PROPERTY INSURANCE

CB/SB 1418 — Citizens Property Insurance Corporation

by Banking & Insurance Committee and Senators Garcia, Campbell, Pruitt, and Villalobos

This bill changes the structure of the two state-created residual market associations that provide property insurance to persons unable to obtain coverage and merges them into a single entity named the "Citizens Property Insurance Corporation" (CPIC), effective July 1, 2002. Specifically, the policies, obligations, and liabilities of the Florida Residential Property and Casualty Joint Underwriting Association (JUA) would become those of CPIC and the policies, obligations, and liabilities of the Florida Windstorm Underwriting Association (FWUA) would be transferred to CPIC. The FWUA would operate subject to the supervision and approval of the CPIC Board.

Under current law, the FWUA provides coverage for the perils of windstorm (including hurricanes) and hail in specified coastal areas while the JUA provides full homeowners' and similar coverages statewide, except that it is prohibited from providing windstorm coverage in areas eligible for the FWUA. These associations comprise what is known as the "residual market" for property insurance in Florida.

The Citizens Property Insurance Corporation is structured to meet Internal Revenue Service (IRS) requirements so that its income will be exempt from federal income taxation and it will be able to issue tax-free bonds. On February 20, 2002, the Department of Insurance received an IRS "private letter ruling" stating that CPIC, as structured under this legislation, and if operated consistently with such legislation, would be tax exempt and be able to issue tax-free bonds.

In summary, the bill provides for the following:

- CPIC functions under a 7-member Board of Governors who are Florida residents and who are appointed by the State Treasurer, effective July 1, 2002. All board members serve at the pleasure of the Treasurer who also appoints the CPIC executive director and senior managers, as well as a technical advisory group which provides information and advice to the Board.

- CPIC will issue personal residential and commercial residential full coverage, all perils policies on a statewide basis (excluding FWUA eligible areas) and offer wind-only coverage for personal residential, commercial residential, and commercial nonresidential risks in current FWUA-eligible areas of the state. The Corporation will assess authorized insurers and assess surplus lines policyholders to pay regular and emergency assessments.

The Florida Surplus Lines Office is responsible for identifying surplus lines premiums subject to assessments and verifying and collecting such assessments.

- The Corporation operates three separate accounts: personal lines, commercial lines, and a high risk (in FWUA areas) account and the high risk account must include "quota share policies." Quota share policies allow authorized insurers to offer hurricane coverage within FWUA areas, whereby the insurer and CPIC is each solely responsible for a specified percentage of hurricane coverage of an eligible risk. The Corporation may enter into quota share primary insurance agreements with authorized insurers at coverage levels of 90 and 50 percent; however, neither the insurer nor CPIC will be responsible beyond their specified percentage of coverage of hurricane losses. Quota share agreements are further subject to review and approval by the Department of Insurance. Notice of the quota share percentages and responsibilities under quota share agreements will be provided to policyholders. The Corporation is required to establish standards in its plan of operation to ensure that quota share agreements (as to terms, pricing, incentives, and consideration) are implemented among insurers in a non-discriminatory manner.

- A market equalization surcharge must be levied upon CPIC's policyholders in all 3 accounts should there be a deficit occurring in any of the 3 CPIC accounts. Emergency assessments would be for as many years as necessary to cover a deficit and emergency assessments must be held by CPIC solely in the applicable (high risk, personal lines, or commercial lines) account. When financing obligations are no longer outstanding, CPIC may use a single account for all revenues, assets, liabilities, losses, and expenses.

- The Department of Insurance may remove territory from the area eligible for wind-only and quota share coverage (the CPIC high-risk account) after a public hearing, under specified conditions.

- There will be a cap on CPIC rates for personal lines residential "wind-only" policies issued or renewed between July 1, 2002, and June 30, 2003, at no more than 10 percent above the June 30, 2002, FWUA rate. Beginning July 1, 2003, the current JUA rate formula will apply to CPIC personal lines residential wind-only rates (i.e., the highest wind rate in the county among the top 20 insurers with the greatest total direct written premium in the state). The current JUA rating law provisions will also apply to CPIC personal lines residential policies (i.e., the highest rate in the county among the top 20 insurers with the greatest total direct written premium in the state, but excluding wind). With respect to mobile homes, the five insurers with the greatest total written premium for that line of business in the preceding year will be used. Rates for commercial lines coverage will be subject to the rate standards under current law, s. 627.062, F.S.

- It is the Legislature's intent that CPIC should, over time, reduce the 100-year probable maximum loss (PML) in the residual markets and thus reduce assessments levied on property insurers and policyholders statewide. An annual report must be provided to the

President of the Senate and the Speaker of the House of Representatives showing the reduction or increase in the 100-year PML attributable to wind-only coverages and the quota sharing program combined under CPIC, as compared to the benchmark 100-year PML of the FWUA (calculated in February 2001, and based on November 30, 2000, exposures). The bill mandates reduction of the boundaries of the high risk eligible areas (wind-only) in CPIC, beginning on February 1, 2007, if the PML is not reduced 25 percent from the benchmark. Furthermore, beginning on February 1, 2012, the bill requires a further reduction of the CPIC high risk area boundaries by eliminating any area that is not seaward of a line 1,000 feet inland from the Intracoastal Waterway, if the PML is not reduced by 50 percent from the benchmark. The Corporation is prohibited from requiring flood insurance as a condition of coverage subject to the insured executing a specified form.

- The existing financial obligations of the JUA and the FWUA in the newly created CPIC will be preserved. Creditors of existing FWUA and JUA debt will have recourse only against accounts upon which the debt is secured.

- No part of CPIC's income may inure to the benefit of any private person.

- Policyholders within CPIC will have the right or "choice" to select and maintain an insurance agent and may retain coverage in CPIC, notwithstanding take-out or keep-out offers, under specified depopulation programs. Also, commissions to producing agents are increased under such programs. Further, an offer of full property insurance coverage by an insurer writing either the ex-wind or wind-only coverage on a policy to which the offer applies is not considered a take-out or keep-out offer.

- The area within Port Canaveral is made eligible for coverage in the high-risk CPIC account.

- The current arbitration provision for the residual market would be deleted which means that the administrative hearing procedure under ch. 120, F.S., is the only avenue to litigate rate filing disputes between CPIC.and the Department of Insurance.

- CPIC may impose and collect an amount equal to the premium tax from policyholders to augment its financial resources. However, CPIC is exempt from corporate income tax.

- The same public records and open meeting exemptions which are currently in place for the JUA, apply to CPIC.

- The Treasurer may postpone, for a period not to exceed 180 days after the effective date of the bill, the implementation of CPIC or the transfer of FWUA policies, assets, and liabilities into the high risk account, if the Treasurer determines postponement is necessary due to specified conditions.

