



LAAIA 2019 Legislative Wrap-Up
by
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The Florida Legislature, in order to adjourn a relatively calm 60-day session, had to extend its 2019 activities by one day in order to pass its \$91.1 billion budget for the New Year. The total is about a \$2.3 billion increase over last year's budget.

Despite numerous issues with the potential to distract and create havoc, House Speaker Jose Oliva and Senate President Bill Galvano are credited with keeping a steady and participatory hand on the proceedings of both Chambers leading to the final Sine Die.

The over \$2 billion new dollars for budgeting also played a major role in keeping the session on an even keel. Usually the reverse is true when the budget is in the red.

Statistically, the Legislature passed 197 Bills of the 3,491 total Bills filed by both House and Senate members. House members filed 2,506 individual Bills, 1,630 of which were for funding projects, and Senators filed 985 Bills. For curiosity sake, there were 2,997 amendments filed, 3,765 votes taken and 40 Floor sessions.

The Legislature covered a significant amount of ground and a surprising assortment of major issues, but the media seemed most fixed on the expansion of the medical marijuana issue and the attempt to provide for the recreational use of marijuana. Medical MJ did get expanded to allow for the prescription smoking of the medication while the recreational use of the product never came close to passage.

A bill also passed to allow the growing and sale of marijuana hemp without any of the hallucinogenic qualities. Additionally, a Hemp Council was established to govern and regulate the hemp industry.

Curiously, while the Legislature moved to expand the smoking of medical marijuana, the Senate passed a bill that would have restricted tobacco smoking by raising the minimum age to buy tobacco and vaping products from 18 to 21. The House did not take up the issue.

Another media-driven issue, texting while driving, garnered a great deal of attention as the Legislature proceeded to strengthen Florida's texting while driving laws by elevating texting while driving from a secondary offense to a primary offense. Due to concerns about racial profiling, law enforcement officers will record race and ethnicity of the drivers and report it to the state. The Governor has signed the bill into law.

Education, which is the second largest expenditure in the state also was the focus of legislative and media attention, but almost lost in the legislative scramble was the fact that road funding was increased by hundreds of millions of dollars to create three new toll roads in the more rural parts of the state.

The new toll ways will be part of the Florida Turnpike System and extend the Florida Turnpike to the existing Suncoast Parkway, and then expand the Parkway from the Tampa region to the Georgia line. A new roadway will be constructed between Polk and Collier counties.

That's all for now as we await the beginning of Committee meetings in September in anticipation of the next Legislative session that will begin on January 14, 2020.

Now onto our insurance issues!

2019 Session Summary

[CS/CS/CS/HB 301 — Insurance](#)

by Commerce Committee; Civil Justice Subcommittee; Insurance and Banking Subcommittee; and Rep. Santiago (CS/CS/CS/CS/SB 714 by Appropriations Committee; Banking and Insurance Committee; Judiciary Committee; Banking and Insurance Committee; and Senators Brandes and Bracy)

The bill:

Florida Hurricane Catastrophe Fund

- Effective upon becoming law, the bill increases reimbursement for LAE from 5 percent to 10 percent of reimbursed losses beginning with contracts effective on or after June 1, 2019.

Motor Vehicles - Certificate of Salvage Title and Certificate of Destruction

- The bill authorizes the certificate of title of a salvage vehicle to be forwarded to DHSMV via the United States Postal Service, other commercial delivery service (e.g., FedEx or UPS), or by electronic means when the DHSMV makes electronic delivery means available. It allows the DHSMV to begin issuing salvage certificates of title and certificates of destruction when the insurer has been unable to obtain the title from the insured beginning January 1, 2020, rather than after

July 1, 2023, as currently provided. The bill also provides that an electronic signature consistent with ch. 668, F.S., relating to electronic commerce, satisfies any signature required related to the issuance of a salvage certificate of title or certificate of destruction when this new process becomes effective; however, if the electronic signature relates to an odometer disclosure, the signature must be executed using a system providing at least Level 2 or Level 3 for the Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, for certificates of destruction and salvage certificates of title, respectively.

