PROPERTY INSURANCE AND HURRICANE PREPAREDNESS

CS/HB 7057 — Hurricane Damage Mitigation

by Policy and Budget Council; Jobs and Entrepreneurship Council; and Rep. Traviesa and others (CS/CS/SB 1864 by Community Affairs Committee; Banking and Insurance Committee; and Senators Posey and Crist)

During the 2006 Regular Session, the Legislature created the Florida Comprehensive Hurricane Damage Mitigation Program and appropriated $250 million to provide financial incentives to encourage residential property owners in Florida to retrofit their properties, making them less vulnerable to hurricane damage and helping decrease the cost of residential property and casualty insurance. The program provides free home inspections and matching grants of up to $5,000 for home mitigation and is administered by the Department of Financial Services (DFS). The bill makes changes to the program and the Florida Building Code, and contains other issues related to hurricane damage mitigation.

My Safe Florida Home Program [s. 215.5586, F.S.]

- The name of the program is changed from the Florida Comprehensive Hurricane Damage Mitigation Program to the My Safe Florida Home Program (MSFH).
- Legislative intent is provided that the MSFH program provide at least 400,000 inspections and at least 35,000 grants by June 30, 2009.
- The bill clarifies that free home inspections are available statewide, but limits the inspections to site-built, single-family residential property.
- The amount of matching grants (and non-matching grants for low-income homeowners) are maintained at a maximum of $5,000, but grants are limited as follows:
    - Grants may only be used for opening protections (such as shutters); exterior doors, and to brace gable ends (and are no longer available for roof upgrades). The DFS may require that all openings be protected as a condition of approving a grant, under certain conditions.
    - The property must be homestead property with an insured value of $300,000 or less (rather than $500,000), located in the "wind-borne debris region," and built prior to March 1, 2002. The "wind-borne debris" region is the where the Florida Building Code requires new homes to have opening protections (shutters, etc.) and is where sustained winds of 120 mph or greater are likely to occur.
- The DFS must establish objective, reasonable criteria for prioritizing grant applications.
- The bill allows hurricane mitigation inspector training to be on line or in person and allows a hurricane mitigation inspector to also be the mitigation contractor if the inspector is otherwise qualified and certified.

- The bill requires that an application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.
- The DFS is authorized to contract with third parties for grants management, inspection services, educational outreach, and auditing services. Contracts valued at $500,000 or more shall be subject to review and approval by the Legislative Budget Commission.
- DFS shall transfer $40 million from funds appropriated to the MSFH program, including up to 5 percent for administrative costs, to Volunteer Florida Foundation, Inc. (VFF), for provision of inspections and grants to low-income homeowners. VFF must report its activities and account for state funds on a quarterly and annual basis.
- In making matching fund grants available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family residential property, the DFS must liberally construe such requirements in favor of availing the state of the opportunity to leverage program funding with other sources of funding.
- The DFS may use up to $10 million from the funds appropriated for the MSFH to develop a no interest loan program by December 31, 2007, to encourage the private sector to provide loans for mitigation measures. The DFS shall pay the interest on the loans which may be for a term of up to 3 years and cover up to $5,000 in mitigation measures.
- The DFS is directed to make an annual report by February 1 of each year on the activities of the program that shall account for the use of state funds.
- The DFS must transfer $1 million from the funds appropriated to the MSFH program to the Low-income Emergency Home Repair Program. Administrative expenses may not exceed 5 percent ($50,000) of the funds appropriated.

Florida Building Code: Roof Replacements and Adding Opening Protections [s. 553.844, F.S.]

The bill requires the Florida Building Commission to develop and adopt within the Florida Building Code standards for mitigation techniques for site-built, single-family-residential structures constructed prior to the implementation of the Florida Building Code, including gable-end bracing, secondary water barriers for roofs, roof-to-wall connections, roof-decking attachments, and opening protections.

The Florida Building Commission must adopt rules by October 1, 2007, to take immediate effect (to apply to building permits applied for on or after that date) to require that a roof replacement incorporate a secondary water barrier and strengthening the roof decking attachments. For single-family residential structures located in the wind-borne debris region that have an insured value of $300,000 or more, a roof replacement must also incorporate cost-effective improvements of roof-to-wall connections as determined by the Florida Building Commission, under the standard that such improvements add no more than 15 percent to the cost of the reroofing. These rules shall be incorporated into the next edition of the Florida Building Code.

Any construction activity that requires a building permit after July 1 2008, and for which the estimated cost is $50,000 or more must include opening protections (shutters, etc.) as required for new buildings if the building has an insured value of $750,000 or more and is located in the wind-borne debris region.

Eligibility for Coverage in Citizens Property Insurance Corporation [s. 627.351(6), F.S.]

Effective January 1, 2009, a home (personal lines residential structure) with an insured value of $750,000 or more that is located in the wind-borne debris region is not eligible for coverage from Citizens Property Insurance Corporation unless it has opening protections as required for new construction. A home complies with this requirement if it has opening protections on all openings and complied with the Florida Building Code at the time they were installed.

Contractor Continuing Education [s. 489.115, F.S.]

The bill adds, for applicable licensure categories, wind mitigation methodologies to contractor continuing education requirements.

Wind-loss Mitigation Study

The bill provides that it is the intent of the Legislature that scientifically valid and actuarially sound windstorm mitigation rate factors, premium discounts, and differentials be provided to residential and commercial property insurance policyholders. In order to ensure the validity of such factors, the Office of Insurance Regulation, in consultation with the Department of Community Affairs and the Florida Building Commission, is directed to conduct one or more wind-loss mitigation studies for both residential property (including mobile homes and condominiums) and commercial non-residential property. The studies related to residential property shall be completed by January 1, 2008 and the studies related to commercial nonresidential property shall be completed by March 1, 2008.

The General Appropriations Act contains an appropriation of $1.5 million to the Office of Insurance Regulation to conduct these studies.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 90-28

SB 2498 — Hurricane Preparedness and Insurance

by Banking and Insurance Committee and Senators Garcia, Posey, Fasano, and Atwater

This bill makes changes to the Citizens Property Insurance Corporation ("Citizens") law, prohibits the formation of new Florida domestic residential property insurance subsidiaries and requires rate filings for all insurance subsidiaries to include parent company profit information. Specifically, the bill:

Citizens Property Insurance Corporation ("Citizens") [s. 627.351(6), F.S.]

