Committee on Banking and Insurance

CS/CS/HB 3 — Government and Corporate Activism

by State Affairs Committee; Commerce Committee; and Reps. Rommel, Sirois, and others (CS/SB 302 by Banking and Insurance Committee and Senator Grall)

The bill (Chapter 2023-28, L.O.F). addresses the provision of products and services by financial institutions, the investment of certain state and local government funds, the issuance of environmental, social, and governance (ESG) bonds, and procurement of and contracting with vendors by certain state and local entities and educational institutions.

Prohibition against Engaging in Unsafe and Unsound Practices – Financial Institutions, Consumer Finance Lenders, and Money Services Businesses

The bill requires financial institutions such as banks and credit unions, consumer finance lenders, and money services businesses to make decisions about the provision or denial of services based on an analysis of risk factors unique to each customer, and prohibits them from engaging in any "unsafe and unsound practice." The bill specifies that it is an "unsafe or unsound practice" to deny or cancel services to a person, or discriminate against a person in making available such services or in the terms or conditions of such services, on the basis of:

- The person's political opinions, speech, or affiliations.
- Except for such entities that claim a religious purpose in certain circumstances, the person's religious beliefs, exercise, or affiliations.
- Any factor that is not a quantitative, impartial, and risk-based standard.
- The use of any rating, scoring, analysis, tabulation, or action that considers a "social credit score" based on factors, including, but not limited to:
  - The person's political opinions, speech, or affiliations.
  - The person's religious beliefs, religious exercise, or religious affiliations.
  - The person's lawful ownership of a firearm.
  - The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.
  - The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.
  - The person's support of the state or federal government in combatting illegal immigration, drug trafficking, or human trafficking.
  - The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described by the aforementioned factors.
  - The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:
    - Environmental standards including emissions standards, benchmarks, requirements, or disclosures.
    - Social governance standards, benchmarks, or requirements, including (but not limited to) environmental and social justice.

- Corporate board or company employment composition standards, benchmarks, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992.
- Policies or procedures requiring or encouraging employee participation in social justice programing, including but not limited to diversity, equity, and inclusion training.

Financial institutions, consumer finance lenders, and money services businesses regulated by the Office of Financial Regulation (OFR) must annually attest that their practices comply with the applicable requirements and limitations created by the bill. Failure to timely file the attestation is deemed a knowing and willful violation of the law.

Financial institutions, consumer finance lenders, and money services businesses are subject to the following penalties and sanctions:

- Those the OFR may impose under chs. 655, 516, and 560, F.S., respectively.
- Enforcement actions identified in part II of chapter 501, F.S., the Florida Deceptive and Unfair Trade Practices Act, including civil actions brought by the Attorney General and criminal prosecution by a state attorney in the appropriate judicial circuit. Civil actions may include an injunction, an action seeking damages, or a civil penalty up to $10,000 per violation.

The bill prohibits the OFR and the Financial Services Commission from waiving state laws in relation to unsafe and unsound business practices by state-licensed financial institutions, regardless of whether a federally chartered or regulated financial institution may engage in such unsafe and unsound practices.

Prohibition against Engaging in Unsafe and Unsound – Practice Qualified Public Depositories

The bill requires qualified public depositories (QPD) must comply with the requirements to provide services based on the risk factors unique to each customer and refrain from engaging in "unsound and unsafe practices." Beginning July 1, 2023, banks and savings associations must certify compliance with this requirement when filing an application to be designated or re-designated as a qualified public depository QPD.

The bill provides that failure to file the required attestation is grounds for suspension or disqualification of a QPD. The bill also gives the Chief Financial Officer (CFO) authority to verify a QPD's attestation and impose penalties if it fails to timely file the attestation. The CFO can impose an administrative penalty, issue a cease and desist order to require compliance with the law, and suspend or revoke a QPD's qualification. The bill provides that if the CFO determines an affidavit is materially false, the CFO must report the finding to the Attorney General, who may bring a civil or administrative action against the QPD, and recover attorney fees and costs if the enforcement action is successful. The bill does not give the CFO "visitorial

powers" to inspect, examine, supervise, or regulate the affairs of federally-chartered banks or savings associations. Only the federal regulator has visitorial powers.

Government Investments to be Based Solely on Pecuniary Factors

The bill codifies and expands the program adopted by the State Board of Administration (SBA) in 2022 that requires, with limited exceptions, investments of certain state and local funds to be based solely on pecuniary factors. The term "pecuniary factor" is defined as a factor that is expected "to have a material effect on the risk or return of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests."

The expansion applies to all funds of state Treasury, all local government retirement plans, investments of local government surplus funds, and investment of funds raised by citizen support or direct-support organizations. The bill prohibits the person or entity responsible for making investment decisions from subordinating the interests of the beneficiaries to other objectives, and requires the weight given to any pecuniary factor to appropriately reflect a prudent assessment of its impact on risk or returns. Investment policies are required to be updated to incorporate these requirements. Investment restrictions do not apply to individual member-directed investment accounts established as part of a defined contribution plan.

The bill requires state and local retirement systems to report compliance with the law on a biennial basis, beginning December 15, 2023. Local government retirement plans must report to the Department of Management Services (DMS); the SBA, on behalf of the Florida Retirement System, must report to the Governor, the Attorney General, the CFO, and the Legislature. Reports must describe governance policies and standards for the exercise of shareholder rights. DMS is directed to report incidents of noncompliance to the Attorney General, who may seek an injunction against any agency violating the reporting provisions and recover attorney fees and costs when an enforcement action is successful.

Investment managers who invest public funds on behalf of state and local government entities must include a specified disclaimer in certain external communications that discuss social, political, or ideological interests that such communication does not reflect the views or opinions of the people of the State of Florida. On or after July 1, 2023, contracts with investment managers may be unilaterally terminated for failure to provide such disclaimer.

The bill requires investment managers and investment advisors to annually certify compliance with the fiduciary standards set forth in the state's investment policy. Failure to timely file the certification is grounds for terminating any contract with the investment advisor or manager. Submission of a materially false certification, would be subject to sanction if they fail to timely file the required certification or if they submit a certification that is materially false. If an investment manager or advisor who does not comply with the state's fiduciary standards, the SBA must report such noncompliance to the Attorney General, who may bring a civil or

administrative action against such persons and recover attorney fees and costs when an enforcement action is successful.

Bond Financing – Prohibition against ESG Bonds

The bill provides that bond issuers are prohibited from issuing any ESG bond. An ESG bond is defined as any bond that has been designated or labeled as a bond that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting a generalized or global environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives. It includes bonds self-designated by the issuer as ESG-labeled bonds and those designated as ESG-labeled bonds by a third-party verifier.

The bill also prohibits paying for a third-party verifier that certifies or verifies that a bond may be designated or labeled as an ESG bond, renders opinions or produces a report on ESG compliance, among other ESG-related services. Issuers are also prohibited from contracting with a rating agency whose ESG scores for the issuer will have a direct, negative impact on the issuer's bond ratings.

The bill provides that notwithstanding the provisions prohibiting unsafe and unsound practices by financial institutions in,s. 655.0323, F.S., a financial institution may purchase and underwrite bonds issued by a governmental entity.

The bill expressly applies to bonds issued and agreements made and contracts executed on or after July 1, 2023.

Procurement and Contracting with Vendors – No Preference Based on Vendor's Social, Political, or Ideological Interests

Beginning July 1, 2023, certain state and local government entities, and educational institutions, are prohibited from giving preference to a vendor based on the vendor's social, political, or ideological interests when procuring or contracting with them. Such entities may not request documentation relating to a vendor's social, political, or ideological interests, and any solicitation for purchases or leases must notify vendors of these provisions.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 28-12; House 80-31

Committee on Banking and Insurance

CS/SB 180 — Regulation of Securities

by Banking and Insurance Committee and Senator Gruters

The bill revises provisions of ch. 517, F.S., the Florida Securities and Investor Protection Act (Act), which regulates securities transactions. The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms.

Many provisions of the Act are outdated or do not incorporate recent model acts or federal rule changes. The bill provides many technical, clarifying, and conforming changes to update the Act. These changes include provisions that are designed to promote capital formation for small businesses and provide more investment opportunities for investors. The bill provides the following changes:

- Decreases the $1,000 filing fee to $200 for offerings that do not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933 (Act of 1933). The maximum amount currently provided in s. 3(b) of the Act of 1933 is five million dollars.
- Eliminates the requirement for an issuer to register and disclose all material facts regarding the issuer with the OFR. Creates continuing education requirements applicable to representatives or associated persons of state-registered and federal covered investment advisers based on a North American Securities Administrators Association (NASAA) model rule. The representative or associated person must complete 12 hours of specified continuing education credits.
- Creates a registration exemption for investment advisers to private funds based on a NASAA model rule. The bill exempts from registration with the OFR a private fund adviser who acts solely as an adviser to one or more qualifying funds, such as a private equity fund or a venture capital fund, if the private fund adviser:
  - Is not subject to a disqualifying event, such as a fraud conviction or regulatory enforcement action relating to the sale or purchase of any security;
  - Files with the OFR an annual report, including updating amendments, about their business activity, financial data about managed funds, control persons, and disciplinary actions; and
  - Provides disclosures to investors about services, duties, rights, and responsibilities, and meets other specified conditions.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect October 1, 2023.
Vote: Senate 39-0; House 117-0

