

## HB 1A Property Insurance – Special Session 2022A

### Legal Reforms

- One-way attorney fees: complete repeal for property insurance claims.
- Assignment of Benefits (AOB): eliminates the ability of a policyholder to execute an AOB for all property insurance policies (but maintains an existing carve-out for seller-to-buyer AOB related to an ongoing insurance claim).
- Offer of Judgment:
  - Allows joint offers for settlement to be contingent on acceptance of all joint offerees. (This relates to the “husband and wife issue” in split settlements.)
  - Reverts to prior law on the offer of judgment process (AKA, proposal for settlement (PFS)) for property insurance litigation to encourage settlements. Either party may be eligible to receive attorney fees for rejecting a reasonable offer.
- Civil remedies, prerequisites for bringing bad faith actions, and insurer accountability:
  - Requires a court finding of breach of contract before a policyholder can sue a property insurer for bad faith based on how the insurer settled the claim. Acceptance of an offer of judgment or the payment of an appraisal award, alone, is not sufficient to support a lawsuit.
  - Receiving an appraisal award higher than an insurer’s appraiser’s final estimate may be evidence of bad faith; but on its own, does not give rise to a bad faith claim. (This relates to the *Cammarata* decision.)
  - Allows OIR to:
    - Discipline insurers for abuse of the appraisal process,
    - Review an insurer’s forms and suspend their ability to use appraisal for up to two years (policyholders and insureds can still use it), and
    - Identify insurers that abuse the appraisal process on OIR’s website.

### Reinsurance

- The Florida Optional Reinsurance Assistance (FORA) Program:
  - Creates optional hurricane reinsurance that eligible property insurers can purchase at near market rates. (This is separate from the Reinsurance to Assist Policyholders program (RAP) previously established in special session May 2022, but an insurer can participate in both programs.)
  - Premium varies by the coverage level purchased, which range from 50% to 65% rate on-line.
  - Coverage levels begin at the Florida Hurricane Catastrophe Fund (FHCF or Cat Fund) attachment point and 4 coverage levels will be available.
  - Allows any property insurer to purchase the maximum coverage level (layer 4). Only 2022 RAP participating insurers can purchase the other coverage levels.
  - Maintains the RAP program, thus allowing those insurers that could not participate during 2022, to receive their free RAP reinsurance in 2023.
  - Is funded with an additional \$1 billion in general revenue for the 2023 year and is supplemented by the premiums insurers pay for FORA coverage.
  - Returns remaining revenue to general revenue after FORA program ends.

### **Claim Notice and Claim Investigation**

- Policyholder and insured obligations:
  - Reduces the time limit for providing the notice of loss to an insurer:
    - For initial claims and reopened claims – reduced from 2 years to 1 year from the date of loss, and
    - For supplemental claims – reduced from 3 years to 18 months from the date of loss.
- Property insurer prompt pay obligations:
  - Reduces time for insurer to:
    - Review and acknowledge a notice of claim or other claim communication from 14 days to 7 days.
    - Begin an investigation from 14 days to 7 days.
    - Conduct a physical inspection from 45 days to 30 days. Also applies provision to hurricane claims.
    - Pay or deny the claim from 90 to 60 days, but allows OIR to extend the 60-day period up to 30 additional days, in certain circumstances.
  - Provides that certain requirements of the prompt pay law are tolled during the pendency of any mediation or similar process 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.
  - Specifies insurers may use electronic methods to investigate the loss.
    - Allows policyholders to participate in electronic investigations.
    - Provides that fraudulent activity by the policyholder (or anyone operating on their behalf) voids the policy.
  - Requires insurer to send any adjuster's report estimating the loss to the policyholder within 7 days after it is created (rather than upon request).
  - Requires that the insurer's claim records include various parts of the claim investigation and their dates.

### **Optional Mandatory Binding Arbitration**

- Mandatory binding arbitration: codifies that companies may only issue optional endorsement with consent from policyholders (must also offer a policy without a mandatory binding arbitration clause), rather than including arbitration in the base policy, and require a premium discount upon acceptance.

### **Notice Regarding Flood Insurance**

- Flood notice: requires the "Flood Coverage Not Included" statement on the policy declarations page, rather than just "with the policy documents."

### **Office of Insurance Regulation**

- Mandatory market conduct exams following hurricanes: enhances OIR's ability to conduct market conduct exams of property insurers following a hurricane, including examinations of Managing General Agents (MGAs).
- Insurer insolvency: allows additional time for agents to place policyholders during insolvencies, at the option of OIR (which may also prevent policies from unnecessarily going to Citizens).
- Funds for recruitment and retention by OIR: appropriates funds for OIR staff salaries to recruit and retain staff, including filling currently empty positions.

## **Citizens Property Insurance Corporation (Citizens)**

- Eligibility for coverage:
  - Renewal and take-out policies: if a renewal or take-out offer from an authorized insurer is within 20% of the policyholder's Citizens premium, inclusive of Citizens surcharges and assessments, the policyholder is ineligible to remain in Citizens.
  - New policies: a new policy is ineligible for Citizens if the policyholder receives an offer from an authorized insurer that is not more than 20% above Citizens premium, inclusive of Citizens surcharges and assessments. (Most types of residential coverage are already at the 20% amount.)
- Flood insurance: requires Citizens residential lines residential policyholders to obtain flood insurance as a condition of having coverage from Citizens. Requirement is phased-in:
  - Must be purchased by 4/1/23 for new policies in mandatory flood zones.
  - Must be purchased by 7/1/23 for renewal policies in mandatory flood zones.
  - For all other zones, phases-in based on insured property value, starting 1/1/24, with all personal lines residential risks requiring flood insurance after 1/1/27.
- Non-primary residences: must be charged rates that are not less than the previous year's Citizens rate (no decreases) and may not be charged more than 50% above the previous year's Citizens rate (resulting in higher rates than the standard glidepath for primary residences and long-term (9+ month) rentals).
- Citizens surcharge and premium comparison: quotes must include actual surcharges and assessments being imposed when determining eligibility vs. clearinghouse and take-out offers.
- Citizens non-competitive rates and localized Citizens rate reductions: reverts to old law that required Citizens to be "actuarial or non-competitive in the marketplace." This will eliminate localized rate reductions in Citizens in certain areas.
- Combining Citizens accounts: authorizes Citizens to combine its three accounts into a single account upon eliminating all outstanding financing obligations. A single account structure will allow Citizens to access its entire surplus to pay claims. (Currently, surplus in a particular account may only be used to pay claims in that account.)