Casualty Actuarial Society 2022 Ratemaking and Product Management Seminar

Concurrent Session RP2: Regulatory and Legislative Updates

- Andrew Kirkner, National Association of Mutual Insurance Companies
- Kenton Brine, Northwest Insurance Council
- Steve Roddenberry, Pennington P.A.

March 16, 2022

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NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES
SHAPING OUR MUTUAL FUTURE®

REGULATORY AND LEGISLATIVE UPDATES

2022 RPM
MARCH 15, 2022
ANDREW KIRKNER – AVP, STATE AFFAIRS

PRESENTATION OUTLINE

- NAMIC Advocacy
- National/State Political Climate
- NCOIL/NAIC
- In the States
- Questions

NAMIC STATE AFFAIRS

THE NAMIC STATE AFFAIRS TEAM

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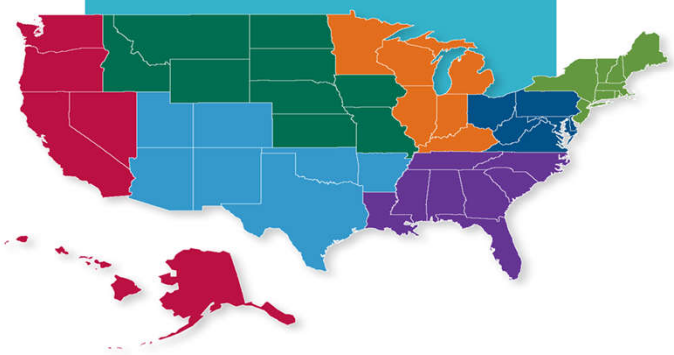
NAMIC's 50-state advocacy strategy is executed through regional assignments of our government affairs staff. For more information about an issue or to discuss NAMIC's position, please contact your regional vice president.



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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

NATIONAL / STATE POLITICAL CLIMATE

- Polarization.
- Democratic Trifecta – ARP, BBB, voting rights
- Can't go without Joe (Manchin).
- President Biden's approval rating extremely low.
- Republicans and Democrats both emboldened at state level.
- 2022 Midterms – split government coming?
- Are swing state moderates gone?

NCOIL/NAIC

NCOIL:

- DNC Model
- Dog Bite Model
- Modernization efforts
- Transparency

NAIC:

- Emerging Technology
- Rating Factor Scrutiny
- Information repository
- Race and Insurance

IN THE STATES: RATING FACTORS / UNDERWRITING FREEDOM UNDER ATTACK

- Dog breed underwriting legislation in Arizona, NCOIL
- Minnesota – Disparate Impact standard headed off
- Challenges to traditional rating factors:
  - Prop 103 light bill in Virginia (HB 446), and Oregon and Maine
  - Gender ban bills in Maryland, Delaware, Maine, etc.
    - Gender appears to be the “it” topic this year
  - Challenges to Territory, Education / Occupation, Martial Status in Maryland and Virginia.
- Colorado comes to Oklahoma
- Colorado stress test rulemaking first meeting mid-February

IN THE STATES: RATING FACTORS UNDER ATTACK

- Risk-based pricing defense spans judicial and legislative realms
  - Washington CBIS Effort:
    - Rule making and litigation: CBIS ban rationale COVID-19.
    - Legislative Advocacy: no CBIS ban bill in 2022, expected again once permanent rulemaking process is complete.
    - NAMIC lawsuit ongoing.
  - Nevada Department litigation (CBIS):
    - NAMIC's challenge to Commissioner Richardson's CBIS COVID-19 ban currently pending before the Nevada Supreme Court.
    - Briefing completed in late 2021, case expected to move forward mid 2022.

IN THE STATES: SOCIAL INFLATION AND TORT REGRESSION

Social Inflation/Bad Faith:

- Utah – minimum auto limits increase (current 25/65/15 to 45/90/30)
- New Jersey (SB 155): Signed into law 1/18
- Virginia (no legislation yet in 2022, trial bar biding time)
- Alaska – Third party bad faith bill introduced and killed
- Florida PIP bill reintroduced
- Missouri no-at-fault claims proposal withdrawn

Offensive Reform Efforts:

- Iowa – (SF 2085 – Litigation financing prohibition)
- New Mexico – “chop shop” criminalization
- Arizona – Phantom Damages/medical lien legislation (SB 1021)
- West Virginia – Collateral Source Reform Legislation
- Catalytic converter theft legislation introduced across the country (California, Virginia, etc.)

IN THE STATES: EMERGING TECHNOLOGY AND MARKET DISRUPTION

- Nebraska – Rebate reform (LB 1042) (NAIC Model, exception for value add/loss mitigation)
- District of Columbia – Algorithmic Accountability Act (B24-0558)
- Indiana – Insurance Scoring transparency
- California – Telematics projects ongoing
- Entire country – Cybersecurity/Data Privacy legislation being considered
- Peer-to-peer: (mostly) national compromise language being considered across the country

IN THE STATES: COVID-19 AND OTHER ISSUES

Wildfires:

- Arizona – (HB 2183) mandates coverage of mudslides, landslides, mudflow, debris flow coverage on fire insurance (advancing through legislature).
- Colorado – ALE / Contents coverage comments (11/2021), wildfire claims bill introduced (HB 22-1111)
- California – NAMIC gathering feedback on CDI proposed wildfire mitigation regulation
- Oregon – Prescribed burn study

COVID-19 related issues will remain relevant in 2022 including:

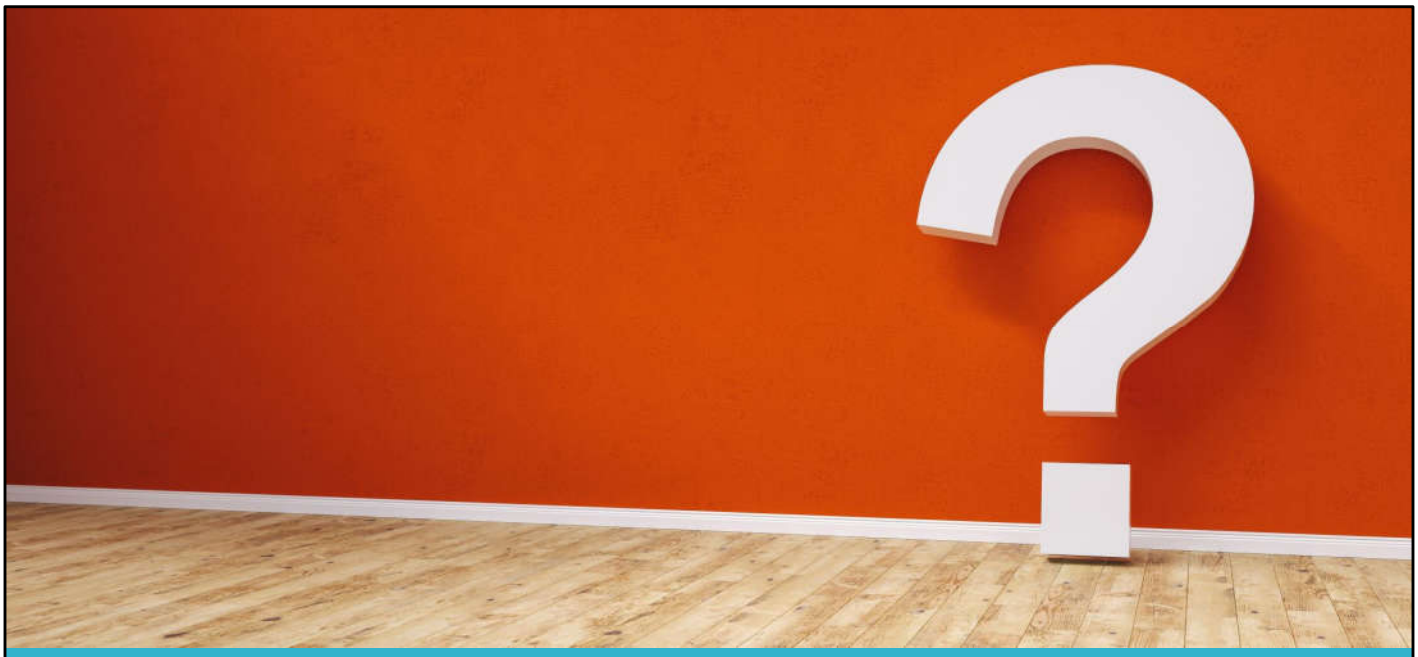
- Liability protection for transmission of virus.
- Liability and private causes of action arising from vaccine mandates for employees.
- Workers' compensation related mandates are all on the horizon in 2022.

Cybersecurity model act under consideration in states across the country:

- Industry markup/amendments.
- Concerns about federal preemption

Distracted Driving:

- Efforts to curb distracted driving ongoing in Kentucky, Ohio, West Virginia, South Carolina and more.
- NAMIC and the broader industry utilizing broad coalitions to help progress bills.



QUESTIONS?

UPDATE:
RISK-BASED PRICING IN WASHINGTON STATE

RPM 2022
Presented by Kenton Brine

NW Insurance Council

About NW Insurance Council

- We inform media, consumers & policymakers about home, auto & business insurance in Washington, Oregon & Idaho.
- Based in Seattle, with offices in Seattle, Olympia and Salem, OR. Serving three states with media and consumer outreach plus legislative and regulatory advocacy.

2021 SHIFT:

PANDEMIC, SOCIAL & RACIAL JUSTICE COLLIDE WITH INSURANCE RATING

The 2020 election brought new members to the WA Legislature and strengthened Progressive majorities in both chambers, who pledged to view *all* legislative proposals through an "equity lens."

Commissioner Mike Kreidler was re-elected to his 6th four-year term.

- Washington statutes enacted in 2002 authorize and regulate the use of Credit-Based Insurance Scores (CBIS) for P&C insurance policy rating and underwriting.
- In January 2021, **Sen. Mona Das** (D-47) sponsored **SB 5010** at the request of **Insurance Commissioner Mike Kreidler** (D).
- **SB 5010:** Prohibited the use of CBIS to rate personal lines P&C policies: Homeowners, Renters, Condo Owners, Private Passenger Auto, RV, Mobile Home, Motorcycle, Boat, Earthquake. Effective on new/renewing policies on/after Jan. 1, 2023.

2021 WA SESSION:

CHANGES TO CBIS BAN; HOUSE PANEL APPROVES NCOIL ELC BILL

Changes are made to SB 5010 in the Senate Committee, while a House Committee passes the NCOIL model of "Extraordinary Life Circumstances" exceptions.

- **Sen. Mark Mullet** (D-05), Chair of the Business, Financial Services & Trade Committee **amended** SB 5010, creating a substitute bill that adopted a "better-only" approach: Insurers could use CBIS for rating new business, then at renewal, CBIS could only be used if it improved the insured's premium (Oregon law).