Workers' Compensation – Applications for Insurance

- The bill corrects the conflict in criminal punishment by specifying that fraud in application is a third degree felony, rather than a second degree felony. It also provides that workers' compensation insurance applicants and their agents are not required to have their sworn statements notarized. This eliminates the requirement provided by rule.

Liability Insurance – Right of Contribution for Defense Costs

- The bill provides that, if more than one liability insurer, including surplus lines insurers, have a duty to defend an insured, the insurer(s) that does defend the insured is entitled to contribution from the insurer(s) that does not defend the insured for defense costs; to have the court allocate such costs; and for the court to order the insurer(s) that did not defend the insured to pay their share of defense costs from the date they received the notice of claim. This applies to civil claims initiated on or after January 1, 2020. It does not apply to motor vehicle insurance or medical professional liability insurance.

Civil Remedies Against Insurers

- The bill prohibits an insured from filing a civil remedy notice within 60 days after an appraisal is invoked. This may reduce the number of bad faith claims and the insurer's exposure to punitive damages by allowing the insurer time to cure a violation before a civil remedy notice is filed. This will affect only statutory bad faith claims, i.e., first-party claims and those third-party claims where the third party elects to pursue statutory remedies.
- The bill also removes the provision authorizing DFS to return a civil remedy notice to the insured for lack of specificity. As a result, if an insurer objects to a civil remedy notice because it lacks specificity, the insurer may challenge the sufficiency of the notice in court instead of through DFS.

Risk-based Capital of Health Maintenance Organizations and Prepaid Limited Health Service Organizations

- The bill changes the method of determining risk-based capital for multi-state HMOs and multi-state PLHSOs from the method for life and health insurers to the method for property and casualty insurers. This makes the statute consistent with the NAIC accreditation standard on this point.

Eligibility of Foreign and Alien Insurers

- The bill adds an additional condition by which OIR may waive the 3-year satisfactory operation requirement related to authorization of foreign or alien insurers. OIR may waive the 3-year requirement if it finds that the insurer possesses sufficient capital and surplus to support the plan of operations it has filed with OIR.

Surplus Lines Export Eligibility

- The bill allows homeowner's property insurance for a residential dwelling with a replacement cost of \$700,000 or more to be exported to a surplus lines insurer following a single coverage rejection. This reduces, from three to one, the number of coverage rejections required prior to exportation for homes valued between \$700,000 and \$1 million. This aligns the exporting provision with the coverage limitation from Citizens in the majority of Florida counties and may mitigate the volume of coverage Citizens writes in Miami-Dade and Monroe.

Agent Fees Related to Surplus Lines Insurance Policies

- The bill removes the \$35 cap on the per-policy fee surplus lines agents may charge for each exported policy. The fee must be reasonable and itemized separately before purchase and enumerated on the policy. It also allows retail agents to receive a reasonable per-policy fee, which must be itemized to the customer prior to the insurance purchase.

Unfair Insurance Trade Practices

- The bill adds another exception, authorizing an insurer to offer and give insureds goods or services for the purposes of loss control or loss mitigation related to covered risks.

Discounts for Purchase of Multiple Insurance Policies

- The bill expands this allowance of multiple policy discounts to also allow premium discounts for:
 - An insured's purchase of policies from insurers operating under a joint marketing arrangement;
 - Where the same agent is servicing policies for an insured where one was obtained through the Citizens clearinghouse process; or
 - The same agent is servicing policies the insured purchased from multiple insurers.

Proof of Mailing - Notice of Defense and Notice of Refusal to Defend by Insurers

- The bill permits use of the Intelligent Mail barcode, or a similar method approved by the United States Postal Service, to establish proof that the liability insurer mailed the written notices, if either notice is required.

Secondary Notice Prior to Life Insurance Policy Lapse

- The bill requires a life insurer to notify the agent of the lapsing policy or provide a copy of the notice of lapse to the agent servicing the policy, in addition to the insured and a second person designated by the insured, 21 days prior to the effective date of the lapse (i.e., cancellation of coverage). The insurer is not required to issue secondary notice to the agent servicing the life insurance policy, if:
 - The insurer provides:
 - An online method for the agent to identify lapsing policies; or
 - A process for the agent to determine that the pre-lapse notice was sent to the insured;
 - The insurer has no record of the agent servicing the policy; or
 - The agent is employed by the insurer or its affiliate.
- The agent's receipt of the notice required by the bill does not make the agent responsible for the lapse.

