Florida Insurance Report

Legislative Edition

Volume XIII, Issue III

Well, We Didn't See That One Coming

By: Travis Miller

There's a certain rhythm to legislative sessions in Tallahassee. Bills start making their way through the committee process weeks and even months before each session. The session then begins with great fanfare, marking a 60-day period in which the bills either live or die. Pressure mounts as the end of the session draws near. The last few days are the most intense as legislators make their last minute efforts to pass their bills. Many of the most controversial bills are amended and negotiated until the last minutes of the session, sometimes passing and sometimes stalling as time runs out.

We all know that the legislature has only one thing that it must do -- pass a budget. Once it passes the budget, it can declare its work to be done. We also all know that the legislature has options if, for some reason, it can't agree on a budget. It can extend the session, or it can adjourn and come back in a special session. This isn't necessary in most years because while the budget goes down to the wire, the legislature typically finds a way to get it done within the 60 days.

All of this changed on one afternoon in this year's session. With 3½ days left in the session and many bills hanging in the balance (some controversial and many others not), House Speaker Steve Crisafulli abruptly adjourned the House and effectively declared the regular session to be over. He announced that differences of opinion relating to the budget, and in particular to Medicaid expansion, were irreconcilable between the House and Senate in the remaining days of session, so the House's work was done and they would come back later in special session. The Senate was still in session and continued to pass bills, but only bills that had already passed the House would have a chance of being sent to the Governor and become law. All other bills were effectively dead, although the Senate continued to symbolically pass some in the House' absence.

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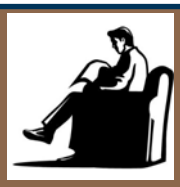

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Even to long-time observers, the House's actions came as a surprise. No one recalls one chamber of the legislature packing its bags three days before the scheduled end of the session when many bills remained pending and the other chamber continued to meet. The House's decision was met with disappointment from Senate President Andy Gardiner, who said, "Nobody won today. Nobody won. The taxpayers lost." House Democrats also questioned the decision, with the minority leader saying that the Speaker in essence had decided to take his toys and go home. A group of Senators even challenged the House's action in the Florida Supreme Court and actually prevailed, although it was too late to salvage any remaining time in the regular session.

In a state known for bizarre political twists, we've added another chapter to the book. Against this backdrop, we present our post-session edition of the Florida Insurance Report which discusses bills that passed, and a few that didn't.

Personal Residential Insurers Authorized to Offer "Flexible" Flood Coverage

By: Travis Miller

Existing law allows a personal residential insurer to issue a policy or endorsement providing coverage for the peril of flood. The legislature enacted these provisions in an effort to increase the availability of flood insurance in the private market due to looming concerns about rate increases in the National Flood Insurance Program. Under current law, an insurer can offer coverage defined as standard, preferred, customized or supplemental. Standard coverage means that the policy has the same coverages and deductibles as exist under the National Flood Insurance Program policies.

SB 1094 passed in the 2015 legislative session, adds an opportunity for personal residential insurers to sell "flexible" flood insurance coverage. Flexible coverage may:

- Include coverage for water intrusion;
- Be in an amount agreed upon by the policyholder and insurer;
- Have deductibles authorized by section 627.701 (relating to deductibles generally);
- Be issued on a replacement cost or actual cash value basis;
- Cover only a principal building as defined in the policy;
- Include or exclude additional living expenses, as set forth in the policy;
- Exclude contents coverage.

Other statutory revisions specify that if an insurer takes advantage of the rate flexibility provided in the statute but the Office of Insurance Regulation later determines the rates to have been excessive, the insurer must return the difference in the form of credits or refunds. In addition, the bill allows an insurer to request a certification from the Office of Insurance Regulation that the insurer's coverage equals or exceeds that of the National Flood Insurance Program.

The provisions of the bill will take effect July 1 assuming it becomes law.