- Revises the legislative findings for establishing Citizens, in order to support its tax-exempt status, finding that the absence of affordable property insurance threatens the public health, safety, and welfare and that the state has a compelling public interest in assuring that property is insured at affordable rates.
- Prohibits any rate increase in Citizens until January 1, 2009. This extends for an additional year, the current prohibition against a rate increase until January 1, 2008. The rates in effect on December 31, 2006 shall remain in effect for 2007 and 2008 except for any rate change that results in a lower rate.
- Provides that if a new applicant to Citizens is offered coverage from an insurer at its approved rate, the applicant is not eligible for a Citizens policy unless the insurer's premium is more than 15 percent greater than the premium for comparable Citizens' coverage. (Current law has a 25 percent limitation.). Also provides criteria for determining when "comparable coverage" has been offered and allows an insurance agent to make this initial determination.
- Extends until January 1, 2009 (rather than July 1, 2008) the ineligibility of coverage in Citizens for personal lines residential structures that have a dwelling replacement cost of $1 million or more (except for dwellings insured by Citizens on December 31, 2008, which may reapply and obtain coverage under certain conditions).
- Clarifies that the expanded Citizens assessment base (per HB 1-A in Special Session) applies only to deficits incurred after January 25, 2007.
- Permits a policyholder whose coverage with Citizens has been assumed by another insurer to continue to be eligible for Citizens coverage through the end of the assumption period regardless of any offer of coverage by the insurer.
- Deletes the requirement that by July 1, 2007, an application for new coverage with Citizens is subject to a 10-day waiting period before coverage is effective.
- Limits the post-employment restrictions on employees of Citizens to senior managers of Citizens.
- Provides that Citizens may be liable for attorney's fees in an action for breach of contract for benefits.
- Requires a Citizens employee to notify the Citizens' Office of the Internal Auditor and the Division of Insurance Fraud of suspected fraud by a Citizens employee.
- Authorizes OIR to establish a pilot program in one or more counties, to allow Citizens to exclude sinkhole coverage (and offer sinkhole coverage as an option) pursuant to the sinkhole coverage changes enacted in HB 1-A, without being required to give the policyholder a notice of non-renewal.
- Deletes the requirement that an insurer that writes the ex-wind coverage must contract with Citizens to adjust the windstorm claims on behalf of Citizens.

- Allows for cross-collateralization of assets of the Personal Lines Account and the Commerical Lines Account for any bonds or other debt for new financing by Citizens, as current law allows for debt that Citizens inherited in the merger with the old Residential Property and Casualty Joint Underwriting Association.
- Creates the "Citizens Property Insurance Corporation Mission Review Task Force" to analyze and compile data for development of a report specifying the statutory and operational changes needed to return Citizens to its former role as a state created, noncompetitive residual market.
    - The Task Force consists of 19 members: the Governor appoints 4 members, of which 2 must be consumer representatives, the President of the Senate appoints 3 members, and the Speaker of the House of Representatives appoints 3 members. An additional 6 members are appointed as representatives of private insurance companies, of which 3 are appointed by the Governor, President, and Speaker, respectively. The Chief Financial Officer appoints 3 members representing insurance agents.
    - The Task Force must submit its report to the Governor, President of the Senate, and Speaker of the House by January 31, 2008.
    - Appropriates $600,000 from the Insurance Regulatory Trust Fund of the Department of Financial Services (DFS) to the Task Force, which may employ consultants. DFS must provide administrative support.

Prohibition on New Florida Subsidiaries; Profits of Parent Company

- Prohibits a new certificate of authority for the transaction of residential property insurance to any insurer domiciled in Florida which is a wholly owned subsidiary of an insurer authorized to do business in any other state. Effective December 31, 2008.
- Requires the rate filings of an insurer domiciled in Florida that is a wholly owned subsidiary of an insurer authorized to do business in any other state to include information relating to the profits of the parent company. Effective December 31, 2008.

Payment of Claims [s. 627.70131, F.S.]

- Revises the requirement for a property insurer to pay or deny a claim within 90 days of receiving notice of a claim to:
    - Apply this requirement to residential property insurance claims and to commercial property claims for structural or contents coverage if the structure is 10,000 sq. ft. or less. However, this would not apply to a policy covering commercial nonresidential structures or contents in more than one state.
    - Alternatively requires the insurer to pay a "portion of the claim" within the 90-day period.
    - Require an insurer to pay interest pursuant to s. 55.03, F.S. (as required for legal judgments) to a policyholder if the insurer fails to timely pay a claim within 90 days

of receipt, or 15 days after circumstances that have reasonably prevented payment no longer exist, whichever is later.

Florida Hurricane Catastrophe Fund (FHCF) [s. 215.555, F.S.]

- Allows any insurer that qualifies as a limited apportionment company ($25 million in surplus or less) to purchase up to $10 million of additional coverage from the FHCF (at a premium of 50 percent of the coverage amount, above a retention of 30 percent of the insurer's surplus).
- Exempts medical malpractice insurance from FHCF assessments through May 31, 2010.
- Clarifies the method of determining coverage and premium for insurers purchasing optional ("TEACO") coverage below the insurer's retention for the mandatory FHCF coverage.
- Deletes the June 1, 2007 expiration date of the provision that allows Citizens to mutually agree with the State Board of Administration on how to structure FHCF coverage for policies that Citizens assumes from an insolvent insurer.

Policy Exclusions and Deductibles [ss. 627.701 and s. 627.712, F.S.]

- Requires an insurer to make available a policy that excludes coverage for windstorm coverage (rather than hurricane or windstorm coverage), and requires that all property insurers (commercial and residential) offer this coverage.
- Excludes a tenant's policy from the requirement for an insurer to offer an exclusion of contents coverage.
- Specifies that the policy exclusions for windstorm or contents coverage may only be implemented as of the date of a policy's renewal.
- Specifies that a new deductible for residential property insurance may only be implemented as of the date of the policy's renewal.

Rating Law [ss. 627.062 and 627.0655, F.S.]

- Specifies that the temporary prohibition against making a "use and file" rate filing applies to property insurance (but not casualty insurance) rate filings and clarifies that it applies to a rate filing submitted after January 25, 2007 (the effective date of HB 1-A).
- Prohibits an insurer from recouping in its rates the interest payments the insurer makes for failure to pay or deny a property insurance claim within 90 days as required by statute.
- Clarifies that a multi-line discount may only be offered by an insurer to a consumer that has purchased another policy from the same insurer or insurer group.