- The State Board of Administration (SBA), when developing factors to determine premiums for the Florida Hurricane Catastrophe Fund (CAT Fund), may consider the factor of providing for a more rapid cash buildup in the CAT Fund, until its capacity for a "single hurricane season" is fully funded. The term "losses" under the CAT Fund is expanded to include losses for additional living expenses under specified percentages, however, losses do not include losses for fair rental value associated with personal and commercial residential exposures or business interruption losses associated with commercial residential exposures.

- Effective January 7, 2003, references to "Treasurer" in specified provisions in the bill would be deemed references to the Chief Financial Officer and references to the Department of Insurance would be references to the Department of Insurance and Finance Services or other lawful successor.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

CS/SB 1126 — Insurance Policy Holder Protection Act

by Banking & Insurance Committee and Senators Posey, Wasserman Schultz, and Latvala

This bill creates the "Insurance Policy Holder Protection Act" which establishes a policyholder's right to select and maintain an insurance agent, increases agent commission payments by insurers, and revises agent policy servicing procedures under specified insurance risk apportionment plans.

Currently, the Florida Windstorm Underwriting Association (FWUA) and the Residential Property and Casualty Joint Underwriting Association (JUA) are property insurers of last resort (termed "residual market" insurers), one insuring against the peril of wind, the other against "all perils," (except wind in FWUA areas), respectively. These entities are also referred to as insurance risk apportionment plans under s. 627.351, F.S. The FWUA and the JUA presently must refuse coverage to those risks who receive an offer of coverage in the voluntary market and these entities charge rates generally higher than insurers in the voluntary market. Specifically, the bill provides for the following:

Eligibility for Coverage in the Residual Market

The bill creates an exception to the current requirement that the FWUA and the JUA deny coverage to a policyholder receiving an offer of coverage in the voluntary market. These entities would not be allowed to refuse coverage if the policyholder's agent is "unable" or "unwilling" to be appointed by the insurer making the offer of coverage.

Agent Compensation

The bill changes the way in which agents are compensated when a FWUA and JUA risk is removed before policy issuance, during the first 30 days of coverage (termed a keep-out plan), or as part of a take-out plan. If a risk accepts coverage with a voluntary market insurer before policy issuance or during the first 30 days, that insurer would be required to pay the agent of record either the insurer's or the FWUA's usual and customary commission, whichever is greater, for the first year. As is now the case for policies removed from the JUA under a take-out plan, if the policy is removed from the FWUA under a take-out plan, the agents also would be entitled by law to retain any unearned commission on the policy.

For the JUA, the applicable agent commission will no longer be limited to that paid by the take-out insurer, but will be the greater of that rate and the rate paid by the JUA, regardless of whether the policy is removed before policy issuance, during the first 30 days of coverage, or as part of a take-out plan. Agents will be entitled by law to retain any unearned commission on the policy removed under a take out plan, regardless of whether or not the insurer is paid a bonus.

An exception is provided to the above procedure when an offer of "full" property insurance coverage is made by the insurer *currently insuring* either the ex-wind or wind-only coverage on the policy to which the offer applies. This type of offer will not be considered a take-out or keep-out offer and so the agent commission provisions would not apply.

Florida Windstorm Underwriting Association Eligible Area

The bill provides that the area within Port Canaveral in Brevard County will be eligible for windstorm coverage from the Florida Windstorm Underwriting Association.

The provisions of this bill are contained in CS/SB 1418. However, under CS/SB 1418, these provisions will apply to the newly created Citizens Property Insurance Corporation.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 33-0; House 110-0

BANKING

CS/SB 2262 — Florida Fair Lending Act

by Banking & Insurance Committee and Senators Meek, Posey, and Holzendorf

The Florida Fair Lending Act ("the Act") imposes restrictions on high-cost home loans, to be enforced by the Department of Banking and Finance. In recent years the sub-prime mortgage market has grown substantially, providing access to credit to borrowers with less than perfect credit and who are not served by prime lenders. With this increase in sub-prime lending, there

has also been an increase in reports of abusive lending practices. The Act makes legislative findings regarding the problems of abusive mortgage lending.

The Act imposes requirements on high cost mortgage loans that mirror the requirements of the federal Home Ownership and Equity Protection Act (HOEPA), but adds other restrictions and enforcement provisions. These requirements would be enforced by the Department of Banking and Finance and would apply to high cost mortgage loans that charge interest or points that exceed the same triggers as provided in HOEPA.

Definition of "High-Cost Home Loan"

The definition of "high-cost home loan" is the same as in the federal (HOEPA) law. The *interest rate trigger*, for a first mortgage lien, is 8 percentage points above U.S. Treasury Securities of comparable maturity. For second and subordinate lien mortgages, the interest rate is 10 percentage points above U.S. Treasury Securities. The *fee-based trigger* is reached if total points and fees exceed the greater of 8 percent of the loan amount or $480 for 2002, adjusted annually based on the Consumer Price Index. Fannie Mae and Freddie Mac loans are exempt from the act.

Prohibited Provisions for High-Cost Home Loans

A high-cost home mortgage loan is permitted, but the following loan provisions and practices would be prohibited for high-cost home loans:

- Prepayment penalties are prohibited after the first 36 months of the loan; prepayment penalties during the first 36 months are permitted under certain conditions.
- The interest rate may not be increased after default.
- Balloon payments are prohibited for loans of less than 10 years, except for bridge loans of less than 18 months.
- Negative amortization schedules are prohibited, where interest payments do not reduce the principal.
- No more than two payments may be consolidated and paid in advance from the loan proceeds.
- A lender may not engage in a pattern or practice of making high-cost home loans based upon the collateral without regard to the borrower's ability to repay the loan.
- Payments under home improvement contracts may not be made directly to the contractor.

- The lender may not call or accelerate the indebtedness, except for the borrower's failure to abide by the terms of the loan, or fraud or material misrepresentation by the consumer.

- Refinancing within the first 18 months is prohibited, unless the new loan has a reasonable benefit to the borrower considering all of the circumstances.

- A lender may not make an open-ended loan in order to evade the provisions of this act.

- A lender may not recommend or encourage default.

- A lender may not make a loan at the residence of the borrower, without an appointment or express invitation.

- A lender may not charge a late payment fee unless the payment is at least 15 days late and the fee may not exceed 5 percent of the amount due.

- A lender may not charge a borrower any fees to defer payment or to modify the loan, for a minimum of one deferral or modification per each 12 months of the length of the loan.

Required Disclosures for High-Cost Home Loans

Lenders must provide certain disclosures to the borrower at least 72 hours before the closing of a high-cost home loan, including notice that the borrower should consider consulting a qualified independent credit counselor, and that the borrower should contact the U.S. Department of Housing and Urban Development for a list of credit counselors available in the area. Other disclosures (among others) inform the borrower that the borrower could lose their home if they do not meet their obligations; that the borrower should shop around and compare loan rates and fees; that the mortgage is subject to the Florida Fair Lending Act and purchasers and assignees of the mortgage could be liable for all claims and defenses which the borrower can assert against the creditor; and that the borrower has the right to rescind the loan within 3 business days.

