One of the Department's goal is to keep licensees informed in a timely manner of pertinent information. Licensees are required to abide by the Florida Insurance Code, regardless of whether they have read the information provided.



## **Course Authority Clarified**

The Division of Insurance Agent and Agency Services has clarified its course authorities. A course authority is an alpha numeric designation that broadly defines the subject of a course. Generally, the course authority will link to a specific license type. For example, a course authority of CE 2-20 would be courses designed for property and casualty agents and customer representatives licensed under type 220.

The following is a listing of some of the course authorities and the license types for which they are designed:

- CE 2-20—property and casualty agents and customer representatives
- CE 3-24a, b, and c—all lines adjusters
- CE 3-20a, b, and c—public adjusters

The importance of the course authority becomes critical as it relates to the five-hour law and ethics update course, which is license specific as follows:

- CE 5-220—property and casualty agents and customer service representatives
- CE 5-320—public adjusters
- CE 5-620—all lines adjusters

A common question received by the Division related to courses other than the five-hour law and ethics update course is, "Can I get credit if I take this course?" A course authority generally allows licensees to study subject matter that is of interest, and credit will be given for any approved continuing education course. For example, an adjuster would get credit for a course with a course authority of CE 2-20.

In addition to the changing state laws affecting Florida licensees, changes at the federal government level are also of note.

## **National Flood Insurance Program Changes**

### **National Flood Insurance Program Expands Private Sector Reinsurance**

The National Flood Insurance Program (NFIP), the federal insurance and risk management program managed by FEMA, continued to expand its private sector reinsurance program. Beginning January 2017, FEMA began purchasing reinsurance to help diversify and lessen the NFIP's net exposure to catastrophic losses. On January 1, 2019, FEMA secured \$1.32 billion in reinsurance to cover any qualifying flood losses occurring in calendar year 2019.

Under the 2019 reinsurance agreement, 28 reinsurance companies agreed to indemnify FEMA for flood losses from individual flood events (as opposed to aggregate losses from multiple flood events). The agreement is structured to cover 14 percent of losses between \$4 billion and \$6 billion, 25.6 percent of losses between \$6 billion and \$8 billion, and 26.6 percent of losses between \$8 billion and \$10 billion. FEMA paid a total premium of \$186 million for the coverage.

Also in 2018, for the first time, FEMA transferred a portion of the NFIP's financial risk to capital markets investors through a \$500 million catastrophe bond for claims from a qualifying flood event between August 1, 2018, and July 31, 2021. FEMA worked with brokers, book runners, and a catastrophe modeler to structure this transaction. The FIO continued to provide FEMA with information and advice about reinsurance and alternative risk instruments.

### **National Flood Insurance Program Premium Increase**

The National Flood Insurance Program (NFIP) saw premium increases in 2018 and will see more increases in 2019.

Effective January 1, 2019, preferred risk policy premiums increased by an average of 8 percent with a total increase of 6 percent, including fees.

### **Newly Mapped Policy Increases**

Newly mapped policies are initially charged preferred risk policy premiums during the first year following the effective date of the map change. Annual increases to these policies result from using a multiplier that varies by the year of the map change, which is applied to the base premium before surcharges and other fees are added.

The program increased the multiplier effective January 1, 2019. Premiums for newly mapped policies increased at that time by 15 percent, with a total increase of 11 percent after surcharges and other fees are considered.

### **Terrorism Risk Insurance Act of 2002 (TRIA) Extended**

After 9/11, it became clear that property losses from terrorist-related acts could be significant and might seriously erode the ability of the insurance industry to cover such losses. After much of the financial fallout from 9/11 fell on reinsurers, many reinsurers withdrew from the market for terrorism coverage because they could not accurately price terrorism exposures. Without coverage from reinsurers, primary insurers excluded terrorism losses from their coverage. Many sectors of the economy—notably, transportation, construction, energy, and utilities—were therefore vulnerable to future losses from terrorist attacks.

As a result, Congress enacted the Terrorism Risk Insurance Act of 2002 (TRIA), which created the Terrorism Risk Insurance Program (TRIP). TRIP was established primarily to incentivize the private market to offer insurance for terrorism risk, while providing a transitional period for the private market to resume pricing terrorism risk and build capacity to absorb future insurance losses. Under the TRIP Reauthorization Act, TRIP has been extended through December 31, 2020. The Act requires the Department of Treasury to collect data annually regarding the effectiveness of the program, which is then submitted to Congress. The reporting period for 2019 is currently in progress.