

Client Alert: Understanding Florida's Insurer Accountability Act

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Introduction

In a move aimed at strengthening consumer protection and improving insurer transparency, the state of Florida has implemented the Insurer Accountability Act, a bipartisan insurance law that introduces a range of new duties and obligations for insurance companies and regulatory bodies, alongside increased penalties for noncompliance and willful misconduct.^[1]

Much of the impetus of the law arises from complaints levied against regional insurers in the wake of Hurricane Ian in 2022. Following a series of severe storms and a subsequent spate of insurance claims for the resulting property damage, national insurers began to pull back from the Florida market, leaving regional insurers with far fewer guarantees of solvency in their stead. A *Washington Post* investigation detailed numerous instances of these regional insurers attempting to reduce costs by altering homeowners' claims, slashing payouts, and denying coverage for storm-induced property damage.^[2] The investigation further found that insurance claim adjusters' work had been changed without their knowledge in order to lower estimates, rewrite damage descriptions, and delete photographic evidence of property damage alongside entire line items of estimates.^[3]

Impact on Insurers

One of the key provisions of the new Insurer Accountability Act is the provision preventing insurers from altering policyholders' estimates without providing a detailed account of the changes made, the person responsible for making the changes, and the justifications for doing so.^[4] Insurers must then maintain a list of edits or retain all versions of insurance claim adjusters' reports for regulatory inspection.^[5] Furthermore, insurers must submit claims handling instructions to Florida regulators for recordkeeping.^[6]

Another major aim of the Insurer Accountability Act is to prevent insolvent or near-insolvent insurers from underwriting policies that create undue risks for policyholders. Those insurers, identified using a set of financial auditing criteria, would be prevented from soliciting or accepting

new policies.^[7] Additionally, executives, officers, and directors of these insurance companies are prohibited from receiving bonuses.^[8]

Furthermore, insurers seeking to temporarily suspend the underwriting of new residential property insurance policies must provide notice to regulators, explaining the reasons for the suspension, effective dates, and the communications to be made to the insurer's agents.^[9] These requirements, however, do not apply to temporary suspensions made in response to a hurricane or other natural disaster emergencies.^[10]

Increased Regulatory Agency Responsibilities and Resources

The Insurer Accountability Act also imposes additional duties on Florida's Office of Insurance Regulation and Department of Financial Services, the state's central insurance regulatory bodies, to enhance their effectiveness in overseeing the insurance industry. These regulatory bodies are now required to report suspected violations of criminal law by insurers to state investigators, ensuring that any potential illegal activities are promptly addressed.^[11] They are also required to provide annual and quarterly reports demonstrating consistent enforcement of laws and regulations.^[12] Furthermore, these bodies have been allocated additional resources for staffing and enforcement, enabling them to carry out their duties more effectively.^[13]

To identify and address potential risks within the insurance industry, the Insurer Accountability Act introduces mandatory investigations of "high-risk" insurers every three years.^[14] A "risk-based selection methodology" will be implemented to schedule investigations, taking into account factors such as levels of capitalization, negative profitability trends, cash flow, risk-based capital testing, and pending regulatory action against the insurer.^[15]

The legislation also includes provisions for "market conduct" investigations.^[16] Insurers that fall within the top 20 percent in terms of hurricane-related property insurance claims and unpaid claims will be subject to such investigations within 90 days after the end of the hurricane season.^[17] Additionally, insurers against whom action has been taken by regulators in other states, insurers who received a disproportionate number of claims-handling complaints, or insurers who meet other relevant criteria will also be subjected to market conduct investigations.^[18]

Increased Penalties for Non-Compliance

The Insurer Accountability Act introduces additional penalties to deter noncompliance by insurers. It authorizes fines of up to \$25,000 per violation, capped at an aggregate amount of \$100,000 for all "nonwillful violations" related to covered losses or claims caused by an emergency.^[19] For other nonwillful violations arising from the same action, fines of up to \$12,500 per violation, capped at an aggregate amount of \$50,000 can be imposed.^[20] For willful violations related to covered losses or

claims caused by an emergency, fines of up to \$200,000, capped at an aggregate amount of \$1 million can be levied.^[21] Similarly, fines of up to \$100,000, capped at \$500,000, can be imposed for other knowing and willful violations.^[22]

Conclusion

The Insurer Accountability Act has only just gone into effect as of July 1, 2023, such that its effectiveness in insuring a fair and reliable insurance market in Florida has yet to be put to the test. In the meantime, other hurricane-prone states continue to face insurance crises that combine a scarcity of property coverage options for homeowners with a massive influx of claims in response to natural disasters. For example, Louisiana has seen premium rates skyrocket in the lead-up to this summer's hurricane season, and the state enacted an incentive program directing \$45 million to secure agreements to write policies from several carriers.^[23] Likewise, in Texas, many owners of high-risk homes have been forced to turn to the state-chartered Texas Windstorm Insurance Association as the only coverage option available to them.^[24]

States likely will not be able to withstand the fiscal pressures of underwriting insurance policies themselves, thus creating more need for regional insurers to step in and foot some of the bill. If proven successful, we may see Florida's approach to regulating this market by way of the Insurer Accountability Act implemented elsewhere.

Footnotes

[1] "CB/SB 7052: Insurer Accountability." <https://www.flsenate.gov/Committees/BillSummaries/2023/html/3204>

[2] Brianna Sacks, "Insurers slashed Hurricane Ian payouts far below damages estimates, documents and insiders reveal," *The Washington Post* (Mar. 11, 2023). <https://www.washingtonpost.com/climate-environment/2023/03/11/florida-insurance-claims-hurricane-ian/>.

[3] *Id.*

[4] Insurer Accountability Act, 2023 Fla. Laws 172

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Sam Winstrom, “Lawmakers approve \$42 million to bring in 8 insurance firms to Louisiana,” *4WWL* (Mar. 18, 2023).

<https://www.wwltv.com/article/news/politics/louisiana-insurance-incentive-program/289-24c63e38-5556-4313-8ecf-24100b4f5979>.

[24] Wells Dunbar, “Texas Braces for a potential insurance crisis as storm season nears,” *The Texas Standard* (May 2, 2023).

<https://www.tpr.org/business/2023-05-02/texas-braces-for-a-potential-insurance-crisis-as-storm-season-nears>

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