FAIA’s 2018 Legislative Summary

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Each year, FAIA provides a line-by-line analysis of legislation and how it affects the insurance industry. Where shown, page numbers refer to pages in the enrolled bill. Section (§) numbers refer to Florida Statutes. Content shown in italics represents comments on final provisions.

This summary is not intended to constitute legal advice. If you have questions of a legal nature, please consult your attorney. Any redistribution or republication without the express written approval of FAIA is prohibited.
Insurance Licenses for Active Military and Veterans
CS/HB 29

License Application Filing Fees

p. 63, §626.171

Amends §626.171, F.S., regarding application for an agent, customer representative, or adjuster license, to clarify that members of the U.S. Armed Forces and their spouses, and veterans of the U.S. Armed Forces who have separated from service within the last 24 months (in good standing or honorably discharged) are exempt from the license application filing fee.

Current law provides the application fee waiver to active military personnel and their spouses, and “retired” veterans (retired in the last 24 months), but the bill expands the category of “retired” veterans to those separated from service within the last 24 months for any reason, as long as the veteran is in good standing or was honorably discharged.

Pre-Licensure Coursework

pp. 63–68, §626.732, §626.7851, §626.8311, §626.8417, and §626.927

Amends various statutes regarding licensing of general lines, life, health, title, and surplus lines agents, to provide for an exemption from pre-licensure coursework for an applicant who is a member or veteran of the U.S. Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Effective date: July 1, 2018
Chapter No. 2018-7, LOF

Unfair Insurance Trade Practices: Advertising and Promotional Gifts
CS/CS/HB 483

Advertising and Promotional Gifts

pp. 1–2; §626.9541

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these are prohibitions on certain inducements to the purchase of insurance; however, there are also exceptions provided by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to $25 per gift to an insured, prospective insured, or any person, for the purpose of advertising. This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given over any period of time. The $25 limit has been in place since 1989.

Expands the exception for advertising gifts to:
- Allows gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise.
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Agent Issues

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- Authorizes charitable contributions in the name of insureds or prospective insureds, up to the specified limit.
- Removes the limitation that the gifts be for advertising purposes.

**Increases** the maximum allowed value from $25 to $100 per insured or prospective insured.

**Limits** the total value given to any insured or prospective insured to $100 in one calendar year.

**Maintains** the existing applicable gift limit (i.e., limits them to an aggregate $25 gift value with no annual aggregate limitation) in relation to advertising gifts by title insurance agents, agencies, and insurers.

For years, FAIA has debated ways to change the advertising gift statute to better reflect what happens every day in the marketplace. Unfortunately, consensus has never been reached. HB 483 was proposed by a national insurer to provide loyal customers with incentives to buy mitigation items such as smoke detectors and fire extinguishers.

The first draft of this bill included gift cards that could have been considered cash or cash equivalent. FAIA had concerns about the unintended consequences of companies and agents being able to provide such advertising gifts. The bill was amended to address those concerns by limiting “gift cards” to “store gift cards.” FAIA also requested the term “goods” to be included so agents could provide lunch, golf, etc., to customers without fear of regulatory action.

**Effective date:** July 1, 2018

Chapter No. 2018-149, LOF

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Unfair Insurance Trade Practices: Refusal to Insure

CS/HB 533

**Insurance Eligibility, Motor Vehicle Services**

pp. 1–2; §626.9541

**Creates** an exemption from the Unfair Insurance Trade Practices Act. Under the bill, an insurer may refuse to insure a person for failure to purchase motor vehicle services from a membership organization that, as of January 1, 2018, is affiliated with an admitted property and casualty insurer.

AAA and other auto clubs have never been able to require membership to buy insurance products. This bill repeals that prohibition.

**Effective date:** July 1, 2018

Chapter No. 2018-153, LOF

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Page numbers refer to pages in the enrolled bill. Section (§) numbers refer to Florida Statutes.
Department of Financial Services (DFS) Legislative Package
CS/CS/CS/HB 1073

Managing General Agent Licensure

Eliminates the managing general lines (MGA) license, but not the role of an MGA. It requires an MGA to be a licensed agent and have an MGA appointment. These changes will clarify some of the inconsistency in the MGA statutes. The bill makes technical changes throughout Chapter 626, F.S., to conform terminology to these changes.

Under current law, an MGA is defined as any person managing all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office. In addition, an MGA, is a person acting as an agent for the insurer, who, with or without authority, separately or together with affiliates, produces directly or indirectly, or underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any single quarter or year. The definition also includes that an MGA adjusts or pays claims and/or negotiates reinsurance on behalf of the insurer.

