

# LAAIA 2017 Legislative Summary

## [CS/HB 359](#)

### **Regulation of Insurance Companies**

by Commerce Committee and Rep. Santiago (CS/CS/SB 454 by Appropriations Committee; Banking and Insurance Committee; and Senator Brandes)

The bill makes several changes relating to the regulation of insurance companies. The bill:

- Deletes the future repeal of the exemption of medical malpractice insurance premiums from the Florida Hurricane Catastrophe Fund assessments. Under current law, the exemption is repealed May 31, 2019.
- Allows an insurer issuing only renter's insurance, tenant's coverage or cooperative unit owners insurance to maintain a surplus of \$10 million to do business in the state.
- Removes the requirement that all members of an audit committee for an insurer must be free of any relationships that could interfere with the member's independent judgment.
- Allows Florida Workers' Compensation Insurance Guaranty Association surcharges to be counted as insurer assets if those surcharges are paid to the Association before the surcharges are collected from the insureds.
- Removes the requirement on insurers writing certain lines of medical malpractice insurance to make a full rate filing annually; these insurers will have the option to certify their rates with the Office of Insurance Regulation.
- Renames "owners and encumbrance" reports to "property information" report and clarifies such reports are not title insurance.
- Allows electronic checks and drafts as acceptable methods of payment for specified lines of insurance and allows insurers to charge a \$15 insufficient funds fee.
- Specifies display requirements for the electronic delivery of documents.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 37-0; House 117-0*

## [CS/CS/HB 805](#)

### **Insurance Policy Transfers**

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Ingoglia (CS/CS/SB 812 by Rules Committee; Banking and Insurance Committee; and Senators Perry and Gibson)

Insurance companies writing commercial lines insurance policies may transfer commercial policies to a different Florida licensed insurance company that is a member of the same insurance group or owned by the same holding company as the first insurer. A commercial policy that is transferred under current law is considered a renewal policy, rather than a cancellation, nonrenewal, or termination. The insurer must provide notice of intent to transfer at least 45 days in advance along with the financial rating of the authorized insurer to which the policy is being transferred.

Insurance companies that write personal lines residential and commercial residential policies, except for certain farmowners policies, are not authorized to use this procedure. Instead, the insurer must first cancel, nonrenew, or terminate residential policies and meet current law applicable to

cancellations, nonrenewal, or terminations, including a requirement to provide notice 120 days in advance of the action.

The bill allows the transfer of a personal lines residential or commercial residential policy as a renewal. The bill provides certain conditions to protect a policyholder when a policy is being transferred.

These provisions were approved by the Governor and take effect July 1, 2017.

*Vote: Senate 38-0; House 113-0*

### [CS/CS/HB 813](#)

#### **Flood Insurance**

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Lee (CS/CS/SB 420 by Community Affairs Committee; Banking and Insurance Committee; and Senator Brandes)

The National Flood Insurance Program (NFIP) is a federal program that offers subsidized flood insurance to property owners and promotes land-use controls in floodplains. Anticipating substantial rate increases in the NFIP, the Legislature created s. 627.715, F.S., in 2014 to provide a framework for a private, personal lines flood insurance market in Florida. This law does not apply to excess flood insurance or commercial lines flood insurance.

The Florida Commission on Hurricane Loss Projection Methodology (Commission) is required to adopt actuarial methods, principles, standards, models, or output ranges for personal lines residential flood loss and is required to revise these adoptions each odd-numbered year.