NATIONAL FLOOD INSURANCE PROGRAM

Legislature Passes Omnibus Insurance Bill

By: Travis Miller

In each session, one bill seems to be a "catch all" for wide-ranging statutory changes that might not individually warrant their own bills. These so-called omnibus bills sometimes become weighted down with controversial changes as they progress through the session, which results in the bills' demise and dooms all of the otherwise non-controversial changes.

In some years, however, the omnibus bill remains relatively clean without controversial amendments to bog it down. This was the case in the 2015 session when the legislature passed HB 165. This bill adopts the following among its varied changes to the insurance code:

- Eliminates the requirement for insurers to certify rate filings for the types of commercial filings that have become exempt from the rating law. The legislature in recent years has eliminated the filing and approval requirements for many types of commercial property and casualty insurance. However, a separate statute relating to the certification of filings remained unchanged and therefore out-of-step with the rating law. The legislature has fixed this in HB 165.
- Allows an insurer to use a hurricane loss projection model for up to 120 days following expiration of the model's acceptability. Under current law, when the Florida Commission on Hurricane Loss Projection Methodology determines a newer version of a model to be acceptable, insurers may use the prior version for only 60 days. The longer 120-day period will create a smoother transition period for insurers.
- Clarifies that the annual rate filing requirement at section 627.0645 does not apply to commercial property and casualty insurance except for commercial residential insurance. This is designed to be consistent with the reduced filing requirements for commercial property and casualty insurance under Florida's rating law (section 627.062).
- Provides a uniform 120-day period for residential property insurance cancellations and nonrenewals under section 627.4133. Current law contains a complicated combination of notice periods including 100 days' notices for most policies but 120 days' notice for policies in effect for five years and a requirement to send notices by June 1 for any effective date between June 1 and November 30.
- Rewords provisions relating to the cancellation or nonrenewal of residential property insurance policies after the first 90 days of the policy period. The revised provision would clarify that an insurer may cancel a policy based upon an insured's failure to comply, within 90 days after effectuation of coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage.
- Clarifies that a policyholder's opportunity to request neutral evaluation of sinkhole claims does not apply if sinkhole coverage is not available under the policy or if the claim is filed outside of the statutorily-established window for filing sinkhole claims.
- Specifies that the Medicare fee schedule used in connection with PIP policies is effective from March 1 of a given year through the end of the following February.
- Adds leased vehicles to the exemption from pre-insurance inspections applicable to private passenger auto policies; and
- Eliminates the prohibition under current law against an insurer's advertising the existence of the Florida Insurance Guaranty Association, provided that any reference to FIGA must explain the coverage limits that apply to the type of insurance for which FIGA is mentioned.

HB 165 will be presented to Governor Scott, who may sign it into law, veto it, or allow it to become law without signature. Assuming the bill becomes law, its provisions will take effect July 1.

Construction Defects Bill May Affect Insurance Policies

By: Travis Miller

The legislature made several changes to Florida's alternative dispute resolution provisions relating to construction defects (section 558.001 and following). Under HB 87, the legislature specifies that the confidential settlement negotiation process contemplated by the statutes extends to the insurer of a contractor, subcontractor, supplier or design professional.

The statutes as amended would require a claimant providing notice of a claim to identify, based on at least a visual inspection, the location of each alleged construction defect so the responding parties can locate the construction defects without undue burden. The law changes also would specify that the notice of claim contemplated by the statute does not constitute a claim for insurance purposes "unless the terms of the policy specify otherwise." Insurers therefore will need to consider how these notices of claims are treated under their policies.

The bill extends the scope of completion of a building or improvement to include the issuance of temporary certificates of occupancy.

Assuming the bill becomes law, its provisions will take effect October 1, 2015.

The Legislature Revises Title Insurance Assessment and Surcharge Statute

By: Laura Dennis

During the 2015 legislative session, the Legislature passed HB 927 which amends certain provisions in section 631.401, Florida Statutes, relating to assessments charged for the administration of an insolvent title insurers' rehabilitation and related surcharges. Among the several amendments to section 631.401, HB 927 removes language previously limiting the Office of Insurance Regulation to order only one surcharge per insolvent company. The bill also requires that surcharges collected in excess of the assessment must be paid quarterly to the excess surcharge account.