To be an MGA under current law requires an MGA license, but this license type has no pre-licensing requirements or formal examination to determine eligibility. To obtain this license, the only requirements are to complete the application, be eligible to work in the United States, and submit fingerprints for a background evaluation.

Also under current law (§626.731, F.S.), a general lines agent may not hold an MGA license. This is inconsistent with the National Association of Insurance Commissioners’ Model Act because the Act states that a person shall not be an MGA without being licensed as an agent in the state.

Fingerprinting Requirements

Provides that an individual who is currently licensed under Chapter 626 or 648, F.S., and has submitted fingerprints in the past 48 months is not required to resubmit fingerprints or pay the fingerprint processing fee when applying for an additional license.

Current law requires a submission of fingerprints and a fingerprint-processing fee of $50 with each application for an insurance license and each application for licensure as a bail bonds agent. The DFS currently tracks its licensees against the Florida Clerk’s database to identify existing licensees convicted of or pleading to felony charges. According to the DFS, the fingerprinting requirement is unnecessary for those already licensed because the DFS can already obtain relevant information on these individuals from the Florida Clerk’s database.

All-Lines Adjuster Examination Requirements

Adds the designation Claims Adjuster Certified Professional (CACP) from WebCE, Inc., to the list of professional designations that exempt an applicant from the all-lines adjuster licensure exam requirement.
Under current law, the DFS may not issue any license as an adjuster to any individual who has not taken and passed a written examination. However, there are exemptions from examination for applicants who have certain professional designations or certificates.

Credit and Character Reports

pp. 34–36, §626.521

Changes the time at which a credit and character report for an insurance license applicant must be completed, and requires the report to be obtained before appointment rather than before licensure. The bill removes the requirement that a credit and character report requested by the DFS be submitted on a form furnished by the DFS. It also removes the requirement that the credit and character report be done by an “established and reputable independent reporting service” because there are no standards to determine “established and reputable independent reporting service.” Additionally, the appointing insurer or employer is required to certify to the DFS that the licensee is of good moral character and reputation, and is fit to engage in the insurance business. The bill also adds that the requirements for credit and character reports do not apply to licensees who self-appoint pursuant to §624.501, F.S.

Under current law, credit and character reports must be secured from an established and reputable independent reporting service. They must be secured and kept on file by the appointing insurer or employer for first-time applicants as agents, service representatives, customer representatives, or managing general agents. If a credit and character report is requested by the DFS, it must be submitted on a form furnished by the DFS.

Exchange of Business

pp. 24, 39–41, p.43; §§624.501, 626.752, 626.793, 626.837

Amends the “exchange of business” and the “excess or rejected business” statutes to reduce the number of policies a brokering agent may write for an insurer without an appointment from 24 to four. The bill also changes the requirement for a brokering agent to maintain a “bound journal” of brokered transactions to a “permanent record” of such transactions, to allow for electronic recordkeeping.

Under current “exchange of business” or “excess or rejected business” laws, brokering agents are permitted to write up to 24 policies for an insurer each year without being appointed by the insurer. Once an agent has written more than 24 policies, the insurer must report them to the DFS under the exchange of business appointment type. This appointment type costs $30 per year. Under §626.451(3), F.S., an appointment of an agent by an insurer is a certification to the DFS that the insurer is willing to be bound by the acts of the agent, within the scope of the licensee’s employment or appointment.

Life Agent as Beneficiary; Prohibitions

pp. 41–43, §626.798

Expands current law to prohibit a life agent from “modifying” as well as placing a life insurance contract to name the life agent or a family member of the life agent as the beneficiary, unless the life agent or family member of the life agent has an insurable interest in the life of such person.

Revises the circumstances under which a life agent may serve as a trustee or guardian, or accept authority to act under a power of attorney, for any person the life insurance agent conducts insurance business with, to include a life agent who is:
- Acting as a fiduciary;
- Licensed as a certified public accountant under §473.308, F.S.; and
- Registered as an investment advisor, or a representative thereof, under federal law or registered as a dealer, investment adviser, or associated person under state law.
Non-Resident Public and All-Lines Adjusters’ Qualifications

pp. 43–44, §§626.8732, 626.8734

Eliminates the affidavit required for non-resident public adjusters and non-resident all-lines adjusters to do business in Florida, which certifies that the licensee is familiar with and understands the Insurance Code, administrative rules of the state, and the provisions of the contracts negotiated or to be negotiated.

Current law requires this affidavit as a condition precedent to the issuance, continuation, reinstatement, or renewal of a non-resident public adjuster’s or non-resident all-lines adjuster’s appointment. The DFS has indicated that the affidavit is duplicative because insurance companies who appoint licensees are already required to certify to the DFS that the licensee is of good moral character and is fit to engage in the insurance business.

