

FSLA

Florida End of Session Update

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Summary of Passed Legislation

Permissible Insurance Acts: [HB 483](#)

A bill to increase the value of gifts and merchandise given to insureds, prospective, insureds, or any person for the person of advertising was increased from \$25 to \$100. The bill also expanded the exception for advertising gifts to gift cards, event tickets, anti-fraud or loss mitigation services, and charitable contributions.

Insurance: [HB 465](#)

The 2018 insurance omnibus bill passed on the last day of session. Included within this package was:

- Foreign Insurer Stock Valuation – 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 – provides an exemption to the all-lines adjuster licensing exam to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.
- Personal Financial and Health Information Privacy – 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 and the Financial Services Commission.
- Execution of Insurance Policies – 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 – 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”).

- Property Insurance Claim Mediation – 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 – 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 – 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 – 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 OIR.
- Reciprocal Insurer Reserve Requirements – revises unearned premium reserve requirements.
- Delivery of Policies – 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.

The bill previously included a change to the surplus lines tax calculation, as well as a lowering of the diligent effort standard from \$1m to \$700m. In response to concerns over rate increases and opposition from a key Senator, both were removed.

Department of Financial Services: [HB 1073](#)

The first departmental bill pushed by new CFO Jimmy Patronis, the DFS once again succeeded in getting legislation to adjust roles and responsibilities within that agency, including:

- Deeming electronic images of all records as original documents as used by the Division of Treasury;
- Requiring that financial literacy be addressed in a foster youth's transition plan;

- Changing the managing general agent license to an appointment and allowing a general lines agent to obtain a managing general agent appointment;
- Authorizing the Chief Financial Officer to develop the Florida Open Financial Statement System;
- Clarifying and expanding the circumstances under which a life agent may serve as a trustee or guardian or to act under a power of attorney for the insured;
- Deeming fingerprint submissions to be valid for 48 months for currently licensed individuals seeking additional licensure under ch. 626, F.S., and for bail bond agents under ch. 648, F.S.;
- Reducing the number of insurance policies that can be written each year, with an insurer by an unappointed agent from 24 to 4;
- Eliminating an affidavit requirement for nonresident public and all-lines insurance adjusters;
- Adding that DFS may utilize the Anti-Fraud Reward Program to pay rewards for tips relating to arson;
- Clarifying the terms of members of the Florida Fire and Safety Board;
- Allowing franchisees to operate under the fire equipment dealer license of their parent company;
- Modifying the requirements for the firefighter Special Certificate of Compliance; and
- Allowing fire service providers to employ veterans who have received equivalent training.

Additionally, the bill made several updates to the Division of Risk Management, particularly as it regards training, communications, and reporting functions.

Florida Insurance Code Exemption for Nonprofit Religious Organizations: [SB 660](#)

Health care sharing ministries succeeded in authorizing their practices under Florida law, substantially adopting the American Legislative Exchange Council's model act.

Hurricane Flood Insurance: [HB 1011](#)

In response to some constituent communications post-Irma, two legislators worked to pass an enhanced disclosure embedded within homeowners' insurance policies, reminding insureds that flood insurance is a separate policy. The language was amended during session to ensure that the enhanced notification was not unduly burdensome, could be included in the policy, and took effect later than traditional bills to ensure that forms could be updated timely.

Workers' Compensation Benefits for First Responders: [SB 376](#)

An initiative of CFO Jimmy Patronis to assist first responders dealing with posttraumatic stress disorder achieved final passage this session. The bill allows first responders that meet certain conditions to access indemnity and medical benefits for PTSD without an accompanying physical injury. Current law provides only medical benefits for a mental or nervous injury without an accompanying physical injury and requires the first responder to incur a compensable physical injury to receive indemnity benefits for a mental or nervous injury.

Handy Workers' Comp amendment: [SB 7087](#)

An amendment to ensure that painters, furniture assemblers, house cleaners, and the like who use an internet platform to connect them with clients are not treated as employees of the platform passed on Sunday, the last day of session, as an amendment to the tax package.

Unfair Insurance Trade Practices: [HB 533](#)

Receiving final approval on the last day of the session for policy bills was a priority of AAA, which adjusted a provision that prevented the conditioning of insurance on the purchase of towing, emergency, and other services. Now, insurers can condition the sale of insurance on the purchase of motor vehicle services if those services are purchased from an organization affiliated with the insurer.

Summary of Failed Legislation

Public Records/Trade Secrets: [HB 459/SB 956/HB 461/SB 958](#)

An initiative by the House Speaker to remove current trade secret exemptions and replace them with a uniform exemption process failed. While the bill moved swiftly through the House, it never received a Senate hearing.

Assignment of Property Insurance Benefits: SB 62; HB 7015; SB 1168

Efforts to reform property insurance assignments of benefits failed for yet another year, due to disagreement between the chambers on approach. The House bill was supported by the industry and regulators, while the Senate version included ancillary provisions, such as prohibiting one-way fees from being included in rate filings. In addition, the Senate bill did not address the root of the AOB problem regarding attorney's fees.

