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A Quick First Look at Florida's New AOB Bill

By Patrick Wraight | May 1, 2019

I have a new hobby. It complements one of my other hobbies, reading insurance policies. What is it?

I've started reading legislation. What a thrill to print (yes, print) 16 pages of legislation. The numbered lines, the underscores and strikethroughs. Let's not forget the references to new and old sections, chapters, and paragraphs in the law. It's enough to make me happy for days.

Since the Florida legislature finally decided that it had enough evidence that this was an actual issue, and decided to take legislative action, I feel compelled to read their magnum opus. It must be good because we've already heard from groups on both side of the issue. Some that support their action have absolved the legislature for the seven years they failed to do anything about it. Meanwhile, those against the new law have already proclaimed that this is the beginning of the apocalypse.

We will find some reality somewhere in the middle. Since the bill is 16 printed pages, we won't be able to go through the whole thing in one post. Instead, I want to look at a few specific lines that I think are of particular importance. If you're interested in reading the whole bill, you can find the text that was sent to Governor DeSantis here.

Quoting from CS/CS/HB 7065, lines 163-180

(4) An assignee:

(a) Must provide the assignor with accurate and up-to-date revised estimates of the scope of work to be performed as supplemental or additional repairs are required.

(b) Must perform the work in accordance with accepted industry standards.

(c) May not seek payment from the assignor exceeding the applicable deductible under the policy unless the assignor has chosen to have additional work performed at the assignor's own expense.

(d) Must, as a condition precedent to filing suit under the policy, and, if required by the insurer, submit to examinations under oath and recorded statements conducted by the insurer or the insurer's representative that are reasonably necessary, based on the scope of the work and the complexity of the claim, which examinations and recorded statements must be limited to the matters related to the services provided, the cost of the services, and the assignment agreement.

(e) Must, as a condition precedent to filing suit under the policy, and, if required by the insurer, participate in appraisal or other alternative dispute resolution methods in accordance with the terms of the policy.

For those who think that this is an apocalyptic herald, we look at these provisions as being very consumer friendly. In fact, we find them friendly to all parties that could be involved, including the contractors, their attorneys, and the insurance companies. Yes, this is good for everyone involved, but I'm just focused on the consumer for now.

It is good because it retains the consumer's freedom.

The AOB was designed to simplify the claims process for the consumer and the contractor. This bill retains that freedom. Contractors can still use the AOB to help get the claims process moving so that they can get paid and the customer can be made whole. I maintain that the idea of the assignment of benefits (AOB) is a good one. When it works right, it allows the contractor to negotiate with the claim adjuster, hire a public adjuster, get the work done, and get paid quicker than might be possible with the insured in the loop.

When the insured is part of the process, they have to gather information from the contractor, send it to the adjuster or company, get a list of questions from the adjuster or company, send those to the contractor, wait for the contractor to get back with them, and on and on ad nauseam. The AOB can be a great tool to expedite the process, get the insured indemnified, and get live moving back in the right direction.

This bill doesn't hinder the insured from signing an AOB. It simply protects them from the worst actors (contractors who want to cheat good people, the attorneys that work with those cheater contractors, and the insurance companies that might act poorly when served suit.)

It is good because it protects the consumer from surprises.

Before this new law goes into effect, there are some surprise actions that a contractor and their attorney can take, which are bad for the consumer. This bill is designed to prevent those actions. The contractor must keep the insured in the loop regarding the cost of repairs, must do acceptable work, and cannot ask for money beyond the policy's deductible.

Can you imagine the shock at thinking that the repairs should cost one amount and find out that your insurance company was sued for twice that? That's on the list of anti-consumer actions that this bill is designed to stop.

What about hiring a contractor, signing the AOB, and the work never getting done? Possibly worse, work gets done, but it's done so poorly that the customer would have been better off without the work getting done. Let me remind you that it does indeed happen. This bill specifically writes out what most of us would assume should happen. We believe that our contractors should do good work. The problem is that you really do have to write these things down to make sure that people understand what's expected sometimes.

It is good because it takes the lawsuit away as a default method to get what the contractor (and their attorney) wants.

Before the contractor can file suit against the insurance company, they have some responsibility now. They have to submit to examination under oath and alternative dispute resolution if required by the insurance company. These two actions allow the insurance company to determine what's going on with the claim before they have to deal with the legal process.

These are two provisions of many policies that applied to the insured but didn't necessarily apply to the assignee. Where the company would normally be able to ask for appraisal or mediation (depending on the policy wording) when dealing with the insured, the assignee didn't have that requirement. Now, they have to submit to these requirements before going to court.

In short, it forces the contractor to sit down and have conversations with the insurance company before filing suit. Conversations are always good things.

Let's not be confused about this issue. It isn't the end of the story. The Governor has promised to sign it, but that hasn't happened yet. The courts haven't weighed in yet (and they will). There's no reliable way to tell what all will come out of this legislation, but we'll keep watching it with you.

If I've learned anything working in insurance in Florida, it's that there's always something else around the corner. The bad actors will find another way to steal from the customer and blame the insurance industry. And the rest of us will have to take up the warning cry against that new issue.

I'll see you on that hill when it shows up.

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