Committee on Banking and Insurance

CS/HB 1007 — Insurer Insolvency

by Insurance and Banking Subcommittee; Reps Bernard; Julien; Cruz and others (CS/CS/SB 1568 by Budget Committee; Banking and Insurance Committee and Senator Montford)

The bill contains numerous provisions.

Relating to the State Board of Administration

- The bill allows an insurer to request that the State Board of Administration renegotiate the terms of a surplus note issued before January 1, 2011 under the Insurance Capital Build-Up Incentive Program.
- The bill increases the surplus requirements from $100 million to $250 million for foreign insurers in order to receive credit for reinsurance ceded to these foreign insurers.
- The bill expands the list of nationally recognized statistical rating organizations that may be utilized to provide a secure financial rating.

Relating to Title Insurers

- The bill requires that after an order of rehabilitation has been entered, the receiver shall review the condition of the title insurer and file a plan of rehabilitation for approval with the court.
- The bill requires that policies on real property in this state issued by the title insurer in rehabilitation shall remain in force unless the receiver determines the assessment capacity provided by this section is insufficient to pay claims in the ordinary course of business.
- The bill allows policies on real property located outside the this state may be canceled as of a date provided by the receiver and approved by the court, if the state in which the property is located does not have statutory provisions to pay future losses on those policies.
- The bill requires the establishment of a claims filing deadline for policies on real property located outside this state that have been canceled.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims when policies have been canceled, with any unused funds being returned to the general assets of the estate.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- The bill requires that funds allocated to pay claims on policies located outside of this state shall be based on the pro rata share of premiums written in each state over each of the 5 calendar years preceding the date of an order of rehabilitation.
- The bill requires each title insurer shall be liable for an assessment to pay all unpaid title insurance claims and expenses of administering and settling those claims on real property in this state for any title insurer that is ordered into rehabilitation.
- The bill states that the Office of Insurance Regulation (office) shall order an assessment if requested by the receiver on an annual basis in an amount that the receiver deems sufficient for the payment of known claims, loss adjustment expenses, and the cost of

administration of the rehabilitation expenses. The receiver shall consider the remaining assets of the insurer in receivership when making its request to the office. Annual assessments may be made until no more policies of the title insurer in rehabilitation are in force or the potential future liability has been satisfied. The office may exempt or limit the assessment of a title insurer if such assessment would result in a reduction to surplus as to policyholders below the minimum required to maintain the insurer's certificate of authority in any state.

- The bill requires that the assessments shall be based on the total of the direct title insurance premiums written in this state as reported to the office for the most recent calendar year. Each title insurer doing business in this state shall be assessed on a pro rata share basis of the total direct title insurance premiums written in this state.
- The bill requires that assessments be paid to the receiver within 90 days after notice of the assessment or pursuant to a quarterly installment plan approved by the receiver. Any insurer that elects to pay an assessment on an installment plan shall also pay a financing charge to be determined by the receiver.
- The bill requires that the office shall order an emergency assessment if requested by the receiver. The total of any emergency assessment, when added to any annual assessment in a single calendar year, may not exceed 3 percent of an insurer’s surplus to policyholders as of the end of the previous calendar year or more than 10 percent of its surplus to policyholders over any consecutive 5-year period. The 10 percent limitation shall be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years.
- The bill allows the receiver to use the proceeds of an assessment to acquire reinsurance or otherwise provide for the assumption of policy obligations by another insurer.
- The bill requires that the receiver shall make available information regarding unpaid claims on a quarterly basis.
- The bill requires a title insurer in rehabilitation may not be released from rehabilitation until all of the assessed insurers have recovered the amount assessed either through surcharges collected or payments from the insurer in rehabilitation.
- The bill prohibits a title insurer in rehabilitation, for which an assessment has been ordered, from issuing any new policies until the insurer has been released from rehabilitation and has received approval from the office to resume issuing policies.
- The bill prohibits officers, directors, and shareholders of a title insurer ordered into rehabilitation or liquidation from serving as an officer, director, or shareholder of another insurer authorized in this state unless the officer, director, or shareholder demonstrates to the office for a 2-year period immediately preceding the receivership that: his or her personal actions or omissions were not a significant contributing cause to the receivership; he or she did not willfully violate any order of the office; he or she did not receive directly or indirectly any distribution of funds from the insurer in excess of amounts authorized in writing by the office; the financial statements filed with the office were true and correct statements of the title insurer's financial contrition; he or she did not engage in any business practices which were hazardous to the policyholders, creditors, or the public; and he or she at all times acted in the best interests of the title insurer.