- **State Rep. Steve Kirby** (D-29), Chair of the House Consumer Protection & Business Committee, introduced and passed **HB 1351**, which would include the NCOIL "Extraordinary Life Circumstances" exceptions (ie: loss of job due to pandemic, death of spouse, divorce, military deployment, etc.) in WA statute.

- Neither bill passed the Legislature in 2021.

MARCH SURPRISE:

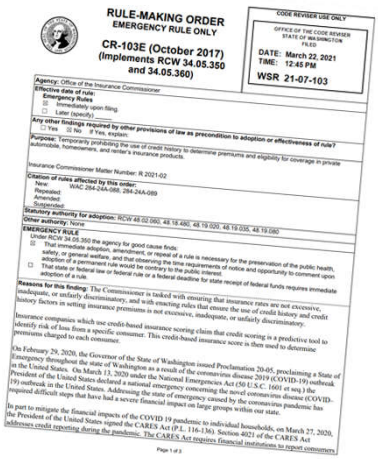
KREIDLER ISSUES EMERGENCY RULE TO BAN CBIS FOR P&C RATES

In March 2021, Commissioner Kreidler issued an **emergency rule** prohibiting insurers from using CBIS for rating personal lines P&C policies in Washington.

OCTOBER REJECTION:

COURT INVALIDATES EMERGENCY RULE

- No testimony allowed; rule adopted on an emergency basis. Cited pandemic-related causes that alleged consumer credit reports had been rendered "unreliable."
- Emergency rule required insurers to file new rate plans by May 6, 2021.
- New filed, approved rates in effect for all policies issued or renewed on/after June 20, 2021.
- Emergency rule was to be replaced by a "permanent" rule – to be in effect for three years.
- **October 2021:** Saying the OIC did not prove existence of "emergency," the Thurston Co. Superior Court **invalidated the Commissioner's rule.**



RULE-MAKING ORDER
EMERGENCY RULE ONLY

CR-103E (October 2017)
(Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 22, 2021
TIME: 12:45 PM
WSR 21-07-103

Agency: Office of the Insurance Commissioner

Effective date of rule:
Emergency Rules
☒ Immediately upon filing.
☐ Later (specify):

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose: Temporarily prohibiting the use of credit history to determine premiums and eligibility for coverage in private automobile, homeowners, and renter's insurance products.

Insurance Commissioner Matter Number: R 2021-02

Citation of rules affected by this order:
New: WAC 284-24A-088, 284-24A-089
Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080

Other authority: None

EMERGENCY RULE
Under RCW 34.05.350 the agency for good cause finds:
☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

On February 29, 2020, the Governor of the State of Washington issued Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers

Page 1 of 3

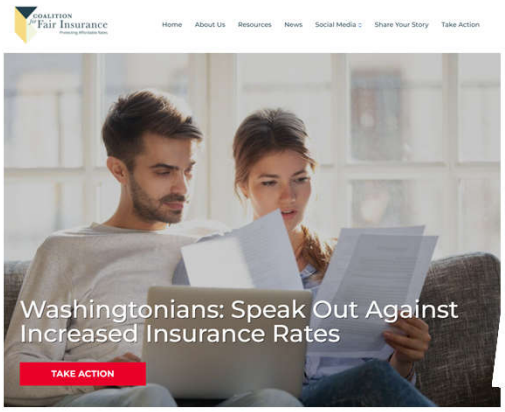
JUNE 2021:
PERMANENT (3-YEAR) RULE PROPOSED

An emergency rule cannot be renewed more than once unless a permanent rule (allowing for a public hearing and review process) has been proposed for adoption. The OIC proposed the permanent (3-years at least) rule in June 2021.

- The "permanent" rule was proposed by the Office of the Insurance Commissioner in June 2021.
- In addition to prohibiting insurers from using CBIS to rate personal lines P&C policies (same as the emergency rule), it also prohibited insurers from considering CBIS to determine an insured's eligibility for payment plans.
- Public hearing held in **November 2021**. More than 100 people attended remotely, with 800 more viewing online. More than 30 people testified (nearly all *opposed*). Nearly 3100 comments were filed from insurers, trades, agents and policyholders.
- Both the House and Senate insurance committees also held interim public hearings to accept testimony from policyholders impacted by the rate increases.
- More than a million WA policyholders saw premium increases between 5% and 80% or more. Hardest hit: retired seniors on fixed incomes, who have highest credit scores and are low-risk insureds.

INDUSTRY AND CONSUMERS RESPOND

While NAMIC, APCIA and producer trades filed suit against the OIC's emergency rule and filed testimony against the proposed permanent rule, NWIC joined the national trades in developing communications to affected insurance agents & frustrated consumers.



- Coalition for Fair Insurance website attracted dozens of testimonials from frustrated WA policyholders.
- More than 10,000 emails to legislators; more than 3,000 emails to the Insurance Commissioner protesting rate increases and the OIC rules.

2022: CBIS "BETTER-ONLY," ELC BILLS IN SENATE

Senate BFST Committee Chair Mark Mullet introduced SB 5623 – similar to Oregon's "better-only" credit law, while another committee member reintroduces the NCOIL ELC language. OIC opposes both bills in testimony to the Committee.