Property Insurance Claim Mediation

- The bill allows the insurer to issue the required notice of the right to mediation at the time the insurer issues the policy (including renewals) or, as currently provided, at the time a claim is filed.

Motor Vehicles – Prepayment of Premium on Initial Policy Purchase

- The bill reduces the required prepayment of policy premium when the policy is initially issued from two months' premium to one month's premium. The requirement that this prepayment come from the insured's own funds is conformed to this reduction of prepayment requirement.

Signed by the Governor June 18, 2019

Effective Date July 1, 2019, except as otherwise provided.

Vote: Senate 37-1; House 114-0

[CS/HB 617 — Homeowners' Insurance Policy Disclosures](#)

by Insurance and Banking Subcommittee and Reps. Newton, Joseph, and others (CS/SB 380 by Banking and Insurance Committee and Senator Brandes)

The bill requires an insurer issuing a homeowners insurance policy that does not provide for the coverage of flood must provide a prescribed statement informing the policyholder that their policy does not insure against losses caused by flood. Such statement must be provided to the policyholder at issuance and renewal.

Signed by the Governor June 7, 2019

Effective Date July 1, 2019.

Vote: Senate 33-0; House 113-0

CS/CS/HB 673 — Insurer Guaranty Associations

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Fischer (CS/CS/SB 626 by Appropriations Committee; Banking and Insurance Committee; and Senators Brandes and Broxson)

The bill revises provisions relating to the Florida Life and Health Insurance Guaranty Association (association) and the Florida Health Maintenance Organization Consumer Assistance Plan (HMOCAP). In response to recent long-term care insurer insolvencies, the bill incorporates some recent changes made to a National Association of Insurance Commissioners' (NAIC) model act and additional recommendations of stakeholders. The bill:

- Expands the assessment base of the association to fund long-term care insurer impairments and insolvencies by including health maintenance organizations (HMOs), life insurers, and annuity insurers. Any assessments related to long-term care insurers would be allocated 50 percent to health member insurers and HMOs, and the remaining 50 percent to life and annuity member insurers. Total assessments on member insurers and HMOs are capped at 0.5 percent of premiums per year. Currently, only health insurers are assessed.
- Exempts any nonprofit HMO from the long-term care insurance assessment if it operates only in Florida and has statutory capital and surplus of less than \$200 million as of December 31 of the year preceding the year in which the assessment is made.
- Increases the number of directors that may be on the association's board of directors and requires that one director be a director of the HMOCAP.

Signed by the Governor June 7, 2019

Effective upon becoming law.

Vote: Senate 40-0; House 114-0

CS/CS/CS/SB 862 — Lessor Liability Under Special Mobile Equipment Leases

by Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Stargel

The bill 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. The bill provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

Special mobile equipment are vehicles not designed or used primarily to transport persons or property and that are only incidentally operated or moved over a highway. Examples include ditchdigging apparatus, well-boring

apparatus, and road construction and maintenance machinery, draglines, self-propelled cranes and earthmoving equipment.

The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation*, 253 So.3d 1054 (Fla. 2018), 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.

Signed by the Governor June 18, 2019

Effective Date July 1, 2019.

Vote: Senate 29-8; House 83-32

CS/CS/CS/HB 1393 — Department of Financial Services

by Commerce Committee; Government Operations and Technology Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Clemons and others (CS/CS/SB 1704 by Innovation, Industry, and Technology Committee; Banking and Insurance Committee; and Senator Wright)

The bill modifies several areas regulated by the Department of Financial Services (DFS).

Department of Financial Services Organization

- The bill removes the requirement that paid warrants be turned over to the Division of Accounting and Auditing. The bill requires the Division of Treasury to maintain the warrants for 10 years after the date on which a warrant was presented for payment.