- The bill requires upon the making of any assessment, the office shall order a surcharge on each title insurance policy issued thereafter, which insures an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed $25 per transaction for each impaired title insurer. If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.
- The bill states the party responsible for payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance issued at the simultaneous issue rate. For all other purposes, the surcharge will be considered a governmental assessment to be separately stated on any settlement statement. The surcharge is not subject to premium tax or reserve requirements.
- The bill requires that a title insurer doing business in this state which wrote no premiums in the prior calendar year shall collect the same per transaction surcharge. Such surcharge collected shall be paid to the receiver within 60 days after receipt from the title agent or agency.
- The bill states that each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance policy written and remit those surcharges along with the policies and premiums within 60 days to the title insurer on whom the policy was written.
- The bill prohibits a title insurer from retaining more in surcharges for an ordered assessment than the amount of assessment that title insurer paid.
- The bill requires each title insurer collecting surcharges to promptly notify the office when it has collected surcharges equal to the amount of the assessments paid. The office shall notify all companies, including those collecting surcharges to cease collecting surcharges when notified that all assessments have been recovered.
- The bill requires that when filing each quarterly financial statement, a title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period. Any surcharges collected in excess of the amount assessed shall be paid to the Insurance Regulatory Trust Fund.

Relating to the Department of Financial Services

- The bill allows the Department of Financial Services to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- The bill provides for the State Risk Management Trust Fund to cover employees, officers, and agents at the department for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by the department while acting as a receiver.
- The bill requires the Insurance Regulation Trust Fund to cover all unreimbursed costs when opening ancillary delinquency proceedings for the purposes of obtaining records.
- The bill further clarifies the department's power to obtain records from third-party administrators.

Relating to Florida's Insurance Guaranty Associations

- The bill makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.
- The bill amends qualifications of FIGA and FWCIGA board members representing, or employed by, an insurer in receivership.
- The bill clarifies FIGA's obligation to pay valid claims after an independent review of policies and claims has been presented to it.

This bill substantially amends the following sections of the Florida Statutes: 215.5595, 624.610, 631.152, 631.2715, 631.391, 631.400, 631.401, 631.54, 631.56, 631.717, 631.904, and 631.912.

The bill creates section 631.2715, Florida Statutes.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 34-0; House 115-0

Committee on Banking and Insurance

CS/HB 1087 — Insurance

by Economic Affairs Committee; and Rep. Holder (CS/CS/SB 1252 by Rules Committee; Budget Committee; and Senator Smith)

In Florida, the Office of Insurance Regulation (OIR) regulates insurers and other risk-bearing entities. The Department of Financial Services (DFS) has regulatory authority over many insurance-related activities, including, but not limited to, insurance agents and agencies, investigation of insurance fraud, and the administration of the Workers' Compensation Law. The bill provides the following changes to these insurance-related activities:

Notification of the Cancellation, Nonrenewal, or Renewal of a Policy

The bill revises the policyholder notification requirements for an insurer in transactions involving the nonrenewal, renewal, or cancellation of workers compensation, employer liability, commercial liability, motor vehicle, or other property and casualty insurance coverage. The bill changes the designated person or persons an insurer is required to notify from the "named insured" to the "first-named insured" in transactions involving the nonrenewal, renewal, or cancellation of such.