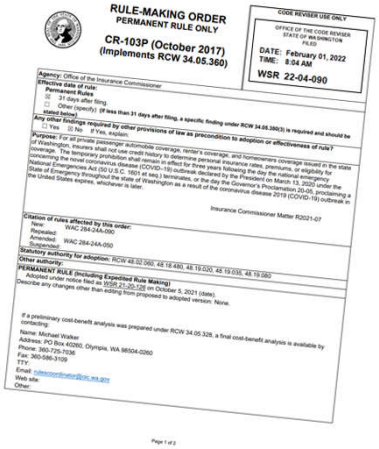
- **Sen. Mullet**, seeking a middle ground that protects consumers, introduced **SB 5623**, which allows CBIS for new P&C policies, but only allows CBIS at renewal if the result is a reduced premium for the insured.
- **Sen. Perry Dozier** (R-16), re-introduced the NCOIL ELC language in proposed **SB 5879**.
- Staff of the **Office of the Insurance Commissioner** (OIC) staff in opposition to both bills in committee. Neither bill passed.
- Sen. Mullet made a final effort at compromise with proposed **SB 5969**, which would delay further rulemaking by the OIC for 18 months and establish a balanced working group (4 each from P&C industry and the OIC) to study rate impacts of CBIS and recommend changes to the 2023 Legislature. The bill died without a vote.

FEBRUARY 2022 SURPRISE:

KREIDLER ADOPTS PERMANENT RULE TO BAN CBIS FOR P&C RATES. TRADES FILE LEGAL CHALLENGES

On February 1, as the Senate Committee was hearing the compromise bill from Chair Mullet, the OIC formally adopted the permanent rule banning CBIS for rating personal lines P&C policies.

- Adopted **Feb. 1**, effective for personal lines P&C policies issued or renewed on/after **March 4, 2022**.
- In effect until at least March 13, 2023 (3 years from the pandemic national emergency declaration by President Trump.)
- Prohibits CBIS use for policy rating, but also to determine eligibility for policy payment plans.
- Challenges filed: NAMIC; APCIA plus IIABW & PIA/WA.



RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (October 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 01, 2022
TIME: 8:04 AM
WSR 22-04-090

Agency: Office of the Insurance Commissioner

Effective date of rule:
Permanent Rules
☒ 31 days after filing.
☐ Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain.

Purpose: For all private passenger automobile coverage, renter's coverage, and homeowners coverage issued in the state of Washington, insurers shall not use credit history to determine personal insurance rates, premiums, or eligibility for coverage. The temporary prohibition shall remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

Insurance Commissioner Matter R2021-07

Citation of rules affected by this order:
New: WAC 284-24A-090
Repealed:
Amended:
Suspended: WAC 284-24A-050

Statutory authority for adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080

Other authority:

PERMANENT RULE (including Expedited Rule Making)
Adopted under notice filed as WSR 21-20-129 on October 5, 2021 (date).
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:
Name: Michael Walker
Address: PO Box 40260, Olympia, WA 98504-0260
Phone: 360-725-7036
Fax: 360-586-3109
TTY:
Email: rulescoordinator@oic.wa.gov
Web site:
Other:

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2022: RELIEF FROM THE COURT

STIPULATED AGREEMENT & STAY OF RULE APPROVED

NAMIC and the OIC agreed to jointly submit a proposed stipulated order staying the rule pending the OIC providing the full rulemaking file on the permanent rule. Thurston County Superior Court Judge Indu Thomas approved the order Feb. 25.

- On February 25, Thurston County Superior Court Indu Thomas approved the agreed stipulated order and stayed the OIC's CBIS ban rule.
- The stipulated order proposed a stay of the rule for 52 days, which assumed the time necessary for the OIC to provide requested documents to NAMIC and go through the filing and response process that would result in a legal challenge of the rule and possible permanent injunction.
- The court ruled that the individual claims made by NAMIC and APCIA + IIABW & PIA/WA could be consolidated, and that the stay would remain in place until the court ultimately rules on the merits of the challenge (likely longer than 52 days).
- IN THE MARKET: Some insurers refiled rate plans or filed notes with the OIC and have returned to using CBIS-based rates. More may now consider doing the same given the longer time frame for the court's review of the rule and the legal challenge.

THANK YOU!

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Florida Senate Bill 76

Florida Senate Bill 76

Florida Property Insurance Market Litigation Challenges

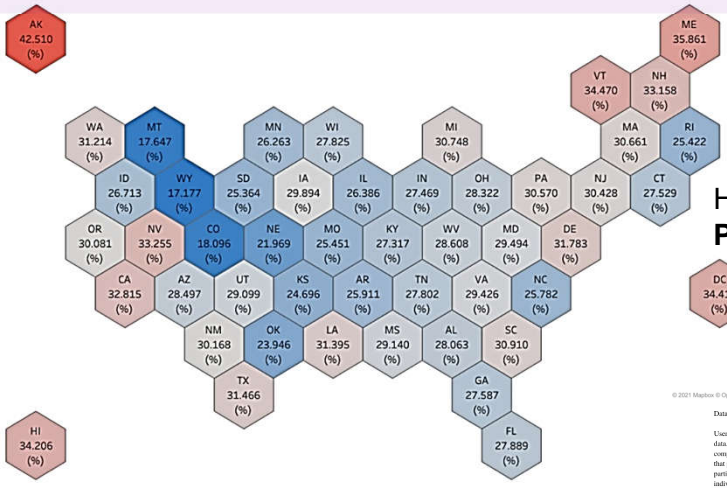
NAIC Market Conduct Annual Statement Data Call

Year	Percent of Nationwide Homeowners'	
	Claims Opened in Florida	Suits Opened in Florida
2016	7.75%	64.43%
2017	16.46%	68.07%
2018	11.85%	79.91%
2019	8.16%	76.45%