Committee on Banking and Insurance

CS/SB 214 — Sales of Firearms and Ammunition

by Commerce and Tourism Committee and Senator Burgess

The bill (Chapter 2023-79, L.O.F.) revises Florida gun registry laws to prohibit certain entities from using an identifying code for purchases from firearm or ammunition retailers. The bill:

- Makes Legislative findings with respect to maintaining records or tracking firearms and ammunition purchases by nongovernmental entities, specifying that such records and tracking may frustrate the right to keep and bear arms and violates the reasonable privacy rights of lawful purchasers of firearms or ammunition.
- Prohibits payment settlement entities, merchant acquiring entities, third party settlement organizations, or entities involved in facilitating or processing a payment card transaction from classifying or assigning merchants with a merchant category code ("MCC") that identifies them as sellers of firearms or ammunition.
- Authorizes a firearm or ammunition merchant to be assigned or use an MCC for general merchandise or sporting goods retailers.
- Provides that any agreement or contractual clause that is not in compliance with the prohibition against classifying a merchant as a firearms or ammunition retailer or a similar classification, or requiring a merchant to use such a classification, is void and in violation of the public policy of Florida.
- Amends the penalties provisions of the Florida gun registry laws to only apply to the law prohibiting any person, public or private, from keeping a registry of privately owned firearms, and not to the new provisions relating to MCCs established under the bill.
- Excludes the new provisions relating to MCCs for firearms or ammunition retailers from the provision under current law that provides that the state attorney in the appropriate jurisdiction is responsible for investigating violations.
- Authorizes the Department of Agriculture and Consumer Services to conduct investigations of alleged violations of the new provisions on MCCs, and to bring an administrative action seeking to impose penalties for such violations.

These provisions were approved by the Governor and take effect July 1, 2023.
Vote: Senate 27-11; House 83-32

Committee on Banking and Insurance

CS/SB 286 — Legal Instruments

by Banking and Insurance Committee and Senator Powell

The bill amends laws relating to various legal instruments.

The bill defines the term "witness" in the statute authorizing electronic signatures, specifying that the term means a person whose electronic signature is affixed to an electronic record to attest or subscribe to a principal's signature.

Regarding statutes governing foreclosures on mortgages and liens, the bill:

- Expands the scope of existing law on the finality of a clerk's deed following foreclosure sale to apply to any form of lien. Currently, only foreclosure of a mortgage is governed by the statute on finality of a clerk's deed.
- Requires the foreclosure court to award attorney fees to a senior lienholder when a junior lienholder wrongfully tries to foreclose a senior lien. The bill also reaffirms the common law rule that a superior lien may not be foreclosed by a junior lienholder.
- Expands application of an assignment of rents to apply to a successor landowner and adds that regular association fees (e.g. homeowner association, condominium or co-op) may be paid from the rent collected. An assignment of rents (if authorized by the mortgage terms) is a temporary relief allowing a foreclosing lienholder to collect rents from the property during the pendency of the foreclosure case and use those rents for upkeep of the property.
- Expands application of an order to show cause procedure in foreclosure law to allow use of the procedure when a successor landowner is being foreclosed. The current order to show cause procedure compels the defendant to either resume making regular payments or vacate the premises, but is only applicable when the mortgagor still holds title to the property.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 38-0; House 119-0

Committee on Banking and Insurance

CS/CS/SB 312 — Insurance

by Rules Committee; Banking and Insurance Committee; and Senator Collins

The bill reduces the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

The bill also authorizes a life or health insurer, or a life or health agent of the life or health insurer, to offer or provide value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy. Such products or services must relate to the insurance coverage and be primarily designed to do one or more of the following:

- Provide loss mitigation or control.
- Reduce claim or claim settlement costs.
- Provide education about liability risks or risk of loss to people or property.
- Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk.
- Enhance health.
- Enhance financial wellness through items such as education or financial planning services.
- Provide post-loss services.
- Incentivize behavioral changes to improve the health, or reduce the risk of death or disability.
- Assist in the administration of employee or retiree benefit insurance coverage.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 39-0; House 115-0

Committee on Banking and Insurance

CS/CS/HB 331— Liens and Bonds

by Regulatory Reform and Economic Development Subcommittee; Civil Justice Subcommittee; and Rep. Overdorf (CS/CS/SB 624 by Rules Committee; Judiciary Committee; and Senators Grall and Perry)

The bill revises several provisions of the Construction Lien Law, which is codified in ch. 713, part I, F.S.

Notice of Termination

Presently, an owner may record a notice of termination after:

- Completion of the construction project; or
- Work stops on the project and every person who worked on the property has been paid.

Such notice is effective 30 days after the notice of termination is recorded or on the termination date stated in the notice, whichever is later.

The bill provides that, prior to recording a notice of termination, a copy of the notice must be served on each lienor in privity with the owner and on each person who timely served a notice to owner before the recording of the notice of termination. Under the bill, if it is thus served, such notice terminates the notice of commencement 30 days after it is recorded. However, the bill also requires an owner to serve a copy of the notice of termination on any lienor who began work under a notice of commencement before its termination, lacks a direct contract with the owner, and timely serves a notice to owner after the notice of termination is recorded. Under the bill, the notice of termination is effective as to such lienors 30 days after service.

Service Requirements

The bill provides that documents required by the Construction Lien Law must be served by:

- Actual delivery to the person being served; if a partnership, to one partner; if a corporation, to an officer, director, managing agent, or business agent; or if a limited liability company, to a member or manager;
- Common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, to the person being served with postage or shipping paid by the sender and with evidence of delivery; or
- Posting on the construction site if service cannot be performed by the other two methods.

Other Issues

The bill:

- Modifies the notice of commencement, notice of termination, and notice of nonpayment forms.

- Allows licensed general or building contractors providing construction or program management services to claim construction liens for such services.
- Authorizes a person intending to make a claim against a payment bond to serve the surety with a copy of the notice of nonpayment, instead of an original document.
- Provides that the methods specified for discharging a lien may also be used to release a lien, in whole or in part. The bill also specifies that, if a satisfaction or release of lien is filed with the clerk's office, the satisfaction or release must include the lienor's notarized signature and the official reference number and recording date affixed by the recording office on the subject lien.
- Increases the amount of the bond required to be deposited or filed with the clerk's office to transfer a lien to a security. Specifically, the bill changes the amount required to the amount demanded in the lien, plus interest at the legal rate for three years, plus $5,000 (increased from $1,000) or 25 percent of the amount demanded in the lien, whichever is greater.
- Entitles the prevailing party in an action to enforce a lien transferred to a security to recover reasonable attorney fees.
- Specifies that after a clerk's office records a notice of contest of claim against a payment bond or a notice of contest of lien and a certificate of service for such notice, the clerk must serve a copy of the recorded notice on the lienor and on the owner or the owner's attorney.
- Authorizes a building permit applicant to provide the issuing authority with the clerk's office official records identifying information in lieu of a certified copy of the notice or a notarized statement of filing.
- Provides that, in computing any time period relating to the Construction Lien Law, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk's office or designated as such by the chief judge of the circuit, the time period is extended to the end of the next business day. The bill also provides that if a clerk's office is closed in response to an emergency, the time period for recording a document or filing an action is tolled by the number of days the clerk's office was closed.
- Repeals s. 713.25, F.S., an outdated provision relating to the applicability of ch. 65-456, L.O.F. Section 713.25, F.S., provides that the changes to the Construction Lien Law made by the Legislature in 1965 were not applicable "to any act required to be done within a time period which is running on that date nor shall apply to existing projects where its operation would impair vested rights."
- Modifies the definition of "clerk's office" to include "or another office serving as the county recorder as provided by law, in which the real property is located."
- Defines "finance charge" to mean "a contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract."

The bill does not appear to have a fiscal impact on state government, but may increase expenditures for Clerks of the Circuit Court. The bill provides that the Clerks may charge fees as authorized by law for these services, so any increase in expenditures should be offset by these fees.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect October 1, 2023.
Vote: Senate 40-0; House 115-0

Committee on Banking and Insurance

CS/CS/CS/SB 418 — Insurance

by Rules Committee; Military and Veteran Affairs, Space, and Domestic Security Committee; Banking and Insurance Committee; and Senator Perry

The bill amends several insurance-related statutes. Specifically, the bill:

- Revises insurance requirements for a livery (boat rental business) providing it may either:
  - Obtain a policy that insures the renter in the same manner and amounts of the policy obtained by the livery and provide to each renter the insurer's information; or
  - Present the renter with the opportunity to purchase coverage against any loss. If a renter chooses not to purchase the coverage, the livery must obtain a signed acknowledgement from the renter.
- Provides that for any local governmental entity that is a member of a group self-insurer, only an elected official of the local governmental entity may be the local government's representative on the group self-insurer's governing body.
- Provides that a residential property insurer's rate filing may estimate projected hurricane losses by using a weighted or straight average of two or more models approved by the Florida Commission on Hurricane Loss Projection Methodology.
- Provides that the Executive Director of the Citizens Property Insurance Corporation and the Director of the Division of Emergency Management, respectively, may appoint a designee to be a member of the Commission on Hurricane Loss Projection Methodology.
- Provides that an insurer may file a personal lines residential property insurance rating plan that provides premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, nonprofit scientific research organization.
- Limits the requirement that an insurer provide a policyholder who has an automatic bank withdrawal agreement with the insurer with 10 days advance written notice of any increase in policy premiums. Instead, notice will only be required for premium increases that result in an increase of more than $10 in the automatic withdrawal.
- Expands the types of documents and policies that may be delivered to a policyholder by electronic transmission to include individual and group health insurance policies, health maintenance contracts or certificates of coverage, and prepaid limited health service contracts.
- Revises the mandated deductibles that must be offered for hurricane loss when issuing a personal lines residential property insurance policy. For policies with a dwelling limit of:
  - $250,000 or more, but less than $1 million, the insurer need not offer the $500 hurricane deductible;
  - $1 million or more, but less than $3 million, the insurer may, in lieu of offering the 2 percent deductible, offer a deductible amount applicable to hurricane losses equal to 3 percent of the policy dwelling limits; and
  - $3 million or more, the insurer need not offer the 2 percent deductible.
- Revises the requirement that the waiver by a policyholder of residential windstorm coverage or contents coverage be in the policyholder's own handwriting by also allowing the waiver to be typed.