Insurance Capital Build-Up Incentive Program [s. 215.5595, F.S.]

- Allows an insurer that exclusively writes manufactured housing to obtain a surplus note of up to $7 million from the Insurance Capital Build-Up Incentive Program. (Current law allows such an insurer to have a total amount of surplus, new capital, and surplus note equal to $14 million, rather than $50 million.)
- Provides that an insurer is considered to be "writing only manufactured housing" if it is: 1) a Florida domiciled insurer that began writing policies after March 1, 2007, removes at least 50,000 policies from Citizens without a bonus, and at least 25 percent of its policies cover manufactured housing; or 2) a Florida domiciled insurer that writes at least 40 percent of its policies covering manufactured housing in Florida.
- Between insurers writing manufactured housing policies, priority shall be given to the insurer writing the highest percentage of manufactured housing policies.

Florida Insurance Guaranty Association (FIGA) [ss. 631.52, 631.57, and 631.695, F.S.]

- Specifies that any kind of self-insurance fund, liability pool, or risk management fund is not covered by FIGA.
- Clarifies that FIGA's authority to levy emergency assessments of 2 percent of premium is for payment of covered claims (not just homeowners claims) of insurers rendered insolvent by the effects of a hurricane.
- Permits all municipalities and counties in the state to issue bonds to assist FIGA in expediting the handling and payment of covered claims of insolvent insurers.

Surplus Lines Policies [ss. 626.914, 626.916, and 626.9201, F.S.]

- Requires a retail agent to inform a policyholder that coverage may be available and less expensive from Citizens before export to the surplus lines insurance market. The notice must also include information that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage.
- Requires only one rejection from an authorized insurer, rather than three rejections, in order for coverage for a $1 million residential structure to be exported to the surplus lines market.
- If a policyholder pays for a surplus lines insurance policy with a bad check, or fails to maintain membership in an organization necessary to obtain insurance coverage, the policy may be cancelled for nonpayment of premium. If a bad check is the initial premium payment, the policy is retroactively void unless payment is tendered within the earlier of 5 days after actual notice by certified mail is received by the applicant, or 15 days after notice is sent to the applicant by certified or registered mail.

Florida Building Code; Internal Pressure Option

- Retains the internal design (pressure) options in the Florida Building Code (as an option to opening protections in the wind-borne debris region) until June 1, 2007, for a building permit application made prior to that date. This applies retroactively to January 25, 2007, the effective date of HB 1-A that repealed this option, and applies to any action taken on a building permit affected by that act.

Other Provisions

- Applies the $50 million surplus requirement to a domestic residential property insurer if it is a subsidiary of an insurer domiciled (rather than "doing business") in another state.
- Provides that the annual report card for insurers prepared by the Consumer Advocate regarding consumer complaints and the time it takes to pay claims applies to personal residential property insurers, rather than all property insurers, and requires the report to include the number of consumer complaints "as a market share ratio."
- Provides that 100 days' notice of non-renewal is required, rather than June 1, if earlier, for a nonrenewal effective during hurricane season, if the policy is being non-renewed for the sole purpose of revising the coverage for sinkhole losses; or if the policy is non-renewed by Citizens for a policy assumed by an insurer that offers replacement or renewal coverage.
- Transfers and amends s. 627.7277(4), F.S., to s. 627.4133(7), F.S., to place in the proper section the requirement of HB 1-A that each residential property insurance renewal premium specify the amounts recouped for assessments, the dollar amount of a premium increase that is due to an approved rate increase, and the total dollar amount of increase due to coverage changes. The bill applies this to residential property policies and specifies that the amount of the increase for coverage changes need only specify the total dollar amount due to all coverage changes. It also is limited to identifying the amount of an "approved" rate increase which is intended to not require identification of a rate increase that is due, for example, to the home being one year older or such other rating change that was in a rate schedule that was not affected by a rate filing approved since the prior renewal.
- Creates the Florida Catastrophic Storm Risk Management Center at Florida State University, to promote and disseminate research on issues related to hurricane catastrophe loss and to assist in developing education and research grant funding opportunities. (The General Appropriations Act appropriates $1 million for this center.)

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.
Vote: Senate 38-0; House 106-10

INSURANCE, GENERALLY

CS/SB 2198 — Financial Statements

by Banking and Insurance Committee and Senator Gaetz

The bill allows specified insurance administrators and viatical settlement providers to file specified financial statements with the Office of Insurance Regulation (OIR) on a fiscal year, rather than a calendar year, basis. Specifically, the bill provides that an authorized insurance administrator with an established fiscal year of July 1 through June 30, whose sole stockholder is a health care provider association which is not an affiliate of an insurer, to submit the preceding fiscal years audited financial statement to OIR on or before December 31. The bill also allows a viatical settlement provider to file its annual audited financial statement with the OIR covering a 12-month period ending on a day falling during the last 6 months of the preceding calendar year.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 33-0; House 115-0

CS/CS/HB 1381 — Insurance

by Policy and Budget Council; Jobs and Entrepreneurship Council; and Rep. Richter
(CS/SB 2702 by Banking and Insurance Committee and Senators Aronberg and Gaetz)

The bill makes the following changes pertaining to the regulation of insurance agencies, agents and adjusters under the authority of the Department of Financial Services (DFS or department):

- Requires the DFS and the Financial Services Commission (FSC) to adopt rules to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by insurers and agents involving the offer of life insurance products. The rules must be based upon model rules or model laws adopted by the National Association of Insurance Commissioners. This is in response to a 2006 federal law that expresses the intent of Congress that every state adopt rules or laws to protect members of the military from deceptive and improper insurance sales practices;
- Allows a branch location of a securities dealer to register as an insurance agency rather than obtain an insurance agency license;
- Provides that the current exemptions from taking the written examination for an adjuster's license for persons who complete certain educational programs apply to persons who are applying for an independent adjuster or company employee adjuster license. Therefore, the exemptions would no longer apply to applicants for a public adjuster licensee;
- Adds an entity ("ALL-LINES Training") to the list of entities that may apply to the DFS for approval to be a pre-licensing adjuster course provider. Persons who take a course which is approved by DFS are exempt from taking the adjuster license examination, except for public adjusters who must take the exam as provided for under the bill;

