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Key Provisions of 2022 Insurance Consumer Protections & Market Reforms (SB 2-D & SB 2-A)

The Florida Legislature meeting in two special sessions passed [SB 2-D](#) in May and [SB 2-A](#) in December of 2022. The December measures build on the May reforms. The bills are designed to further reform bad practices and protect consumers in Florida's decimated property insurance market – plagued by **high insurance and reinsurance rates, carrier insolvencies, inflated claims, excessive litigation**, and a **residual market that needs to be restored to the market of last resort**.

Highlights of [SB 2-D](#) (the May 2022 Reforms)

The law, which became effective on May 26, 2022, covers reinsurance, civil litigation, roof coverage, claims handling, insurance fraud, industry regulation, and changes to the Florida Building Code to improve the affordability and availability of insurance coverage.

Litigation Reform:

The law further limits or eliminates plaintiff attorney fee awards in key litigation:

- **Assignment of Benefits (AOB)** – This section builds on the [2019 AOB Reform](#) passed by the Florida Legislature that has not been as effective as desired. It intends to close loopholes that have allowed contractors to make an end-run around AOBs using Directions to Pay or through other designees, such as attorneys themselves. The law:
 - **Prohibits third-parties from the assignment of the right to obtain attorney fees**, reserving it only for the named or omnibus insured or their beneficiary. So while AOBs may occur, the assignee vendor will no longer be able to recover attorney fees in suits against an admitted or surplus lines insurance company;
 - Eliminates previous statutory language for awarding of attorney fees under the 2019 Reform;
 - Requires that a valid AOB must specify that the assignee will hold harmless the assignor from all liabilities, including attorney fees; and
 - Revises the definition of AOBs to include property inspection services and clarifies they do not include public adjuster services.
- **Notice of Intent to Litigate (NOITL)** – The [2021 Insurance Consumer Protections](#) (SB-76) passed by the legislature required that a policyholder must file a NOITL and demand at least 10 days before filing a lawsuit against their insurance company. The 2022 law:
 - Further clarifies the requirement; and
 - Allows the insurance company to obtain recovery of its own attorney fees and costs associated with securing a dismissal without prejudice for failure to provide the NOITL.
- **Contingency Fee Multipliers** – This is a renewed attempt to put the brakes on a growing abuse of attorney fee awards, through Contingency Risk Multipliers. The law provides that a strong presumption is created that a lodestar fee (billable hours x reasonable hourly rate) is sufficient and reasonable in judgements or decrees against insurance companies. Florida is the only state, based on a past judicial decree, that doesn't follow the federal lodestar standard.
- **Bad Faith** – The law requires a claimant to establish a property insurance company breached the insurance contract in order for the claimant to prevail in a bad faith claim for extra contractual damages under s. [624.155\(1\)\(b\), F.S.](#) This applies to civil remedy actions based upon a property insurer:



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- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for his or her interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Failing to settle claims promptly, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy. Liability coverages are exempted.

Roofing Solicitation & Coverage Changes:

The law seeks to curb unscrupulous roof claims by clarifying advertising and solicitation restrictions in the legislature's 2021 [SB 76](#) reform law that a federal judge [enjoined from enforcement](#) on free-speech grounds from July 2021 through June 2022. Passage of this bill made the injunction moot. **The law prohibits roofing contractors from making written or electronic communications** that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage **unless such solicitation provides notice that:**

- The consumer is responsible for the payment of any deductible;
- It is insurance fraud punishable as a third-degree felony for a contractor to pay or waive an insurance deductible; and
- It is insurance fraud punishable as a third-degree felony to intentionally file an insurance claim containing false, fraudulent, or misleading information.

The law includes funding for 18 extra fraud investigators at the Department of Financial Services.

The law also creates a non-catastrophe roof deductible in the standard policy and a resulting premium discount, to counter any "free roof" solicitation inducement. The policyholder must actively opt-out if they choose to do so. The law:

- Allows property insurers to include in the policy a separate roof deductible of up to 2% of the Coverage A limit of the policy or 50% 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 under s. [627.702, F.S.](#), which is caused by a covered peril;
 - A loss caused by a hurricane;
 - A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck; and
 - A roof loss requiring the repair of less than 50% of the roof.
- Specifies that when a roof deductible is applied, no other deductibles under the policy may be applied.
- 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; and



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- 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.