Florida Senate Bill 76

Florida Property Insurance Market Litigation Challenges

NAIC Market Conduct Annual Statement Data Call



Homeowners **Claims Closed without Payment** to Total Claims Closed: 2019

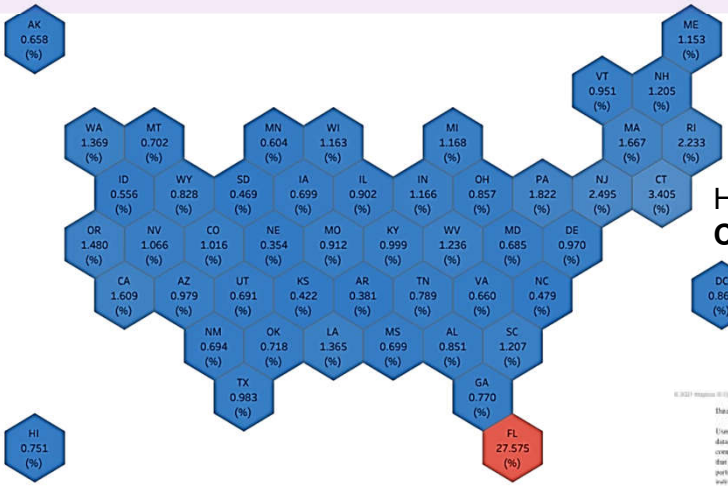
Data does not include Citizens Property Insurance Corporation. Scorecard data can be found at https://content.naic.org/mcas_data_dashboard.htm.

Users of the MCAS Scorecard data should be aware of the following: (1) Only companies that meet the Market Conduct Annual Statement (MCAS) reporting threshold are required to submit MCAS data. (2) Reporting companies may revise their reported data when errors are discovered. Consequently, statewide ratios reported for one year may change as revised data are submitted by reporting companies. (3) While the jurisdictions that participate in the MCAS and the NAIC make every effort to ensure that reporting companies submit compete and accurate data, the NAIC and the jurisdictions that participate in the MCAS make no representations, guarantees or warranties with respect to the accuracy or completeness of the data and statistics in scorecards. (4) The NAIC and the jurisdictions participating in the MCAS are not responsible for any calculations or products based upon the scorecard data and any use of these scorecard data must be accompanied by a statement, 'The NAIC and individual states do not endorse any calculation or subsequent use of the MCAS scorecard data."

Florida Senate Bill 76

Florida Property Insurance Market Litigation Challenges

NAIC Market Conduct Annual Statement Data Call



Homeowners **Suits Opened to Claims Closed** Without Payment: 2019

Florida Senate Bill 76

Solutions Proposed by OIR in April 2021

Reform Florida's One-Way Attorney Fees Statute

- Floridians should have an avenue to pursue damages via the judicial system
- The One-Way Attorney Fee Statute provides a venue for this to occur
- However, it also provides an incentive for litigation that that is not always legitimate
- The primary cause is the fact that plaintiffs need to only win at least one penny more than the insurer's initial offer in order to win attorney's fees
- Adopting reforms in 2019 AOB legislation preserves consumer protections, while providing a framework to ensure that litigation is legitimate

Florida Senate Bill 76

Solutions Proposed by OIR in April 2021

Address Ramifications of the Joyce Decision Regarding Contingency Fee Multipliers

- Florida diverges from federal standards in its awarding of contingency fee multipliers
- The Joyce decision highlights how far Florida is from the federal standard
- The awarding of contingency fee multipliers could incentivize the filing of meritless cases for the sake of receiving a large attorney's fee
- Legislation that codifies the Fifth District Court of Appeal's decision in Joyce could be effective in reducing this incentive

Florida Senate Bill 76

Solutions Proposed by OIR in April 2021

Address Ramifications of the Sebo Decision Regarding Concurrent Causation

- This decision incentivized roof claim solicitations based on the Florida Supreme Court's holding which applied the concurrent causation doctrine and held that coverage may exist when there are concurrent causses of loss and at least one is covered under the policy
- Allowing insurers to mandate ACV coverage for roofs could address this incentive
- Statutory language that excludes wear and tear from concurrent causation could also address this incentive

Florida Senate Bill 76

Solutions Proposed by OIR in April 2021

Include Provision From Legislation Recently Implemented in Texas

- The Texas Legislature passed HB 1774 in 2017; it broadened pre-suit notice and inspection requirements for property claims and addressed attorney's fees
- Requires the claimant to notify the insurer of potential litigation at least 61 days prior to filing suit
- Links recovery of attorney's fees to trial recovery and initial demand
- If an insurer is not given notice as required, the court cannot award attorney's fees incurred after the insurer files a separate pleading with the court

Florida Senate Bill 76

Provisions of SB 76*

Creates Florida Statute § 489.147 to curb questionable marketing practices by contractors

- Prohibits contractors from encouraging consumers to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. Contractors also prohibited from:
  - Offering anything of value in exchange for allowing the contractor to inspect the roof or for making an insurance claim
  - Offering or accepting a referral fee for services for which insurance proceeds are payable
  - Providing advice regarding the terms of a property insurance policy
  - Providing an agreement for services that does not include a detailed written estimate and a notice that the contractor cannot engage in the solicitation restrictions imposed by the statute

* Note that certain provisions were eliminated after legal challenges

Florida Senate Bill 76

Provisions of SB 76

Florida Statute § 627.70132 already applied a maximum three-year period to report a hurricane claim. The new statute expands this to encompass all property insurance claims

- Under SB 76, an insured must provide notice of a claim or a “reopened claim” within two years of the date of loss
- A “supplemental claim” is barred unless notice of the supplemental claim is provided within three years of the date of loss