- Allows correspondence courses to be approved by the DFS for satisfying the pre-licensing education requirements for obtaining a life or health insurance agent license;
- Allows an insurance agent to be in charge of more than one agency branch location so long as insurance activities do not occur at the location when the agent is not physically present (effective January 1, 2008);
- Clarifies that the surety bond required for a public adjuster must be maintained continuously and for one year after termination of the license;
- Allows the DFS to extend the deadline for up to one year for an insurance adjuster to meet continuing education requirements, for good cause;
- Clarifies that the agent manual of the Florida Surplus Lines Service Office must be approved by the DFS;
- Requires that "risk bearing entities" (i.e., reciprocal insurers; commercial, group, local government, public utility or independent educational self insurance funds) clearly indicate on advertising materials that they are offering insurance products. The bill provides that there is no liability to the insured on the part of, and no cause of action of any nature shall be brought against any licensed or appointed insurance agent for the insolvency of any risk bearing entity when such entity has been authorized or approved by the Office of Insurance Regulation to do business in Florida. However, if the agent was a "controlling producer" (i.e., controlling the management and policies of an entity) of the risk bearing entity within 2 years preceding the insolvency, the agent is subject to a penalty under s. 626.7491, F.S. (i.e., OIR can order the agent to cease placing business with the controlled insurer or the OIR may bring a civil action for recovery of damages); and
- Provides an appropriation of $132,000 to the DFS from the Insurance Regulatory Trust fund to make necessary computer system changes as required under the bill.

If approved by the Governor, these provisions take effect July 1, 2007, except as otherwise expressly provided in this act.
Vote: Senate 40-0; House 117-0

HB 1549 — Examination of Insurers

by Rep. Rivera (SB 2782 by Senator Posey)

Currently, an insurer is generally subject to a financial examination by the Office of Insurance Regulation (OIR) of its affairs, transactions, accounts, records, and assets, no less frequently than once every 3 years. This bill changes the frequency of the required examination to at least once every 5 years, with the exception of domestic insurers that have held a certificate of authority for less than 3 years. These domestic insurers would continue to be subject to an examination on an annual basis.

The bill expands the specialists that qualify to conduct independent examinations. The current list comprised of independent certified public accountants, actuaries, and reinsurance specialists is expanded to also include investment specialists and information technology specialists.

The bill allows the OIR to unilaterally select the independent examining firm by removing the requirement that the insurer and the OIR must agree to an independent examination, the rates and terms of the examination, and the selection of such an independent examiner. The bill also provides additional criteria for the selection of an independent examiner. Rates charged by such firms must be consistent with rates charged by other firms in similar professions, and the firm selected by the OIR to conduct an examination may not have a conflict of interest that would preclude an independent examination. The bill also provides that if the OIR contracts with an outside examiner for an examination of an insurer, the insurer must pay the OIR, rather than the contract examiner, for the cost of the exam. Then, the office would reimburse the examiner pursuant to a legislative appropriation**.** The bill eliminates the $25,000 cap on the fee for the annual examination of a domestic insurer that has held a certificate of authority for less than 3 years.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 39-0; House 118-0

CS/HB 111 — Title Insurance

by Jobs and Entrepreneurship Council and Rep. Galvano and others (CS/SB 636 by Banking and Insurance Committee and Senator Lawson)

The bill provides for the following changes to the title insurance law:

- Requires nonresident title insurance agents to qualify for licensure by passing an examination and completing continuing education requirements in the same manner as Florida resident title insurance agents;
- Allows for the rebating of an attorney's fee charged for professional services, the title agent's portion of the insurance premium, or any other agent charge or fee, to the person responsible for paying the premium, charge, or fee;
- Clarifies that no portion of the attorney's fee, the title agent's portion of premium, any agent charge or fee, or any other monetary consideration or inducement, may be paid directly or indirectly for the referral of title insurance business;
- Clarifies definitions within the title insurance law and provides that "primary title services" do not include closing services or title searches, for which a separate charge may be made;
- Repeals the authority for the Financial Services Commission to establish limitations on related title services charges by rule;
- Provides that a title insurer may not issue a title policy until the insurer has made a determination of insurability based upon the evaluation of a reasonable title search;

- Repeals the provision that the title insurer or agency must maintain a record of the related title service charges made for the issuance of a policy;
- Clarifies the definition of an "estoppel letter" relating to mortgage certificates of release;
- Clarifies the provisions to clear liens that have been paid off from the public records; and,
- Removes the requirement that the Financial Services Commission adopt rules to establish a premium charged by a title agent for preparing and recording of an affidavit of release of a mortgage.

If approved by the Governor, these provisions take effect October 1, 2007.
Vote: Senate 39-0; House 109-0

CS/HB 411 — Limited Insurance Licenses

by Jobs and Entrepreneurship Council and Rep. Precourt and others (CS/CS/SB 1678 by Regulated Industries Committee; Banking and Insurance Committee; and Senators Haridopolos and Lynn)

The bill provides changes to two limited insurance licenses issued by the Department of Financial Services (department). It changes the license for personal accident insurance to "travel insurance," and changes the license for baggage and motor vehicle excess liability insurance to "motor vehicle rental insurance."

The "travel insurance" license is expanded to cover accidental death and dismemberment of a traveler; trip cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to illness or emergency of a traveler. The bill authorizes timeshare developers, sellers of travel, and their subsidiaries or affiliates to obtain a limited agent's license to sell travel insurance. Such insurance policies or certificates may be issued for terms longer than 60 days, but each policy or certificate, other than a policy or certificate providing coverage for air ambulatory services only, must be limited to coverage for travel or use of accommodations of no longer than 60 days. Employee training is required and fingerprinting is mandated for specified officers of the licensed entity.

The "motor vehicle rental insurance" license is expanded to include accidental personal injury or death of the lessee and passengers in a leased or rented motor vehicle. The bill authorizes licensure of only the "business entity" for a motor vehicle rental insurance license, rather than licensing each entity's branch office, as under current law. The method used for calculating licensing fees is revised so the bill's effect is revenue neutral. License applicants must furnish to the department specified information about each business entity's branch office that is to be covered by the license. The bill expands the maximum time period for which insurance may be issued under a limited license leases or rental agreements from 30 to 60 days.

The bill also clarifies that limited insurance policies or certificates may only be sold by an authorized insurer or an eligible surplus lines insurer.