The bill makes the following changes regarding flood insurance:

- Moves the expiration of an exception to ratemaking requirements that allows flood insurers to make informational rate filings, rather than “use and file” or “file and use” ratemaking, from October 1, 2019, to October 1, 2025;
- Extends the exemption from the statutory due diligence requirement (i.e., obtaining coverage declinations from three admitted flood insurers) when exporting flood insurance to surplus lines insurers from July 1, 2017, to July 1, 2019, and provides the exemption ends earlier in certain circumstances;
- Upon expiration of the exemption, provides for an exception related to the statutory due diligence requirement if there are less than three admitted flood insurers so that policies can be exported to surplus lines insurers when all admitted insurers decline coverage;
- Reduces obligations on an insurance agent when placing a flood insurance policy with a surplus lines insurer by requiring the agent to provide a specified written notice to the applicant for signature noting the possible impact of leaving the National Flood Insurance Program, rather than requiring the agent to obtain a signed acknowledgement of the possible impact before placing the policy, as currently required;
- Eliminates an exclusion that held that regulation under Florida’s flood insurance statute did not apply to excess flood insurance and allows excess flood insurers to make information rate filings and gives them relief from due diligence requirements;
- Changes the frequency of Florida Commission on Hurricane Loss Projection Methodology adoptions of flood loss projection guidelines from every odd-numbered year to at least once every four years; and

- Corrects a technical error regarding issuance of flexible flood insurance coverage.

If approved by the Governor, these provisions take effect July 1, 2017.

*Vote: Senate 31-0; House 117-0*

### [CS/CS/HB 837](#)

#### **Insurer Insolvency**

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Raburn (CS/CS/SB 730 by Rules Committee; Banking and Insurance Committee; and Senator Passidomo)

The bill amends various provisions of part I of ch. 631, F.S., governing insurer rehabilitation and liquidation in Florida. Many of the revisions are based upon portions of the National Association of Insurance Commissioners (NAIC) Insurer Receivership Model Act (IRMA).

Among its many provisions, the bill:

- Extends reciprocity in the administration of receiverships to states that have adopted the IRMA.
- Revises the requirements related to delinquency proceedings to update the list of guaranty associations that must receive notice of hearings; clarify the court's jurisdiction over assets of the insurer; provide a conflict of laws provision; establish timeframes for initiating proceedings; clarify that the automatic stay during the pendency of the proceeding does not apply to the Office of Insurance Regulation; specify contracts that may be assumed or rejected by the Department of Financial Services (DFS) and its authority for paying expenses; clarify the authority of the insurer's management subsequent to a liquidation; and specify what defenses may be raised against the DFS and the form of required evidence to assert a defense.
- Revises claim filing procedures to allow the court to approve alternatives and to allow the court to establish a filing deadline.
- Disallows claims for postjudgment interest.
- Revises the priority of claims to add claims for expenses incurred during administrative supervision and for medical providers, and revises the methodology for calculating interest allowed on claims.
- Revises the procedures applicable to early access distributions to guaranty funds.
- Establishes the process for administering workers' compensation large deductible policies during an insolvency proceeding.

If approved by the Governor, these provisions take effect July 1, 2017.

*Vote: Senate 36-0; House 117-0*

### [CS/CS/HB 911](#)

#### **Insurance Adjusters**

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Shaw (CS/CS/SB 922 by Appropriations Committee; Banking and Insurance Committee; and Senator Garcia)

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. Current law provides for five adjuster licenses: public adjuster, all-lines adjuster, temporary license (all-lines adjuster), public adjuster apprentice, and catastrophe or emergency adjuster. A licensed all-lines adjuster may be appointed as an independent adjuster, or

company employee adjuster. An “all-lines adjuster” is defined as a person who acts on behalf of an insurer to determine the amount of and settle a claim.

#### Effect of the Bill on Public Adjuster Apprentice

The bill eliminates licensure for public adjuster apprentices, substituting instead licensure as an all-lines adjuster and appointment by a public adjuster or a public adjusting firm. In addition, the bill eliminates the requirement for a public adjuster apprentice to work under the supervision of a public adjuster for 12 months before becoming eligible for licensure as a public adjuster. Instead, that period is reduced to 6 months continual appointment as a public adjuster apprentice. Finally, the bill reduces to four the number of public adjuster apprentices that may be appointed by a firm concurrently and reduces to one the number of public adjuster apprentices that may be supervised by a public adjuster simultaneously. Thus, while the bill shortens the timeframe for a person to move from apprentice to public adjuster, the bill restructures the supervision that occurs during that period to allow for more focused attention.