The Department of Financial Services, acting as receiver, maintains the excess surcharge account and may only use the excess funds to either: (1) reduce or eliminate the amount of a future assessment for a title insurer in receivership at the time of the assessment or that later enters receivership; or (2) reduce the amount of time that consumers in the state are subject to surcharges by transferring excess funds to title insurers that have not fully collected surcharges equal to the amount of the assessments. Excess surcharges may now be rolled over to the Insurance Regulatory Trust Fund if there are no active title insurer receiverships for 12 consecutive months, or if there have been no payable claims against any title insurer receivership for 60 consecutive months. Lastly, the bill grants rulemaking authority to both the Financial Services Commission and the Department of Financial Services.

If the bill becomes law, it will go into effect July 1, 2015.

Expected Recoupment of FIGA Assessments to be Allowed as Assets

By: Travis Miller

House Bill 189 passed in the 2015 session would allow expected recoveries of FIGA assessments to be counted as admitted assets allowed under section 625.012, Florida Statutes. Under existing law, FIGA assessments levied late in a calendar year have left insurers scrambling to submit recoupment filings so they could book offsetting receivables in their annual statements. Under the bill passed this year, assets allowed under the statute would include the amounts of assessments paid to FIGA even before the surcharges are collected and result in a receivable to be collected in the future. These amounts would be admissible to the extent it is likely the assets will be realized. If an insurer is unable to fully recoup the amount of its assessment because of a reduction in writings or withdrawal from the state, the insurer should reduce the amount of the asset it carries to the amount reasonably expected to be recouped.

If the bill becomes law, it will take effect July, 1, 2015.

HB 715 Clarifies Eligibility of Coastal Construction for Citizens Coverage

By: Travis Miller

House Bill 715 modifies an eligibility requirement for Citizens Property Insurance Corporation relating to coastal construction. Under current law, a structure is not eligible for coverage in Citizens if it is new construction or a substantial improvement to existing construction seaward of the coastal construction control line and the permit is obtained on or after July 1, 2015. In the 2015 session, the legislature modified this because the "substantial improvement" requirement would affect current structures that might be damaged in a storm for which the owners simply seek to make needed repairs. The legislature therefore revised the standard for ineligibility such that it will apply to new construction or to rebuilt or repaired structures for which the square footage of the structures is increased by more than 25%.

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HB 1133 Changes Many Agent and Agency Laws

By: Karen Asher-Cohen

HB1133 amended many agent and agency licensure laws, regulated by DFS. The following are some of the major changes:

- A general lines agent can now sell health insurance with any health insurer. The agent's ability to sell health insurance is no longer limited to companies that the agent also represents for property and casualty insurance. Section 626.015(5)(d), F.S.
- An agent in charge now must only be licensed in at least two of the location's lines of business, rather than the previous requirement to be licensed in all of that location's lines. Section 626.0428(4)(a), F.S.
- Defines the term "surrender" when an agent recommends the surrender of an annuity or life insurance policy with cash value. Section 627.4553(2), F.S.
- When an agent recommends the surrender of an annuity or life insurance policy with cash value, the agent is no longer required to provide the information prior to surrender on a required form. Also eliminates the insurance company's requirement to provide the notice if no agent is involved. Section 627.4553(1), F.S.
- General lines agents, personal lines agents, and all-lines adjusters are exempt from the required examination when they apply for licensure in Florida, upon certain conditions, including particular professional designations or a qualifying academic degree. Section 626.221 (2), F.S.
- Removes limitations applicable to licensee transfers from other states. Section 626.221(2), F.S.
- Non-resident agents may now be exempt from examination if they hold a comparable license in another state with comparable examination requirements as Florida. Section 626.221(2), F.S.
- Eliminates the examination requirement for customer service representatives. Section 626.7351, F.S.
- Agents may now share commissions with customer service representatives. Section 626.753, F.S.
- Agents must now retain records for five years following the expiration of a policy. Section 626.748, F.S.