Any person who purchases or is assigned a high-cost home loan shall be subject to all claims and defenses that the borrower could assert against the creditor of the mortgage, to the same extent and limitations as provided in the federal HOEPA law (15 U.S.C. 1641).

Right to Cure Default

The bill requires a lender to notify the borrower 45 days prior to taking any action to foreclose a high-cost home loan and to allow the borrower to cure the default and prevent foreclosure, within this 45-day period. However, the lender is only required to do this two times over the term of the loan.

Penalties/Enforcement

The Department of Banking and Finance (Department) is authorized to impose an administrative penalty of up to $5,000 for a violation of the act, up to $500,000 for all violations that could have been asserted at the time of the order. The Department may adopt rules to implement this act; conduct investigations and examinations; bring an action on behalf of the State to enjoin any person violating the act; and issue cease and desist orders.

Any person or the agent, officer, or other representative of any person committing a material violation of the act shall forfeit the entire interest charged, and only the principal sum can be enforced. (Current law provides this penalty for lenders making loans with interest rates in excess of the usury limits.)

Any violation of this Act shall also be deemed to be a violation of chs. 494, 516, 520, 655, 657, 658, 660, 663, 665, and 667, F.S., under which different types of lenders and brokers are licensed in Florida. Of particular importance, is that a violation of ch. 494, F.S. (Mortgage Brokerage and Mortgage Lending), gives rise to a civil action for damages pursuant to s. 494.0019, F.S., for which the person making the transaction and every licensee, director, or officer who participated in making the transaction, are jointly and severally liable for damages incurred by every party to the transaction. In addition, for a willful violation of part IV of ch. 520, F.S. (the Home Improvement Sales and Finance Act), with respect to any home improvement sale or contract, the owner may recover from the person committing the violation, or may set off or counterclaim in any action against the owner by such person, an amount equal to any finance charge and fees charged to the owner by reason of delinquency, plus attorney's fees and costs incurred by the owner.

A creditor who unintentionally violates the act, due to a good faith, bona fide error, shall not be deemed to have violated the act if the creditor notifies the borrower within 60 days of the error and makes appropriate restitution and adjustment to the loan.

Preemption of Local Government Ordinances

The Act broadly prohibits all counties and municipalities from enacting and enforcing ordinances, resolutions and rules regulating financial or lending activities of persons who are subject to the jurisdiction of the Department of Banking and Finance (except entities licensed to make title loans), or subject to the jurisdiction of any one of specified federal agencies that regulate financial and lending activities, or persons who originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made by such persons.

Credit Insurance Enrollment Forms

The Act requires all credit insurance enrollment forms to be approved by the Department of Insurance pursuant to ss. 627.410 and 627.682, F.S.

If approved by the Governor, these provisions take effect October 2, 2002.
Vote: Senate 36-0; House 118-0

WORKERS' COMPENSATION

CS/CS/SB 108 — Workers' Compensation

by Appropriations Committee; Banking & Insurance Committee; and Senator Smith

Workers' Compensation Coverage for Firefighters

This bill broadens the circumstances in which firefighters are considered to be acting within the course and scope of employment and, accordingly, covered by workers' compensation by providing that a firefighter, an emergency medical technician, or a paramedic that is engaged in responding to an emergency within Florida, but outside of the employer's jurisdiction or off-duty, and not engaged in services by a private employer, is considered to be acting within the course of employment and thereby covered by workers' compensation.

Under current Florida law, workers' compensation insurance only covers an employee's injury if the injury arises out of and occurs within the course and scope of employment. An employee is not considered to be acting within the course and scope of employment when "going to or coming from" work, unless engaged in a special errand or mission for the employer (this is known as the "going or coming" rule).

Law enforcement officers now enjoy a limited exception to the "going or coming" rule when injured while carrying out their "primary responsibility" to prevent or detect crime or enforce the penal, criminal, traffic, or highway laws of the state, while off-duty. They are deemed by operation of s. 440.091, F.S., to have been injured within the course of employment, and therefore are covered by workers' compensation. Currently, firefighters responding to fire emergencies while off duty or outside of the employer's jurisdiction do not enjoy a similar exception to the "going or coming rule."

Other Workers' Compensation Provisions

The bill provides significant changes to the workers' compensation system that are designed to expedite the dispute resolution process, eliminate exemptions from coverage for most commercial construction job sites, provide greater enforcement authority for the Division of Workers' Compensation of the Department of Labor and Employment Security to enforce

exemption and coverage requirements of ch. 440, F.S., and reduce costs for the overall administration of the workers' compensation system. These changes include:

Informal Dispute Resolution

1. Eliminates the mandatory request for assistance process in order to expedite the resolution process.

2. Authorizes the Division of Workers' Compensation to contact the injured worker or the workers' representative directly upon receipt of the notice of injury or death to provide information and facilitate resolution.

Formal Dispute Resolution

1. Revises the statutory dispute resolution time line in order to expedite the process. A mediation conference would be required to be held within 40 days after the receipt of the petition for benefits. The bill also requires that *all* final hearings be held within 210 days after receipt of the petition.

2. Authorizes the use of private mediation, at the carrier's expense, prior to the date of mandatory mediation in order to expedite the resolution process.

3. Requires use of expedited hearings for claims relating to determination of pay or claims for $5,000 or less for medical benefits only.

4. Limits the conditions under which a continuance for a mediation conference may be granted by a judge of compensation claims to circumstances beyond the party's control and requires that any order granting a continuance must set forth the date of the rescheduled mediation.

5. Provides that a mediation conference cannot be used solely for the purpose of mediating attorney's fees.

6. Authorizes the judge of compensation claims to dismiss claims that have been inactive for the previous 12 months unless good cause is shown.

7. Provides that attorneys fees would not attach until 30 days after the date the carrier/employer receives the petition.

Medical Fees and Medical Cost Containment

1. Authorizes medical providers and carriers to negotiate medical fees for independent medical examinations for workers' compensation in excess of the fee schedule.

Presently, s. 440.13, F.S., provides that medical fees, except for managed care arrangements, must be charged pursuant to the fee schedule adopted by the Division of Workers' Compensation by rule.

2. Requires the three-member panel, (the Insurance Commissioner, or designee, and two members appointed by the Governor) which establishes the statewide schedule of maximum reimbursement allowances for workers' compensation health care treatment to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules, and alternative reimbursement methods of medical providers and health care facilities. In addition, the three-member panel is required to survey carriers and providers to determine the availability and accessibility of health care delivery and the potential impact of changing the reimbursement method. The panel is required to submit a report to the Legislature. The Division of Workers' Compensation is required to provide administrative support, services, and data to the panel.
3. Clarifies that the managed care opt-out provision adopted by the Legislature in 2001 was intended to allow a carrier/employer to opt-out of mandatory managed care without regard to the date of accident.