#### Effect of the Bill on Public Adjusters:

- Prohibits individuals from directly or indirectly performing the duties of a public adjuster or soliciting, investigating, or adjusting claims on behalf of a public adjuster, unless licensed. However, individuals who photograph or inventory damaged personal property or business personal property are not required to be licensed. There have been anecdotal reports of individuals serving as “loss consultants” in claims involving an assignment of benefits. These individuals allegedly solicit claims, but are not licensed as an adjuster. The DFS has indicated that current law is inadequate to permit enforcement of these violations because it does not expressly address indirect solicitation.
- Repeals language that prohibits a public adjuster from contacting a policyholder within 48 hours of an occurrence that might be the basis of an insurance claim. This provision was declared unconstitutional by the Supreme Court in 2012 as unduly restricting the commercial speech of public adjusters.
- Permits a policyholder to cancel a public adjuster contract by any means, not just by phone or in writing as is currently allowed by law.
- Prohibits a public adjuster from charging a fee that is based on the policy deductible portion of a claim.
- Prohibits a public adjuster, a public adjuster apprentice, or any person working on behalf of a public adjuster from contracting for goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services. This expands the current law prohibition, which is limited to contracts for repair, and further limits the opportunity for self-dealing.
- Prohibits any person who is not licensed as a public adjuster or otherwise exempt from licensure from directly or indirectly performing the duties of or advertising for employment as a public adjuster. This is language that is typical of professional practice acts and, in combination with the language that tightens up the definition of public adjuster, may assist the DFS in enforcement actions against “loss consultants” (described above) and similar violators.
- Reduces from 1 year to 6 months the time an all-lines adjuster must be licensed and appointed as an independent adjuster, company adjuster, or public adjuster apprentice before becoming eligible for licensure as a public adjuster.

### Miscellaneous Provisions:

- Allows employees of insurers to handle residential property insurance claims that are subject to a coverage limit in the policy of \$500 or less.
- Clarifies the requirements for designating a primary adjuster.
- Repeals the temporary adjuster license and authority for the DFS to create a pool of adjusters for use during emergencies, neither of which is currently used. Temporary licenses are needed, generally, only in the context of hurricanes and other catastrophic events. There is a separate licensing category for catastrophe or emergency adjusters. Thus, the temporary license is not required and the authority to create emergency pools of adjusters is not needed.
- Clarifies that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during an emergency.
- Changes the required retention for adjuster claim records from 3 years to 5 years to align with other provisions of the insurance code.
- Addresses potential conflicts of interest by prohibiting concurrent licensure as an all-lines adjuster and a public adjuster and prohibiting concurrent appointment as an independent, company employee, or public adjuster apprentice.

If approved by the Governor, these provisions take effect January 1, 2018.

*Vote: Senate 38-0; House 117-0*

### [CS/CS/HB 925](#)

#### **Department of Financial Services**

by Commerce Committee; Insurance and Banking Subcommittee; and Reps. Miller, M., Plakon, and others (CS/CS/SB 986 by Appropriations Committee; Banking and Insurance Committee; and Senator Stargel)

The bill amends statutes relating to the Department of Financial Services (DFS):

- Replaces the Treasury Investment Committee with the Treasury Investment Council within the Division of Treasury and provides for the duties of the council;
- Applies timely payment and other requirements related to state payments, warrants, and invoices for payments made in relation to certain agreements funded with federal or state assistance;
- Updates the 1991 Boiler Safety Act (Act) as to installation requirements, who can conduct inspections of boilers in public assembly locations, continuing education of inspectors, and changes criminal penalties to administrative fines for violations of the Act;
- Authorizes the DFS, within existing resources, to expend funds for the purpose of staff professional development for certain divisions;
- Allows certain licensed insurance professionals who are active participants in insurance associations to annually earn two hours of continuing education credits for attendance in four or more hours of association meetings;
- Exempts persons who have the Universal Claims Certification from the Claims and Litigation Management Alliance from the licensure examination for all-lines adjuster and adds that certification training to the approved continuing education requirements for certain adjusters and agents;
- Provides that upon a grant of a pardon or the restoration of civil rights, criminal offenses that would otherwise temporarily or permanently bar certain individuals or entities seeking

licensure as an insurance agent, agency, or public adjuster do not automatically bar or disqualify the applicant;