Funeral, Cemetery & Consumer Services

- Allow a funeral director in charge to supervise up to two facilities, provided they are not more than 75 miles apart as measured in a straight line;
- Provide criteria for internship programs for a joint funeral director and embalmer license applicant;
- Require notice be sent to purchasers of preneed services when the services have not been rendered after a specified time frame and providing for distribution of funds held in trust;
- Allow out of state trust companies to receive funds from a preneed contract without obtaining a preneed license; and
- Authorize out of state trust companies to service a funeral or cemetery's care and maintenance trust fund.

Fire Prevention and Control

- The bill amends statutes relating to the State Fire Marshal to provide that identification of state owned and leased buildings will no longer be determined by the U.S. National Grid Coordinate System and to direct the Division of State Fire Marshal to develop employer best practices for firefighter cancer prevention. It also clarifies requirements for installation of fire extinguishers and preengineered systems. The bill provides for a uniform fire alarm permit for installing, replacing, or repairing a fire alarm system.

Division of Insurance Agent and Agency Services

- The bill 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 criteria created for the grant of a temporary license to a personal lines agent are the same as those for life agents under s. 626.175, F.S.
- Removing the examination requirement for life agents who otherwise meet the requirements for temporary licensing and requiring 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.

Examination Requirements

- The bill 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 would 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. The bill provides that individuals currently holding industrial fire or burglary licenses may continue to hold the license, but no new licenses of this type will be issued.

Continuing Education

- The bill removes limited customer representatives, motor vehicle physical damage and mechanical breakdown insurance agents as well as industrial fire and burglary agents from those who are required to complete continuing education as these are obsolete license types.

Industrial Fire and Burglary License

- The bill 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.

Grounds for Discretionary Refusal of Insurance Agency Licenses

- The bill 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 is grounds for discretionary authority for DFS to deny, suspend, revoke, or refuse to continue the license of any insurance agency. The bill also allows a formerly disqualified applicant who has served at least half of the disqualifying period to reapply for a probationary license if they have not been found or plead guilty or nolo contendere to a crime during that time.

The bill makes several minor changes to Agent and Agency services, including:

- Removes redundant language regarding insurance agencies in administrative enforcement actions.
- Clarifies that certain references to the “act” mean the Florida Insurance Code.
- 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.
- Removes the credit and character reporting for insurance agents.
- 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.
- 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.
- Requires bail bonds agents seeking reinstatement of licensure to file an application with DFS rather than an informal request.
- Conforms cross references in accordance with other changes made by the bill.

Unclaimed Property

- The bill allows DFS to develop a verification and disbursement process to disburse accounts valued at \$2,000 or less automatically, after verifying the identity, availability and address of the apparent owner. The bill also allows DFS to develop a verification and disbursement process to automatically disburse accounts owned by a state agency, subdivision or successor thereof; a county government or subdivision thereof; a public school district or subdivision thereof; a municipality of subdivision thereof; or a special taxing district or authority, in the state of Florida regardless of the amount of the disbursement.
- The bill allows DFS to develop a process by which a claimant's representative or buyer of unclaimed property could electronically submit to DFS an electronic image of a completed claim and claims-related documents including a limited power of attorney or purchase agreement that has been manually signed by the claimant or seller. Each claim filed by a registered claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property affirming that all documents are true copies of the original and that the original documents are in the possession of the claimant's representative or buyer. All original documents must be kept in the original form, under the secure control of the claimant's representative or the buyer and must be available for inspection by DFS. DFS is directed to create rules to implement this section.

DFS Property Insurance Mediation Program

- The bill requires that settlements of property insurance claims conducted through mediation to be reported to all parties by the mediator at the conclusion of the mediation.

Blockchain Technology

- The bill establishes the Florida Blockchain Task Force comprised of 13 government and private sector representatives to study the ways in which the state, county, and municipal governments can benefit from transitioning to a blockchain-based system for recordkeeping, security, and service delivery. The task force is established within DFS. It will explore and develop a master plan for fostering the expansion of the blockchain industry in this state, recommend policies and state investments to help make Florida a leader in blockchain technology, and issue a report to the Legislature. The task force will develop and submit recommendations to the Governor and Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.
- DFS must provide support staff for the task force and any relevant studies, data, and materials in its possession to assist the task force in the performance of its duties. The task force terminates upon submission of the report and presentation of findings.