For these and other changes, please see a copy of the bill on our website.

The Legislature Amends Certain Insurer Notification Requirements

By: Laura Dennis

Section 627.421, Florida Statutes, requires that every policy must be "mailed, delivered, or electronically transmitted to the insured" no later than 60 days after the insurance coverage takes effect. HB 273, which the Legislature passed during the 2015 session, now permits an insurer to deliver policy documents by electronic means to the policyholder in lieu of delivery by mail, when the policyholder affirmatively elects to electronic delivery.

HB 273 also amended section 627.43141, Florida Statutes, which governs the Notice of Change in Policy Terms issued by insurers. Prior to the passage of this bill, an insurer must provide the policyholder a written Notice of Change in Policy Terms with the policy renewal notice at least 45 days prior to the renewal date. The bill permits insurers to submit written Notices of Change in Policy Terms separate from the policy renewal notice. However, if the insurer elects to submit a Notice of Change in Policy Terms separately, it must do so sooner and within the timeframes required under the Florida Insurance Code for the provision of a notice of nonrenewal to the policyholder. The insurer must also provide a sample copy of the Notice to the policyholder's insurance agent before or at the same time the Notice is provided to the policyholder. Lastly, HB 273 prohibits an insurer from using the Notice to add optional coverage that increases the premium, unless the policyholder affirmatively approves of the optional coverage.

The bill, if signed into law becomes effective July 1, 2015.

Transportation Network Bill Stalls with Session's Abrupt End

By: Travis Miller

One of the most controversial and widely publicized topics of the 2015 session related transportation network companies (such as Uber and Lyft). Legislative proposals attempted two primary issues relating to transportation network companies-- regulation and insurance requirements. The regulatory issues relate to how transportation network companies and their drivers should be regulated as compared to other services such as taxis and limousines. The insurance issues relate to a potential gap in coverage between a driver's personal auto policy and the commercial coverage supplied by the transportation network companies. The specific insurance-related concern is that a driver's liability might not be covered under his or her personal auto policy in the period between his or her "turning on" the app and the time he or she picks up the customer (when the transportation network company's policy begins to provide coverage). Bills in the 2015 session would have addressed insurance requirements for this gap period and would have attempted to address issues of state or local regulation of the transportation network companies. However, the proposals fell by the wayside in the session's abrupt close, leaving regulatory issues to a series of disputes at the local level around the state and leaving the insurance obligations unresolved.

Private Passenger Motor Vehicle Insurers May Now Issue a Single Policy Covering More than Four Vehicles

By: Laura Dennis

Section 627.041(8), Florida Statutes, defines a motor vehicle insurance as a policy that does not insure more than four automobiles. Similarly, section 627.728, Florida Statutes, defines policy to include a policy insuring a motor vehicle of the private passenger type, other than a policy insuring more than four automobiles. However, HB 4011 removed the language in both provisions limiting the number of insured automobiles under the same policy. Therefore, insurers may now issue single private passenger motor vehicle insurance policies that cover any number of automobiles. The provisions of this bill will go into effect July 1, 2015 if signed into law.

The Legislature Revises the Countersignature Statute

By: Laura Dennis

Section 624.425, Florida Statutes, requires that all property, casualty, and surety insurance policies be countersigned by a licensed agent. Previously, an insurer may waive the countersignature requirement, but failure to waive the requirement would render the policy unenforceable against the insurer. During the 2015 session, the Florida Legislature passed SB 252, which amends section 624.425 to provide that the absence of a countersignature does not affect the validity of an insurance policy. Assuming the bill becomes law, it will take effect on July 1, 2015.

SB 520 Addresses Long-Term Care Nonforfeiture Protective Provisions

By: Travis Miller

Under current law, an insurer that offers long-term care insurance must offer a nonforfeiture protection provision. SB 520 passed in the 2015 legislative session specifies that the nonforfeiture protection provision may be offered in the form of a return of premium upon the death of the insured or upon the complete surrender or cancellation of the policy or contract.