Bureau of Insurance Fraud and Bureau of Worker’s Compensation Fraud

pp. 9–11, §20.121

Creates two new bureaus within the DFS Division of Investigative and Forensic Services: The Bureau of Insurance Fraud and The Bureau Workers’ Compensation Fraud.

This should focus and strengthen insurance fraud investigation.

Effective date: July 1, 2018
Chapter No. 2018-102, LOF
Homeowners’ Insurance Policy Disclosure Regarding Flood Damage
CS/CS/HB 1011

pp. 1–2, §627.7011(4)

Amends §627.7011(4), F.S., and revises the notice/disclosure that insurers must include in homeowners’ policies regarding flood insurance. The following statement must be included in an initial homeowners’ policy and in every renewal after January 1, 2019:

“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

Following recent hurricanes, the Legislature became concerned that most policyholders do not understand that flood insurance is a separate line of insurance from homeowners’ property insurance and is not included in such a policy. The Legislature wanted to clarify that the windstorm portion of a homeowners’ property insurance policy, which many think of as “hurricane insurance,” does not cover the flood damage from rising or accumulating surface water. Thus, the new required policy disclosure is intended to inform homeowners that if they do not separately purchase flood insurance (through the National Flood Insurance Program, or from an authorized Florida flood insurer), then their flood damages will not be covered.

Effective date: January 1, 2019
Chapter No. 2018-63, LOF
Workers’ Compensation for First Responders
CS/CS/SB 376

pp. 1–2

Amends §112.1815 (5) (a), F. S., to revise the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers’ compensation (WC) for “first responders”.

Current law defines “First responders” to include volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, and paramedics.

Current law also provides only medical benefits for a mental or nervous injury without an accompanying physical injury and requires a first responder to incur a compensable physical injury in order to receive indemnity benefits for a mental or nervous injury.

Provides that PTSD suffered by a first responder is a compensable disease within the meaning of the WC law if:

• The PTSD resulted from the first responder acting within the course of his or her employment as provided in §440.091, F. S.; and
• The first responder is examined by a licensed psychiatrist who is an authorized treating physician and, using nationally recognized standards, is subsequently diagnosed with PTSD due to one of the following events:
  o Seeing for oneself a deceased minor;
  o Directly witnessing the death of a minor;
  o Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
  o Manually transporting an injured minor who subsequently dies before or upon arrival at a hospital emergency department;
  o Seeing for oneself a decedent whose death involves grievous bodily harm of a nature that shocks the conscience;
  o Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. §530C, manslaughter, self-defense, misadventure, and negligence;
  o Directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
  o Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
  o Manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

The first four of these categories deal with events where minors are involved. The remaining five categories deal with events not necessarily involving minors.

p. 3

Amends §112.1815 (5) (b), F.S., to provide that the finding of PTSD must be by “clear and convincing” medical evidence.

Earlier drafts of the bill had the weaker standard of “preponderance of the evidence.”
p. 3

**Amends** §112.1815 (5) (c), F.S., to provide that benefits for a first responder under this subsection:
- Do not require a physical injury to the first responder; and,
- Are not subject to:
  - Apportionment due to a preexisting post-traumatic stress disorder;
  - Any limitation on temporary benefits under §440.093, F.S.; or
  - The one-percent limitation on permanent psychiatric impairment benefits under §440.15 (3), F.S.

Currently, §440.093 (1), F.S., requires physical injury to the employee as a condition of receiving indemnity benefits under W.C. Additionally, §440.093 (3), F.S., limits temporary benefits in these cases to no more than six months after maximum medical improvement.

p. 3

**Amends** §112.1815 (5) (d), F.S., to provide time limits for filing first notice of death or injury in cases of PTSD to be within 90 days of the qualifying event or manifestation of the PTSD, whichever is later. However, the claim is barred if the notice is not filed within 52 weeks after the qualifying event.

p. 4

**Amends** §112.1815 (5) (e), F.S., to define the following:
- “Directly witnessing” means to see or hear for oneself.
- “Manually transporting” means to perform physical labor to move the body of a wounded person for his or her medical treatment.
- “Minor” means any person who has not attained the age of 18 years.

p. 4

**Amends** §112.1815 (5) (f), F.S., to require the Department of Financial Services (DFS) to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience.

p. 4

**Amends** §112.1815 (6) (f), F.S., to provide that the employing agency of a first responder, including volunteer first responders, must provide educational training related to mental health awareness, prevention, mitigation, and treatment.

p. 4

**Provides**, in Section 2, that the Legislature determines and declares that this act fulfills an important state interest.