- Clarifies certain exceptions to the unlicensed transaction of life or health insurance;
- Provides that a regular employee of an insurer may handle claims with respect to residential property when the sublimit coverage is less than \$500;
- Removes the July 1, 2018, deadline for Holocaust victims to file insurance claims or civil actions to obtain proceeds from an insurance policy;
- Allows for the use of firefighter's confidential information for the purposes of certain studies; and
- Removes a requirement for an individual to send a written notice of claim or serve a summons on the DFS for an action against a county.

### **Certifications & Continuing Education Changes in the bill**

The bill adds Universal Claims Certification from Claims and Litigation Management Alliance to the professional certifications that may be asserted in lieu of the examination required for licensure as an all-lines adjuster and that satisfy the continuing education requirement generally required of all individuals who are licensed to sell, solicit, or adjust insurance in Florida.

The bill amends Florida law relating to continuing education requirements for licensees. The bill provides that "active participants" in "associations" may receive two hours of continuing education credit each calendar year. It defines active participant as a member who attends four or more hours of association activities each year. The bill defines association to include:

- Florida Association of Insurance Agents (FAIA);
- National Association of Insurance and Financial Advisors (NAIFA);
- Florida Association of Health Underwriters (FAHU);
- Latin American Association of Insurance Agencies (LAAIA);
- Florida Association of Public Insurance Adjusters (FAPIA);
- Florida Bail Agents Association (FBAA); or
- Professional Bail Agents of the United States (PBUS).

In addition, the bill allows a person to assert any part of the 24 hours required for certification under the Claims and Litigation Management Alliance Universal Claims Certification to satisfy required continuing education. Of the 24 hours required for certification, 19 hours may be asserted in Florida to satisfy the elective continuing education course requirements; 5 hours may be asserted to satisfy the mandatory biennial continuing education update.

If approved by the Governor, these provisions take effect July 1, 2017.

*Vote: Senate 36-0; House 118-0*

### **[CS/CS/CS/HB 1007](#)**

#### **Prohibited Insurance Acts**

by Commerce Committee; Government Operations and Technology Appropriations Subcommittee; Insurance and Banking Subcommittee; and Reps. Raschein, Diamond, and others (CS/CS/SB 1012 by Appropriations Committee; Banking and Insurance Committee; and Senators Brandes and Young)

The bill creates new requirements for insurance companies relating to insurance fraud prevention and reporting. The bill requires all insurers to adopt an anti-fraud plan and to establish and maintain a designated anti-fraud unit within the company to investigate possible fraudulent insurance acts or contract with others to investigate fraudulent insurance acts. The insurer must electronically file with the Department of Financial Services (DFS) a detailed description of the designated anti-fraud unit or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer and a copy of the anti-fraud plan. This filing must be made annually on or before December 1, starting in 2017.

The anti-fraud plan must include:

- An acknowledgment that the insurer has established procedures for detecting possible fraudulent insurance acts;
- An acknowledgement that the insurer has established procedures for reporting such acts to the DFS;
- An acknowledgement that the insurer provides required anti-fraud education to employees;
- A description of the anti-fraud education;
- A description of the insurer's anti-fraud unit; and
- The rationale for staffing levels and resources provided to the anti-fraud unit.

Beginning in 2019, the bill requires every insurer to annually submit anti-fraud statistics to the DFS by March 1 for the lines of business written by that insurer for the calendar year. The statistics 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 fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the DFS;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the DFS or other agencies.