Workers' Compensation Insurance

The bill allows for the use of a prepaid card for the provision of workers' compensation benefits to an injured employee if certain conditions are met. Currently, such benefits are payable by check or by direct deposit into the employee's account. The bill permits flexibility for insurers regarding the frequency of premium audits by providing that such audits are not required for coverage, except as provided by the insurance policy, by an order of the OIR, or at least once each policy period at the request of the insured. The bill provides that assessments for the Special Disability Trust Fund are determined on a calendar year basis rather than a fiscal year basis.

Certificate of Authority Requirements for Insurers

The bill allows insurers domiciled outside of the U.S., that cover only persons who are nonresidents of the U.S., to be exempt from the certificate of authority provisions if certain conditions are met. Currently, life insurers are provided an exemption if certain conditions are met.

Licensure of Agents and Agencies

The bill revises the requirements for disqualification of applicants convicted of certain crimes from agent and adjuster licensure by the DFS. The bill bars persons who commit specified felonies from applying for licensure and revises license waiting periods for other persons.

Motor Vehicle Insurance

The bill creates a civil penalty for motor vehicle insurance fraud authorizing civil fines of up to $5,000 for the first offense, $10,000 for the second offense, and $15,000 for third and subsequent offenses.

Service Warranty Associations

The bill exempts a service warranty company from licensure requirements if the service warranties are only offered, marketed, or sold to nonresidents of Florida, and meets other requirements.

Surplus Lines Insurance

The bill allows surplus lines insurance agents to place commercial insurance directly in the surplus lines market without requiring the agent to make a diligent effort to procure such coverage from an authorized insurer. The bill also requires the insured to sign a disclosure regarding surplus lines coverage.

Except if otherwise expressly provided in this act and except for section 20, which takes effect upon this act becoming a law, this act takes effect July 1, 2011.
Vote: Senate 38-0; House 111-4

Committee on Banking and Insurance

CS/HB 1121 — Financial Institutions

by Insurance and Banking Subcommittee and Rep. Ingram (CS/SB 1332 by Banking and Insurance Committee and Senator Richter)

The bill permits the Office of Financial Regulation to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares. The bill permits the Office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the Office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the Office.

The bill creates s. 658.4185(3), F.S., to expand the prior approval privilege of charters from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the $7,500 filing fee.

The bill creates s. 655.03855, F.S., which allows the Office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board. Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to operate the financial institution in a safe and sound manner. Nevertheless, prior to the placement of a provisional director, the Office must allow the financial institution 30 days to acquire the minimum amount of directors.

The bill eliminates the required examination of state financial institutions by the Office every 36 months. The bill requires that the Office perform examinations every 18 months, but the Office may accept examinations conducted by the appropriate federal regulatory agency. The bill moves the definition of "related interest" to s. 655.005,.F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability.

The bill makes the following conforming changes to comply with the Wall Street Reform Act:

The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution. The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a cease and desist order. To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk. To conform, the bill adds the evaluation exposure to risk in derivative transactions.

The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

The bill makes other technical conforming changes.

These provisions become law on July 1, 2011.
Vote: Senate 39-0; House 114-0

Committee on Banking and Insurance

CS/HB 1125 — Health and Human Services

by Health and Human Services Quality Subcommittee; and Rep. Corcoran (CS/SB 1922 by Banking and Insurance Committee; and Senator Garcia)

In 2008, the Florida Legislature created the Florida Health Choices Program (program). The program is designed to provide a centralized marketplace for the sale and purchase of health care products. These products would include, but are not limited to, health insurance plans, health maintenance organizations (HMOs) plans, prepaid services, service contracts, and flexible spending accounts. The bill makes the following changes to the program:

- Expands the products, vendors, employers, and individuals that may participate in the program;
- Streamlines and clarifies the process by which new products are approved and offered; and
- Requires the Office of Insurance Regulation (OIR) to approve risk-bearing products offered by the program.