If approved by the Governor, these provisions take effect January 1, 2008.
Vote: Senate 40-0; House 105-0

CS/HB 97 — Medicare Supplement Policies

by Healthcare Council and Rep. Hays (CS/CS/SB 266 by Health Policy Committee; Banking and Insurance Committee; and Senators Baker and Peaden)

The bill redefines the term "Medicare supplement policy" for purposes of the Florida Medicare Supplement Reform Act (ss. 627.671-627.675, F.S.), to exclude from regulation under this act, a policy or plan of one or more employers that have at least 50 employees at issue, or trustees of a fund established by one or more employers for employees or former employees, if, upon termination of eligibility, group members age 65 or older are offered continuation of coverage under the group plan or a conversion policy that has the same benefits as a Medicare Supplement policy.

By excluding policies or plans for Medicare supplement insurance provided to employers from the definition of "Medicare supplement policy" (whether the policy was issued in Florida or issued to an out-of-state group) the state Medicare supplement requirements of part VIII of chapter 627, F.S., would not apply to such policies or plans. However, if the Medicare supplement policy is issued to an employer in Florida, the provisions of the Insurance Code that apply to insurance policies in general and to "health insurance" policies in particular, other than those in ch. 627, part VIII, F.S., would continue to apply. For example, rates and policy forms for health insurance are subject to filing and approval by the OIR pursuant to ss. 627.410 and 627.411, F.S. If the policy is issued to an employer outside of Florida, the department would not have regulatory authority to assist Florida insureds who have problems or complaints with the insurer. However, any policy issued to such an employer would still be required to comply with the applicable laws of the state where the master group policy is issued.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 19-14; House 110-1

WORKERS' COMPENSATION

CS/SB 746 — Workers' Compensation/First Responders

by General Government Appropriations Committee and Senators Alexander, Atwater, Gaetz, Fasano, and Justice

The bill provides standards for determining benefits for employment-related accidents and injuries of "first responders," which generally increase the amount and likelihood of eligibility for workers' compensation benefits. Many of these provisions have the effect of reversing the application to first responders of benefit changes to the workers' compensation law enacted in 2003.

The bill defines "first responder" to include a law enforcement officer, a firefighter, an emergency medical technician or paramedic, and a volunteer firefighter. The bill provides the following changes in workers' compensation for first responders:

- Lowers the standard of proof and other requirements for compensability for toxic substance exposure, occupational disease, and mental or nervous injury.
- Authorizes payment for medical benefits in cases involving a mental or nervous injury without an accompanying physical injury requiring medical treatment.
- Eliminates the six-month limitation on temporary total disability benefits for compensable mental or nervous injuries after a first responder reaches maximum medical improvement and the 1 percent limitation for permanent impairment benefits for psychiatric impairment.
- Provides that any adverse result or complication caused by a smallpox vaccination is deemed to be an injury arising out of work performed in the course and scope of employment.
- Extends the payment of permanent total disability supplemental benefits beyond age 62 for first responders that were employed by a public employer that did not participate in the social security program whether or not the employer provided an alternative retirement program.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 109-2

CS/CS/CS/SB 1894 — Joint Underwriting Plan/Workers Compensation

by General Government Appropriations Committee; Governmental Operations Committee; Banking and Insurance Committee; and Senator Posey

The bill amends laws governing the Florida Workers Compensation Joint Underwriting Association, Inc., (JUA) to provide greater accountability and oversight, to assist the JUA in achieving tax-exempt status, and to authorize additional funding mechanisms.

JUA Board Oversight; Tax-Exempt Status

The bill revises the JUA board appointment process by requiring the Financial Services Commission (FSC) to appoint eight of the nine members instead of three members. The insurance industry will have five representatives, as currently provided by law; however, the FSC will select and appoint each respective representative from a list of five nominees for each vacancy, which would be submitted by the industry. The number of state governmental appointees (including the Consumer Advocate of the Department of Financial Services) would remain at four members.

Upon dissolution of the JUA, the bill requires that all assets of the JUA first be used to pay all debts and obligations of the plan and that any remaining assets would revert to the state. This provision will also assist the JUA in its effort to obtain tax-exempt status.

To avoid significant future federal tax liabilities, the bill requires that, on or before January 1, 2008, the JUA must seek a letter ruling or determination from the IRS regarding the JUA's eligibility as a tax-exempt organization. Since its inception in 1994, the JUA has incurred an estimated $33 million in federal income tax expenses, including $16 million in 2006.

Code of Ethics and Financial Disclosure

Senior managers, officers, and board members are subject to certain provisions of ch. 112, part III, F.S., including, but not limited to, standards of conduct, public disclosure requirements, and reporting of financial interests to the Commission on Ethics on an annual basis. The bill authorizes an employee, director, etc., of an insurance entity to be a board member unless the insurance entity provides certain services to the JUA. The bill prohibits such a board member from voting on a matter if the insurance entity would obtain a special benefit that would not apply to similarly situated entities.

Current and prospective employees are required to submit an annual statement to the JUA attesting that no conflict of interest exists. Any senior manager or officer of the JUA employed as of January 1, 2008, who retires or terminates employment, is prohibited from representing another person before the JUA for a two-year period. Employees and board members are prohibited from accepting gifts of any value from a person or entity, or an employee or representative of such person or entity, that has a contractual relationship with the plan or who is under consideration for a contract. Employees or board members that fail to comply with this provision are subject to penalties, such as fines. The executive and legislative branches of government are subject to a similar prohibition as that applied to lobbyists.

Deficit Funding

The JUA is required to use any policyholder surplus attributable to former subplan C prior to assessing policyholders in the voluntary market for funding subplan D deficits on a cash flow basis. The surplus in subplan C is approximately $39 million and the estimated additional funding needed is less than $5 million. The deadline for levying "below-the-line" assessments to fund deficits in subplan D, and Tiers One and Two is extended from July 1, 2007, to July 1, 2012.

Regulatory Oversight

The JUA is required to refund premiums to their policyholders if the OIR subsequently disapproves the rate. Also, the OIR is required to conduct periodic market conduct examinations of the JUA.