The law also restricts insurance company underwriting of roofs in an effort to disincentivize unscrupulous roofers from submitting insurance claim damages for normal wear-and-tear of roofs, while protecting consumers. The requirements:

- **Prohibit an insurance company from refusing to issue or renew a homeowners insurance policy based alone on a roof less than 15 years old; and**
- If the roof is at least 15 years old, the company **must allow a homeowner to have a roof inspection performed** by an authorized inspector at the homeowner's expense before requiring the replacement of the roof as a condition of issuing or renewing a homeowner's insurance policy. The insurer may not refuse to issue or renew the policy solely because of roof age if an inspection of the roof indicates that the roof has five years or more of useful life.

A companion bill, [SB 4-D](#), was also passed and signed into law that **changes the Florida Building Code to allow flexibility in the state's 25% Roof Repair/Replacement Rule**. The rule required an entire roof be replaced if 25% or more of it is damaged. This law creates a statutory exception to the Code so that roofs that are more than 25% damaged but already comply with the 2007 Florida Building Code may be repaired instead of being required to be replaced.

Claims Handling:

The law provides greater claims transparency and protection for insurance consumers. The law:

- Requires an insurance company to physically inspect a property within 45 days of receiving a proof of loss statement, except in hurricane claims;
- Requires a company to notify policyholders of their right to receive any reports by its adjuster that estimates the amount of the loss and to provide the report within 7 days upon request or completion of the report; and
- Requires a company to provide a reasonable explanation of the claim decision in relation to the policy, facts, and law, and explain the discrepancy of any claim payment that is less than its adjuster's estimate.

More Affordable Reinsurance:

The law establishes the **Reinsurance to Assist Policyholders (RAP) Program**. This program provides \$2 billion in no-cost reinsurance coverage to property insurance companies in exchange for those companies reducing policyholder premiums. The law:

- Authorizes a \$2 billion dollar reimbursement layer of reinsurance for hurricane losses directly below the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF). All eligible insurers must participate in the program. The FHCF mandatory retention is \$8.5 billion for the 2022-2023 contract year;
- The RAP program coverage reimburses 90% of each insurer's covered losses and 10% of their loss adjustment expenses up to each individual insurer's limit of coverage for the two hurricanes causing the largest losses for that insurer during the contract year;
- Each insurer's limit of the \$2 billion in RAP coverage is their pro-rata market share among all insurers that participate in the RAP program. Thus, an insurer with 5% of the risk reinsured by RAP coverage would have a limit of coverage of \$100 million;



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- All eligible insurers will participate in the RAP program for one year. Insurers that do not have private reinsurance within the RAP layer of coverage for the 2022-2023 contract year must participate during the 2022-2023 contract year. Insurers that have private reinsurance at the RAP layer for the 2022-2023 contract year must defer using RAP program coverage until the 2023-2024 contract year;
- An insurer may not obtain RAP coverage if the Insurance Commissioner certifies it is in “unsound financial condition;” and
- Insurers do not pay premiums for RAP program coverage, but must reduce rates to reflect savings. Insurers that participate in the RAP program for 2022-2023 must reduce their rates by June 30, 2022, to reflect the savings from RAP coverage. Insurers that defer using the RAP program until 2023-2024 must reduce rates to reflect savings by May 1, 2023.

Greater Regulatory Monitoring:

The law improves insurance company accountability and creates a new insurance company stability unit within the Florida Office of Insurance Regulation (OIR) to increase regulatory oversight, with a focus on the financial stability of companies. The law:

- Requires the OIR to publish all orders, specified insurance industry data, and reports issued by the newly created Property Insurance Stability Unit;
- Specifies that publication of the annual statistical report must be done by July 1 of each year and requires the OIR to include within that report an analysis of the availability of reinsurance to domestic insurers selling homeowners’ and condominium unit owners’ insurance in Florida;
- Requires that the OIR include within its annual report additional data regarding insurers against which delinquency or similar proceedings were instituted, a concise statement of the circumstances that led to each insurer’s delinquency, a summary of actions taken by the insurer and the OIR to avoid delinquency, and that results or status of each delinquency proceeding;
- Requires the OIR to maintain and make available upon request reports relating to the health of the homeowners’ and condominium unit owners’ insurance market that include specified information regarding market trends and the percentage of policies written by voluntary carriers and Citizens Property Insurance Corporation;
- Directs the OIR to make data publicly available detailing the statewide number of policies, amount of premium, number of cancellations, and other data for each property insurer. Specifies such information is not a trade secret;
- Creates a Property Insurance Stability Unit within the OIR to aid in the detection and prevention of insurer insolvencies in the homeowners’ and condominium unit owners’ insurance market. Insurers must be referred to the unit for enhanced monitoring upon the occurrence of specified events. The unit must:
 - Provide enhanced monitoring when the OIR identifies significant concerns about various aspects of the insurer.
 - Conduct a target market conduct exam when there is reason to believe the insurer may be in an unsound financial condition.
 - Closely monitor insurer financial data.
 - Conduct annual catastrophe stress tests of domestic insurers.
 - Update mind mitigation credits.
 - Review the causes of insolvency and business practices of insurers referred to the Division of Rehabilitation and Liquidation within the Department of Financial Services.
 - Twice annually, provide a report on the status of the homeowners’ and condominium unit owners’ insurance market.



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- Requires the OIR to execute an affidavit identifying the grounds for initiating delinquency proceedings against an insurer.
- For an insolvency involving a domestic property insurer, the Department of Financial Services must:
 - Begin an analysis of the history and causes of the insolvency no later than the initiation of delinquency proceedings against the insurer;
 - Review the OIR's regulatory oversight of the insurer.
 - Submit an initial report analyzing the history and causes of the insolvency no later than two months after the initiation of the delinquency proceeding;
 - Provide a special report within ten days of identifying any condition or practice that may lead to insolvency in the property insurance marketplace; and
 - Submit a final report analyzing the history and causes of the insolvency and the OIR's regulatory oversight within 30 days of the conclusion of the insolvency proceeding.

My Safe Florida Home Program:

This is a re-creation of the 2005 My Safe Florida Home Program, establishing a \$150 million home hardening grant program to help residents make their homes built since 2008 safer and more resilient. **This mitigation matching grant program provides a maximum \$10,000 state contribution with the homeowner having to match that with \$5,000.** There is also a metric built-in to measure insurance premium savings to homeowners.

Highlights of SB 2-A (the December 2022 Reforms)

The bill significantly builds on the May 2022 reforms. Although it does not include any measures on roofing practices or coverage, it does include reform of the state-backed Citizens Property Insurance Corporation, the state's residual market insurer. It also includes a first of its kind mandatory flood coverage requirement for Citizens policyholders to help insure Floridians against the twin perils of wind and water. It became effective on December 16, 2023. Its provisions are not retroactive.

Litigation Reform:

The law fully eliminates one-way plaintiff attorney fees and Assignment of Benefits (AOB) contracts, among other reforms. Specifically:

- **Awards of Attorney Fees** – This section builds on the May reforms that eliminated one-way attorney fees in third-party lawsuits by vendors to now include first-party lawsuits, such as by the homeowner. It makes the provisions under [627.428, F.S.](#), [626.9373, F.S.](#), and [627.70152, F.S.](#) no longer applicable to residential and commercial property insurance policies;
- **Offers of Judgment** – Reinstates the civil offer of judgment statute [768.79, F.S.](#) (also known as Proposals for Settlement) and makes attorney fees available for the prevailing party, while also allowing for joint offers of settlement contingent on acceptance of all joint offerees;
- **Assignment of Benefits (AOB)** – Prohibits AOB contracts of residential and commercial property insurance policies issued on or after January 1, 2023;
- **Bad Faith** – Prohibits the filing of a bad faith lawsuit until a final judgement is issued against the insurance company for breach of the contract in the original claim dispute; and
- **Arbitration** – Allows insurance companies to offer mandatory binding arbitration in their policies with a resulting premium discount.



