# FAIA’s 2019 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 Assignment Agreements
CS/CS/HB 7065

pp. 1–12, §627.7152, F.S.

Creates a new section of the Florida Statutes titled, “Assignment Agreements.”

Defines the terms: “assignee,” “assignment agreement,” “assignor,” “disputed amount,” “judgment obtained,” “pre-suit settlement demand,” and “pre-suit settlement offer.”

Defines what must be provided in an assignment agreement (AOB) for it to be valid:
• Executed in writing by the assignee and assignor.
• Give the insured 14 days to rescind the assignment without penalty, and 30 days to rescind the assignment if the assignee has not begun substantial work during that 30 days.
• The assignee must provide a copy of the AOB to the insurer within three (3) days.
• Contain a written, itemized cost estimate of services to be performed.
• Relate only to work to be performed by the assignee
• Contain an 18-point uppercase bold notice to the consumer informing them that they are assigning the benefits of their policy to a third party.
• Require the assignee to hold harmless the assignor if the policy doesn’t allow for assignment rights.

Defines what a valid assignment agreement may NOT contain:
• A rescission penalty.
• Check or mortgage processing fee.
• A penalty or fee for cancellation.
• An administrative fee.

Limits AOBs to $3,000 or one (1) percent of Coverage A (whichever is greater) during emergency situations.

Transfers certain pre-lawsuit duties under the insurance contract to the assignee (requires notice of filing suit and estimate of work to be performed, cooperation with claims investigation, sit for examinations under oath by insurer, participate in appraisal process).

Eliminates “one way” attorney fees for assignees, and sets the formula that will determine which party, if any, receives an award of attorney fees should litigation related to an AOB result in a judgment. “Disputed amount” is defined as difference between insurer’s pre-suit offer and assignee’s pre-suit demand. If the difference between the judgment obtained and the settlement offer is less than 25 percent of the disputed amount, then the insurer is entitled to attorney fees. If the difference between the judgment obtained and the settlement offer is at least 25 percent but less than 50 percent of the disputed amount, neither party is entitled to fees. If the difference
between the judgment obtained and the settlement offer is at least 50 percent of the disputed amount, then the assignee is entitled to attorney fees.

While all of the consumer protection provisions are good public policy and will certainly help policyholders from being taken advantage of, the attorney fee reform is what is most likely to change the behavior of unscrupulous repair vendors and attorneys. For the past seven years, the industry has fought hard to stop AOB abuse. During that time, many different proposals have been debated and the industry has always supported a ban on third-party vendors being able to use the one-way attorney fee statute. Despite not being able to pass a ban on one-way attorney fees to third parties, most companies believe this new attorney fee framework will significantly curb AOB lawsuit abuse. The impact on rates remains unknown. It will take several years of claims data to find out whether the reforms have worked and consumers will see any rate relief.

Requires each insurer to report specified data on claims paid in the prior year under an AOB by January 30, 2022, and each year thereafter.

pp. 12–14, §627.7153, F.S.

Creates a new section of the Florida Statutes.

Allows insurers to make available policies prohibiting AOB (as long as assignable policies are still offered), if the same coverage is offered for the unassignable/restricted policy but at a lower price. Notice of this restricted policy must be on face of policy and included in notice of premium upon renewal, and insured must sign this rejection: YOU ARE ELECTING TO PURCHASE AN INSURANCE POLICY THAT RESTRICTS THE ASSIGNMENT OF BENEFITS UNDER THE POLICY IN WHOLE OR IN PART. PLEASE READ CAREFULLY.

pp. 14–15, §627.422

Amends §627.422, Florida Statutes.

Allows the insurer to deal with the assignee as the owner of the policy until the insurer has received a written termination notice of the assignment.

pp. 15–16

Prohibits Citizens from implementing rate changes for DP-3 and HO-3 policies in 2019 unless the rate filing reflects projected rate savings from AOB reform.

p. 16

Provides a severability clause which states that if any provision of the bill is held invalid, the remaining provisions of the bill can still be given effect.
p. 16

Applies to all assignment agreements entered into on or after July 1, 2019, except HB 337 provides that subsection (10) of §627.7152, F.S. regarding the calculation of attorney fees is effective upon becoming law (which was May 23, 2019).

Effective date: July 1, 2019
Chapter No. 2019-57, LOF
Department of Financial Services
CS/CS/CS/HB 1393

Temporary Licensing

pp. 23–26, §626.175, F.S.