Procurement of Goods and Services

Competitive selection of goods and services valued at over $25,000 is generally required. Exceptions for exempted services (legal and auditing, etc.), sole sourcing and emergency purchases are authorized. Any purchase that exceeds $100,000 requires approval by the board of governors. Guidelines and criteria are provided for determining whether staff attorneys or outside attorneys should be used and factors to be used in selecting outside firms.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 40-0; House 117-0

SB 1748 — Insurance Contracts/Workers' Compensation

by Senators Gaetz, Baker, Bennett, and Lynn

The bill prohibits a person, such as a contractor, from rejecting workers' compensation coverage from a self-insurance fund that is subject to ch. 631, part V, F.S., based upon the self-insurance fund not being rated by a nationally recognized insurance rating agency. Such coverage is required pursuant to a construction project. Chapter 631, part V, F.S., establishes the Florida Workers' Compensation Insurance Guaranty Association to pay claims for insolvent insurers and self-insurance funds. Presently, some builders, notably national companies, require contractors or subcontractors to secure coverage with a workers' compensation carrier rated not less than an "A" by a nationally recognized rating agency as a condition of being a vendor or receiving payment. In Florida, workers' compensation insurance is offered by insurance companies and commercial self-insurance funds whose claims are protected by the Florida Workers' Compensation Insurance Guaranty Association in the event of insolvency. There is no current law requiring workers' compensation insurers or self-insurance funds to be rated by a rating service as a condition of being authorized to write workers' compensation insurance.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 40-0; House 117-0

FINANCIAL MATTERS

CS/CS/CS/SB 1638 — Gift Certificates and Similar Credit Items

by General Government Appropriations Committee; Commerce Committee; Banking and Insurance Committee; and Senators Constantine, Webster, Atwater, Lynn, Aronberg, Crist, and Alexander

This bill requires that a gift certificate or credit memo sold or issued for consideration in this state may not have an expiration date, expiration period, or any post-sale charge or fee, such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. The bill creates the following exemptions to this requirement:

- A gift certificate may have an expiration date of not less than three years if it is provided as a charitable contribution where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate may have an expiration date of not less than one year if it is provided as a benefit pursuant to an employee incentive program, consumer-loyalty program, or promotional program where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided.
- A gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, sporting, or fine arts event having a limited duration and if the majority of the value paid by the recipient is attributable to the convention, conference, vacation, sporting or fine arts event.
- The prohibitions against expiration dates, expiration periods, or post-sale charges or fees do not apply to gift certificates or credit memos sold or issued by a financial institution, as defined in s. 655.055, F.S., (state-chartered banks and credit unions), or by a money transmitter, as defined in s. 560.103, F.S., if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

The terms "gift certificate" and "credit memo" are defined by the bill.

This bill provides that unredeemed gift certificates or credit memos are not required to be reported as unclaimed property. However, this does not apply to gift certificates that are exempt from the prohibitions against fees and expiration dates contained in the bill and are sold or issued by a financial institution as defined in s. 655.005, F.S., or a money transmitter as defined in s. 560.103, F.S.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 33-0; House 117-0

CS/CS/SB 1824 — Mortgages

by Commerce Committee; Banking and Insurance Committee; and Senators Fasano, Lynn, and Margolis

The bill provides greater consumer protections related to the mortgage loan application process and provides greater compliance and enforcement authority for the regulator, the Office of Financial Regulation (OFR). The bill:

- Requires mortgage brokers and lenders offering adjustable rate mortgages to provide borrowers with a copy of the *Consumer Handbook on Adjustable-Rate Mortgages*, which explains the different loan products and the potential risks associated with these products.

- Requires that brokers disclose to borrowers the amount of payment that the brokers will receive from lenders no later than three business days after brokers become aware of the exact amount, and no later than three business days prior to closing.
- Requires the good faith estimate to be signed and dated by the mortgage broker or lender and borrower.
- Requires borrowers to be notified of any material changes to the terms of a previously offered loan within three days of being made aware of the change and no later than three business days before closing. The licensee bears the burden of proving that the notice was provided and that the borrower accepted the new terms.
- Permits a borrower to waive the right to notice if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and provides a written statement meeting certain criteria to the broker regarding the emergency. Permits imminent foreclosure to be a basis for a personal financial emergency for which a waiver of notice is sought.
- Authorizes the OFR to pursue an enforcement action against mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act (RESPA) or the federal Truth-in-Lending Act.
- Authorizes the OFR to impose an administrative fine of up to $5,000 for each separate violation of ch. 494, part I, F.S.
- Allows the OFR to charge a fee, not to exceed $50, for mortgage brokerage applicants to review their mortgage brokerage test results.

The bill also makes mortgage fraud a third-degree felony. Under the bill, a person commits mortgage fraud if, with the intent to defraud, the person knowingly:

- Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intent that such information will be relied upon by a party to the mortgage lending process;
- Uses or facilitates the use of any material misstatement, misrepresentation, or omission, with the intention that the misstatement, misrepresentation, or omission will be relied on by a party to the mortgage lending process;
- Receives any proceeds or other funds in connection with a mortgage lending process that the person knew resulted from such a misstatement, misrepresentation, or omission; or
- Files with the clerk of the court for any county in Florida a document related to a mortgage lending process which contains a material misstatement, misrepresentation, or omission.

Finally, the bill provides that any mortgage fraud violation is considered to have been committed in the county in which the real property is located or in any county in which a material act was

performed in furtherance of the violation. The provision will allow flexibility for the venue for prosecution and investigation.

If approved by the Governor, these provisions take effect October 1, 2007.
Vote: Senate 38-0; House 119-0

HB 7087 — Financial Services

by Jobs and Entrepreneurship Council and Rep. Carroll (CS/SB 2084 by Banking and Insurance Committee and Senator Bennett)

The bill:

- Authorizes the sale of optional guaranteed asset protection (GAP) products by motor vehicle installment sellers, sales finance companies, retail lessors and their assignees, and establishes requirements for the sale of such products. The seller of GAP coverage may not require its purchase as a condition for making a loan. In order to offer a GAP product, the seller of the GAP product must comply with specified statutory consumer protection requirements.
- Defines "debt cancellation product," specifies that such products may be sold by financial institutions and their subsidiaries and other business entities authorized by law, and states that it is not insurance for purposes of the Florida Insurance Code. Financial institutions are required to manage risks associated with debt cancellation products prudently, and to establish and maintain effective risk management and control programs regarding such products. Insurance purchased by a creditor for debt cancellation products is defined as a form of casualty insurance.
- Increases the maximum delinquency charge from $10 to $25 for a default of payment pursuant to a revolving account provision in a retail installment contract.
- Eliminates the $50,000 limit on insurance that may be procured on the life of a debtor under a debtor group contract, or pursuant to a credit life insurance policy. Instead, the limit is the amount of the person's indebtedness to the creditor. The bill also allows the term of credit disability insurance to extend for the term of the indebtedness, rather than the current 10-year time limitation.
- Specifies that a deposit or account made in the name of two persons who are husband and wife is considered a tenancy by the entirety unless otherwise specified in writing.
- Provides that an agreement to operate or share an ATM may not "prohibit, limit, or restrict" the right of the owner or operator to charge an access fee or surcharge not otherwise prohibited under state or federal law to a customer conducting a transaction using an account from a financial institution that is located outside of the United States. The bill also provides that nothing in the act is intended to restrict the owner or operator from entering into agreements regarding access free fee arrangements. The bill requires an owner or operator of an ATM to disclose such fees or surcharges in compliance with

federal Regulation E,[1] addressing electronic fund transfers, which was issued by the Board of Governors of the Federal Reserve System, pursuant to the federal Electronic Fund Transfer Act.

- Allows state-funded endowments that are funded by a general appropriation act prior to 1990 to maintain funds in state or federal financial institutions.
- Raises the minimum capitalization for a proposed bank to $8 million and deletes the differing capitalization for banks in a metropolitan area and those in other counties. The bill also raises the minimum total capital accounts at opening for a trust company from $2 million to $3 million and sets differing capitalization standards for banks owned by a single-bank holding company and banks owned by multibank holding companies.
- Eliminates the need for a bank or trust company to obtain approval from the Office of Financial Regulation (OFR) in order to increase its capital. However, a state bank or trust company must notify the OFR in writing 15 days before increasing its capital stock. The bill deletes the prohibition against a bank or trust company issuing capital stock with over a $100 par value. It states a financial institution may not issue or sell stock of the same class which creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. However, the financial institution may create uniform restrictions on the transfer of stock as permitted in s. 607.0627, F.S.
- Clarifies who can assert dissenter's rights pursuant to the approval of the sale of stock by a state bank or trust company. The fair value of the shares of stock will be determined using the procedures in s. 607.1326, F.S., and s. 607.1331, F.S., rather than by a panel of three appraisers. The new procedure would be the same as is applied to corporations.

If approved by the Governor, these provisions take effect October 1, 2007.
Vote: Senate 38-1; House 116-1

CS/HB 743 — Trusts

by Safety and Security Council and Rep. Hukill and others (CS/CS/SB 2218 by Judiciary Committee; Banking and Insurance Committee; and Senator Posey)

The bill amends various sections of the Florida Trust Code to:

- Expand the power of a bank or trust company that is acting as a trustee to invest in investment instruments that the bank or trust company owns or controls. A trust company or bank that is acting as a trustee of a trust may invest in an investment instrument it owns or controls if the investment instrument is available for sale to accounts of other customers (rather than "primarily" sold to other customers); and not sold to the trust account upon less favorable terms than the terms upon which they are "normally" sold to other customers.

[1] 12 C.F.R. part 205, as amended.

- Limit the power of a trustee to distribute the principal of a trust when the trustee has absolute power under the trust's terms to invade the principal of the trust. A trustee with absolute power to invade principal may take the principal of a trust (first trust) and place the property in a second trust if the beneficiaries of the second trust include only beneficiaries of the first trust; the second trust does not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust; and if the first trust qualified for a marital or charitable federal income tax deduction, the second trust does as well and does not reduce the deduction. When principal is invaded under an absolute power, it must be done in writing, signed and acknowledged by the trustee, and filed with the records of the first trust. The exercise of this power may not be used to appoint in favor of the trustee or the trustee's creditors and cannot be used in a manner that would postpone the vesting of the trust estate beyond the rule against perpetuities. Sixty days advance notice must be given to all qualified beneficiaries of the first trust prior to the exercise of the power to invade principal.
- State that exculpatory terms caused to be drafted by a trustee are invalid unless the trustee proves that the exculpatory term is fair under the circumstances, and (if the trust is created after July 1, 2007) the term's existence and contents were adequately communicated to the settlor or the independent attorney of the settlor.
- Revise the definition of "land trust" to apply only to trusts in which ownership of real property is vested in the trustee and to provide that the recorded land trust instrument does not create an entity.
- Establish under what circumstances a trustee of a land trust may be personally liable for torts committed while administering a trust and for contracts made by the trustee in a fiduciary capacity. By operation of s. 736.1013(1), F.S., a trustee may be personally liable on contracts if the trustee did not disclose that he or she was acting as a fiduciary. Moreover, s. 736.1013(2), F.S., provides that a trustee may have personal liability for certain torts for which the trustee is personally at fault.
- Make certain provisions of the Florida Probate Code inapplicable to trusts.
- Provide that a creditor of a beneficiary of a discretionary trust may not compel a distribution from a trust or reach a beneficiary's interest in the trust.
- Make certain accounting provisions effective on the effective date of the new Florida Trust Code.
- Provide that certain anti-lapse statutes in effect before the effective date of the new Florida Trust Code apply to preexisting trusts.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 39-0; House 112-0

SB 672 — Credit Balances/Unclaimed Property

by Senator Fasano

The bill exempts credit balances held by a financial institution, credit union, or "participant" as defined in 12 USC s. 4001(19), that are the result of check-clearing functions from the unclaimed property requirements of s. 717.117, F.S. The bill states that this provision is clarifying and remedial in nature. It will apply retroactively to credit balances held before July 1, 2007, as well as to credit balances held on or after that date. The cited federal regulation defines "participant" as a depository institution which (a) is located in the same geographic area as that served by a check clearinghouse association; and (b) exchanges checks through the check clearinghouse association either directly or through an intermediary. A "check clearinghouse association" is defined as "any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System."

The provisions of the bill have been the subject matter of ongoing litigation in *Bank of America, N.A. v. McCann*, 444 Fed. Supp. 2d 1227 (USDC ND Fla. 2006). However, on February 15, 2007, the plaintiffs in the case filed for a voluntary dismissal with prejudice, effectively ending the legal action.