If the bill becomes law, the effective date of the new provision will be July 1, 2015.

Senate Bill 252 Revises Several Reporting Deadlines to the Legislature and Definition of Financial Guaranty Insurance

By: Laura Dennis

Presently, the Office of Insurance Regulation and the Agency for Health Care Administration must submit a report on January 1 of each year on health flex plans to the Governor, President of the Senate, and Speaker of the House of Representatives. The Office must also submit an annual report to the Speaker of the House of Representatives and the President of the Senate by January 1 of each year that evaluates the workers' compensation insurance market. Additionally, Florida law has established a three-member panel that is charged with determining schedules of reimbursement allowances for medically necessary treatment. The panel must submit recommendations to the Legislature on January 1 of every other year on methods to improve the workers' compensation health care system. SB 252 amends the due dates of these reports and recommendations to the Legislature from January 1 to January 15.

SB 252 also revised the definition of "financial guaranty insurance" to conform to the current definition in the model Financial Guaranty Insurance Guideline of the National Association of Insurance Commissioners. Financial guaranty insurance is defined in section 627.971(1)(a), Florida Statutes, as a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which a loss is payable upon proof of the occurrence of financial loss to an insured, oblige, or indemnitee as a result of certain specified events. SB 252 revised section 627.971 to provide that financial guaranty insurance does not include "[g]uarantees of higher education loans, unless written by a financial guaranty insurance corporation."

This bill will become effective July 1, 2015 if signed into law by Governor Scott.

OIR Announces New Profit & Contingency Factors

By: David Yon

Pursuant to Rule 69O-170.003, Florida Administrative Code, the Office of Insurance Regulation annually establishes underwriting profit and contingency factors that may be used in rate filings. Insurers may use the profit and contingency factors referenced below when they are unable to produce credible profit and contingency factors from their own data.

Line of Business	2014 Factor
ALLIED LINES	3.6%
BOILER & MACHINERY	1.9%
BURGLARY & THEFT	3.8%
COMMERCIAL AUTO LIABILITY	0.4%
COMMERCIAL AUTO PHYSICAL DAMAGE	4.9%
COMMERCIAL MULTIPLE PERIL (BUSINESS OWNERS)	1.4%
CREDIT	4.0%
EARTHQUAKE	3.6%
FARMOWNERS	4.1%
FIDELITY	2.0%
FINANCIAL GUARANTY	5.0%
FIRE	3.7%
HOMEOWNERS	4.1%
INLAND MARINE	3.7%
MEDICAL MALPRACTICE – CLAIMS MADE	-3.4%
MEDICAL MALPRACTICE – OCCURRENCE	-10.0%
MORTGAGE GUARANTY	0.3%
OTHER LIABILITY – CLAIMS MADE	-3.5%
OTHER LIABILITY – OCCURRENCE	-4.7%
PRODUCTS LIABILITY – CLAIMS MADE	-4.0%
PRODUCTS LIABILITY – OCCURRENCE	-8.5%
SURETY	3.0%

SB 836 Significantly Revises the Law Concerning FIGA

By: Laura Dennis

During the 2015 session, the Legislature passed SB 836, which significantly amended several provisions relating to the Florida Insurance Guaranty Association ("FIGA"). The bill takes effect on July 1, 2015.

FIGA Assessments

If an insurance company becomes insolvent, FIGA will determine whether an assessment is needed to pay the covered claims of the insolvent insurer. FIGA will then certify the need for an assessment to the Office of Insurance Regulation, and the Office may issue an order to all insurance companies subject to the FIGA assessment to pay such assessment. The Office may issue a regular assessment or an emergency assessment. Once an insurance company pays the assessment, it may recoup the assessment from its policyholders.