Exemptions From Workers' Compensation Coverage

1. Revises the exemption criteria for businesses primarily engaged in the construction industry by eliminating exemptions for persons engaged in commercial construction. For any commercial construction job site estimated to be valued at $250,000 or greater, a person who is actively engaged in the construction industry is not considered an independent contractor, would be either an employer or employee, and is not exempt from the coverage requirements of ch. 440, F.S. Exemptions continue to be available to persons engaged in residential construction.

2. Provides greater enforcement tools for the Division of Workers' Compensation. Persons claiming an exemption would be required to maintain certain business records and to provide such records to the division upon request. If such records were not produced within 3 business days, the division is authorized to issue a stop-work order. The division is *required* to issue a stop-work order within 72 hours of making a determination that a person failed to secure compensation coverage, as required by law. The division is *required*, rather than allowed, to assess a penalty in the amount of the premium evaded or up to twice the amount of the premium evaded, or $1,000, whichever is greater, against employers that failed to secure compensation, as required by ch. 440, F.S.

Compliance and Enforcement

1. Revises reward eligibility requirements for the Anti-Fraud Reward Program of the Department of Insurance in order to encourage greater participation in the program. The department is authorized to provide a reward of up to $25,000 to persons providing information to the department which leads to the arrest and conviction of persons committing insurance fraud. An employer is required to post a notice informing employees of the Anti-Fraud Reward Program, for information leading to the arrest and conviction of persons committing insurance fraud, including employers who illegally fail to obtain workers' compensation coverage.

2. Revises required disclosures on the insurance application form.

Death and Disability Benefits for Local Law Enforcement and Correctional Officers

The bill revises death and disability benefits for correctional officers and local law enforcement officers. Current law (s. 112.18, F.S.) provides that any condition or impairment of health of any firefighter or state law enforcement officer caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to have been accidental and to have been suffered in the line of duty unless the contrary is shown by competent evidence. In order for the presumption to apply, the firefighter or state law enforcement officer must have successfully passed a physical examination upon entering into service as a firefighter or state law enforcement officer that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill expands that legal presumption to include any local law enforcement officer, correctional officer, or correctional probation officer. The bill does not mandate that a correctional officer or a correctional probation officer undergo a mandatory pre-employment physical examination requirement that is currently required for firefighters and state law enforcement officers.

If approved by the Governor, these provisions take effect July 1, 2002.
Vote: Senate 31-0; House 117-1

CS/CS/HB 319 — Self-Insurers

by Competitive Commerce Council; Insurance Committee; and Rep. Clarke (CS/SB 398 by Banking & Insurance Committee and Senator Latvala)

The bill transfers regulatory authority over individual employers that self-insure for purposes of workers' compensation coverage from the Division of Workers' Compensation to the Department of Insurance and to the Florida Self-Insurers Guaranty Association (association), a not-for-profit corporation. Currently, the Florida Self-Insurers Guaranty Association is under the general supervision of the Department of Labor and Employment Security. The bill transfers

powers, functions, duties, rules, records, and property relating to the regulation of self-insured employers from the Department of Labor and Employment Security to the Department of Insurance.

The Department of Insurance will exercise oversight authority over the association, including approval of the plan of operation and appointment of the board members. Division authority to assess association members is transferred to the association, subject to approval by the Department of Insurance. The Department of Insurance is required to act in accordance with recommendations of the association regarding the qualifications of an applicant to be approved as a self-insured employer, and determining whether the financial strength of a current or former member, unless the department finds by clear and convincing evidence that the recommendations are erroneous. The authority to commence delinquency proceedings and be appointed receiver is transferred from the Division of Workers' Compensation to the Department of Insurance and the association. The association is given a number of additional responsibilities.

The Department of Insurance will be required to contract with the association for services that could include processing applications from self-insurers, collecting and reviewing financial statements, processing compliance documentation, and inspecting and auditing payroll records of individual self-insurers. The Department of Insurance is required to contract with attorneys recommended by the association, in certain instances.

The prohibition against the use of state funds of any kind by or for the association is removed. State funds may not be used for claims payments; however, state funds may be paid to the association under a contract for performing services required by law.

The bill appropriates the sum of $183,750 from the Workers' Compensation Administration Trust Fund to the Department of Insurance for the purpose of contracting with the association for FY 2002-2003. Six positions within the Division of Workers' Compensation responsible for the regulation and oversight of the individual self-insured employers are eliminated.

If approved by the Governor, these provisions take effect October 1, 2002.
Vote: Senate 36-1; House 119-0

CS/HB 1643 — Department of Labor and Employment Security

by Smarter Government Council and Rep. Clarke (CS/CS/2340 by Commerce & Economic Opportunities Committee; Banking & Insurance Committee; and Senator Clary)

The bill abolishes the Department of Labor and Employment Security and transfers the department's divisions, functions, and responsibilities to other executive branch agencies. The bill transfers the Division of Workers' Compensation to the Department of Insurance, by a Type II transfer, except as otherwise provided. The Department of Insurance is authorized to reassign,

reclassify, and reorganize the transferred positions. The bill transfers other programs and functions from the Department of Labor and Employment and Security, as summarized below:

- Positions and funding for the rehabilitation and reemployment of injured workers within the Division of Workers' Compensation are transferred to the Department of Education by a Type II transfer;

- Positions and funding for the oversight of medical services within the Division of Workers' Compensation are transferred to the Agency for Health Care Administration by a Type II transfer;

- Positions and funding for the regulation of child labor, farm labor, and migrant labor are transferred to the Department of Business and Professional Regulation by a Type II transfer;

- Positions and funding for the Unemployment Appeals Commission are transferred to the Agency for Workforce Innovation by a Type II transfer; and

- The Office of Information Systems is transferred to the State Technology Office within the Department of Management Services by a Type II transfer.

The bill reorganizes the responsibilities of the offices within the Agency For Workforce Innovation. The bill also provides certain other substantive changes affecting the administration of the Workers' Compensation Law. The Department of Insurance is: 1) authorized to share confidential medical records with the Agency for Health Care Administration and the Department of Education to assist them in fulfilling their responsibilities, which are both required to maintain the confidentiality of the information; 2) required to develop reporting requirements for health care providers in consultation with the agency; and 3) authorized to monitor and audit workers' compensation carriers under the provisions of the Florida Insurance Code. Certain reporting and administrative functions are revised or eliminated, and the Workers' Compensation Oversight Board is abolished.

If approved by the Governor, these provisions take effect July 1, 2002, except as otherwise provided.
Vote: Senate 35-0; House 115-0

HEALTH INSURANCE

CS/CS/SB 1412 — Prescription Drug Claim Identification Cards

by Health, Aging & Long-Term Care Committee; Banking & Insurance Committee; and Senators Posey, Peaden, and Crist

The bill requires any health insurer or health maintenance organization and all state and local government entities that provide outpatient prescription drug coverage to issue a prescription drug benefits-identification card containing certain specified information.