- Eliminates the requirement that a notice be stamped on the declarations page of limited coverage automobile policies. Such policies generally cover antique motor vehicles.
- Provides that a motor vehicle service agreement company that maintains a contractual liability insurance policy in lieu of maintaining unearned premium reserve may have a policy that either pays 100 percent of claims as they are incurred or 100 percent of claims in the event of the failure of the service agreement company to pay claims when due.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 39-0; House 110-0

Committee on Banking and Insurance

CS/CS/HB 487 — Department of Financial Services

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Salzman
(CS/CS/CS/SB 1158 by Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator DiCeglie)

The bill revises provisions of multiple programs within the Department of Financial Services (DFS).

Investigations and Prosecutions

The bill amends provisions regarding investigations and prosecutions within the regulatory authority of the DFS to clarify and expand the powers and duties of the Division of Investigative and Forensic Services (DIFS) relating to investigations including the authority to initiate investigations if it has reason to believe any criminal law of Florida or the United States has or may have been violated. The bill allows the DFS to initiate, not just conduct, investigations under the jurisdiction of the Chief Financial Officer (CFO), including the CFO's role as State Fire Marshal. This section also expands DIFS authority to refer suspected criminal violations for prosecution to include criminal violation of federal law, in addition to state law criminal violations.

Anti-Fraud Reward Program

The bill adds violations for which the DFS may pay up to $25,000 in reward under the Anti-Fraud Reward Program. The list of investigable insurance fraud violations under the Anti-Fraud Reward Program is expanded to include, but is not limited to, nursing home and related health care facilities noncompliance; forgery and counterfeiting public records; racketeering and illegal debts; burning to defraud an insurer; theft, robbery and related crimes; false and fraudulent insurance claims; patient brokering; criminal use of personal identification; and money laundering.

The bill removes the requirement for a conviction in order for the person providing information leading to an arrest of a person committing crimes to receive a reward under the Anti-Fraud Reward Program.

Deferred Compensation

The bill adds the State College System to the State Deferred Compensation Program.

Workers' Compensation

The bill revises provisions relating to the Workers' Compensation Three Member Panel, which adopts manuals governing maximum reimbursement of medical providers under the workers' compensation system, by eliminating the physician reimbursement manual and instead directing

the DFS to annually publish the physician and nonhospital maximum reimbursement allowances. The bill also ratifies three DFS rules relating to the Florida Workers' Compensation Law. Those rules are titled "Florida Workers' Compensation Health Care Provider Reimbursement Manual," "Health Care Provider Medical Billing and Reporting Responsibilities," and "Insurer Authorization and Medical Bill Review Responsibilities."

Health Care Ministries

The bill provides that a nonprofit religious organization may not market or sell health plans through agents licensed by the DFS.

Funerals and Cemeteries

The bill revises definitions relating to the regulation of funeral, cemetery, and consumer services. The bill defines "preneed" to mean any arrangement or method for which the provider of funeral merchandise or services receives any payment in advance for funeral or burial merchandise and services after the death of a contract beneficiary. The term excludes a transportation protection agreement and any payments received on a transportation protection agreement. The bill also defines "transportation protection agreement" to mean an agreement that exclusively provides or arranges for services related to the preparation for the purpose of transportation and subsequent transportation of human remains or cremated remains. The bill expressly states the Florida Insurance Code, as defined in s. 624.01, F.S., does not apply to any transportation protection agreement sold by any licensee under this chapter.

Division of Insurance Agents and Agencies

The bill makes the following changes regarding licensure of agents and agencies:

- Deletes the application filing and license fee for reinsurance intermediaries.
- Deletes the authority of designated examination centers to take fingerprints of applicants for a license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.
- Provides an insurance agency closure notice requirement provision does not apply to title insurance, life insurance, or annuity contracts.
- Authorizes the DFS to adopt rules establishing specific penalties against licensees for violations of:
    - Section 626.112(7) or (9), F.S., regarding trade names of insurance agencies and adjusting firms;
    - Section 626.6115, F.S., regarding compulsory refusal, suspension or revocation of insurance agency licensure;
    - Section 626.6215, F.S., regarding discretional refusal, suspension, or revocation of insurance agency licensure;
    - Section 626.7451, F.S., regarding managing general agent contract provisions;
    - Section 626.8695, F.S., regarding designation of primary adjusters at each business location;

  - Section 626.8697, F.S., regarding mandatory refusal, suspension, or revocation of an adjusting firm license; and
  - Section 626.8698, F.S., regarding disciplinary guidelines for public adjusters and public adjuster apprentices.
- Provides any course related to commercial and residential property coverages, claim adjusting practices, and any other adjuster elective courses approved by the DFS, qualify as elective continuing education for certain insurance representatives.
- Deletes requirements prohibiting limited lines agents from holding a license as an agent for any other or additional kind or class of insurance coverage and creates a limited license for preneed funeral agreement insurance coverage.
- Adds having been found guilty of or having pleaded guilty or nolo contendere to a misdemeanor directly related to the financial services business as grounds for compulsory disciplinary actions taken by the DFS against insurance representatives.
- Adds having had the cancellation of the applicant's, licensee's, or appointee's resident license in a state other than Florida as grounds for discretionary disciplinary actions taken by the DFS against insurance representatives.
- Provides that, contingent upon the provision in CS/CS/CS/SB 418 in the 2023 Regular Session authorizing boat liveries to provide insurance becoming law, that licensed insurance agents must be involved when offering the renter the opportunity to obtain insurance.
- Revises the definitions of the terms "producer" and "reinsurance intermediary manager" in order to change the Reinsurance Intermediary Manager and Reinsurance Intermediary Broker licenses to an appointment.
- Revises the role of reinsurance intermediaries to an appointment instead of a license.
- Requires the DFS to suspend the insurer's or employer's ability to appoint licensees if the insurer fails to pay the exchange of business fee within 21 days after notice by the DFS.
- Authorizes a funeral director, a direct disposer, or an employee of a funeral establishment that holds a preneed license to obtain a limited license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise.
- Requires the DFS to suspend the authority of an insurer or employer to appoint licensees if the insurer or employer does not pay the fees and taxes due within 21 days after notice by the DFS.

Title Insurance Agents and Agencies

The bill makes the following revisions related to title insurance agents and agencies:

- Provides the notice requirements relating to notifying policyholders of the agency closure, do not apply to title insurance agents or title insurance agencies.
- Adds grounds for compulsory disciplinary actions taken by the DFS against a title insurance agent or agency to include misappropriation, conversion, or improper withholding of funds received in a fiduciary capacity and held as part of an escrow agreement, real estate sales contract, or as provided on a settlement statement in a real estate transaction and revocation or cancellation of a licensee's resident license in a jurisdiction other Florida.

- Adds grounds for discretionary disciplinary actions taken by the DFS against a title insurance agent or agency for having been the subject of a violation of any federal or state securities or commodities law or having a licensee's resident license in a jurisdiction other than Florida revoked or cancelled.
- Transfers the duties as an escrow agent from the title agent to the title agency.

Adjusters

The bill makes the following revisions related to insurance adjusters:

- Makes clear that the exemption to the prohibition of taking a thing of value for certain prohibited acts applies to a licensed "and appointed" public insurance adjuster. Section 626.112, F.S., requires each insurance adjuster to be currently licensed by the department and appointed by a licensed adjuster firm.
- Provides a catastrophe or emergency adjuster must adjust claims, losses, or damages under policies or contracts of insurance issued by an authorized insurer or by a licensed independent adjusting firm contracted with an authorized insurer.

Board Member Requirements

The bill establishes guidelines for board member requirements where the CFO has sole appointment authority, making such board members subject to specified provisions of the Code of Ethics under ch. 112, F.S. The board composition of the Florida Insurance Guaranty Association is revised to require three representatives from domestic insurers selected by the CFO. The bill authorizes the CFO to remove board members of the following entities for misconduct, malfeasance, misfeasance, or neglect of duty:

- The Florida Self-Insurers Guaranty Association.
- The Medical Malpractice Joint Underwriting Association.
- The Florida Insurance Guaranty Association.
- The Florida Life and Healthy Guaranty Association.
- The Florida Health Maintenance Organization Consumer Assistance Plan.
- The Florida Workers' Compensation Insurance Guaranty Association.

Mediation Programs

The bill revises various insurance-related mediation programs administered by the DFS.

The bill specifies that a property insurance claim is eligible for the DFS property insurance mediation once the insurer makes a claim decision pursuant to the 60-day prompt payment requirements of s. 627.70131, F.S., or elects to re-inspect the property as allowed for under the notice of intent to litigate a property insurance claim requirements of s. 627.70152, F.S., and specifies that the DFS may suspend an insurer's ability to appoint agents if the insurer fails to pay fees related to rescheduled mediation conferences.