Florida Senate Bill 76

Provisions of SB 76

Creates Florida Statute § 627.70152 applying to lawsuits arising under property insurance policies, except for lawsuits from an assignee of benefits. An insured must provide a notice of intent to litigate at least ten business days prior to filing a lawsuit

- The pre-suit notice must include the following information:
  - the alleged acts or omissions of the insurer giving rise to the suit
  - if provided by an attorney or other representative, state that a copy of the notice was provided to the claimant
  - if the notice is provided following a denial of coverage, an estimate of damages if known
  - if the notice is provided following acts or omissions by the insurer other than denial of coverage, both of the following:
    a) the pre-suit settlement demand, which must itemize the damages, attorney fees and costs, and
    b) the disputed amount

Florida Senate Bill 76

Provisions of SB 76

Mandates that the amount of fees and costs can be awarded only as provided in Florida Statutes § 57.105 (the frivolous litigation statute) or § 627.70152 (the pre-suit noticed statute referenced earlier)

- Makes attorney's fee awards dependent on the results obtained in relation ot the pre-suit demand and offer
  - if the difference between the amount obtained by the claimant and the pre–suit settlement offer (excluding attorney fees and costs) is less than 20 percent of the disputed amount, then the insured is not entitled to attorney's fees
  - if the difference is greater than 20 percent but less than 50 percent of the disputed amount, the insurer pays the claimant's fees and costs in a proportion equal to the percentage of the disputed amount obtained multiplied by the total attorney's fees and costs
  - if the difference is greater than 50 percent of the disputed amount, the insurer pays the full amount of attorneys' fees and costs

Florida Senate Bill 76

Provisions of SB 76

Creates Florida Statute § 627.70153, which requires every party to a lawsuit to provide notice of all other lawsuits involving the same property insurance policy and for the same property

- The court, on its own initiative or on the motion of a party, may consolidate all the lawsuits
- This measure is designed to reduce the expense when defending multiple lawsuits concerning the same loss, such as a homeowner claim and a related AOB claim

FINANCIAL SERVICES COMMISSION

RON DESANTIS
GOVERNOR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

NICOLE "NIKKI" FRIED
COMMISSIONER OF AGRICULTURE

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

April 2, 2021

Dear Chair Ingoglia,

On February 24, 2021, the Office of Insurance Regulation (OIR) had the opportunity to provide you and your Committee with a report related to the challenges currently facing Florida's property insurance market, and the impact to consumers that depend on that market. We appreciate your ongoing leadership and partnership regarding this critical issue, as well as the opportunity to continue serving as a data-driven resource as you address a topic that affects all Floridians.

National Litigation Statistics

Since our February 24 response, linked here, OIR has mined additional information from the National Association of Insurance Commissioners (NAIC) Market Conduct Annual Statement (MCAS) Data Call to further provide information on litigation trends in the Florida insurance market. By way of background, MCAS is a regulatory tool developed in 2002 by state insurance regulators to collect information from insurers[1] on a uniform basis in order to identify concerns regarding claims and underwriting. In 2019, over 750 homeowners' insurance companies reported data via MCAS[2] using uniform definitions and reporting requirements across all states.[3] While the NAIC makes certain aggregated data available to the public, other information is considered confidential under Florida law.[4]

OIR has aggregated certain MCAS data in a manner compliant with Florida law to provide information regarding the number of suits opened in the United States[5] for the 2016 – 2019 reporting periods, and the ratio of suits opened in each year to the number of claims opened in each year.

Based on the most recent MCAS data available, in 2019, Florida accounted for 8.16% of all homeowners' claims opened by insurance companies in the U.S. However, in 2019, Florida accounted for 76.45% of all homeowners' suits opened against insurance companies in the U.S.

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[1] Participation requirements available here: https://content.naic.org/sites/default/files/inline-files/2020%20MCAS%20Part%20Reqmts-Gen%20Info_.pdf

[2] Additional Information regarding MCAS can be found at https://content.naic.org/cipr_topics/topic_market_conduct_annual_statement_mcas.htm.

[3] North Dakota and New York do not participate. Data is collected based on $50,000 premium threshold.

[4] See sections 624.319(3), 624.4212 and 624.4213, Florida Statutes, which provides for the confidentiality of certain information, including but not limited to information in the MCAS.

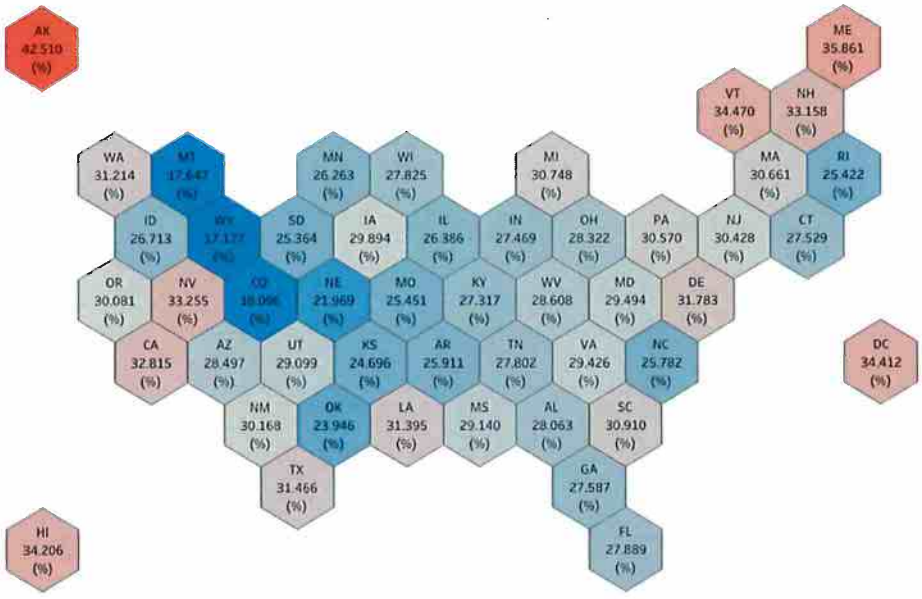
[5] New York and North Dakota do not participate in MCAS. Therefore, those states are not included in this analysis.