*This language is used to avoid constitutional challenges by local government, which may view this change as an “unfunded mandate.”* Article VII, §18 (a) of the Florida Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and is passed by a 2/3rds vote of both the House & Senate. The bill passed the Senate on a vote of 33–0 and passed the House 114–0, far exceeding the 2/3rds requirement.

**Effective date:** October 1, 2018

Chapter No. 2018-124, LOF
An Act Relating to Insurance
CS/CS/HB 465

Foreign Insurer Stock Valuation
pp. 2–3; §625.151, §625.325

Provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from certain limitations on valuation and investment requirements for solvency evaluation purposes in certain circumstances.

Exemption to Adjuster Examination Requirement
p. 4; §626.221

Provides an exemption to the all-lines adjuster licensing exam to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.

Surplus Lines Insurer Eligibility
p. 5; §626.918

Repeals a requirement that conflicts with federal law; however, it does not affect the current eligibility determination process implemented in the state.

Personal Financial and Health Information Privacy
p. 5; §626.9651

Incorporates a recent amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to certain notices required by rules adopted by the Department of Financial Services (DFS) and the Financial Services Commission (FSC).

*This provision was drafted and supported by FAIA as part of the association’s Legislative Plan of Work.*

Execution of Insurance Policies
p. 6; §627.416

Provides that an insurer may elect to issue a policy that is not executed by one of several specified insurer representatives and that the policy is not invalid despite not being executed.

Notice of Policy Change
p. 6; §627.43141

Requires that a property and casualty insurer summarize policy changes on the required Notice of Change in Policy Terms that is issued at policy renewal, rather than merely issuing a notice (i.e., requires content more informative than merely the phrase “Notice of Change in Policy Terms”).

*FAIA drafted and advocated for this statutory change after it became apparent that some companies, while complying with a strict reading of the law, were not providing consumers and agents a summary of the actual changes from one policy period to the next.*

Property Insurance Claim Mediation
p. 7–10; §627.7015

**Provides** that a third-party assignee may request mediation of property insurance claims; except, an insurer is not required to participate in mediations requested by the assignee.

**Proof of Mailing**

p. 10; §627.728

Permits motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices.

**Filing Exception for Specialty Insurers**

pp. 10–13; §628.4615

**Authorizes** specialty insurers to overcome a presumption of control regarding acquisition of stocks, interests, and assets of other companies in the same manner as insurers.

**Confidentiality of Documents Submitted to the Office of Insurance Regulation**

pp. 13–14; §628.8015

**Expands** the confidentiality of documents submitted to the Office of Insurance Regulation (OIR) under Own-Risk and Solvency Assessment requirements to make them inadmissible as evidence in any private civil action, regardless of from whom they were obtained, rather than only when they are obtained from the OIR.

**Reciprocal Insurer Reserve Requirements**

pp. 14–48; §629.401

**Revises** unearned premium reserve requirements.

**Delivery of Policies**

pp. 48–51; §634.121, §641.3107

**Authorizes** motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver agreements and HMO contracts, respectively, in the same manner as currently required for insurers, including the posting of boilerplate contents on a website and requiring delivery within 60 days, rather than 45 days and 10 days, respectively.

**Effective date:** March 30, 2018

**Chapter No. 2018-131, LOF**
Business Filings
CS/HB 661


Amends various statutory provisions to require the Division of Corporations within the Department of State (Department) to send notice of the filing of any business record on behalf of a company or entity to the electronic mail address on file for the company or entity or its authorized representative, or send a copy of the document to the address of such company or entity or its representative. If the record changes the electronic mail address for the company, the Department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the Department must send such notice to the new mailing address and to the most recent prior mailing address.

Provides that a person on whose behalf a filed record was delivered to the Department for filing may correct the record if the record contains false, misleading, or fraudulent information. A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee if the statement is delivered to the Department within 15 days after the notification of the filing is sent by the Department.

Current law provides that the Department collects, maintains, and makes available to the public all information related to business entities operating in Florida. This information related to business entities includes: filings of corporations, limited liability companies, limited partnerships, and general partnerships; declarations of trust; certain specified cooperative associations; notary commissions; cable franchises; trademarks and service marks; Uniform Commercial Code financing statements; federal liens and judgment liens; and fictitious name registrations. Because the Department is a ministerial filing agency, the Department must file the record received unless the Department determines that the record does not comply with the filing requirements. The Department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid; however, filed information is available to the public. Additionally, any website user can file an annual report or amendment online and there does not appear to be a verification system in place for business entities to review these filings before the records are filed. FAIA is aware of several of its members that have been the victims of fraudulent filings in the past. The new requirements in this bill should correct that problem.

Effective date: July 1, 2018
Chapter No. 2018-58, LOF