The bill authorizes the DFS to contract with a third-party to administer the sinkhole neutral evaluation program.

The bill requires that insurers pay for mediation of motor vehicle mediation claims. If a policyholder fails to appear at mediation, the policyholder is responsible to pay for a rescheduled mediation conference. If the insurer fails to appear, the insurer must pay the policyholder's expenses for attending the conference, pay the mediator an additional fee to reschedule the conference, and a charge to the DFS related to expenses for rescheduling.

Insurer Insolvency – Rehabilitation and Liquidation

The bill authorizes the DFS, in receivership proceedings, to use the property of the estate of the insolvent insurer to transfer the insurer's book of business to a solvent assuming insurer or insurers and to share records of the insolvent insurer with the prospective assuming insurer. The bill also provides that policies of the insolvent insurer do not have to be cancelled if there is a carrier willing to take on policies of an insolvent company.

State Fire Marshal Direct Support Organization

The bill creates a direct support organization (DSO) for the State Fire Marshal to be known as the "State Fire Marshal Safety and Training Force," whose purpose is to support the safety and training of firefighters and to recognize exemplary service. The bill provides the DSO must be a non-for-profit corporation incorporated under ch. 617, F.S., and approved by the Department of State; be organized to raise funds; request and receive grants; gifts and bequests of money; conduct program and activities; acquire, receive, hold, invest and administer, in its own name, securities, funds or property; and make grants and expenditures to or for the direct or indirect benefit of the division. The bill provides funds may include the cost of education and training of firefighters, or the recognition of exemplary service of firefighters. Under the bill, the DSO must operate under a written contract with the Division of State Fire Marshal (division). The bill provides for a board of directors; provides requirements for the use of property, annual budgets and reports, an annual audit, and the division's receipt of proceeds; and authorizes moneys received to be held in a depository account. The bill provides a repeal date of October 1, 2028.

Warranty Associations

The bill makes the following revisions regarding warranty associations:

- Adds grounds for compulsory disciplinary actions against motor vehicle service agreement salespersons and provides for the immediate temporary suspension of a license if the licensee is charged with certain felonies; and authorizes the DFS to adopt rules.
- Adds an additional discretionary ground for refusal, suspension, or revocation of a license or appointment of a motor vehicle service agreement salesperson for failure to report the final disposition of an action taken against the salesperson by a regulatory agency relating to the business of insurance, the sale of securities, or an activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty.

- Adds grounds for discretionary disciplinary actions taken against a home warranty association sales representative for having been the subject of a violation of any federal or state securities or commodities law; provides for the immediate temporarily suspension of a license if the licensee is charged with certain felonies; and authorize the DFS to adopt rules.
- Adds grounds for discretionary disciplinary actions against a home warranty association sales representative; requires a sales representative to report any action taken against the sales representative relating to the business of insurance; and authorizes the DFS to adopt rules.
- Provides that specified home solicitation sale requirements, ss. 501.021-501.055, F.S., do not apply to persons or entities licensed and appointed, or their affiliates, which solicit the sale of a service warranty or related service or product in connection with a prearranged appointment at the request of the consumer.
- Revises grounds for compulsory disciplinary actions by the DFS against service warranty association sales representatives; requires the DFS to immediately temporarily suspend a license or appointment under certain circumstances; prohibits a person from transacting insurance business after such suspension; and authorizes the DFS to adopt rules.
- Adds grounds for discretionary disciplinary actions taken against a service warranty association sales representative for having been the subject of a violation of any federal or state securities or commodities law; provides for the immediate temporary suspension of a license if the licensee is charged with certain felonies; and authorizes the DFS to adopt rules.

Bail Bonds

The bill revises provisions relating to bail bond agents and agencies. The bill provides a definition of "appointment"; provides that a "temporary bail bond agent" means a person licensed before January 1, 2024; and provides that a temporary bail bond agent license expires 18 months after issuance and is no longer valid on or after June 30, 2025.

The bill provides that bail bond agencies must be licensed rather than registered. A person may not control or manage a bail bond agency unless the person has been engaged as a bail bond agent for the preceding 24 months. The bill provides application requirements for bail bond agency licenses; a bail bond agency that holds a current valid registration will have its registration automatically converted to a license on July 1, 2024, and provides s. 112.011, F.S., relating to disqualification from licensing and public employment based on criminal conviction, does not apply to bail bond agencies or to applicants for licensure as bail bond agencies.

The bill provides that a bail bond agent may not sell a bail bond issued by an insurer for which the agent and the agent's bail bond agency do not hold a current appointment. The bill prohibits the performance of any of the functions of a bail bond agency without a bail bond agency license.

Florida Disposition of Unclaimed Property Act

The bill provides that statutory requirements relating to recovery agreements and purchase agreements for claims filed by a claimant's representative do not prohibit lawful nonagreement, noncontractual, or advertising communications between or among the parties.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 112-0

Committee on Banking and Insurance

CS/HB 599 — Debt Management Services

by Commerce Committee and Rep. Garcia and others (CS/SB 628 by Banking and Insurance and Senator Grall)

The bill revises the fee chargeable by a credit counseling agency to a debtor for receiving from the debtor, and subsequently disbursing to a creditor, money or anything of value. The maximum fee will now be up to the lesser of 15 percent of the monthly payment or $75 monthly, rather than the greater of 7.5 percent of the monthly payment or $35 monthly under current law.

The bill will not have a fiscal impact on state and local governments but will have both positive and negative fiscal impacts on the private sector.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 39-0; House 115-0

Committee on Banking and Insurance

CS/HB 607 — Money Services Businesses

by Commerce Committee and Rep. Steele (CS/CS/SB 532 by Rules Committee; Banking and Insurance Committee; and Senator Burton)

The bill revises the definition of a "control person" and defines several terms used in the revised definition to clarify the persons who are subject to fingerprinting for a money services business to become licensed under ch. 560, F.S. The purpose of the bill is to clarify the definition of "control person" to ensure compliance with federal law.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 40-0; House 115-0

Committee on Banking and Insurance

CS/CS/HB 721 — Paid Family Leave Insurance

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Chaney and others (CS/SB 670 by Banking and Insurance Committee and Senators Yarborough and Stewart)

The bill specifies standards for transacting paid family leave insurance in Florida. The Office of Insurance Regulation licenses and regulates insurers, health maintenance organizations, and other risk-bearing entities pursuant to the Florida Insurance Code. Currently, life insurers are authorized to transact health insurance, disability income insurance, and excess coverage for health maintenance organizations and multiple-employer welfare arrangements. The bill authorizes life insurers to transact paid family leave insurance as a policy or as a rider to a group disability income policy. Further, the bill specifies circumstances under which paid family leave insurance benefits may be provided; and requires paid family leave insurance policies or riders to include disclosures and coverage requirements, such as benefit periods, waiting periods, benefit amounts, offsets, and the payment of benefits. The bill authorizes the Financial Services Commission to adopt rules to administer this act.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

Committee on Banking and Insurance

HB 793 — Collateral Protection Insurance

by Rep. Fernandez-Barquin and others (SB 410 by Senators Garcia and Hutson)

The bill creates a new statutory chapter part (Part XXII), Collateral Protection Insurance (CPI) to regulate CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes, are subject to Part XXII except for transactions involving extensions of credit primarily for business, commercial, or agricultural purposes; insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor's option; insurance purchased by a lender or servicer on real-estate owned property; and insurance for which no specific charge is made to the mortgagor or mortgagor's account.

Definitions

The bill defines CPI and several related terms. CPI means commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the mortgaged real property. CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Collateral Protection Insurance Policies

The bill provides that CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The effective date of insurance acceptable under the mortgage agreement.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers.
- The termination date of the policy.

The bill provides that CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the replacement cost of the real property serving as collateral as calculated by the insurer. If the last known coverage amount is unknown and the replacement cost is unavailable or prohibited by other state or federal law, the CPI coverage and calculation

of premium should be based upon the unpaid principal balance of the mortgage loan. In any event, a mortgagor must not be charged for CPI before the effective date of the CPI or for a term longer than the scheduled term of the CPI.

Prohibited Practices

The bill prohibits the following practices by insurers or insurance agents related to CPI:

- Issuing CPI on mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property.
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer.
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI.
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost.
- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

Evidence of Coverage

The bill requires evidence of CPI must be set forth in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically. The individual policy or certificate of insurance must include specified information identifying the real property insured, information about the CPI policy, and contact information for filing a claim.

Filing, Approval, and Withdrawal of Forms and Rates

The bill provides that, except as otherwise provided in Part XXII, rate and form filing requirements are subject to the Florida Insurance Code. The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by the OIR as provided in s. 627.062, F.S. As part of the rate review, the OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires insurers to refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

An insurer must include its experience in existing programs in the associated filings upon the introduction of a new CPI program. Part XXII does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. An insurer may also rely on models, where

actuarially acceptable, or in the case of flood filings where applicable experience is not credible, on National Flood Insurance Program data.

By April 1 each year, each insurer with at least $100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to the OIR for the prior calendar year:

- Actual loss ratio.
- Earned premiums.
- Any aggregate schedule rating debit or credit to earned premium.
- Itemized expenses.
- Paid losses.
- Loss reserves, including case reserves and reserves for incurred but not reported losses.