Signed by the Governor June 25, 2019

Effective date July 1, 2019.

Vote: Senate 36-3; House 112-2

CS/CS/HB 7065 — Insurance Assignment Agreements

by Judiciary Committee; Insurance and Banking Subcommittee; Civil Justice Subcommittee; and Rep. Rommel and others (CS/CS/CS/SB 122 by Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senators Broxson, Hooper, Simmons, and Stewart)

The bill addresses issues arising from the assignment of post-loss benefits from property insurance policies.

Assignability of Insurance Policies

CS/CS/HB 7065 creates s. 627.7152, F.S., establishing requirements applicable to the assignment of post-loss residential and commercial property insurance benefits. The provisions regulating such AOBs are divided between the execution, validity, and effect of an AOB and its enforcement.

The bill defines an “assignment agreement” to mean any written instrument which assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage. To be valid and enforceable, an assignment agreement must:

- Be in writing and signed by the assignor and the assignee;
- Allow the assignor to rescind the agreement without penalty within:
 - 14 business days of execution of the agreement;
 - At least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed; or
 - At least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property;
- Require the assignee to provide the insurer with a copy of the assignment agreement within three business days after the agreement is executed or work has begun, whichever is earlier;
- Include a written, itemized, per-unit cost estimate of services;
- Relate only to the work to be performed by the assignee;
- Contain notice to the assignor of the right to rescind the agreement and that, by executing the assignment agreement, the assignor is giving up certain rights that could result in litigation by the assignee against the insurer; and
- Contain a provision requiring the assignee to indemnify and hold harmless the assignor from most liabilities, damages, losses, and costs should the insurance policy subject to the assignment agreement prohibit such assignment, in whole or in part.

The bill prohibits an assignment agreement from containing any fee related to administering or rescinding the agreement and from altering any term or defense relating to a managed repair arrangement contained in the policy. The bill also prohibits an assignee from:

- Collecting or attempting to collect money from an insured;
- Maintaining any action at law against an insured;
- Claiming a lien on the real property of an insured; or
- Reporting an insured to a credit agency for payments arising from the assignment agreement.

However, a named insured is still responsible for paying:

- Any deductible amount due under the policy;
- Any betterment ordered and performed that the insured approved; and
- Any contracted work performed before the assignment agreement’s rescission.

Further, if an assignor, acting under urgent or emergency circumstances, executes an assignment agreement under a residential property insurance policy to protect, repair, restore, or replace property, or to mitigate against further property damage, the assignee may not receive an assignment of more than the greater of:

- \$3,000; or
- 1 percent of the Coverage A limit under the policy.

Finally, the bill does not transfer any authority to adjust, negotiate, or settle a claim to, or create such authority in, any person not authorized to do so under part VI of ch. 626, F.S.

Assignee Duties

The bill transfers duties under the policy to the assignee which, if not carried out, shift the burden to the assignee to prove why such a failure did not limit the insurer's ability to perform under the contract. The duties are to:

- Maintain all service records and provide such records to the insurer for copying upon request;
- Cooperate in the investigation of a claim; and
- Deliver the assignment agreement to the insurer within three business days after execution or work has begun, whichever is earlier.

The bill requires an assignee to give an insurer and the assignor prior written notice of at least ten business days before filing suit on a claim. The notice must be sent by certified mail, return receipt requested, or by electronic delivery, and may not be served before the insurer has made a determination of coverage according to the timeframes and requirements of current law. The notice must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed written invoice or estimate of the work performed or to be performed. The insurer must respond to the notice in writing within ten days of receipt of the notice by making a settlement offer or requiring appraisal or other alternative dispute resolution.

The bill also requires the assignee to:

- Provide the assignor with revised estimates of the scope of work to be performed as supplemental or additional repairs are required;
- Perform work in accordance with accepted industry standards; and
- If required by the insurer, and as a condition precedent to filing suit:
 - Submit to examinations under oath and recorded statements conducted by the insurer or its representative that are reasonably necessary and related to the services provided, the costs of such services, and the assignment agreement; or
 - Participate in appraisal or other alternative dispute resolution under the policy terms.