The benefits-identification card must contain certain information, including the name of the claims processor, the insured's name, identification number and prescription group number, the help desk telephone number, and the claims submission name and address. The bill does not require the information to be formatted in any specified manner. The information must be printed on the card, or it may be embedded in the card and available through magnetic stripe, smart card, or other electronic technology. Certain information is not required if the card provides instructions on how such information may be readily accessed by electronic means. An entity affected by the bill could issue temporary stickers containing the required information that policyholders can affix to the existing card.

If approved by the Governor, these provisions take effect October 1, 2002, and would apply to policies or contracts issued or renewed on or after that date.
Vote: Senate 34-0; House 117-0

CS/SB 2192 — Solvency of Insurers and Health Maintenance Organizations

by Banking & Insurance Committee and Senator Sanderson

This bill revises various provisions relating to the authority of the Department of Insurance (DOI) in regulating the solvency of insurance companies and health maintenance organizations (HMOs). It also provides for the transfer of HMO payment obligations to other entities, and the payment of dividends or distributions by HMOs. The bill specifically provides for the following:

- Authorizes the DOI to issue an order placing an insurer in administrative supervision and allows such insurer to contest the order by requesting an administrative hearing under ch. 120, F.S. Such a request stays the effect of the order.

- Specifies that if the DOI and the insurer are not able to agree on a plan to correct the conditions set forth in the order placing the insurer in administrative supervision, the DOI may require the insurer to take corrective action as is necessary to remove the causes giving rise to the need for administrative supervision.

- Provides that during the period of administrative supervision in which the insurer may contest an action taken by the DOI, that contesting such action does not stay the action pending reconsideration by the DOI.

- Expands the definition of "unsound condition," by adding a provision to the criteria that the DOI uses to determine whether an insurer is in such condition. It adds the condition that if an insurer meets one or more of the grounds for which the DOI may currently petition for an order directing it to rehabilitate a domestic insurer, the insurer is in an unsound condition.

- Authorizes the DOI to adopt rules to define standards of hazardous financial condition and corrective action substantially similar to that indicated in the 1997 National Association of Insurance Commissioners' (NAIC) model rule.

- Specifies that for determining the financial condition of an insurer writing workers' compensation insurance, the insurer must accrue a liability on its financial statements for all Special Disability Trust Fund (SDTF) assessments that are due within the current calendar year. Such insurers must disclose in the notes to the statements, an estimate of future SDTF assessments, if the assessments are likely to occur and can be estimated with reasonable certainty.

- Revises the financial requirements for charitable organizations that are authorized by the DOI to issue donor annuity agreements. Clarifies the method for calculating reserves and surplus, reduces the required surplus from 25 to 10 percent of required reserves, and removes the specified diversification requirements and replaces such requirements with particularized investments.

- Mandates that HMOs include in their annual actuarial certifications assurance that they have adequately reserved for specified liabilities. Eliminates the requirement for HMOs to file a 4th quarter report, and specifies the due dates for the filing of their 1st, 2nd, and 3rd quarterly reports. Also, requires HMOs to file quarterly reports and the annual report with the NAIC and to pay fees to the NAIC rather that to the DOI, which they must do currently.

- Provides that if an HMO, through a health care risk contract, transfers to any entity the obligation to pay a provider for any claim, that the liabilities of the HMO must include the amount of those losses and claims to the extent that the provider has not received payment. No liability need be established if the entity has provided the HMO a financial instrument acceptable to the DOI which secures the obligations under the contract or if the HMO has an escrow or withhold agreement approved by the DOI which assures full payment of those claims. A "health care risk contract" is defined as a contract under which an individual or entity receives consideration or other compensation in an amount greater than 1 percent of the HMO's annual gross written premium in exchange for

providing to the HMO a provider network or other services, which may include administrative services. The 1 percent threshold must be calculated on a contract-by-contract basis for each such individual or entity and not in the aggregate for all health care risk contracts.

- Allows HMOs to invest a portion (5 percent of admitted assets or 25 percent of excess surplus, whichever is less) of their excess surplus in investments not specifically authorized under current law as long as the investment is not expressly prohibited by ch. 641, F.S. This would allow HMOs to invest in similar types of investments as insurers are allowed to do currently.

- Unless prior written approval is obtained from the DOI, HMOs would be prohibited from paying dividends or distributing cash to stockholders if payment would create negative retained earnings. Dividends equal to or less than the greater of 10 percent of retained earnings or prior year net income would be permitted if surplus is 115 percent of the minimum requirement, and the DOI is notified 30 days prior to the dividend or distribution payment. Criteria is also set forth in the bill for the DOI to consider before approving dividend or distribution payments in excess of the maximum amount authorized above.

If approved by the Governor, these provisions take effect October 1, 2002.
Vote: Senate 37-0; House 115-0

INSURANCE AGENTS

CS/HB 1841 — Insurance Company Representatives

by Competitive Commerce Council; Insurance Committee; and Reps. Waters, Wiles, Brown, Lee, Kallinger, McGriff, and others (CS/CS/SB 1436 by Governmental Oversight & Productivity Committee; Banking & Insurance Committee; and Senator Posey)

The provisions of this bill seek to bring Florida into compliance with the uniformity and reciprocity provisions of the federal Gramm-Leach-Bliley Act ("Act"), while preserving certain "consumer protection" laws. Under the Act, certain state regulatory authority over producer (insurance agent) licensing is pre-empted to the National Association of Registered Agents and Brokers (NARAB), unless a majority of the states and territories (29) achieve uniformity or reciprocity by November 12, 2002. The Act requires states and territories either to enact uniform producer licensing laws or to ensure non-discriminatory treatment through reciprocity for non-resident agents. According to the National Association of Insurance Commissioners (NAIC), thirty-seven states have enacted uniformity or reciprocity legislation.

This bill makes numerous changes to the licensing of insurer representatives in Florida and includes the following provisions:

- Establishes legislative intent to achieve compliance with the uniformity and reciprocity requirements of the Gramm-Leach-Bliley Act, while preserving applicable insurance consumer protection laws which are not inconsistent with these requirements.

- Creates a broad "definitions" section by consolidating terms contained in Part I of ch. 626, F.S., into one section. It corrects references and repeals the various statutory provisions that have been consolidated and creates new definitions for the terms "uniform application," "home state," "limited lines insurance," and "line of authority." Adds the term "producer" to the definition of "agent" so that such terms will have the same meaning when used throughout the Florida Insurance Code.

- Identifies certain license requirements as consumer protections.

- Beginning November 1, 2002, mandates that the Department of Insurance (DOI) accept the NAIC's "Uniform Application" as acceptable for use for licensure for nonresident insurance agents. Applicants may submit or transmit the Florida application or a Uniform Application.

- Combines sections in current law addressing temporary licensing provisions and authorizes the DOI to issue a single temporary license for multiple lines for a period not to exceed 6 months.

- Gives the DOI the authority to promulgate rules establishing waiting periods for applicants to become eligible for licensure following denial, suspension, or revocation of a license and provides penalties for violations.

- Provides additional exemptions from the examination requirement for certain licensees.