Florida Hurricane Catastrophe Fund: HB 97/SB 1454

An initiative of the Florida Association for Insurance Reform, comprised of a few domestic insurers, lawyers, and public adjusters, to reform the CAT Fund failed when it did not clear necessary committees. The bill created an addition coverage option for insurers of 60%, and lowered the cash build-up factor, authorizing a stairstep build-up approach if the fund is less than \$16b.

Firefighters: SB 900/HB 695

A bill to provide free cancer treatment and cash payouts to firefighters being diagnosed with certain types of cancer failed to clear necessary House committees, and as a result, did not pass.

Prohibited Activities under the Workers' Compensation Law: SB 1568

Although it received one hearing, a bill to preclude citizenship, residency, or employment status from being used as a basis for denying workers' compensation benefits did not move in the House, and as a result, failed to pass. The bill was in response to investigative reporting by Naples Daily News on immigration and workers' compensation coverage.

Motor Vehicle Insurance: HB 19/SB 150

Two divergent packages that would repeal personal injury protection and institute a mandatory bodily injury system failed to reconcile key differences regarding minimum limits and the nature of medical

payments coverage. While HB 19 passed the House the first week of session, SB 150 did not clear its second committee, bottling up the reform.

Texting while Driving: [HB 33/SB 90](#)

Currently, texting while driving is a secondary offense. This bill sought to make it a primary offense, however, a key Senate chairman's concerns about pretextual stops indefinitely postponed this bill's path through committees, preventing its passage.

Vacation Rentals: [SB 1400/HB 773](#)

AirBnB sought to preempt the regulation of vacation rentals to the state. However, this bill failed to clear necessary committees.

Workers' Compensation: [HB 7009](#)

While the Florida workers' compensation marketplace was rocked by the striking of attorney fee caps, as well as a series of other decisions handed down by the Florida Supreme Court, the Legislature has yet to successfully address those rulings. This year, there was no Senate companion bill filed, which prevented the success of this package.

Motor Vehicle Coverage Exclusions: [HB 329/SB 518](#)

This session, legislation was introduced to address the requirement that policies providing automobile insurance must cover relatives residing in the same household as the policyholder. Often, this means that if one member of the household has a DUI, or otherwise poor driving record, optimal coverage must be denied to the remainder of the household. This bill sought to allow insurers to exclude the poor driver in order to provide the other members of the household more options, however, significant opposition from the trial bar prevented this bill's passage.

County Court Jurisdictional Change: [HB 7061/SB 1396](#)

An effort to increase the jurisdictional limits of county courts from \$15,000 and below to \$50,000 and below was batted back on Friday, after successful compromise amendments were adopted in the Senate.

These compromises included a jurisdictional limit of \$25,000 effective January 1, 2020, a study by the State Court Administrator, and the retaining of appellate jurisdiction at the District Court of Appeal for anything \$15,000 or above. The House did not accept the amendments and sent the bill back to the Senate, who refused to take it out of messages late in the night on Friday, March 9th.

Autonomous Vehicles: [HB 353/SB 712](#)

Florida law currently authorizes the operation of autonomous vehicles equipped with the defined autonomous technology on public roads. This bill sought to update the law in a number of ways, including:

- Replacing the term “Autonomous Vehicle” with “Automated Driving System”, defined as the hardware and software that performs the autonomous driving task.
- Removing the requirement for a person to possess a valid driver license to operate a fully autonomous vehicle. Additionally, the bill provides that an “automated driving system”, rather than a person, is deemed the operator of an autonomous vehicle operating in autonomous mode.
- Specifying that certain provisions of law do not apply to fully autonomous vehicles operating in autonomous mode if, in the event of a crash involving the vehicle, the vehicle owner, a person on behalf of the vehicle owner, or the autonomous vehicle, promptly contacts law enforcement to report the crash.

Disputes over a number of issues, including the requisite amount of insurance coverage to be imposed, ultimately sank this bill before it could clear all committees.

Motor Vehicle Insurance Coverage for Windshield Glass: [HB 811/SB 396](#)

Assignment of benefits is not just a phenomenon in property insurance, it actually was created in the context of personal injury protection coverage and has also be exported to auto glass. In 2017, over 20,000 AOB lawsuits were attributable to auto glass vendors. These bills sought to require insurer authorization before a windshield was replaced, and the Senate version was amended to prohibit inducements for glass repair or replacement. Ultimately, both failed.

Mediation: [SB 1034/](#)[HB 1043](#)

Met with significant opposition from the insurance industry, this bill sought to authorize circuit courts to compel the attendance of nonparties at mediation, eliminate information in a mediation report to the court, and required a carrier’s representative to have authority to settle up to the insurer’s reserves on the claim. Fortunately, this bill did not progress through the committee process.

Chief Financial Officer: [SB 792/](#)[HB 1421](#)

The effort by Sen. Tom Lee—a likely primary challenger to current CFO Jimmy Patronis in the upcoming 2018 election—to expand the duties of the CFO to include participation in economic, demographic, and revenue estimating conferences, as well as authority to review and certify, prior to execution, state contracts in excess of \$10m, met resistance in the House, leading it to die in committee.

Financial Responsibility for For-Hire Passenger Transportation: [SB 382](#)

An amendatory effort to allow for nonadmitted insurers to suffice for financial responsibility requirements under s. 324.031 was not ultimately successful, as the bill to which it was offered was pared back to only relate to transportation facility designations.