Enforcement; Attorney Fees

If the parties fail to settle and subsequent litigation results in a judgment, the bill provides the exclusive means by which either party may recover attorney fees. The bill allows an award of attorney fees based on the difference between the amount recovered and the amount offered during settlement negotiations. To accomplish this, the bill defines the difference between the insurer's pre-suit offer and the assignee's pre-suit demand as "the disputed amount." Fees are then awarded as follows:

- 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, the assignee is entitled to attorney fees.

The insurer waives its right to attorney fees if it fails to inspect the property, or provide written or verbal authorization for repairs, within seven calendar days of first notice of the loss. However, the insurer does not waive its right to attorney fees if such failure was the result of:

- An event for which the Governor had declared a state of emergency;
- Factors beyond the control of the insurer which reasonably prevented an inspection or authorization; or

- The insured's failure or inability to allow an inspection of the property after a request by the insurer.

Forum Shopping

The bill attempts to disincentivize forum shopping by authorizing a court to award attorney fees to a respondent in a voluntarily dismissed action when an assignee brings an identical claim against the same respondent in a subsequent action in another court. The court must stay the subsequent proceeding until the assignee pays the attorney fees from the dismissed action.

Applicability

The bill provides that the foregoing provisions do not apply to:

- An assignment, transfer, or conveyance granted to a subsequent property purchaser with an insurable post-loss interest in the property;
- A power of attorney under ch. 709, F.S., that grants to a management company, family member, guardian, or similarly situated person the authority to act on behalf of an insured relating to a property insurance claim; or
- Liability coverage under a property insurance policy.

Non-Assignable Policies

The bill creates s. 627.7153, F.S., to allow insurance companies to make available a residential or commercial property insurance policy restricting, in whole or in part, the assignment of post-loss benefits if:

- The insurer makes available the same coverage to an insured or a potential insured at the same time under a policy that does not restrict the right to assignment;
- The restricted policy is available at a lower cost than the unrestricted policy; and
- The policy prohibiting assignment in whole is available at a lower cost than the policy prohibiting assignment in part.

The restricted insurance policy must include on its face the following notice in 18-point uppercase, boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7153 OF THE FLORIDA STATUTES.

Insurers making available policies restricting assignment must notify a policyholder at least annually of his or her coverage options. The notice must be part of, and attached to, the notice of premium. An insured who purchases a restricted assignment policy must reject a fully assignable policy in writing on a form approved by OIR. The heading of the form must state, in 18-point uppercase, boldfaced type:

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.

Other Provisions

The bill requires insurers to report by January 30, 2022, and each year thereafter, detailed claims data to OIR. The bill directs the FSC to adopt by rule a list of data points for insurers to report, which must include, at a minimum, specific data about claims adjustment, settlement timeframes, and trends, grouped by whether a claim was litigated or not litigated and by loss adjustment expenses.

The bill prohibits Citizens from implementing rate changes in 2019 for DP-3 and HO-3 policies unless the rate filing reflects projected rate savings from AOB reform. Any rate filings must include an exhibit demonstrating the impact of AOB reform on indicated rates for said policies, and Citizens must give its policyholders details on the projected rate savings resulting from AOB reform.

Finally, the bill:

- Applies to assignment agreements entered into on or after July 1, 2019;
- Declares that the provisions of the act are severable, so that the invalidity of any provision of the act does not affect the remaining provisions; and
- Provides an effective date of July 1, 2019.

If CS/CS/HB 337 becomes law, then subsection 627.7152(10), F.S., created by this bill, is effective upon becoming law. Subsection 627.7152(10), F.S., provides that attorney fees related to an assignment agreement for post-loss claims arising under a property insurance policy may only be recovered by an assignee pursuant to the formula created in subsection (10) or s. 57.105, F.S.

Signed by the Governor May 23, 2019

Effective Date July 1, 2019.

Vote: Senate 25-14; House 96-20