

INTERNAL AUDIT

2021 Legislative Session
Advisory Memorandum
SB76 Implementation

August 18, 2021





Advisory Memorandum

Background

During the 2021 legislative session the Florida legislature passed several bills with a direct effect on the insurance industry and impacting business processes and systems across Citizens. One of the legislative bills was SB76, which became effective on July 1, 2021.

SB76 not only amended existing Florida Statutes, but also created new ones, all of which establish, prohibit and/or require the following:

- Prohibiting certain contractor practices and requiring that contractors include a notice in their contracts indicating that they may not engage in those prohibited practices, lack of which would make the contract voidable within 10 days after execution. The violations of this statute are subject to disciplinary proceedings and fines of up to \$10,000.00 for each violation¹.
- Prohibiting certain Public Adjuster practices, where violations are subject to fines of up to \$10,000.00 each.
- Establishing a pre-suit notice requirement in first-party property claims where Insureds must file a Notice of Intent (NOI).
- Requiring insurers to have procedures in place to promptly investigate, review and evaluate NOI's.
- Creating a new structure for awarding attorneys' fees in first party property claims.
- Requiring Insurers to file annual reports of closed claims.
- Repealing exemptions in the required contract provisions in contracts between Insurers and Managing General Agents (MGA's).
- Establishing a new statute of limitations of two (2) years for first notice of loss or reopened property claims and three (3) years for supplemental claims.
- Establishing that for claims resulting from hurricanes, tornadoes, windstorms, severe rain, or other weather-related events, the date of loss is the date that the hurricane made landfall, or the weather-related event is verified by the National Oceanic and Atmospheric Administration (NOAA).
- Requiring that each party that becomes aware of ongoing multiple lawsuits involving coverage provided under the same residential property policy, for the same

¹ On July 11, 2021, Chief U.S. District Judge Mark E. Walker issued a preliminary injunction against the enforcement of certain provisions of SB76. The ruling was sought by Gale Force Roofing and Restoration, who alleged that SB76 infringed on their freedom of speech by preventing them from assisting homeowners from making valid insurance claims to repair their homes. The Court found that Plaintiff showed a substantial likelihood of proving an ongoing violation to their First Amendment rights through a direct penalization for prohibited speech and as such, no steps can be taken to enforce Florida Statutes §§ 489.147, (2)(a), (3), and 4(b) as they pertain to "prohibited advertisements," until otherwise ordered.



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property, with the same owners, provide written notice to the court. The court can consolidate the cases subject to its judicial discretion.

- Revising several sections of Citizens' statute providing:
 - That a personal lines residential risk seeking to be newly insured by Citizens is ineligible for coverage if it receives an offer of comparable coverage from an authorized insurer that is not more than 20% higher than Citizens' premium (currently it is 15%).
 - Specifying that Citizens need not purchase reinsurance when it is not available at reasonable rates but requires that Citizens' rate calculations must include the cost of reinsurance to cover its projected 100-year probable maximum loss, even when Citizens does not purchase reinsurance.
 - Increasing the 10% cap ("glide path") on Citizens' rate increases by 1% annually beginning in 2022, until the cap reaches 15% in 2026.
 - Requiring that the Citizens budget allocations for employee compensation and all proposed raises for an employee exceeding 10% of their current salary must be approved by the Citizens Board of Governors.
 - Requiring Citizens to have an employee compensation plan approved by the Board of Governors.
- Providing additional powers to the Office of Insurance Regulation (OIR) to regulate insurance holding companies.

Objectives and Scope

Internal Audit provided advisory services in support of the implementation and management of all requirements of SB76 impacting Citizens' business units through consultative advice and project management upon request. Internal Audit also confirmed the effective and timely escalation and handling of issues.

Results

Upon the conclusion of the legislative session, a Legislative Reform Implementation Project was developed to address the requirements of the different legislative bills impacting Citizens and to implement the required business and technical changes to meet compliance with the bills. The Project was led by a Steering Committee and a Project Manager. Although SB76 impacts several of Citizens' business units, the requirements of the bill will impact Claims more than any other unit.

Internal Audit observed diligent efforts between the workgroups to interpret and discuss the impact of SB76 and develop, assign, and handle action items, coming up with new workflows, processes, and procedures to meet the requirements of the bill. A risk management plan was established, with risks escalated as identified to workgroup leaders and the Steering Committee. Workgroup and Steering Committee meetings occurred regularly. Phase One of the implementation has been completed and included the following:

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- Analysis of SB76 and opinions by the Legal Department. The Legal Department has had regular meetings not only as part of the initial review and implementation of SB76, but also *ad hoc* as part of emerging situations after the bill became effective. Results of pending action items for the Legal Department are expected by the end of August 2021.
- Rate and Product changes in alignment with SB76.
- Human Resources changes to be presented in Board of Governors meeting in September 2021.
- Meetings between Claims Management and the Florida Department of Financial Services regarding the newly created NOI form and reporting mechanism.
- Changes in claim workflows to assist in the decision-making process and handling of NOI's.
- Creation of a Claims NOI Team dedicated to handling the NOI's received through the Department of Financial Services and determine the appropriate course of action as well as the appropriate response. This team will consist of one (1) Manager and approximately five (5) adjusters and is currently in the staffing process.
- Modifications and improvements to the Claims Management Platform (Claims Center) which will allow capturing data necessary to comply with reporting requirements. One pending action item pertaining to the capturing of total indemnity paid (includes attorneys' fees) for all coverages is expected to be resolved by the end of August 2021. Currently, attorney's fees are only captured under Coverage A.
- Development of job aids for initial NOI receipt. Additional job aids are being developed for the NOI Team.
- Creation of letters with appropriate language for the NOI Team to respond to NOI's.
- General overview and focused training sessions.

Of note, Citizens' Legal Department interpretation of the statute is that it is applicable only to those policies written or renewed after July 1, 2021. This interpretation is based on *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010) whereby The Florida Supreme Court held that substantive statutory requirements could not be applied retroactively to insurance policies. Therefore, the statute in effect at the time an insurance contract is executed is the one that governs substantive issues arising in connection with that contract.

Notwithstanding the above, one of the risks identified has materialized as claimants' attorneys have been utilizing the NOI mechanism/requisite in cases with policies written before July 1, 2021. This could possibly be attributed to:



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- **Misinformation or Interpretation of statute** – There may be misinformation or a different interpretation on part of claimants' attorneys, leading them to file NOI's regardless of the policy period.
- **Vagueness of the statute** – Some of the statutes may not be clear. As an example, the statute seems to create the notion of pre-suit attorneys' fees. Some claimants' attorneys may be using the mechanism to test the applicability of this notion of pre-suit attorneys' fees.

Regardless of the possible reasons, over 80 NOI's have been received by Citizens so far. This has led to a risk mitigation strategy from Claims Management as efforts continue to staff the NOI Team.

Claims Management will continue to have meetings to analyze the impact of the changes made to the processes and the claims management platform in order to identify any necessary adjustments, system releases and automations as part of a possible Phase Two. Meetings are currently scheduled for August and October. Arising practices/issues will have to be addressed *ad hoc* until such time there is clarification via court ruling or statute amendment.

Internal Audit will continue to monitor the progress of the pending action items and provide updates on the resolution and implementation. A post-implementation audit has been requested by Claims Management and will take place as part of the OIA Plan for 2022.

We would like to thank management and staff for their cooperation and for utilizing IA advisory services.



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