- Facilitates the transfer of a license from another state by allowing certain agents who become Florida residents to transfer their licenses from other states. Also exempts specified applicants from having to meet Florida's prelicensing or examination requirements if the applicant was previously licensed in another state which has substantially equivalent requirements.

- Requires insurance agents to report to the DOI certain final dispositions of administrative actions taken against them.

- Extends the time period allowed for licensees to notify the DOI of a change of address or name, and imposes fines for failure to provide timely notification.

- Establishes prohibitions against the unlicensed transaction of general lines, life, and health insurance.

- Allows the DOI to utilize a national producer database to verify the license status of producers.

- Cancels all current solicitor licenses effective October 1, 2002, and allows existing solicitor licensees to be licensed as general lines agents.

- Extends the express authority of the DOI to enter into reciprocal agreements with other states waiving the examination requirement as to nonresident general lines agent licensing.

- Increases the penalties for insurance agents who represent or aid an unauthorized insurer.

- Exempts persons adjusting only multiple peril crop or crop hail claims from the Insurance Adjuster Law.

If approved by the Governor, these provisions take effect on October 1, 2002.
Vote: Senate 37-0; House 119-0

MISCELLANEOUS

CS/CS/SB 432 — Insurer Rehabilitation and Liquidation/Withdrawal of Insurers from Florida

by Judiciary Committee; Banking & Insurance Committee; and Senator Klein

This bill provides for major changes to the "Insurers Rehabilitation and Liquidation Act" (Act) under ch. 631, F.S. Currently, when solvency protections fail, the Department of Insurance (DOI) may seek to be appointed Receiver of an insurer through a judicial proceeding for the purpose of rehabilitating an impaired insurer or liquidating the insolvent company. The DOI, as Receiver, is placed in control of the impaired or insolvent insurer. The provisions of the bill are summarized as follows.

Protection and Collection of Insurer Assets, Funds, and Property and Payment of Claims

The "purposes" section of the Act is clarified to provide a comprehensive scheme to administer insurer receiverships; establish a system to equitably apportion any unavoidable loss; administer receiverships more efficiently on an interstate and international basis; and, to maximize recovery of assets for the benefit of the insurer's estate, policyholders, creditors, and other claimants, and the public. Certain operative terms are defined to help identify legitimate transfers of insurer

funds, assets, and property and aid in recovering funds and property that have been inappropriately transferred in accordance with the provisions of the Act.

Reciprocity in the treatment of policyholders in receiverships is extended to those states that have enacted the National Association of Insurance Commissioner's (NAIC) model act or the specified uniform liquidation act. The jurisdiction of the receivership court is expanded to include actions against third parties involved in insurance, in lieu of collateral actions for related matters in other courts in other parts of the state. The statutes of limitation provisions are tolled for a period of 4 years from the date the court enters an order placing the insurer in receivership to prevent the loss of rights that might not be immediately apparent to the Receiver. The Receiver is authorized to exercise the rights of certain third parties that could add to the value of the estate and is allowed to recover costs "expended in," rather than "necessary to," the recovery of funds and property from third parties.

Investigation Authority

The DOI, as Receiver, is allowed to conduct an investigation into the cause of the insolvency during the delinquency proceeding under the direction of the receivership court. The scope of the DOI's authority to examine books, records, and documents of authorized insurers is expanded to include those of third parties currently or formerly associated with the insolvent insurer, other than reinsurance companies.

Civil and Criminal Sanctions/Prohibitions Against Officers of Insolvent Insurers

New civil and criminal penalties are created and applied to certain persons for specified fraudulent acts that are a significant cause of the delinquency proceeding. Sanctions are also applied to persons who make false or misleading statements relating to transactions of insurers. The bill further prohibits a person who was an officer or director of an insolvent insurer and who served in that capacity within the 2-year period prior to the date the insurer became insolvent, from thereafter serving in such capacity for an insurer unless the person demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Claims Payments by Guaranty Associations

In addition to the current prohibition on claims for subrogation, claims for contribution and indemnity against the Florida Insurance Guaranty Association (FIGA) by reinsurers, insurers, insurance pools, or underwriting associations would be prohibited. The defenses available to insurers in defending claims are specifically granted to the FIGA. The bill also amends s. 631.904, F.S., which provides definitions applicable to the Florida Workers' Compensation Insurance Guaranty Association, to revise the definition of the term "covered claim" to exclude any return of premium for retrospective rating plans or return of premium from a policy that was not in force on the date of the final order of liquidation.

Withdrawal of Insurers from Florida

Under a separate provision of the bill that amends s. 624.430, F.S., a procedure is authorized to allow an insurer to surrender its certificate of authority or withdraw from this state. It provides that a solvent insurer can submit a plan for withdrawal to the DOI (surrender its certificate of authority) and, upon approval of the plan, the insurer may initiate corporate dissolution proceedings pursuant to ch. 607, F.S. The DOI must, within 45 days from receipt of the withdrawal plan submitted by the insurer, either approve, disapprove, or approve with conditions the plan, and the failure to do so is deemed an approval of the surrender of the insurer's certificate of authority.

If approved by the Governor, these provisions take effect July 1, 2002.
Vote: Senate 35-0; House 118-0

CS/SB 1822 — Insurance

by Banking & Insurance Committee and Senator Holzendorf

This bill makes the following changes to miscellaneous provisions of the Florida Insurance Code:

- Amends s. 627.4072, F.S., to extend a current exemption from state insurance premium taxes, municipal premium taxes, and regular assessments (but not emergency assessments) of the Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association for residential property insurance policies issued by minority-owned property and casualty insurers licensed after May 1, 1998. Insurers qualifying under this section are currently eligible for exemptions for up to 5 years from the date of receiving a certificate of authority, which the bill extends to 10 years. All exemptions terminate on July 1, 2003, which the bill extends to December 31, 2010. However, the bill limits the exemption to insurers issued a certificate of authority before January 1, 2002. There is currently only one insurer that qualifies for this exemption.

- Amends s. 215.555, F.S., to require that collateral protection insurance be covered by the Florida Hurricane Catastrophe Fund (FHCF), under certain conditions. The FHCF is a state trust fund administered by the Florida State Board of Administration, which fund provides coverage for a portion of an insurer's residential property insurance losses resulting from a hurricane. Each insurer writing residential property insurance in the state must purchase coverage from the FCHF. Collateral protection insurance covers the interest of a creditor arising out of a credit transaction secured by real or personal property, if the borrower allows his or her coverage to lapse. The bill provides that collateral protection insurance which covers personal residences is covered by the FHCF if the policy coverage protects both the borrower's and the lender's financial interests in

an amount at least equal to the coverage for the dwelling, and if such policy can be accurately reported to the FHCF.