The report must be separately produced for each CPI program and presented on both an individual-jurisdiction and countrywide basis. Except for CPI for flood insurance, an insurer experiencing an annual rate loss ratio of less than 35 percent in any collateral protection insurance program for two consecutive years, must submit a rate filing, either adjusting its rates or supporting their continuance, to the office no more than 90 days after the submission of the data required.

Fiscal Impact

The bill does not have a fiscal impact on state or local revenues or local government expenditures. Insofar as a data call is created for the annual report required in Section 10 of the bill, the OIR may experience an increase in expenditures related to the technology need. To the extent the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 35-0; House 105-0

Committee on Banking and Insurance

CS/CS/CS/HB 799 — Property Insurance

by Commerce Committee; State Administration and Technology Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Griffitts and others (CS/CS/SB 594 by Fiscal Policy Committee; Community Affairs Committee; and Senator Martin)

The bill provides that a property insurer's residential rate filing must allow for appropriate discounts for mitigation measures that reduce the potential for windstorm losses. The bill also adds wind uplift prevention to the list of windstorm mitigation measures undertaken by policyholders to reduce hurricane losses that must be evaluated for purposes of mitigation discounts on residential property insurance rate filings. Wind uplift occurs if the air pressure below the roofing system is higher than the air pressure above the roofing system.

The bill exempts condominium unit owner policies from the requirement that Citizens Property Insurance Corporation (Citizens) personal lines property coverage policyholders must maintain flood insurance. The bill provides technical revisions to provisions requiring Citizens personal lines policyholders to obtain flood insurance coverage to refer to dwelling replacement cost instead of the property value.

The bill provides that the limitation on rate increases normally imposed on Citizens' rates does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by the Office of Insurance Regulation (OIR) to be unsound or placed into receivership due to impairment or insolvency. The bill provides that the limitation on Citizens' rates for non-primary residences (current law) and policies assumed from unsound insurers (proposed by the bill) applies on a year-over-year basis, rather than based on a fixed date.

The bill authorizes Citizens to adopt policy forms providing for claim disputes to be resolved in a proceeding before the Division of Administrative Hearings (DOAH). All such DOAH proceedings are subject to the award of attorney fees when the opposing party is sanctioned for bringing an unsupported claim or defense and pursuant to the offer of judgment statute, as if filed in the state courts. The bill provides that the applicable Florida Rules of Civil Procedure apply to any offer served pursuant to the offer of judgment statute, except that an offer may not be served earlier than 10 days after filing the request for hearing with the Division of Administrative Hearings and not later than 10 days before the date set for the final hearing.

The bill requires, that if an insurer requires an insured or applicant to have flood coverage when issuing a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage. If the insurer fails to verify that the insured or applicant has flood coverage, the insurer may not deny a claim for wind solely because the insured does not have coverage for the peril of flood, unless flood coverage that was verified is not in force at the time of the loss.

The bill provides a $750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the OIR to, in consultation with the Department of Business and Professional Regulation and the Florida Building Commission, conduct a wind-loss mitigation study to evaluate the windstorm loss relativities for construction features, including, but not limited to, wind uplift

prevention, methods and devices to prevent water intrusion through the tracks of sliding glass doors, and those that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor-to-foundation strength; opening protections; and window, door, and skylight strength. The study must include, but need not be limited to, an analysis of developed hurricane loss data for hurricanes since June 1, 2018. The OIR may use a portion of the funds to contract separately with building code experts to implement the bill and adopt rules. The findings of the study must be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 32-7; House 87-28

Committee on Banking and Insurance

CS/CS/HB 837— Civil Remedies

by Judiciary Committee; Civil Justice Subcommittee; and Reps. Gregory and Fabricio and others (CS/CS/SB 236 by Fiscal Policy; Banking and Insurance; and Senator Hutson)

The bill (Chapter 2023-15, L.O.F.) makes the following changes to Florida's civil justice system:

- Provides that a contingency fee multiplier for an attorney fee award is appropriate only in a rare and exceptional circumstance, adopting the federal standard.
- Repeals Florida's "one-way" attorney fee provisions for insurance cases under which plaintiffs that obtained a favorable judgment against an insurer were entitled to an award of reasonable attorney fees.
- Maintains the ability to award attorney fees to an owner, contractor, subcontractor, laborer or materialman that prevails in a claim against a construction surety bond.
- Creates a limited ability to recover attorney's fees from an insurance company after a total coverage denial through a declaratory judgment action.
- Reduces the statute of limitations for general negligence cases from four years to two years, while providing protections to servicemembers during terms of active duty which materially affect the servicemember's ability to appear.
- Changes Florida's comparative negligence system from a "pure" comparative negligence system to a "modified" comparative negligence system, whereby a plaintiff who is found to be more that 50 percent at fault for his or her own harm may not recover damages from any defendant. The new comparative negligence standard does not apply to causes of action for personal injury or wrongful death arising out of medical negligence.
- Modifies Florida's "bad faith" framework to:
  - Provide an insurer has no liability for a bad faith involving a liability insurance claim if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receipt of the claim and sufficient evidence to support the claim.
  - Allow an insurer, if there are multiple claimants in a single action, to limit the insurer's bad faith liability if, within 90 days after receiving notice of competing claim in excess of the policy limits, the insurer pays the total amount of the policy limits to the court through an interpleader action or, through binding arbitration agreed to by all parties, making the entire policy limits available for payment to the competing third-party claimants.
  - Provide that negligence alone is not enough to demonstrate bad faith.
  - Allow the trier of fact in any bad faith action to consider whether the insureds, claimants, and their representatives acted in good faith with respect to furnishing information, making demands, setting deadlines, and attempting to settle the insurance claim. If such parties did not act in good faith toward the insurer, the trier of fact may reasonably reduce the amount of bad faith damages awarded against the insurer.
- Applies the offer of judgment statute to any civil action involving an insurance contract.
- Specifies that certain evidence is admissible to calculate medical damages in personal injury or wrongful death actions. These changes modify the collateral source rule in a

way that allows the parties to present evidence of actual medical costs or evidence that better approximates medical costs that may be incurred by a claimant.

- Requires the trier of fact in a negligent security action against the owner, lessor, operator, or manager of commercial or real property brought by a person lawfully on the property who was injured by the criminal act of a third party, to consider the fault of all persons who contributed to the injury.
- Provides that the owner or principal operator of a multifamily residential property which substantially implements certain security measures on that property is presumed to not be negligent in connection to a criminal act occurring on the premises which are committed by third parties who are not employees or agents of the owner or operator. The bill requires the Florida Crime Prevention Training Institute of the Department of Legal Affairs to develop a proposed curriculum or best practices for such owners or operators.
- Provides that the new two-year statute of limitations for negligence actions applies prospectively to causes of action accruing after the effective date of the bill, that the remainder of the bill applies to causes of action filed after the effective date, and that the bill shall not be construed to impair any right under an existing insurance contract.

These provisions were approved by the Governor and took effect on March 24, 2023.
Vote: Senate 23-15; House 80-31

Committee on Banking and Insurance

CS/HB 881— My Safe Florida Home Program

by Insurance and Banking Subcommittee and Rep. LaMarca and others (CS/CS/SB 748 by Fiscal Policy Committee; Banking and Insurance Committee; and Senator Boyd)

The bill revises provisions relating to the My Safe Florida Home Program (Program). The bill:

- Provides the Program may select as a mitigation inspector a licensed home inspector who has completed certain training.
- Provides an inspection under the Program may only be done on a property for which a homestead exemption has been granted.
- Revises eligibility requirements for mitigation inspections to include townhouses to determine if opening protection mitigation would provide improvements to mitigate hurricane damage.
- Revises eligibility requirements for mitigation grants to include dwellings with an insured value of $700,000 or less (up from $500,000 or less) and for opening protection for townhouses when recommended by a hurricane mitigation inspection.
- Deletes the requirement a property eligible for a mitigation grant must be located in the "wind-borne debris region."
- Increases the amount from $5,000 to $10,000 that low-income homeowners may receive from a grant and not have to provide a matching amount.
- Adds the Citizens Property Insurance Corporation to the list of entities that may receive Program brochures for redistribution.
- Deletes the requirement contracts valued at one million dollars or more entered into by the Program be reviewed and approved by the Legislative Budget Commission.
- Requires the Department of Financial Services (DFS) to develop a quality assurance and reinspection program.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 38-0; House 115-0

Committee on Banking and Insurance

CS/CS/HB 897 — Group Health Plans

by Health and Human Services Committee; Healthcare Regulation Subcommittee; and Rep. Fernandez-Barquin and others (CS/SB 940 by Banking and Insurance Committee and Senators Calatayud and Rodriguez)

The bill clarifies the criteria that employer members of a group or association must meet to constitute a bona fide group or association of employers in order to sponsor a group health plan for their members or employees. Association health plans (AHP) are a type of multiple employer welfare arrangement (MEWA). In Florida, the Office of Insurance Regulation has regulatory oversight of self-insured MEWAs and AHPs.

A 2018 Department of Labor rule on the regulation of association health plans (AHPs), provided another pathway for establishing an AHP in order to expand access to affordable health coverage for small employers and sole proprietors. This rule loosened the requirements for an association to qualify as a "bona-fide association" by allowing the establishment of an AHP for the explicit purpose of providing health coverage, so long as the association has another legitimate purpose for members. Florida subsequently codified the 2018 federal rule defining the term, "bona-fide group." However, the federal rule's definition of a "bona-fide group" was struck down by a federal district court in 2019.