Consolidates several little-used or previously-repealed license types by removing temporary licensing and related criteria for industrial fire or burglary agents and replacing that license with a temporary license and related criteria for personal lines agents.

The new criteria created for the grant of a temporary license to a personal lines agent are the same as those for life agents under §626.175, F.S. Pursuant to this criteria, the Department of Financial Services (DFS) may issue a temporary license to the executor or administrator of a deceased personal lines agent’s estate, a surviving next of kin if no administrator has been appointed, or an individual otherwise qualified to be licensed as an agent who has completed the educational or training requirements prescribed in §626.732, F.S., and who is appointed to represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies. Such licensee may not directly or indirectly solicit, negotiate, or effect contracts of insurance.

Removes the examination requirement for life agents who otherwise meet the requirements for temporary licensing and requires that they be appointed to the post.

Persons operating under a temporary life agent license may only represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies. Such licensee may not directly or indirectly solicit, negotiate, or effect contracts of insurance.

Repeals the temporary license for a customer representative which can no longer be issued because of prior changes to the insurance code.

Currently, there are no active licenses of this type.

Industrial Fire and Burglary Limited License

pp. 29–30, §626.321, F.S.

Allows all licensees holding a limited license as an industrial fire or burglary agent to renew their license and appointment, but no new or additional licenses may be issued, and a licensee whose limited license has been terminated, suspended, or revoked may not have such license reinstated.
There is only one insurance company with agents utilizing this license, and the qualifications for the license are identical to those for a personal lines agent.

**Examination Requirements**

pp. 29–30, §626.321, F.S.

Removes the examination requirement for industrial fire insurance and burglary insurance agents as well as crop hail and multiple-peril crop insurance agents.

The industrial fire license will be eliminated for new applicants and the crop hail exam is unnecessary as the agents operate in an extremely limited field of insurance and under the direction of a licensed general lines agent.

**Continuing Education**

pp. 28–29, §626.2815, F.S.

Removes continuing education requirements for limited customer representatives, motor vehicle physical damage, and mechanical breakdown insurance agents, as well as industrial fire and burglary agents as these are now obsolete license types.

**Grounds for Discretionary Refusal of Insurance Agency Licenses**


Provides that the denial, suspension, revocation, or other adverse administrative action taken against a license to practice or conduct any regulated profession, business, or vocation by this or any other state, nation, court, or agency of the United States shall also be grounds for discretionary authority for the DFS to deny, suspend, revoke, or refuse to continue the license of any insurance agency.

Current law provides that the DFS may refuse the grant of, suspend, or revoke an insurance agency license for several discretionary reasons. These reasons include any cause for which issuance could have been denied if it had existed and been known to the DFS; use of the license to circumvent any requirements or prohibitions of the Florida Insurance Code; being found guilty or pleading nolo contendere to a felony relating to the business of insurance; knowingly employing an individual in a managerial or public capacity who is under an order of revocation or suspension issued by the DFS; committing certain acts with a frequency so as to make the operation of the agency hazardous to the insurance-buying public; and failure to take corrective action or report a violation to the DFS within 30 days after an individual licensee’s violation is or should have been known.
Disqualification of Applicants and Licensees

pp. 26–27, §626.207, F.S.

**Allows** a formerly disqualified applicant who is subject to the seven-year (7) disqualifying period in §626.207(3)(b), F.S. (this applies to felonies not subject to the permanent bar nor the 15-year disqualifying period), and who has served at least half of the disqualifying period, to reapply for a probationary license if such applicant has not been found or plead guilty or nolo contendere to a crime during that time.

Miscellaneous Insurance Agent and Agency Services Issues

pp. 34–36, §626.8732, F.S.

**Shortens** the time frame for licensure of a non-resident public adjuster from one year to six months of licensure or employment in another state, to conform it with the time frame for resident public adjusters.

p. 46, §626.521, F.S.

**Removes** the statutory requirement that credit and character reports on insurance agents must be kept on file by appointing insurers or employers.

p. 27, §626.221, F.S.

**Clarifies** that an exemption from examination for an all-lines adjuster who is applying for reinstatement of licensure is limited to application for reinstatement as an all-lines adjuster and not an exemption from examination requirements for other license types.

pp. 30–31, §626.471, F.S.