Current law only requires statistical reporting from workers' compensation insurers. This bill requires all insurers to provide reports. The bill modifies reporting requirements for workers' compensation insurers.

The bill requires the DFS to create a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts. The report must be updated at least every two years. The bill requires the DFS to collect data from each state attorney office that receives appropriations to fund prosecutor positions to prosecute insurance fraud cases. The state attorneys must provide specified data to the DFS each quarter and the DFS is required to

report to the Executive Office of the Governor, President of the Senate, and Speaker of the House of Representatives each year.

The bill provides that a health maintenance organization authorized to exclusively market, sell, or offer to sell Medicare Advantage plans shall be actively engaged in managed care with 24 months after licensure in order to maintain its certificate of authority. The Office of Insurance Regulation (OIR) may extend the period upon written request.

The bill makes stranger-originated life insurance (STOLI) contracts void and unenforceable and allows a life insurer to contest a policy obtained through a STOLI practice, notwithstanding that life insurance contracts cannot be contested two years after issuance. A stranger-originated life insurance practice is an act, practice, arrangement or agreement to initiate a life insurance policy for the benefit of a third party investor who has no insurable interest in the insured at policy origination.

The bill makes void and unenforceable viatical settlement contracts subject to a loan secured by an interest in the insurance policy within five years from the issuance of the underlying insurance policy. This is referred to as the contestability period of the viatical settlement contract. The bill otherwise retains the existing two year contestability period under current law. Current law provides conditions that, if met, allow the execution of a viatical settlement contract during the contestability period. The bill modifies the process for doing so. The viator must provide a sworn affidavit and accompanying independent evidentiary documentation to a viatical settlement provider certifying that the viator has met a statutory exception that allows viatication of a policy during the contestability period.

Current law does not require the viator to execute a sworn affidavit with documentation evidencing that the exception applies. The bill also revises and clarifies some of the conditions that allow viatication during the contestability period.

The bill adds as prohibited practices under the Viatical Settlement Act:

- Engaging in a fraudulent viatical settlement act;
- Engaging in a STOLI practice;
- Knowingly entering into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of the viatical settlement contract or within a contestability period unless the viator complied with s. 626.99287, F.S.; and
- Knowingly issuing, soliciting, marketing, or promoting the purchase of a life insurance policy for the purpose of, or with an emphasis on selling the property to a third party.

Violations are third-degree felonies if the insurance policy has a value less than \$20,000; second degree felonies if the insurance policy has a value of \$20,000 or more but less than \$100,000; and first-degree felonies if the insurance policy has a value of \$100,000 or more.

The bill allows motor vehicle insurers an exemption from the requirement that they inspect each private passenger motor vehicle before issuing an insurance policy that provides coverage for physical damage. The inspection requirement only applies in counties with a 1988 population of 500,000 or greater. The bill requires insurers using the exemption to file a manual rule with the OIR and allows an insurer to file with the OIR their own preinsurance inspection requirements before insuring a private passenger motor vehicle.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 33-0; House 116-0*

### [CS/HB 1009](#)

#### **Public Records Insurance Fraud Information DFS**

by Insurance and Banking Subcommittee and Rep. Raschein (CS/SB 1014 by Banking and Insurance Committee and Senator Brandes)

The bill creates a public record exemption that makes the following information, when submitted to the Division of Forensic Services (DIFS) within the Department of Financial Services, exempt from s. 119.07(1), F.S., and s. 24(a), Art I of the Florida Constitution:

- The description of an insurer's anti-fraud education and training;
- The description of an insurer's anti-fraud investigative unit;
- An insurer's rationale for the level of staffing and resources for the anti-fraud investigative unit;
- 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 accepted or investigated by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the DIFS or other agencies.

The exemption applies to records held before, on, or after the effective date of the exemption.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the Florida Constitution.

If approved by the Governor, these provisions take effect on the same date that CS/HB 1007 or similar legislation takes effect, if such legislation is adopted in this legislative session and becomes a law.

*Vote: Senate 37-0; House 119-0*