The bill removes references in the Florida Insurance Code to the 2018 federal rule relating to AHPs and bona-fide group eligibility, and instead adopts the requirements to be considered a bona fide group from the stricken rule and thus maintains an expanded pathway for more groups or associations to form MEWAs.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 100-7

Committee on Banking and Insurance

CS/SB 1002— Motor Vehicle Glass

by Rules Committee and Senators Stewart and Hooper

The bill revises definitions under the Florida Motor Vehicle Repair Act to ensure that businesses that calibrate or recalibrate advanced driver assistance systems associated with windshields are regulated under the Act. The bill provides that motor vehicle repair shops, their employees, and their representatives:

- May not offer an inducement to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair.
- Must provide electronic or written notice to the customer whether calibration or recalibration of the advanced driver assistance system is required to make the system operable and must provide such service in a manner that meets or exceeds the vehicle manufacturer's specifications.

The bill prohibits a policyholder, or any other person, from entering an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including for calibration or recalibration of advanced driver assistance systems.

Finally, with regard to a motor vehicle windshield glass claim under comprehensive or combined additional coverage of a personal lines motor vehicle policy, the bill provides that:

- No person may require a claimant to use a particular company for motor vehicle windshield glass replacement, repair, or calibration services.
- An insurer or a person acting on the insurer's behalf may provide an explanation of motor vehicle comprehensive coverage benefits and any applicable limit of liability to a claimant.
- An insurer must provide an actuarially sound discount to the insured if they offer a policy that contains a managed repair arrangement for the provision of windshield glass replacement, repair, or calibration services.
- The foregoing requirements do not create a private cause of action.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 103-16

Committee on Banking and Insurance

CS/CS/HB 1185 — Consumer Protection

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Giallombardo and others (CS/CS/SB 1398 by Appropriations Committee on Agriculture, Environment, and General Government; Banking and Insurance Committee; and Senator DiCeglie)

The bill revises consumer protection laws, including, but not limited to, those related to public adjusters, annuity investments, insurance provisions, and mortgage loan regulations.

Public Adjusters

The bill amends the definition of "public adjuster" to specify that it applies to any person who meets the definition, regardless of how that person describes or presents their services.

Regarding public adjuster compensation, the bill:

- Limits a public adjuster's compensation to no more than one percent of a payment or commitment to pay at least policy limits made within the later of 14 days after the date of loss or 10 days after the public adjusting contract is executed.
- Requires a written contract with the insured for a public adjuster to receive fees for payments to the named insured, and prohibits a public adjuster from receiving compensation based upon a claim payment or written agreement to pay that occurs before the public adjuster contract is executed.
- Provides that a public adjuster may not charge a named insured for fees incurred by a third-party that public adjuster contracted with to assist with the claim settlement unless the public adjuster first obtains the named insured's written consent.

Regarding rescission of contracts for public adjusting services, the bill:

- Allows the insured or claimant to cancel a contract with a public adjuster that was entered into based on events that are the subject of a state of emergency for up to 30 days after the loss or 10 days after the date on which the contract is executed, whichever is longer.
- Specifies an insured may cancel a public adjuster's contract without penalty or obligation if a written estimate is not received within 60 days unless the failure to provide the estimate is caused by factors beyond the control of the public adjuster.

Regarding contracts for public adjusting services, the bill:

- Requires the inclusion of certain contact details and compensation, amends the font type for certain contract provisions and the proof-of-loss statement, and requires initials of the insured to be on each page that does not contain the insured's signature.
- Provides that a public adjuster must provide an unaltered copy of the contract to the insured at execution and to the insurer or insurer's representative within seven days after execution.
- Provides a public adjuster may not receive compensation for services before the date the insured receives an unaltered copy of the executed contract or the date the contract is submitted to the insurer.

- Requires the public adjuster to provide to and obtain a signed separate disclosure statement from the insured with specified information.
- Provides that a public adjuster contract which does not comply with s. 626.8796, F.S., regarding public adjuster contracts, is invalid and unenforceable.
- Provides rulemaking authority to the Department of Financial Services (DFS).

Annuity Investments

As it relates to annuity investments, the bill:

- Amends s. 627.4554, F.S., to adopt, with minimal exceptions, the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation (2020).
- Broadens the scope of the section to apply to any sale or recommendation of an annuity.
- Amends the duties of insurers and agents to require the agent to act in the consumer's best interest which includes satisfying obligations regarding care, disclosure, conflict of interest, and recordkeeping.
- Specifies transactions for which an agent does not have an obligation to a consumer;
- Revises an insurer's obligation to establish a supervision system to provide additional consumer protections.
- Prohibits insurers from dissuading, or attempting to dissuade, a consumer from providing truthful information, filing complaints, or cooperating with a complaint investigation.
- Provides any sale in compliance with comparable standards satisfies the requirements of the section, and provides this provision does not limit an insurer's care obligation.
- Provides for training requirements for agents who engage in the sale of annuities.

Insurance Provisions

As it relates to other insurance provisions, the bill:

- Provides adjusting firms must comply with the same requirements an insurance agency must comply with regarding firm names, and repeals the grace period for using the terms "Medicare" or "Medicaid" that expires on July 1, 2023.
- Requires an independent or public adjuster to post their license in the principal place of business or have it in the public adjuster's actual possession in certain circumstances.
- Specifies independent adjusters and public adjusters must retain certain records for five years and requires such records must be available for inspection by the DFS.
- Provides it is an unfair method of trade for an agent to fail to disclose a third party that receives remuneration for specified marketing practices for a health insurance policy.
- Provides the timeframe during which a residential property insurance hurricane deductible can be applied to a claim begins only upon the issuance of a hurricane warning, but not a hurricane watch, and defines the term "hurricane deductible."
- Reduces the underwriting timeframe on property insurance from 90 days to 60 days.
- Provides Citizens Property Insurance Corporation may cancel policies covering risks that were most recently insured by an insurer in receivership within 90 days or less for

misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

Mortgage Loans

As it relates to mortgage loan regulations, the bill:

- Expands the options of where a mortgage lender may transact business.
- Specifies a remote location must be operated under the full charge, control, and supervision of the licensee.
- Provides when a licensee may allow loan originators to work from a remote location.
- Amends the definition of "branch office" and defines the term "remote location."

Money Services Businesses

As it relates to money services businesses, the bill:

- Specifies a licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same policy coverage period.
- Provides a person who violates this provision commits a felony of the third degree.

Crowd-funding Campaigns

As it relates to crowd-funding campaigns, the bill:

- Requires organizers of crowd-funding campaigns related to disasters to take certain steps relating to collecting and retaining certain information, disclosing specified information, cooperating with law enforcement, and displaying and directing donors to certain fundraisers.
- Requires an organizer to attest to the accuracy and completeness of specified information.
- Defines several terms, including "crowd-funding campaign," "crowd-funding platform," "disaster," and "organizer."

Distributed Energy Generation Platforms

As it relates to distributed energy generation platforms, the bill:

- Adds three disclosures related to the sale or lease of a distributed energy generation system which must be separate from the agreement between the seller or lessor and buyer and lessee.
- Requires a sale or lease agreement to include the customer contact center phone number for the Department of Business and Professional Regulation.

Warranty Associations

The bill provides that motor vehicle service agreement companies that maintain a contractual liability insurance policy in lieu of maintaining unearned premium reserve, may have such a

policy that pays 100 percent of claims as they are incurred or upon the failure of the service agreement policy to pay such claims when due.

The bill revises the definition of the term "manufacturer" for purposes of service warranty associations, to apply to an entity or affiliate that maintains a minimum net worth of at least $100 million, rather than $10 million under current law. The definition also eliminates reference to an entity or affiliate that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.

If approved by the Governor, except as otherwise provided, these provisions take effect July 1, 2023.
Vote: Senate 38-0; House 113-0

Committee on Banking and Insurance

CS/CS/HB 1267 — Consumer Finance Loans

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Fernandez-Barquin (CS/SB 580 by Banking and Insurance Committee and Senator Gruters)

The bill revises laws governing consumer finance loans, which are loans of $25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

Licensure

The bill revises the process for obtaining a license to issue consumer finance loans to allow a single licensure application for the principal place of business and all branches. The bill defines a "branch" as any location, other than a licensee's principal place of business, at which a licensee operates or conducts consumer finance loan business or controls for the purpose of conducting consumer finance loan business.

Interest and Delinquency Charges

Current law limits consumer finance loan interest rates to no more than 30 percent per annum, computed on the first $3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and up to $25,000. The bill removes the tiered schedule for which interest rates may be charged and increases the maximum interest rate to 36 percent per annum for any loan amount up to $25,000. Consequently, the bill removes language related to calculation of two or more interest rates applied to a principal amount.

The bill increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

Disaster Declarations

The bill requires consumer finance lenders, in any county subject to a Federal Emergency Management Agency (FEMA) Presidential Disaster Declaration, to suspend for 90 days after the initial date of such declaration, the following:

- The application of delinquency charges for payments in default.
- Repossessions of collateral pledged to a consumer finance loan.
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

Reporting

The bill requires consumer finance lenders to provide notice to the Office of Financial Regulation (OFR) of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA Presidential Disaster Declaration, including:

- The licensed locations affected by the disaster declaration.
- The telephone number, e-mail address, or other contact information for the licensee.
- A brief description of the assistance program available to borrowers in the affected areas.
- The start date and end date, if known, of the program.