**Allows** notice of termination of an insurance agent’s appointment to be given via email and provides that such notice is deemed given when sent.

Effective date: July 1, 2019, except as otherwise expressly provided.
Chapter No. 2019-140, LOF
Autonomous Vehicles  
CS/HB 311

pp. 9–10; §316.85, F.S.

Removes the requirement that a person possess a valid driver license to operate a fully autonomous vehicle and provides that the automated driving system, rather than a person, is deemed the operator of an autonomous vehicle when operating with the automated driving system engaged. Autonomous or fully autonomous vehicles equipped with a teleoperation system may operate without a human operator in the vehicle when the teleoperation system is engaged and certain requirements are met.

Current law authorizes the operation of autonomous vehicles equipped with autonomous technology on Florida roads by any person holding a valid driver license and requires such vehicles to meet federal standards and regulations that apply to autonomous vehicles.

pp. 11–13, 17–18; §319.145 and §627.0653, F.S.

Requires autonomous vehicles to comply with applicable federal laws and regulations, and allows an autonomous vehicle logged on to an on-demand autonomous vehicle network to operate pursuant to state laws with the same insurance requirements applicable to a transportation network company.

Insurance requirements for such vehicles include: primary liability coverage of at least $1 million for death, bodily injury, and property damage; personal injury protection benefits that meet the minimum coverage amounts required under §627.730–§627.7405, F.S.; and uninsured and underinsured vehicle coverage as required by §627.727, F.S.

pp. 18-19; §627.0653, F.S.

Establishes insurance requirements for fully autonomous vehicles for personal use of a minimum of $1 million for bodily injury, death, or destruction of property in any one crash.

p. 11; §316.85, F.S.

Prohibits local governments from imposing a tax, fee, or other requirement on automated driving systems or autonomous vehicles, and clarifies that this prohibition does not exempt autonomous vehicles from a tax or fee applied to non-autonomous vehicles. However, the bill does authorize airports and seaports to charge autonomous vehicles providing passenger transportation services reasonable pickup fees.

The intent of the Legislature is to provide for uniformity of laws governing autonomous vehicles throughout the state.
Authorizes the Florida Turnpike Enterprise to fund, construct, and operate facilities for the advancement of autonomous and connected innovative transportation technologies and enter into agreements with private entities to provide services and concessions to benefit the traveling public.

Effective date: July 1, 2019
Chapter No. 2019-101, LOF

Lessor Liability Under Special Mobile Equipment Leases

CS/CS/CS/SB 862

pp. 1–2, §768.092, F.S.

Defines special mobile equipment as vehicles not designed or used primarily to transport persons or property and that are only incidentally operated or moved over a highway.

Examples include ditch-digging apparatus, well-boring apparatus, and road construction and maintenance machinery, draglines, self-propelled cranes, and earthmoving equipment.

pp. 1–2, §768.092, F.S.

Provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee’s agent or employee if the lease agreement requires documented proof of insurance coverage with limits of at least $250,000/$500,000 for bodily injury liability and $100,000 for property damage liability, or at least $750,000 for combined property damage liability and bodily injury liability. Also provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

The bill responds to the Florida Supreme Court’s decision in Newton v. Caterpillar Financial Services Corporation, which found that a loader is a dangerous instrumentality and thus subject to Florida’s dangerous instrumentality doctrine. The dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another. Courts apply the doctrine not only to motor vehicles primarily designed to be used on the roads and highways of the state,
but also to certain dangerous vehicles that are frequently operated near the public, such as farm tractors and tow motors. Under this new law, leased special mobile equipment will be treated the same as rental cars.

Effective date: July 1, 2019
Chapter No. 2019-104, LOF
An Act Relating to Insurance  
**CS/CS/CS/HB 301**

**Florida Hurricane Catastrophe Fund**

pp. 3–4, §215.555, F.S.

**Increases** reimbursement for loss adjustment expenses from five (5) percent to 10 percent of reimbursed losses for contracts effective on or after June 1, 2019.

*This change became necessary after loss adjustment expense (LAE) was significantly higher than expected for many carriers after Hurricanes Irma and Michael. Reinsurers that once charged a small premium, or in some cases nothing for LAE, are now charging more for the coverage.*

**Motor Vehicle Salvage**

pp. 4–7, §319.30, F.S.

**Authorizes** titles to be surrendered electronically and provides that electronic signatures complying with certain conditions may be used for required signatures.