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Claims Handling:

The law further tightens claims filing and handling deadlines, in an effort to reduce fraud and excessive litigation and to improve claims payment service to the consumer. Specifically:

- **Reduces the deadline for policyholders to report a claim under the policy from 2 years to 1 year for a new or reopened claim, and from 3 years to 18 months for a supplemental claim;**
- **Reduces from 90 days to 60 days the time an insurance company has to pay or deny a claim,** unless extended by regulators for an additional 30 days;
- Reduces from 14 days to 7 days the time a company has to review and acknowledge a claim communication and begin an investigation;
- Reduces the time a company has to conduct a physical inspection from 45 days to 30 days, including hurricane claims;
- Specifies a company may use electronic methods to investigate the loss and allows policyholders to participate in the use of such methods;
- Requires a company send any adjuster's report estimating the loss to the policyholder within 7 days after it is created;
- Requires that the company's claim records include various parts of the claim investigation and their dates;
- Provides that the requirements of this section are tolled: during the pendency of any mediation or alternative dispute resolution procedure provided in the insurance contract and upon failure of a policyholder or representative to provide material claim information within 10 days, if the request for such information was made within the first 45 days after notice of the claim;
- Amends the Homeowner Claim Bill of Rights to conform to the bill's changes to the prompt pay laws; and
- Amends the Unfair Insurance Trade Practices Act to conform to changes made to the prompt pay laws by reducing the requirement to pay undisputed amounts of benefits from 90 days to 60 days and revising the factors that excuse failure to perform.

More Availability of Affordable Reinsurance:

The new law establishes a second optional hurricane reinsurance fund (The Florida Optional Reinsurance Assistance Program) of \$1 billion for carriers, while maintaining the Reinsurance to Assist Policyholders (RAP) program created in the May special session. The FORA program:

- Offers rates that vary by tier level, ranging from 50% to 65% of the cost of on-line rates;
- Provides purchase tiers that begin at the Florida Hurricane Catastrophe Fund (FHCF) attachment point and cumulatively are limited to no more than \$5 billion below the FHCF attachment point; and
- Allows insurers that purchase FORA coverage or receive free RAP coverage at each tier to have the option to purchase the next tier down.

Citizens Property Insurance Corporation Reforms:

The new law makes many essential improvements to current laws governing the state-backed Citizens Property Insurance Corporation, including:

- Changing the eligibility to remain a Citizens policyholder, by requiring that private insurance company coverage has to be 20% more expensive (up from 15%, to match current rules on new policies) and likewise for commercial residential policies;



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- Requiring Citizens submit actuarially-sound rates to regulators and be “non-competitive” with admitted companies’ market rates while keeping capped rates (the so-called “glide-path”) for now until each individual policy rate is actuarially-sound;
- Ending capped (glide-path) rates immediately and allowing higher rates for second (non-homesteaded) homes, not to exceed a single 50% increase in a given year; and
- Requiring personal lines policyholders in flood zones to purchase flood insurance to become or remain a Citizens policyholder in 2023, to be extended to all policyholders over five years regardless of flood zone designation.

Greater Regulatory Monitoring:

The law greatly expands regulation by **the Florida Office of Insurance Regulation (OIR)**. Specifically, it:

- Authorizes OIR to subject any authorized insurance company to a market conduct examination after a hurricane under certain conditions relating to property insurance claims;
- Ensures that insurance companies do not abuse the appraisal process under property insurance policies by:
 - Specifying the OIR has discretionary authority to suspend or revoke a company’s certificate of authority or issue administrative fines and restitution upon if the company engages in a general business practice of, without just cause, compelling policyholders to participate in appraisal in order for them to secure the full payment or settlement of a property insurance claim;
 - Adding additional elements to the mandated company’s quarterly reports filed with the OIR related to claims;
 - Authorizing the OIR, based on finding that the company had exhibited a pattern or practice of one or more willful unfair insurance trade practice violations with regard to its use of appraisal, to withdraw OIR approval of the company’s policy forms and, in addition to any other authorized regulatory action, issue an order that prohibits the company from invoking appraisal for up to two years; and
 - Adding an element to the Property Insurer Stability Unit’s required semiannual report on the status of the homeowners’ and condominium homeowners’ insurance market to include the name of any insurance company found to have exhibited a pattern or practice of one or more willful unfair insurance trade practice violations with regard to its use of appraisal. The new law also requires the OIR to publish this same information on its internet webpage at www.floir.com

You can read more about the new law in our December 2022 [Bill Watch](#).