The bill also contains the following provisions:

- Exempts specified Medicaid psychiatric facilities and Level III neonatal intensive care units from the certificate-of-need provisions if certain conditions are met;
- Revises the eligibility requirements for health flex plans by eliminating the requirement that an enrollee must be 64 years of age or younger; and
- Adds licensed orthotists and prosthetists to the current definition of "health care provider," under s. 766.202, F.S., for purposes of medical malpractice actions pursuant to ch. 766, F.S.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 35-4; House 117-0

Committee on Banking and Insurance

CS/HB 1193 — Health Insurance

by Health and Human Services Quality Subcommittee; and Rep. Hudson and others (CS/SB 1754 by Banking and Insurance Committee; and Senator Garcia)

The bill provides that a person may not be compelled to purchase health insurance, except as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- An activity between private persons.

The bill also provides that this would not prohibit the collection of debts lawfully incurred for health insurance.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 30-7; House 81-34

Committee on Banking and Insurance

CS/CS/CS/SB 1816 — Surplus Lines Insurance

by Budget Committee, Budget Subcommittee on Finance and Tax, Banking and Insurance Committee and Senators Fasano and Richter (CS/CS HB1227 by Finance and Tax Committee, Insurance and Banking Subcommittee and Rep. Hager)

Surplus lines insurance is an alternative type of insurance coverage by which consumers can buy property-liability insurance from unauthorized (non-admitted) insurers when they are unable to purchase needed coverage from admitted insurers. The premiums charged for surplus line coverages are subject to a 5 percent tax on premiums and a service fee of up to 0.3 percent. The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was included within the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRAA (ss. 15 USC-8201-8206) limits regulatory authority over nonadmitted (surplus lines insurance to the home state of the insured (policyholder). Under the NRRA, Florida will no longer have jurisdiction to collect taxes and fees on surplus lines policies that cover risks over Florida and other states unless Florida is the home state of the insured, potentially resulting in significant loss of tax revenue. However, the NRRA authorizes states to enter into agreements with one another for home states to collect taxes on multi-state risks and then allocate tax revenue to the state where the insured risks are located.

Senate Bill 1816 applies the surplus lines tax to the entire premium of a surplus lines policy covering risks over multiple states when Florida is the home state of the insured as defined in the NRAA. The bill also authorizes the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) to enter into cooperative reciprocal agreements with other states to collect and allocate nonadmitted surplus lines insurance taxes for multi-state risks pursuant to the NRRA. The bill authorizes the creation of a clearinghouse to receive the surplus lines premium tax collected by the home state of the insured and disburse the appropriate tax amount to the states where the risks are located. The clearinghouse is also authorized to collect a service fee of 0.3 percent of the gross premium. The tax rate collected on a multi-state surplus lines policy is limited to the tax rate where the insured risk is located. The Legislature is authorized to review any such agreement and may instruct the Chief Financial Officer to withdraw from an agreement if it determines that the agreement is not in the best interest of the state. The DFS must issue a report to the President of the Senate and Speaker of the House of Representatives about the terms and conditions of the agreement.

The bill also creates requirements governing the reporting and payment of surplus lines premium tax revenue and fees for policies covering multi-state risks. Surplus lines agents and insureds that do not use a surplus lines agent to procure coverage, have 45 days after the end of the calendar quarter to file and affidavit describing transactions handled during the last quarter and pay the required premium tax and fees.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

Committee on Banking and Insurance

HB 4081 — Repeal of Obsolete Insurance Provisions (Chapter 2011-11)

by Rep. Horner (SB 636 by Senator Simmons)

The bill (Chapter 2011-11, L.O.F.) repeals outdated or obsolete language relating to a refund to Citizens Property Insurance Corporation of funds not committed or reserved for insurers in the Insurance Capital Build-Up Incentive Program; requirements of pre-suit notice for suits brought against the Florida Automobile Joint Underwriting Association (FAJUA); form filings for compliance with the mandatory catastrophic ground cover collapse coverage; report on the development of a sinkhole database; feasibility study for Florida sinkhole coverage facility; and effective date of insurers' mandatory windstorm and contents coverage in property insurance policies.