The results for 2019 are not an anomaly. As the chart below depicts, litigation trends in Florida have been consistently many times higher than any other state.

Year	Percent of Nationwide Homeowners' Claims Opened in Florida	Percent of Nationwide Homeowners' Suits Opened in Florida
2016	7.75%	64.43%
2017	16.46%	68.07%
2018	11.85%	79.91%
2019	8.16%	76.45%

The MCAS data also includes a ratio of claims closed without payment to total claims closed and a ratio of suits opened to claims closed without payment. This data allows OIR to observe trends in the context of other states. When comparing the number of claims closed without payment to total claims closed, Florida trends along with the national average.

Homeowners Claims Closed without Payment to Total Claims Closed: 2019

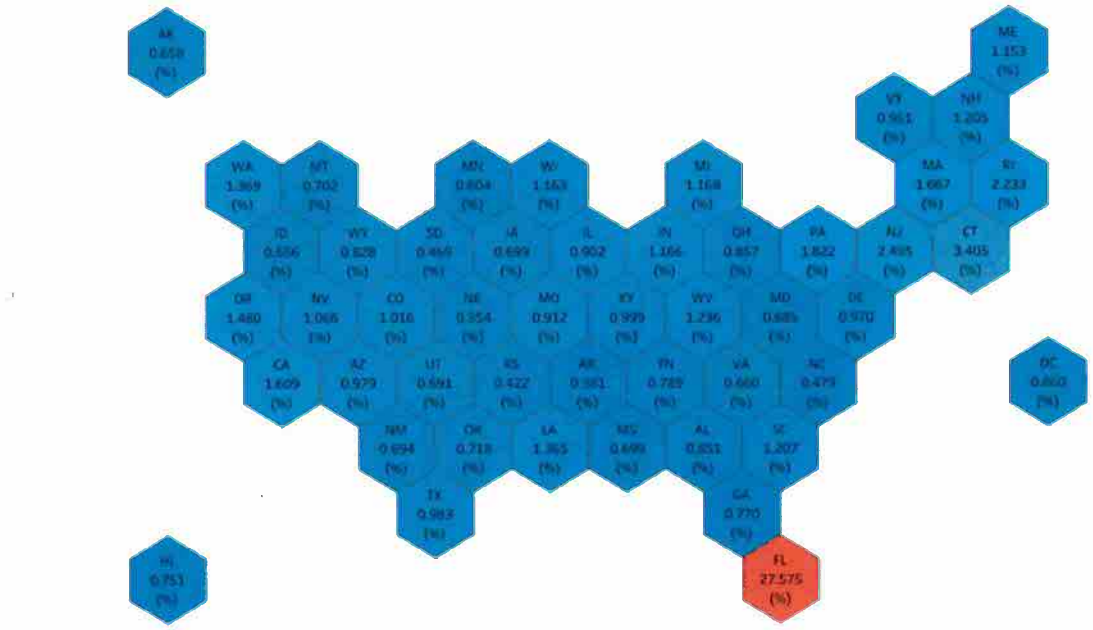


Data does not include Citizens Property Insurance Corporation. Scorecard data can be found at https://content.naic.org/mcas_data_dashboard.htm.

Users of the MCAS Scorecard data should be aware of the following: (1) Only companies that meet the Market Conduct Annual Statement (MCAS) reporting threshold are required to submit MCAS data. (2) Reporting companies may revise their reported data when errors are discovered. Consequently, statewide ratios reported for one year may change as revised data are submitted by reporting companies. (3) While the jurisdictions that participate in the MCAS and the NAIC make every effort to ensure that reporting companies submit compete and accurate data, the NAIC and the jurisdictions that participate in the MCAS make no representations, guarantees or warranties with respect to the accuracy or completeness of the data and statistics in scorecards. (4) The NAIC and the jurisdictions participating in the MCAS are not responsible for any calculations or products based upon the scorecard data and any use of these scorecard data must be accompanied by a statement, "The NAIC and individual states do not endorse any calculation or subsequent use of the MCAS scorecard data."

However, Florida's ratio of suits opened to claims closed without payment is eight times higher than the next highest state at 27.75%. The state of Connecticut has the second highest ratio of suits opened to claims closed without payment at 3.4%. The next highest three states are New Jersey (2.45%), Rhode Island (2.23%), and Pennsylvania (1.82%).

Homeowners Suits Opened to Claims Closed Without Payment: 2019



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Methodology

To examine the disparity between Florida and the other states, OIR analyzed the data from several perspectives. First, we validated our methodology and results with MCAS staff at the NAIC.

Next, because Florida's domestic homeowners' insurance market is heavily reliant on Florida-only or regional insurers, we analyzed the litigation to claims ratio[6] of insurers operating in Florida and other states to see if we detected a pattern of these insurers experiencing litigation higher than their peers in other states; a potential indicator of, *inter alia,* claims handling issues. We did not detect any such systemic pattern that could explain this disparity.

