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LEGISLATIVE WATCH

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2017 Legislative Session Wrap-up

Around 9:30 Friday night, the House and Senate adjourned and will return today to pass the next state budget. The budget is the only order of business the Legislature will consider today. All bills that did not pass Friday are dead...including assignment of benefits, workers' compensation, and medical marijuana, along with other public policy initiatives that many thought were "must pass" legislation. Please continue reading for all the details in our final **Legislative Watch** on the major legislation we followed this 2017 session.

Assignment of Benefits (AOB) – DID NOT PASS: Rep. Jamie Grant's assignment of benefits (AOB) abuse reform bill ([HB 1421](#)) **passed the full House but never was heard in the Senate.** For those of you who don't know this young gun house member, he is tireless, a master of debate and a brilliant entrepreneur. His bill had 3 main components: data collection aimed at having concrete evidence of attorney fees and claim costs; parameters around when attorney fees would be paid vs the current "wild, wild west"; and consumer disclosure language so the consumer is fully aware of the consequences when executing an assignment of benefits document. Rep. Grant's commitment to finding balance in AOB abuse reform was evident in his opening remarks several weeks ago when he said he had a two-tier criteria for the bill - one to reduce rates and the other to ensure nothing is done to harm those with an actual loss.

On Friday of last week, Rep. Grant left his office to head to the House floor with every intention of finding a way to pass this much needed legislation. I met with him before he departed for the House chambers and saw the fire in his eyes. His father, former Senator John Grant, was an incredible Senator over 20 years ago and had the same passion for good insurance public policy, so Rep. Grant comes by it honestly. In the end, the Senate's refusal to hear this balanced and measured reform bill will mean consumer rates will increase as the abusive AOB tactics continue.

Flood Insurance – PASSED: [SB 420](#) (by Senator Jeff Brandes) and its companion, [HB 813](#) (by Representative Larry Lee) extends rate deregulation from 2019 to 2025 and relaxes eligibility requirements to write flood lines. It allows commercial lines coverage (residential & nonresidential), excess flood coverage, and more surplus lines participation by removing the Diligent Effort requirement until 2019. The bill is short and sweet and is an effort to keep a private flood insurance "top of mind" as Congress debates this summer the renewal of the National Flood Insurance Program (NFIP).

Insurance Fraud – PASSED: [SB 1012](#) & [SB 1014](#) (Brandes) and [HB 1007](#) & [HB 1009](#) (Raschein) were the subject of bills supported by outgoing CFO Atwater as providing needed tools to help DFS stay ahead of criminals who seek to defraud Floridians. The original bills had measures that would create a dedicated Insurance Fraud Prosecutor grant funding program but those provisions were not successful. The final version of these bills were finalized in HB 1007 and requires insurers to adopt an anti-fraud plan, designate primary anti-fraud employees, and require that those plans and statistics be submitted to DFS annually. Other bills were amended onto HB 1007 dealing with viatical settlement companies and provide insurance agents a way to give gifts to insureds similar to rewards programs in other industries. HB 1009

is a companion measure to HB 1007 that passed both chambers and protects a consumer or insurance company who sends information to DFS insurance fraud authorities by shielding that information from public record. HB 1009 addresses the concerns of those who report insurance fraud practices from being a target of retaliation from parties interested in “getting back at” the person or entity who made the effort to report the fraud or abuse.

Insurance Premium Tax – DID NOT PASS: [SB 378](#) (Flores) would have repealed the insurance premium tax credit of up to 15% on the salaries that insurers pay to their Florida-based full-time employees. This is a long-standing priority of the Senate President who stated the credit was a good jobs incentive when enacted 30 years ago but is unnecessary now. The \$297 million in resulting savings was originally going to go to pay for a 2% reduction in the Communications Services Tax but later was designated to reducing the Business Rent Tax on building leases by 1% (from 6% to 5%).

Medical Marijuana – DID NOT PASS: [SB 406](#) by Sen. Rob Bradley and [HB 1397](#) by Sen. Rodrigues went back and forth between the House and Senate at least 4 times in less than 48 hours (which is very unusual for that type of bouncing back and forth) but in the end, the disagreement between the two chambers boiled down to two main points: 1) the number of dispensaries the state should have – unlimited or a limited number and 2) whether to tax medical marijuana sales. Our readers will recall that in November, voters passed a constitutional amendment by over 70% in favor of medical marijuana sales for debilitating conditions in Florida. With the legislature failing to come to an agreement, it is now up to the Department of Health to implement the amendment and most certainly, the courts will be weighing-in on what happens next. The seven current licensees, also known as the cartel, will continue to operate while many have observed this creates a monopoly for this group. Marijuana crusaders admitted afterward they “worked long and hard, but [couldn't overcome the influence of money on the process](#).” We will report more about this issue as it develops.