- Amends s. 324.031, F.S., related to the manner of proving financial responsibility for owners or operators of motor vehicles. Currently, under the Financial Responsibility Law, motor vehicle owners and operators involved in an accident causing injuries or convicted of certain traffic offenses must demonstrate their ability to respond to damages in an accident. The main option is obtaining, for each vehicle, a motor vehicle liability insurance policy with minimum limits of $10,000 bodily injury for one person in one crash, $20,000 bodily injury to two or more persons in one crash, and $10,000 property damage in any one crash (i.e., $10,000/$20,000/$10,000). Other options are posting a surety bond, furnishing a deposit of cash or securities, or self-insuring, under certain conditions. The bill revises the excess insurance requirements for business entities (any person other than a natural person) that meet their financial responsibility requirements by posting a surety bond or depositing cash or securities with the Department of Highway Safety and Motor Vehicles. For such entities, the bill increases the minimum required excess liability insurance limits from $50,000/$100,000/$50,000 or $150,000 combined single limits to $125,000/$250,000/$50,000 or $300,000 combined single limits. The bill maintains the current claim amount at which point the excess insurance attaches, which is $10,000/$20,000/$10,000 or $30,000 combined single limits.

- Amends s. 324.032, F.S., also related to the manner of proving financial responsibility for owners or operators of motor vehicles. Under current law, an owner or lessee of at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may prove financial responsibility by securing a motor vehicle liability policy meeting minimum insurance liability requirements or by self-insuring. Under the bill, those choosing to satisfy the financial responsibility requirements by self-insuring would be permitted to self-insure up to a maximum of $300,000 on a per-occurrence basis, rather than the current maximum of $100,000 on a per-occurrence basis.

- Amends s. 631.904, F.S., which provides definitions applicable to the Florida Workers' Compensation Insurance Guaranty Association, to revise the definition of the term "covered claim" to exclude any return of premium for retrospective rating plans or return of premium from a policy that was not in force on the date of the final order of liquidation.

- Amends s. 625.041, F.S., to specify that for determining the financial condition of an insurer writing workers' compensation insurance, the insurer must accrue a liability on its financial statements for all Special Disability Trust Fund (SDTF) assessments that are due within the current calendar year. Such insurers must disclose in the notes to the statements, an estimate of future SDTF assessments, if the assessments are likely to occur and can be estimated with reasonable certainty.

- Amends s. 626.926, F.S., which applies to the liability of surplus lines insurers when a loss of premium occurs. Under current law, when surplus lines coverage has been bound and if the premium has been received by the surplus lines agent or originating agent who placed such insurance, then in all circumstances concerning coverage between the insurer and the insured (policyholder), the insurer is deemed to have received the premium due for the coverage. Furthermore, the insurer is liable to the insured as to losses covered by such insurance and for the unearned premiums if the insurance is cancelled. The bill provides an exception to the current law when an insurance premium is financed (for example, by the originating agent or by a premium finance company), and the surplus lines insurer or the surplus lines agent does not receive the premium. In such a case, the surplus lines insurer may cancel the insurance policy pursuant to s. 626.9201, F.S., which requires the insurer to give at least 10 days' written notice of cancellation. Therefore, if a policyholder makes a premium payment (a "down payment") to an originating agent or premium finance company which finances the premium and if such agent or premium finance company steals or misappropriates the funds, or fails to pay the premium to the surplus lines agent or surplus lines insurer, the insurer may cancel the policy.

- Amends s. 641.35, F.S., to allow health maintenance organizations (HMOs) to invest a portion (5 percent of admitted assets or 25 percent of excess surplus, whichever is less) of their excess surplus in investments not specifically authorized under current law as long as the investment is not expressly prohibited by ch. 641, F.S. This would allow HMOs to invest in similar types of investments as insurers are allowed to do currently.

- Amends s. 627.351, F.S., contingent upon Senate Bill 1418 becoming a law (which was also ordered enrolled) to revise certain provisions that are contained in such other Senate Bill, which is the bill that creates the Citizens Property Insurance Corporation. (See the summary for this bill, above.) The amendment in CS/SB 1822 revises the provisions that allow the Department of Insurance to dissolve the corporation, to provide that no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding, unless adequate provision has been made for the payment of the bonds or other financial obligations. The bill makes other clarifying changes to the language regarding the Legislature's intent that nothing be construed to compromise, diminish, or interfere with the rights of creditors under financing arrangements entered into by the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association.

If approved by the Governor, these provisions take effect July 1, 2002, except as otherwise expressly provided.
Vote: Senate 34-0; House 117-0

CS/SB 1916 — Bail Bond Agencies and Agents

by Banking & Insurance Committee and Senator Silver

This bill revises the laws regulating bail bond agents, based on recommendations of the Bail Bond Blue Ribbon Panel appointed by the Treasurer and Insurance Commissioner. Bail bond agents are regulated by the Department of Insurance, under ch. 648, F.S. A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

The bill makes the following changes:

- Prohibits any person owning a bail bond agency who is not a licensed and appointed bail bond agent;
- Requires the owner of a bail bond agency to designate a primary bail bond agent who is responsible for the overall operation and management of the agency;
- Authorizes the issuance of a temporary permit, valid for 24 months, if the owner of a bail bond agency dies or becomes mentally incapacitated;
- Increases the standards for education and qualifications for bail bond agents, including increasing the required pre-licensing course from 80 hours to 120 hours;
- Prohibits certain acts related to solicitation of bail bond business;
- Requires all build-up funds used to indemnify the insurer by the bail bond agent to be held in an individual fund trust account and maintained in an FDIC or FSLIC approved bank or savings and loan, subject to examination and accounting requirements;
- Requires a temporary bail bond agent to be accompanied by a supervising bail bond agent when apprehending defendants;
- Requires bail bond agents to file a sworn affidavit with a new appointing insurer that no funds are owed to another insurer;
- Provides more specific prohibitions against misleading advertising;
- Provides more specific prohibitions against bail bond agencies hiring persons convicted of a felony;
- Requires bail bond agents that surrender a defendant to provide the defendant with a statement of surrender;

- Provides additional accountability and penalties for requirements related to collateral held by a bail bond agent;

- Increases the maximum fee that a bail bond agent can charge for the actual expenses related to converting collateral to cash, from 10 percent to 20 percent of the face value of the bond, and allows the agent to charge a credit card fee;

- Increases administrative fines that may be imposed by the department for violations from $500 to $5,000 for a nonwillful violation, and from $2,500 to $20,000 for a willful violation;

- Authorizes the department to impose a "civil assessment" of up to $5,000 against a licensee who fails to comply with solicitation requirements, subject to a preponderance of the evidence standard, rather than the clear and convincing standard that has been determined by the Florida Supreme Court to be required for agency fines.

If approved by the Governor, these provisions take effect July 1, 2002.
Vote: Senate 36-0; House 116-0

CS/SB 2102 — Motor Vehicle Service Agreements/Service Warranty Associations

by Banking & Insurance Committee and Senator Villalobos

This bill allows a motor vehicle service agreement company to be licensed by the Department of Insurance (DOI) to sell certain guarantees associated with "vehicle protection" products, defined as a product or system installed to a motor vehicle or designed to prevent the theft of the vehicle or assist in its recovery.