**Applications for Workers’ Compensation Insurance**

pp. 7–8, §440.381, F.S.

**Corrects** a conflict in current law relating to penalties for falsifying workers’ compensation applications. Also provides that workers’ compensation insurance applicants and their agents are not required to have their sworn statements notarized.

*Repealing the requirement that workers’ compensation applications be notarized was an FAIA Legislative Council priority. FAIA staff drafted and championed the statutory language that was included in HB 301.*

**Criminal Punishment Code**

pp. 8–18, §921.0022, F.S.

**Corrects** a conflict in current law relating to penalties for falsifying workers’ compensation applications.

**Right of Contribution for Defense Costs**

pp. 19–20, §624.1055, F.S.

**Provides** for recovery of defense costs from other insurers when more than one liability insurer has a duty to defend an insured and provides for application of the law.
p. 32, §624.1055, F.S.

Affirms that this section, as created by this act, applies to any claim, suit, or other action initiated on or after January 1, 2020.

Civil Remedies

pp. 20–22, §624.155, F.S.

Prohibits an insured from filing a civil remedy notice within 60 days after an appraisal is invoked. It also removes a provision authorizing the Department of Financial Services (DFS) to return the notice for lack of specificity.

Foreign and Alien Insurer Eligibility

pp. 22–23, §624.404, F.S.

Adds an additional condition by which the Office of Insurance Regulation (OIR) may waive a requirement related to authorizing insurers from other states and countries to do business in Florida.

Risk-based Capital

pp. 23–24, §624.4085, F.S.

Changes the method of determining risk-based capital for multi-state health maintenance organizations and multi-state prepaid limited health service organizations.

Surplus Lines Export Eligibility

pp. 24–25, §626.914, F.S.

Lowers the home value threshold to $700,000 for exporting property insurance for a residential dwelling to a surplus lines insurer after one authorized insurer coverage rejection.

For years, only one declination has been required for personal lines risks over $1 million. An argument was made to reduce that threshold to $700K to match Citizens’ eligibility. While some admitted carriers are concerned with the change, agents know that the entire diligent effort process is a worthless exercise that doesn’t provide the admitted market the protections they think it does.
Agent Fees

p. 25, §626.916, F.S.

Removes the $35 cap on the per-policy fee surplus lines agents may charge for each exported policy; allows retail agents to receive a reasonable per-policy fee on exported policies; and provides fee notice requirements.

Uncapping the surplus lines policy fee has been a priority of the Florida Surplus Lines Association for years, but has always run into political opposition. For some reason, this year the proposal saw very little opposition. As a result, the House bill sponsor decided to add additional language that provides the retail agent the ability to charge a reasonable fee as well.

Unfair Insurance Trade Practices

pp. 25–26, §626.9541, F.S.

Permits an insurer to offer and give insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.

This expands on the changes made in the 2018 Legislative Session to the “unlawful inducement” or “advertising and promotional gifts” portion of the Unfair Trade Practices Act. Last year, the limit was raised from $25 of advertising gifts to $100 of almost anything except cash. This year, the limit was completely removed for goods or services related to loss control or loss mitigation.

Multiple Policy Discounts

pp. 26–27, §627.0655, F.S.

Expands the allowance of multiple policy discounts to insurers under a joint marketing agreement, or any insurer if the same insurance agent is servicing the policies.

For years, FAIA members have complained about the multi-policy discount that State Farm used to market personal auto. While State Farm wasn’t the only company eligible to offer the discount, they were the only one in the marketplace to do so. Many independent agents believed that was unfair competition. With this year’s change, any company can offer the discount under the circumstances above.

Proof of Mailing

pp. 27–28, §627.426, F.S.

Revises proof of mailing provisions for certain required motor vehicle insurer notices.
Secondary Notice Prior to Life Insurance Policy Lapse

pp. 28–30, §627.4555, F.S.

Requires a life insurer to provide a notice of lapse to the agent servicing a life insurance policy in addition to other required notices, subject to certain exceptions.

This was a priority of the Florida Association of Insurance and Financial Advisors. They reached out to FAIA early in the process to get our feedback. We agreed to be neutral on the language as long as it was drafted in a way that didn’t put any additional responsibility on the agent or create E&O exposure.

Property Insurance Claim Mediation

p. 30; §627.7015, F.S.