While we continue to explore these and other possibilities to explain the disparity, OIR does not have a readily available explanation for Florida's outlier status other than to simply state that Florida is experiencing far more claims-related litigation than the 47 other reporting states.

[6] The precise calculation is the "Number of suits opened during the period" divided by "Number of claims opened during the period."

Solutions

We appreciate the work of Chair Rommel on House Bill 305 that addresses property market challenges. To reaffirm and expand on OIR's recommendations from February 24, and in light of the new data included in this report, we encourage the legislature to consider additional tort reform measures, including:

- Reform Florida's One-Way Attorney's Fees Statute[7]. Floridians who have been wronged by their insurance company should have an avenue to pursue damages via the judicial system. The one-way attorney's fees statute provides an excellent venue for this to occur. However, the current one-way attorney's fees statute provides an incentive for litigation to come before our judicial system that may not always be legitimate. The primary driver of this is the reality that plaintiffs need not necessarily prevail "substantially," but only win at least one penny more than the insurer's initial offer in order to win attorney's fees. We believe that adopting the attorney's fees reforms enacted in 2019 in the AOB legislation preserves important consumer protections, while providing a framework to ensure that litigation brought against insurance companies is legitimate. To ensure consumers continue to enjoy wide access to courts, any such revision, like the AOB reform, must not require claimants to pay attorney's fees in cases not decided in their favor.

- Address the ramifications of the *Joyce*[8] decision regarding Contingency Fee Multipliers. Florida diverges from federal standards in its awarding of contingency fee multipliers. The *Joyce* decision highlights just how far Florida has diverged from the federal standard. After settling a dispute with their insurance company, *Joyce* received a settlement in the amount of $23,500. Their attorney calculated their lodestar attorney's fees at over $38,000. On top of that, the trial court applied a contingency fee multiplier of 2.0. However, as the Fifth District Court of Appeal stated, the *Joyce* case "...was not a complicated case. There was no esoteric legal issues or complicated factual disputes to resolve."[9] The application of a multiplier in that case that "was not a complicated case" raises significant concerns that contingency fee multipliers will become the normal practice, as opposed to what the Fifth District thought should be "rare and exceptional" cases. As Justice Scalia stated in his majority opinion in *Burlington v. Dague, 505 U.S. 557 (1992),* the awarding of contingency fee multipliers could incentivize the filing of meritless cases for the sake of receiving a large attorney's fees payout. Legislation that codifies the Fifth District Court of Appeal's decision in *Joyce* by adopting a "rare and exceptional" framework for contingency fee multipliers could be effective in reducing this incentive.

- Address the ramifications of the *Sebo*[10] decision regarding concurrent causation. The *Sebo* decision has incentivized roof claim solicitations based on the Florida Supreme Court's holding which applied the concurrent causation doctrine and held that insurance coverage may exist when there are concurrent causes of loss and at least one cause is

[7] Section 627.428, Florida Statutes.

[8] Joyce v. Federated Nat'l Co., 228 So. 3d 1122 (Fla. 2017)

[9] Joyce v. Federated Nat'l Co. v. Joyce, 179 So. 3d 492, 494 (Fla. 5th DCA 2015), decision quashed sub nom. Joyce v. Federated Nat'l Ins. Co., 228 So. 3d 1122 (Fla. 2017)

[10] Sebo v. Am. Home Assurance Co., Inc., 208 So. 3d 694 (Fla. 2016)

covered under the policy. Some stakeholders have argued that allowing insurers to mandate actual cash value coverage for roofs could address this incentive. While that is likely true, statutory language that specifically excludes "wear and tear" from concurrent causation could also provide a disincentive for this behavior, while allowing consumers to keep replacement cost coverage for legitimate roof losses.

- Include provisions from the legislation recently enacted in the state of Texas. In 2017, the Texas Legislature passed House Bill 1774 broadening pre-suit notice and inspection requirements for property claims and addressing attorney's fees. The law requires a potential claimant to notify its insurer of potential litigation at least 61[11] days before filing suit, regardless of the nature of the claim involved. The amount of attorney's fees set forth in the demand must be based on the hours actually worked by the claimant's attorney, as reflected in contemporaneously kept time records. The new law links recovery of attorney's fees to the claimant's trial recovery and initial demand by limiting an attorney's fees recovery to the lesser of: (1) the amount of fees incurred by the claimant in bringing an action; (2) the fees recoverable under another law; or (3) an amount based on the difference between the demand and the amount awarded in a judgment. Under this final provision, the court would divide the amount to be awarded by the amount of the initial demand to obtain a ratio. This ratio is then multiplied against the amount of fees actually incurred by the claimant. Thus, an excessive demand will result in a substantial reduction of recoverable attorney's fees, or no recovery at all; but a reasonable or even low demand will result in a recovery of attorney's fees in excess of the fees actually incurred. The new law also provides additional and very important restrictions on an attorney's fees recovery. If an insurer is not given notice as required, a court cannot award any attorney's fees incurred after the insurer files a separate pleading with the Court. The separate pleading must be filed within 30 days of the date the insurer filed its original answer. The outright bar on recovering attorney's fees should serve as a substantial incentive to follow the law.

These solutions could substantially reduce the litigation associated with claims, bringing more certainty into Florida's property insurance market. Ultimately this will provide more stability in the market and more rate stability for consumers. We are grateful for your thoughtful consideration of these ideas and we stand ready to assist your committee as you continue to work on this important issue.

Sincerely,

David Altmaier

David Altmaier
Insurance Commissioner

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11 Under current Florida law, a claimant may file suit as early as the first notice of loss.