The bill deletes s. 215.5595(11), F.S., which requires the State Board of Administration to refund to Citizens all uncommitted Insurance Capital Build-Up Incentive Program funds that were to have been transferred from Citizens to the Program in 2009 through SB 2860. The transfer of funds was never performed due to the Governor's veto of SB 2860; thus, the bill repeals this obsolete language from the statute.

The bill deletes s. 627.311(3)(k)2., F.S., which contains a 90 day pre-suit notice requirement for suits brought against FAJUA under s. 624.155, F.S. By its own terms, s. 627.311(3)(k)2., F.S., was to expire on October 1, 2007, unless reenacted by the Legislature prior to that date. Because the Legislature did not reinstate s. 627.311(3)(k)2., F.S., prior to October 1, 2007, that subparagraph expired and is obsolete. Therefore, the bill deletes obsolete language from the statute.

The bill deletes s. 627.706(3), F.S., which requires insurers to file a form implementing the mandated coverage of catastrophic ground cover collapse and the optional sinkhole coverage with the Office of Insurance Regulation (OIR) by June 1, 2007. Since the time for filing has passed, and all insurers have filed with OIR, the bill deletes the obsolete language from the statute.

The bill deletes s. 627.7065(5), F.S., which requires the Department of Environmental Protection, in consultation with the Department of Financial Services, to submit a report of sinkhole database recommendations and other similar matters by December 31, 2005, to the Governor, the Chief Financial Officer, and the legislative presiding officers. The report of sinkhole database recommendations was filed by the Department of Environmental Protection before the deadline of December 31, 2005.

The bill repeals s. 627.7077, F.S., which requires the Florida State University College of Business Department of Risk Management and Insurance (Department of Risk Management) was directed by the Legislature to perform a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility. The Department of Risk Management submitted the report, required by the statute, to the Legislature on April 1, 2005.

The bill deletes s. 627.712(7), F.S., which provides an effective date of June 1, 2007, or at the latest, October 1, 2007, of the statute requiring residential property insurers to offer windstorm coverage for property insurance policies. This date has passed and insurance companies are now required to offer windstorm coverage.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 38-0; House 116-0

Committee on Banking and Insurance

HB 4129 — Residential Property/Evaluation Grant Program (Chapter 2011-12, L.O.F.)

by Rep. Crisafulli (SB 638 by Senator Simmons)

The bill (Chapter 2011-12, L.O.F.) deletes s. 627.0629(8), F.S., relating to a grant program for the evaluation of residential property structural soundness. The program was established in 1997 for homeowners insured by the Florida Windstorm Underwriting Association (FWUA) to obtain evaluations of the wind resistance of their homes. The Department of Community Affairs was required by statute to establish by rule standards to govern evaluation, recommendations for retrofitting, the eligibility of those who would perform the evaluations, and the selection of the applicants to obtain the grants.

In 2002, the Florida Legislature combined the FWUA with the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and thereby created Citizens Property Insurance Corporation (Citizens). At that point, Citizens assumed the responsibility to administer the program. When the program was established, it was to be effected "to the extent that funds are provided for this purpose in the General Appropriations Act (GAA)." Representatives of the Division of Emergency Management within the Department of Community Affairs report that the agency has not promulgated rules to establish the grant program because funds have not been provided by the GAA. Representatives for Citizens state that no grants have been awarded since its inception in 2002 because funds have not been provided by the GAA. Because the program has never been activated, the bill deletes the language that created the program.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 37-0; House 112-6

Committee on Banking and Insurance

HB 4181 — Prohibited Activities of Citizens Property Insurance Corporation

by Rep. Davis (SB 634 by Senator Simmons)

The bill repeals s. 215.55951, F.S., which currently prohibits Citizens Property Insurance Corporation (Citizens) from justifying a rate or assessment increase based on amendments enacted in Chapter 2008-66, L.O.F., to the Insurance Capital Build-Up Incentive Program (the "Program"). Chapter 2008-66, L.O.F., funded the Program by requiring Citizens to transfer $250 million to the General Revenue Fund for transfer to the State Board of Administration to fund the Program. No loans were issued using Citizens monies because the transfer was vetoed by the Governor.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 38-0; House 116-0