Personal Injury Protection (PIP), also called No Fault Insurance – DID NOT PASS: Florida has been a no-fault (PIP) state since 1972, yet despite significant reforms in 2001, 2003, and most recently under 2012's [HB 119](#) intended to reduce fraud, rates keep rising – up 25% in 2015. [HB 1063](#) (Grall) would have repealed the Florida Motor Vehicle No-Fault Law & eliminated the requirements for PIP coverage, along with a series of other provisions. **Rep. Grall's bill passed the entire House but was never considered by the Senate so the issue is dead this year.**

Workers' Compensation – DID NOT PASS: By far one of the most contentious – and by court rulings, most immediate – issues facing the legislature after the state Supreme Court last year ruled our workers' comp system unconstitutional. Two weeks ago, the full Florida House approved changes to the state's workers' compensation insurance system with the passage of [HB 7085](#) (Burgess). There were major differences between the House and Senate bills including what to pay attorneys who represent injured workers. **The House wanted fees capped at \$150 an hour, while the Senate wanted a cap of \$250 an hour. In the final hours of the session, the House agreed to \$180 per hour but the Senate would not concur so the bill died. House Insurance and Banking Chairman Burgess said in those final hours, “Every small business, every business owner in the state is watching what we do,” but that was not enough to get the bill across the finish line.** Recall that two 2016 Florida Supreme Court decisions ruled parts of the current work comp law invalid causing an almost 15% rate increase because parts of the law simply “went away,” as one observer noted. “Poof - in two court opinions, the worker's comp system was turned on its head,” according to a former regulator. The hourly attorney fee maximum caused angst during the committee meetings and the Senate in particular didn't like the way the bill cut hospital reimbursements for outpatient services to injured workers.

General Insurance Bills – PASSED: On the last day of session, these bills passed the legislature with many of us hoping that assignment of benefits reform would be tacked on but in the end, [SB 454](#) (Brandes)/[HB 359](#) (Santiago) remained insurance "catchall" bills, also called "omnibus" **bills that made mostly technical changes to certain statutory provisions.** They provide insurers a \$15 insufficient funds fee when a customer's electronic payments bounce with some exceptions and add electronic checks and drafts to the list of allowable e-premium payments; allow medical malpractice insurers flexibility on their annual rate filings and a permanent exemption from having to pay assessments into the Florida Hurricane Cat Fund; and specify procedures for insurance companies to send documents electronically to policyholders.

Construction Defects – PASSED: [HB 377](#) (by Rep. Leek), a compromise between plaintiff attorneys and the construction industry, was filed because the courts ruled that a construction contract is finalized on the date of final payment. The date of final payment is the date the clock starts for any construction defect statute of limitations and statute of repose. (A statute of limitation pertains to the time since the alleged injury, while a statute of repose pertains to the time since a certain event.)

According to the staff analysis of the bill, under current law, a cause of action founded on the design or construction of a building is subject to a four year statute of limitations and a 10 year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus may limit a cause of action for a latent defect even if the injured party has no knowledge of the latent defect. A recent court decision found that a construction contract is complete when the final payment is made. For the purposes of both the statute of limitations and the statute of repose, **this bill provides that a construction contract is considered complete on the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.** The bill applies to causes of action that accrue on or after July 1, 2017.

Insurance Adjusters – PASSED: [HB 911](#) (by Rep. Shaw) revises current insurance adjuster law, including public adjuster and public adjuster apprentice licensing and regulation. The bill was supported by the Department of Financial Services' Agent and Agency Services Division and the Florida Association of Public Insurance Adjusters. **The bill places certain restrictions on public adjusters and its primary focus is aimed at stopping a growing trend with unregulated "loss consultants."** The bill also contains changes to other adjuster licensing and regulation. One noteworthy change allows employees of insurers to handle residential property insurance claims with coverage limits of \$500 or less.

Building Code – PASSED: [HB 1021](#) eliminates the International-Codes (I-Codes) as the sole source for adopting changes to Florida's building code and allows "other nationally adopted model codes and standards for updates to the Florida Building Code," according to a staff analysis. If amendments or modifications are made to the Florida Building Code, those amendments and modifications will be carried forward until the next edition of the Florida Building Code. Earlier versions of the bill extended the timeframe between building code editions to six years, but the final bill retained the three-year cycle. The Florida Homebuilders Association made changes to the building code adoption process a priority but many in the insurance industry opposed the changes saying they will contribute to building vulnerabilities.

Drones – PASSED: [HB 1027](#) vests authority to regulate the ownership or operation of unmanned aircraft systems with the state by creating the Unmanned Aircraft Systems Act. It regulates commercial uses of drones and also addresses passenger/personal delivery drones (PDD), and local ordinances relating to

them. PDD operators are now required to maintain general liability coverage of at least \$100,000 for damages arising from operation of a PDD. The bill stipulates that the regulation of unmanned aircraft must be construed in accordance with federal statutes, regulations, and guidance issued through the Federal Aviation Administration (FAA), which is still evolving.

Bills We Monitored But Had No further Action – [SB 1746](#) (Flores) Comprehensive reform of insurance regulation and practices; [HB 1271](#) (Trumbull) "Right to Repair" construction defect claims law; [SB 614](#) (Brandes), [SB 1388](#) (Artiles), and [SB 1472](#) (Galvano) all medical marijuana regulation; [HB 191](#) (Beshears) and related [SB 208](#) (Passidomo/Mayfield) on diligent effort; and [HB 469](#) (Harrison)/[SB 334](#) (Steube) Insurance Litigation/Prejudgment Interest.

The Legislature's committee weeks begin again in September in preparation for the earlier start of the 2018 Florida Legislative session on January 9, 2018. Stay tuned!