The bill also requires consumer finance lenders to annually report information to the OFR detailing loans issued by the lender during the previous calendar year, including:

- The number of locations held by the licensee as of December 31.
- The number of loan originations by the licensee under all licenses.
- The total dollar amount of loans and the number of loans outstanding by the licensee as of December 31.
- The total number of loans in which the licensee holds a security interest in collateral as of December 31.
- The total number of unsecured loans as of December 31.
- The total number of loans, separated by principal amount, in specified ranges as of December 31.
- The total number and amount of loans charged off as of December 31.
- The total dollar amount of loans and the number of loans with delinquency status for specified timeframes.

Fiscal Impact

The OFR estimates a recurring reduction of $5,000 in revenues but the loss is negligible and would not impact operations. Furthermore, the reduction in staff time reviewing full license applications for each additional location when replaced with a branch office license would likely offset any loss in revenue. In addition, the changes proposed within the bill would require the OFR to update its internal licensing system to create a branch license and annual reporting functionality. The cost of such technology changes would be negligible and can be absorbed within existing resources.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 22-9; House 96-18

Committee on Banking and Insurance

CS/HB 1353 — Commercial Financing Product Brokers and Providers

by Commerce Committee and Rep. Bankson and others (CS/CS/SB 1624 Appropriations Committee on Criminal and Civil Justice; Banking and Insurance Committee; and Senator Brodeur)

The bill creates the "Florida Commercial Financing Disclosure Law," which requires a provider that consummates more than five commercial financing transactions of $500,000 or less in a 12-month period to give each business that enters into a consumer financing transaction certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment. The bill provides exemptions to these disclosures. The bill provides that a provider's characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money. The commercial financing disclosures can be used to assist small businesses in comparing the types and cost of financial products available in the marketplace.

Disclosures

The provider is required to disclose in writing the following at or before consummation of a commercial financing transaction:

- The total amount of funds provided to the business under the terms of the agreement;
- The total amount of funds disbursed to the business under the terms of the agreement, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business;
- The total amount to be paid to the provider pursuant to terms of the agreement;
- The total dollar cost of the commercial financing transaction under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments;
- The manner, frequency, and amount of each payment; and
- A statement of whether there are any costs or discounts associated with prepayment of the commercial financing transaction including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.

A provider that consummates a commercial financing facility to purchase multiple accounts receivable from a recipient may provide the required disclosures described above that are based on an example of an accounts receivable purchase with a total face amount of $10,000. Only one disclosure is required for each commercial financing facility, and a disclosure is not required as a result of a modification, forbearance, or change to the facility.

Prohibited Acts

The bill prohibits a broker arranging a consumer financing transaction from engaging in any of the following acts:

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for commercial financial products, such as a credit check or an appraisal of security, if certain conditions are met.
- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker or engage in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence of reliance by the business.
- Making or using any false or deceptive representation in its business dealings.
- Offering the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.

Enforcement

The bill provides that a violation of this act is punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act. Any person who violates any provision of this act after receiving written notice of a prior violation from the Attorney General is subject to a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act. The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.

The bill does not create a private right of action against any person or entity based upon compliance or noncompliance with this act. A violation of the provisions of this bill do not affect the enforceability or validity of the underlying commercial financing transaction.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 39-0; House 113-1

Committee on Banking and Insurance

CS/CS/HB 1573 — Continuing Care Providers

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Persons-Mulicka and others (CS/SB 622 by Banking and Insurance Committee and Senator Yarborough)

The bill revises provisions of ch. 651, F.S., of the Florida Insurance Code governing continuing care retirement communities (CCRC). The CCRCs provide lifelong housing, household assistance, and nursing care in exchange for a significant entrance fee and monthly fees. A CCRC can include an independent living apartment or house, as well as an assisted living facility or a nursing home. The Office of Insurance Regulation (OIR) regulates CCRC providers as specialty insurers, while the Agency for Health Care Administration regulates the provision of health care.

Regulatory Oversight of CCRCs

Relating to the regulatory oversight of CCRCs, the bill:

- Allows CCRCs easier access to escrowed resident fees as part of an expansion, by allowing the provider to access the escrowed funds once 75 percent of the proposed units have been reserved rather than once payment in full has been received for 50 percent of the units.
- Reduces the time for the OIR to approve or deny an expansion application from 45 days to 30 days from the date the application is deemed complete.
- Specifies that when a provider is using an escrow account held pursuant to a trust indenture or mortgage lien to meet its minimum liquid reserve requirement, the trust indenture, loan agreement, or escrow agreement must require the provider, trustee, lender, escrow agent, or another person designated to act in their place to notify the OIR in writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to meet the provider's minimum liquid reserve requirement.
- Removes the requirement for a provider to obtain prior approval from the OIR to withdraw funds from a debt service reserve required to be escrowed pursuant to a trust indenture of mortgage lien if the funds will be used to pay principal and interest payments.
- Expands the types of financial institutions that can provide a letter of credit to a provider to satisfy its minimum liquid reserve requirements by adding state-chartered financial institutions as well as federally-chartered financial institutions.
- Allows a provider to assess a cancellation penalty against a person who signs a residency contract and rescinds it within seven days if the person had previously signed a reservation agreement and did not cancel it within 30 days.
- Requires the OIR to commence examinations of CCRCs within 12 months after the end of the most recent fiscal year covered by the examination. Further, the scope of the examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period, which affects the present financial condition of the provider.

Transparency for Residents

Regarding transparency for residents, the bill:

- Clarifies that residents may participate in residents' council matters, including elections;
- Requires providers that own or operate more than one facility in Florida to have a designated resident representative at each facility;
- Requires the provider notify the designated resident representative at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes in resident fees or services are on the agenda or will be discussed so that the resident can attend and participate in that portion of the meeting;
- Requires each facility to provide written notice to the president or chair of the residents' council within 10 business days after a change in management; and
- Requires each facility to provide a copy of the OIR final examination report and a corrective action plan, if applicable, to the president or chair of the residents' council within 60 days after issuance of the report.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 39-0; House 113-1

Committee on Banking and Insurance

HB 7007 — OGSR/Security and Firesafety Plans

by Ethics, Elections and Open Government Subcommittee and Rep. Jacques (CS/SB 7040 by Rules Committee and Banking and Insurance Committee)

The bill saves from repeal the current public records exemptions for security or firesafety systems or plans for any state owned or leased buildings and any privately owned or leased property and information relating to such systems or plans that are held by a state agency. The bill also saves from repeal the current public meetings exemptions for any portion of a meeting that would reveal security or firesafety systems or plans that are exempt from public records requirements. The bill repeals a duplicative public record and public meeting exemption for security or firesafety system plans and related information.

The exemptions are necessitated because it is believed that disclosure of sensitive information relating to the security or firesafety systems or plans could result in identification of vulnerabilities in such systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

The Open Government Sunset Review Act requires the Legislature to review each public record and public meeting exemption five years after enactment. These exemptions are scheduled to repeal on October 2, 2023. The bill removes the scheduled repeals to continue the exempt status.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect October 1, 2023.
Vote: Senate 39-0; House 115-0

Committee on Banking and Insurance

HB 7035 — OGSR/Citizens Property Insurance Corporation/Cybersecurity Data and Information

by Ethics, Elections and Open Government Subcommittee and Rep. Griffitts and others (CS/SB 7042 by Rules Committee and Banking and Insurance Committee)

The bill (Chapter 2023-76, L.O.F.) repeals s. 627.352(1)(a), F.S., which makes confidential and exempt from disclosure records held by the Citizens Property Insurance Corporation (Citizens) identifying detection, investigation, or response practices for suspected or confirmed information technology security incidents if certain criteria are met. The confidential and exempt records protected from disclosure under this provision are considered to fall within the scope, and therefore the provision is duplicative, of the general exemption for agency cybersecurity information under s. 119.0725, F.S.

The bill saves from repeal the public records exemption in s. 627.352(1)(b), F.S., maintaining the exemptions in current law for any portions of a risk assessment, an evaluation, an audit, and any other reports of Citizens' information technology security program for its data, information, and information technology resources which are held by Citizens, if the disclosure would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information; or
- Information technology resources, including:
  - Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access.
  - Security information which relates to Citizens' existing or proposed information technology systems.

The bill makes technical amendments, including clarifying that "confidential and exempt" records and portions of public meeting records and transcripts are available to certain state or federal agencies.

The public records exemption stands repealed on October 2, 2023, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal of the exemption to continue the confidential and exempt status of the data and information under s. 627.352(1)(b), F.S.

This bill is not expected to impact state or local government revenues or expenditures.

These provisions were approved by the Governor and take effect October 1, 2023.
Vote: Senate 39-0; House 116-0

Committee on Banking and Insurance

CS/SB 7052 — Insurer Accountability

by Fiscal Policy Committee and Banking and Insurance Committee

The bill contains various provisions intended to increase consumer protection and insurer accountability in this state.

Regarding insurance coverage, the bill:

- Prohibits authorized insurers from cancelling a property insurance policy during any pending claim until the earlier of when the property has been repaired or 1 year after the insurer issues the final claim payment. The bill expands upon current law which prohibits authorized insurers from cancelling a residential property insurance policy until 90 days after repairs are complete for damage resulting from a hurricane or wind loss that is the subject of a state of emergency declared by the Governor and for which the Office of Insurance Regulation has issued an emergency order.
- Protects policyholders whose property insurance company becomes insolvent by requiring Citizens Property Insurance Corporation cover property with open claims handled by the Florida Insurance Guaranty Association.
- Clarifies that if a roof deductible is applied, the prohibition on applying any other deductible under the policy encompasses any other loss to the property caused by the same covered peril.
- Tolls the time period for filing a property insurance claim during a named insured's term of deployment to a combat zone or combat support posting.
- Clarifies legislative intent that ch. 2022-271, L.O.F., passed during Special Session A in December 2022, (SB 2-A [2022] on Property Insurance) shall not be construed to impair any right under an insurance contract in effect on or before the applicable effective date of that chapter law (December 16, 2022).