A motor vehicle service agreement including such a guarantee must cover "vehicle protection expenses" incurred by the service agreement holder for loss or damage to a covered vehicle resulting from the failure of the vehicle protection product to prevent the theft of the vehicle or to assist in its recovery. Such expenses must be clearly stated in the service agreement form. The agreement must either provide reimbursement for a pre-established flat amount *or* for the following expenses which, at a minimum include:

- Deductibles applicable to comprehensive coverage under the service agreement holder's insurance policy;
- Temporary vehicle rental expenses;
- Sales taxes and registration fees on a replacement vehicle; and
- The difference between the benefits paid to the service agreement holder for the stolen vehicle under his or her insurance coverage and the actual cost of a replacement vehicle.

Such coverage may only be sold to a service agreement holder that has comprehensive insurance coverage for the vehicle in question. But, payments to the service agreement holder cannot duplicate the benefits or expenses paid to the holder by the insurer providing comprehensive coverage.

Service agreement companies offering vehicle protection coverage must meet the financial solvency requirements through purchasing contractual liability insurance, rather than maintaining reserves.

DOI may disapprove any service agreement form for vehicle protection expenses which does not clearly indicate the method for calculating the benefit to be paid; the term of the agreement; whether new or used cars are eligible for the vehicle protection product; that a claim may not be made against the Florida Insurance Guaranty Association; and that the service agreement holder must have comprehensive coverage at the time of loss.

The bill also amends s. 634.405, F.S., relating to service warranty associations. Currently such an association must either maintain a specified financial reserve or purchase a contractual liability insurance policy to insure 100 percent of its claims exposure under all of its contracts, "wherever written." The bill provides that if specified conditions are satisfied, that the scope of coverage under an association's contractual liability policy is not required to exceed its claims exposure under contracts delivered in Florida.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 118-0

PUBLIC RECORDS EXEMPTIONS

HB 281 — Public Records Exemption for Risk-Based Capital Information

by State Administration Committee and Rep. Brummer (CS/SB 238 by Banking & Insurance Committee and Senator Holzendorf)

This bill reenacts the public records and public meetings exemptions for certain information regarding risk-based capital information held by the Department of Insurance. The public records exemption provides that the initial risk-based capital report, any adjusted risk-based capital report, any risk-based capital plan, any revised risk-based capital plan, working papers, and reports of examination or analysis of an insurer performed pursuant to a plan or corrective order, or regulatory action level, subsequently filed at the request of the Department of Insurance (DOI), with respect to any domestic insurer or foreign insurer, held by DOI are confidential and exempt from public disclosure. Hearings relating to DOI's actions regarding any insurer's risk-based capital report are closed to the public. Transcripts of those hearings are confidential and exempt from public disclosure. The public records and public meetings exemptions will

terminate either one-year following the conclusion of any risk-based capital plan or revised risk-based capital plan, or on the date of entry of an order of seizure, rehabilitation, or liquidation.

If approved by the Governor, these provisions take effect October 1, 2002.
Vote: Senate 36-0; House 114-0

HB 543 — Public Records Exemption/Abandoned Property

by Rep. Detert (CS/SB 468 by Banking & Insurance Committee and Senators Burt, Sanderson, and Wasserman Schultz)

The bill creates a public records exemption for certain information related to reports of unclaimed property held by the Department of Banking and Finance. The social security number and the financial account numbers of apparent owners of the abandoned or unclaimed property will be confidential and exempt. This exemption applies to social security numbers and financial account numbers held by the Department of Banking and Finance before, on, or after the effective date of this exemption. However, an attorney, Florida-certified public accountant, or private investigative agency licensed in Florida under ch. 493, F.S., and registered with the Department of Banking and Finance under ch. 717, F.S., will continue to have access to the social security number if the information was used for the limited purpose of locating unclaimed property or unclaimed property owners. This public records exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and will stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides that the exemption of this information from public records is necessary to prevent identity theft, related crimes and the misuse of such information to claim entitlement to property and defraud the rightful property owner or the State. The release of this confidential and exempt information to an attorney, a certified public accountant, or a private investigator is necessary to facilitate the return of unclaimed property to the rightful owners.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 36-0; House 117-0

CS/HB 1355 — Public Records/Department of Insurance Workpapers

by State Administration Committee and Rep. Mealor and others (CS/SB 1478 by Banking & Insurance Committee and Senator Clary)

The bill makes confidential and exempt from public record requirements workpapers and other information held by the Department of Insurance (DOI), and workpapers and information received from another governmental entity or the National Association of Insurance Commissioners (NAIC), for use by the DOI in the performance of its examination or

investigation duties. Confidential and exempt information includes workpapers and other information held by the DOI before, on, or after the effective date of this exemption.

The bill provides that such confidential and exempt information may be disclosed to another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and may be disclosed to the NAIC. The receiving governmental entity or the NAIC must maintain the confidential and exempt status of the information. Use of the confidential and exempt information is authorized in a criminal, civil, or administrative proceeding, if its confidential and exempt status is maintained. This provision is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2007, unless saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement which states that such exemption is necessary in order to effectively administer a government program and that disclosure of such information would reveal information that could be used in preparing examination and investigations reports, and could thus thwart the state's interest in ensuring the integrity of the regulatory process. Also, such confidential information is at times incomplete and misleading and revealing such information would be detrimental to persons and insurers examined or investigated. Furthermore, disclosure of such information could impair the ability of the DOI to gather pertinent information it needs to complete such examinations and investigations because individuals or entities which would otherwise disclose information to DOI would be unwilling to do so for fear that the information would not remain confidential.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 18-12; House 96-22

CS/HB 1767 — Public Records/Personal Identification Information

by Smarter Government Council and Rep. Allen (CS/SB 1480 by Banking & Insurance Committee and Senator Clary)

The bill makes confidential and exempt from public record requirements certain personal or financial information held by the Department of Insurance, or its service providers or agents, relating to a consumer's complaint or inquiry regarding a matter or activity regulated by the Department of Insurance (DOI). Confidential and exempt information includes bank account numbers, debit, charge, and credit card numbers, and all other personal financial and health information of a consumer held by the Department of Insurance. However, this exemption does not include the name and address of an inquirer or complainant to the department or the name of an insurer or other regulated entity which is the subject of the inquiry or complaint.

The DOI is authorized to disclose the confidential and exempt information to another governmental entity if that entity needs the information to perform its duties and may disclose the information to the National Association of Insurance Commissioners. A receiving entity must

maintain the confidential status of the information. Use of the confidential and exempt information is authorized in a criminal, civil, or administrative hearing, if its confidential and exempt status is maintained.

The bill provides a public necessity statement which states that such exemption is necessary in order to protect a person's financial interests as well as their personal medical information and to prevent the opportunity for identity theft or fraud. Disclosure of such information could cause unwarranted damage to the good name or reputation of individuals and could jeopardize their health and safety.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 29-4; House 102-17