SB 836 substantially amends how FIGA may collect regular and emergency assessments. First, the legislation permits FIGA to collect regular and emergency assessments through either a single payment, monthly installments, or a combination of the two. Previously, a regular assessment must be paid within 30 days, and an emergency assessment must be paid by the end of the month or, at the election of FIGA, may be paid in monthly installments.

Additionally, SB 836 amends how the amount of assessments are determined. Prior to SB 836, assessments were based on the market share of insurers from the prior year. Insurers that did not write in the prior year were not subject to an assessment. Now, the Office may levy a "uniform assessment percentage" which is applied to the net direct written premium of the insurer from the prior year. Further, insurers who did not write in the prior year are now subject to assessments and must pay an amount based on a good faith estimate of the amount of net direct written premium anticipated to be written for the assessment year multiplied by the uniform assessment percentage. However, the 2% cap for regular and emergency assessments remains unchanged.

Insurers now must file a reconciliation report with FIGA that shows the amount of initial payment to FIGA, whether such amount was based on net direct written premium from the previous year or a good faith projection, and the amount actually collected during the assessment year. If the insurer collects more from its policyholders than the amount it initially paid to FIGA, the insurer shall pay the excess amount to FIGA. However, if the insurer collected less from its policyholders than the amount paid to FIGA, then FIGA shall credit the insurer that amount against future assessments.

Accounting

SB 836 added language to section 631.57, Florida Statutes, to codify the current practices of the Office concerning the accounting of FIGA assessments. Specifically, assessments which are paid by insurers before policy surcharges are collected, result in a receivable for policy surcharges collected in the future and constitute an admissible asset. The legislation requires that the asset be established and recorded separately from the liability, and if the insurer cannot completely recoup the assessment, the amount recorded as an asset must be reduced to the amount the insurer reasonably expects to recoup. If the insurer pays assessments pursuant to the monthly installment method after policy surcharges are collected, the recognition of assets is based on the actual premium written offset by the obligation to FIGA.

Continued on Next Page

FIGA - Continued

Insurance Premium Tax

Prior to the passage of SB 836, only emergency assessments were exempt from the premium tax. SB 836 amends section 631.57, Florida Statutes, to now exempt both regular and emergency assessments from the premium tax.

Regulatory Filings

The bill also eliminates the need for regulatory filings with the Office before applying the recoupment factor to an insurers' policies. SB 836 now requires that recoupments must be separately displayed on premium statements, but does not require that recoupments be included in rates filed and approved by the Office.

Late-Session Bill Revises Citizens Assumption Process

By: Travis Miller

Among the whirlwind of activity surrounding the conclusion of the 2015 regular session, both chambers passed HB 1087 relating to Citizens depopulation programs. The bill heads to the Governor and will become law effective July 1 assuming he does not veto it, although some of the revisions to the depopulation process have a January 1, 2016, implementation date.

The bill makes adjustments to the Citizens depopulation process by specifying that any policyholder assumed within a preceding 36-month period is deemed a renewal policyholder for purposes of Citizens' clearinghouse if the assuming insurer (1) provides an initial premium that exceeds the estimated premium by more than 10%, or (2) increases the rate on the policy more than the 10% glide path amount currently set forth in the Citizens statute. Citizens policyholders also will be able to choose not to receive assumption solicitations more than once every six months, and Citizens will provide a uniform format for insurers to use when comparing their coverages and estimated premiums to those of Citizens. After January 1, 2016, the assumption process also must allow for policyholders to be informed when one or more insurers demonstrate interest in assuming their policies. Currently the depopulation process use an allocation algorithm designed to equitably assign policies among interested insurers when there are competing requests for Citizens policies.

The bill also would specify that the consumer representative appointed to Citizens' board of governors is subject to the same exemption from statutory conflict of interest provisions that already applies to the Citizens' board members who are required to have insurance experience.

Finally, the bill authorizes certain types of organizations to access Citizens' confidential underwriting information for purposes of analyzing and underwriting risks in the private market, provided that the data cannot be used for soliciting Citizens policyholders.

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