Regarding rates charged for insurance, the bill:

- Requires property insurance and motor vehicle rate filings to include, and the OIR must consider in reviewing rates, the combined effect of recent legislative reforms.
- Appropriates $500,000 from the Insurance Regulatory Trust Fund for the OIR to obtain an actuarial study to implement this requirement.
- Requires property insurance mitigation discounts be updated at least every 5 years and requires insurers to provide consumer-friendly information on their website describing hurricane mitigation discounts available to policyholders.

Regarding insurer claims handling, the bill:

- Requires liability insurers to follow proper claims handling practices on behalf of their insureds and provides that insurers engaging in a pattern or practice of violations are subject to enhanced enforcement penalties including a 2.0 multiplier of fines.

- Requires residential property insurers to create and use claims-handling manuals that comply with the Insurance Code and, at a minimum, comport to industry standards. The OIR may request a claims handling manual at any time and requires each property insurer to attest that their claims manuals comply with Florida law and the insurer is able to properly implement their manual.
- Strengthens the Unfair Insurance Trade Practices Act by:
  - Prohibiting alteration or amendment of an adjuster's report without providing a detailed explanation as to why any change that has the effect of reducing the estimate of the loss was made. The insurer must also either create a list of changes and who made the change or retain all versions of the report.
  - Prohibiting officers and directors of impaired or insolvent insurers from receiving a bonus from that insurer or other entity under common ownership with that insurer.

Regarding regulatory oversight of insurers, the bill:

- Creates a statutory requirement that the OIR refer suspected criminal activity to the Department of Financial Services (DFS) or other appropriate law enforcement or prosecutorial entities.
- Requires the OIR to develop a risk-based selection methodology for scheduling examinations of insurers. Such methodology must include:
  - Use of a risk-focused analysis to prioritize financial examinations of insurers when such reporting indicates a decline in the insurer's financial condition.
  - Consideration of:
    - Level of capitalization and identification of unfavorable trends;
    - Negative trends in profitability or cash flow from operations;
    - National Association of Insurance Commissioners Insurance Regulatory Information System ratio results;
    - Risk-based capital and risk-based capital trend test results;
    - The structure and complexity of the insurer;
    - Changes in the insurer's officers or board of directors;
    - Changes in the insurer's business strategy or operations;
    - Findings and recommendations from an examination;
    - Current or pending regulatory actions by the OIR or the DFS;
    - Information obtained from other regulatory agencies or independent organization ratings and reports; and
    - The impact of an insurer's insolvency on policyholders of the insurer and the public generally.
  - Prioritization of property insurers for which the OIR identifies significant concerns about an insurer's solvency.
  - Any other matters the OIR deems necessary to consider for the protection of the public.
- Provides that the OIR must initiate a market conduct examination after a hurricane if, at any time more than 90 days after the end of the hurricane, the insurer:

  - Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claim-related consumer complaints made about that insurer to the DFS to the insurer's total number of hurricane-related claims;
  - Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims;
  - Has made significant payments to its managing general agent since the hurricane; or
  - Is identified by the OIR as necessitating a market conduct exam for any other reason.
- Specifies factors the OIR may consider in determining whether the continued operation of an insurer may be deemed hazardous to its policyholders, creditors, or the general public. In making such a determination, the OIR may consider, in the totality of the circumstances, any of the following:
  - Adverse findings reported in financial condition or market conduct examination reports, audit reports, or actuarial opinions, reports, or summaries;
  - The National Association of Insurance Commissioners Insurance Regulatory Information Systems and its other financial analysis solvency tools and reports;
  - Whether the insurer has made adequate provisions for the anticipated cash flows required to cover its obligations and expenses;
  - The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection;
  - Whether the insurer's operating loss in the last twelve-month period is greater than fifty percent of the insurer's remaining surplus;
  - Whether the insurer's operating loss in the last twelve-month period excluding net capital gains, is greater than twenty percent of the insurer's remaining surplus;
  - Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which may affect the solvency of the insurer;
  - Contingent liabilities, pledges, or guaranties which in the opinion of the OIR may affect the solvency of the insurer;
  - Whether any "affiliate" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;
  - The age and collectability of receivables;
  - Whether the management of an insurer fails to possess and demonstrate the competence, fitness, and reputation deemed necessary;
  - Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information to the OIR;
  - Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the OIR;
  - Whether management of an insurer has filed or released any false or misleading financial statement, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
  - Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

  - Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;
  - Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principals and standards of practice;
  - Whether management persistently engages in material under reserving that results in adverse development;
  - Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;
  - The ratio of the annual premium volume to surplus or of its liabilities to surplus in relation to loss experience and/or the kinds of risks insured;
  - Whether the insurer's asset portfolio when viewed in light of current economic conditions and indications of financial or operational leverage is of sufficient value, liquidity or diversity to assure the company's ability to meet its outstanding obligations as they mature;
  - Whether the excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than 50 percent in the preceding 12-month period;
  - Whether residential property insurers have sufficient capital, surplus, and reinsurance to withstand significant weather events, including but not limited to hurricanes;
  - The insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law;
  - The insurer continues to write new business when it has not maintained the required surplus or capital;
  - The insurer attempts to dissolve or liquidate without first having made provisions, satisfactory to the OIR, for liabilities arising from insurance policies issued by the insurer;
  - Whether an insurer has incurred substantial new debt, has had to rely on frequent or substantial capital infusions, has a highly leveraged balance sheet, or relies increasingly on outside consulting sources;
  - The insurer meets one or more of the grounds in s. 631.051, F.S., for the appointment of the DFS as receiver; or
  - Any other finding determined by the OIR to be hazardous to the insurer's policyholders, creditors, or general public.
- Specifies actions the OIR may take in determining an insurer's financial condition, and specifies actions the OIR may order an insurer to take in an effort to improve the insurer's financial condition.
- Increases maximum administrative fines that may be levied by the OIR on insurers by 250 percent generally, and 500 percent for violations stemming from a state of emergency such as a hurricane.
  - Fines for each nonwillful violation may not exceed $12,500 (up from $5,000) and fines for each willful violation may not exceed $100,000 (up from $40,000). Fines

may not exceed an aggregate amount of $50,000 (up from $20,000) for all nonwillful violations arising out of the same action or an aggregate amount of $500,000 (up from $200,000) for all willful violations arising out of the same action.
    - Fines for "twisting" and for "churning" may not exceed $12,500 (up from $5,000) for each nonwillful violation and may not exceed $187,500 (up from $75,000) for each willful violation. Fines for willfully submitting fraudulent signatures on an application or policy-related document may not exceed $12,500 (up from $5,000) for each nonwillful violation and may not exceed $187,500 (up from $75,000) for each willful violation.
    - Fines for a violation related to a covered loss or claim caused by an emergency for which the Governor declared a state of emergency may not exceed $25,000 for each nonwillful violation and may not exceed $200,000 for each willful violation. Such fines may not exceed an aggregate amount of $100,000 for all nonwillful violations arising out of the same action or an aggregate amount of $1,000,000 for all willful violations arising out of the same action.
- Requires insurers to more promptly respond to the DFS Division of Consumer Services and increases fines for noncompliance. Decreases time for insurers to respond to the DFS Division of Consumer Services from 20 to 14 days and increases fines for noncompliance to $5,000 (up from $2,500) for licensed entities; and increases fines for a licensed individual to a flat $1,000 for each violation (up from $250 for a first violation, $500 for a second violation, and $1,000 for a third and any subsequent violation).
- Requires insurers that violate the Insurance Code to obtain prior approval of forms from the Office of Insurance Regulation (OIR) for three years after the violation.
- Increases staffing for the DFS by appropriating funding for seven full-time equivalent positions.
- Increases staffing at the OIR by appropriating 18 full-time equivalent positions;
- Requires property insurers to report to the OIR any temporary suspension of writing new policies.
- Specifies that insurance fraud referrals may be made to the statewide prosecutor for crimes impacting two or more judicial circuits.
- Requires additional reporting from regulators regarding their enforcement actions.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 39-0; House 113-0

Committee on Banking and Insurance

SB 7054 — Central Bank Digital Currency

by Banking and Insurance Committee

The bill aims to protect Floridians' privacy and other rights by prohibiting a central bank digital currency (CBDC), to the extent one is developed by the United States Federal Reserve or a federal agency, and any foreign CBDC, from being treated as money under the Florida Uniform Commercial Code (Florida UCC). The bill defines CBDC in the Florida UCC as a digital currency, digital medium of exchange, or digital monetary unit of account that is issued by the U.S. Federal Reserve, a federal agency, a foreign government, a foreign reserve system, or a foreign reserve system that is made directly available to a consumer by such entities, and includes when such digital currency is processed or validated directly by them. The bill excludes CBDC from the definition of "money" in the Florida UCC.

The bill has no impact on state and local revenues and expenditures and an indeterminate impact on the private sector.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.
Vote: Senate 34-5; House 116-1