Allows the insurer to issue the required notice at the time the insurer issues a policy (including renewals) or, as currently provided, at the time a claim is filed.

Prepayment of Motor Vehicle Insurance Premium

pp. 30–32, §627.7295

Reduces the minimum amount of premium that must be collected for motor vehicle insurance at the initial issuance of a policy.

Effective date: July 1, 2019, unless otherwise stated.
Chapter No. 2019-108, LOF
Courts

CS/CS/HB 337

pp. 27–28, §34.01, F.S.

Increases the jurisdictional threshold between county court and circuit courts from $15,000 to $30,000, beginning January 1, 2020; and to $50,000, beginning January 1, 2023.

Most in the insurance industry were opposed to expanding the jurisdiction of the county courts since it is a common belief that many county court judges are elected with the substantial assistance of the trial bar, and that many of these judges do not have much experience in deciding complex insurance cases.

pp. 3–4, §28.35, F.S.

Provides that a county court case with an amount in controversy exceeding $15,000 is appealed to the district court of appeal until January 1, 2023, at which time the provision is repealed.

pp. 32–33, §44.108, F.S.

Makes low-cost mediation available in county court only in cases where the amount in controversy does not exceed $15,000.

Multiple pages and statutes throughout the bill.

Adjusts filing fees paid to the clerk to maintain fiscal neutrality with respect to the threshold changes.

p. 28, §34.01, F.S.

Requires the Office of the State Courts Administrator to file a report with the governor, the president of the Senate, and the speaker of the House of Representatives by February 1, 2021, making recommendations on court jurisdiction. The county and circuit court clerks must provide data to develop the report. The report must consider:

- The claim value of filings in county and circuit courts;
- Case events;
- Timeliness in processing cases;
- The fiscal impact resulting from the threshold adjustment;
- The filing fee structure, to ensure the courts are adequately funded; and
- The appellate jurisdiction of the district and circuit courts, including the use of appellate panels by circuit courts.
Multiple pages and statutes throughout the bill.

**Increases** the revenues from court fees, fines, and service charges that will go to the clerks by:
- Clarifying that clerks may carry forward unspent budgeted funds from one fiscal year to the next; and
- Specifically providing the amount of excess fees, fines, and service charges the clerks will be authorized to retain and use for their budgets from 2020 through 2023.

**Clarifies** that the 2008 increases in court fees, fines, service charges, and costs which have been directed to General Revenue since their enactment will continue to be paid to General Revenue.

**p. 55**

Makes the attorney fee language in CS/CS/HB 7065 (Assignment of Benefits “AOB” Bill) effective upon that bill being signed by the governor (May 23, 2019), instead of its stated effective date of July 1, 2019.

*This language was added to the bill by Senator Brandes in an effort to curtail the contemplated plans of trial lawyers who intended to circumvent the attorney fee reforms in the AOB bill by filing as many assignment of benefits cases as possible prior to the effective date (July 1, 2019) of the AOB bill. It remains to be seen how the courts will interpret this language and if it will have any impact on the number of cases filed and the outcome of attorney fee awards in AOB litigation filed between May 23, 2019, and July 1, 2019.*

**Effective date: July 1, 2019, except as otherwise provided.**
**Chapter No. 2019-58, LOF**

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**Electronic Legal Documents**

**CS/CS/HB 409**

**pp. 6–48, Chapter 117, F.S.**

**Allows** an online notary public to perform any function as an online notarization authorized under Chapter 117, F.S., excluding solemnizing matrimony rites. If a notarization requires a principal to appear before the online notary public, the principal is allowed to appear by means of audio-video communication technology.

*Current law prohibits a notary from notarizing a signature if the party executing the document is not in the notary’s physical presence at the time of signature.*
Authorizes remote notarization and the use of an electronic will by providing:

- Definitions for online notarization and the required technology.
- Procedures, standards, and requirements for online notarization.
- Registration requirements for online notaries.
- A certificate to be used by online notaries.
- Standards for supervising the witnessing of electronic records.

pp. 66–77, Chapter 732, F.S.

Provides specifically, as to an electronic will, that an electronic will is executed, modified, and revoked in a similar manner as a paper will under current law. Also, the bill provides a means for self-proving, storing, and filing an electronic will. The bill creates a "qualified custodian" who is responsible for possessing and controlling the electronic will.

Effective date: January 1, 2020
Chapter no. 2019-71, LOF