If approved by the Governor, these provisions take effect July 1, 2007
Vote: Senate 39-0; House 117-0

SB 562 — Ownership or Transfer of Securities

by Senator Fasano

This bill modifies the procedures for acquiring a controlling interest in a specialty insurer, domestic stock insurer or controlling company. The person acquiring stock must now send to the insurer and controlling company a letter of notification that contains information necessary to understand the transaction and identify all purchaser and owners involved. The notice must be filed no later than 5 days after a tender offer or exchange offer is proposed or no later than 5 days after the acquisition of the securities if not tender offer or exchange offer is involved. Previously, a different notice requiring more expansive information had been required to be filed with the insurer and the Office of Insurance Regulation. The more expansive notice now need only be filed with the office within 30 days after a definitive acquisition agreement is entered; a form of tender offer or exchange offer is proposed; or the acquisition of the securities if no definitive acquisition agreement, tender offer, or exchange offer is involved. A person may request and the Office of Insurance Regulation may waive the expanded notice to the office if there is no change in the ultimate controlling shareholder or ownership percentages, and no unaffiliated parties acquire a direct or indirect interest in the insurer.

The bill modernizes Florida law by expanding the scope of permissible custodians to allow licensed securities brokers and dealers to also serve as custodians of securities bought and sold by domestic insurance companies. The bill itself does not contain a definition of "broker or dealer." However, the term is defined elsewhere in Chapter 678, F.S., as well as in the NAIC

Model Regulation on Custodial Agreements and the Use of Clearing Corporations (#298). Model rule 298 requires a "broker/dealer" to be "registered with and subject to jurisdiction of the Securities and Exchange Commission, "maintain membership in the Securities Investor Protection Corporation" and have "a tangible net worth equal to or greater than two hundred fifty million dollars ($250,000,000)." The Office of Insurance Regulation has indicated that it intends to conform the Florida Administrative Code to the NAIC Model Regulation, which would incorporate the model rule's safeguards on brokers/dealers.

The definition of a "clearing corporation" upon adding broker/dealers to the list of permissible custodians. The bill simplifies the Florida Statutes to include the various book-entry systems in which a Treasury security may be maintained in the definition of a closing corporation. The amendments are in conformity with the National Association of Insurance Commissioners Model Act on Custodial Agreements and the Use of Clearing Corporations (#295).

The bill changes the reference date of the Insurance Holding Company System Regulatory Act and Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners from January 1, 1997, to November 30, 2001.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 109-0

OPEN GOVERNMENT SUNSET REVIEWS

CS/SB 1848 — OSGR/Department of Financial Services Information/Unclaimed or Abandoned Property

by Banking and Insurance Committee

The bill amends and reenacts the public records exemption in s. 717.117(8), F.S., related to reports of unclaimed property. The bill re-enacts the public records exemption for social security numbers and expands the exemption by exempting "property identifiers" contained in an unclaimed property report instead of "financial account numbers." Representatives from the Bureau of Unclaimed Property indicated that the term "financial account numbers" has been interpreted by the Department of Financial Services to include types of account numbers that are not directly related to finances (such as patient medical records). The bill removes the exemption for financial account numbers, a term that is undefined by statute. Instead, a property identifier—the descriptor used by the property holder to identify the unclaimed property—is made exempt under the bill. The bill does not include a reference to bank account numbers, debit, charge, and credit card numbers because an agency has authority to hold such items exempt pursuant to s. 119.071(5)(b), F.S. Because the bill expands the public records exemption, it is made subject to the Open Government Sunset Review Act and will repeal on October 1, 2012 unless reviewed and reenacted.

If approved by the Governor, these provisions take effect October 1, 2007
Vote: Senate 40-0; House 117-0

HB 7187 — Open Government Sunset Review of Exemption for Work Papers Held by the Office of Insurance Regulation and Department of Financial Services

by Government Efficiency and Accountability Council and Rep. Attkisson (CS/CS/SB 1850 by Governmental Operations Committee and Banking and Insurance Committee)

This bill is the result of an Open Government Sunset Review of s. 624.319(3)(b), F.S. which makes confidential and exempt from the public record requirements work papers and other information held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) and work papers and other information received from another governmental entity or the National Association of Insurance Commissioners (NAIC), for use by the DFS or the OIR in performance of its examination or investigation duties.

The bill retains the exemption; however, it narrows it by defining the term "work papers" to mean records of the procedures, tests, information and conclusions reached in an examination or investigation performed. The term also includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, schedules or commentaries prepared or obtained in the course of such examination or investigation.

The bill further narrows the exemption by providing that after an examination report is filed or an investigation is completed or ceases to be active, portions of the work papers may remain confidential and exempt if disclosure would:

- Jeopardize the integrity of another active investigation;
- Impair the safety and financial soundness of the licensee, affiliated party or insured;
- Reveal personal financial, medical, or health information;
- Reveal the identity of a confidential source;
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual;
- Reveal investigation techniques or procedures; or
- Reveal confidential and exempt information received from another governmental entity or the National Association of Insurance Commissioners with respect to the sharing of such information.

If approved by the Governor, these provisions take effect October 1, 2007.
Vote: Senate 40-0; House 117-0

SB 1852 — OGSR/Consumer Complaints/Inquiries

by Banking and Insurance Committee

This bill is the result of the Senate Interim Project Report 2007-202 (Open Government Sunset Review of Section 624.23, F.S., Personal Financial and Health Information in Consumer Complaints to Department of Financial Services or Office of Insurance Regulation). This bill makes exempt from the public record requirements certain personal financial and health information of a consumer held by the Department of Financial Services (department) or the Office of Insurance Regulation (OIR) relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code. Confidential and exempt information includes bank account numbers, debit, charge, and credit card numbers, and all personal financial and health information. However, this exemption does not include the name and address of an inquirer or complainant or the name of an insurer or other regulated entity that is the subject of the inquiry or complaint.

This section is subject to repeal on October 1, 2007 without legislative action to save it. This bill retains the exemption; however, it makes the following revisions:

- The bill narrows the current exemption by specifying what "other personal financial and health information" is confidential and exempt based the current definition of such information provided in rules adopted by the department and the OIR. Personal financial and health information would include a consumer's personal health condition, disease, or injury and certain records and information relating to a consumer's personal finances and insurance coverage.
- The exemption is expanded to include the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the Department of Financial Services for the purpose of resolving disputes and complaints of employees.
- Bank account numbers and debit, credit, and charge card numbers are deleted from the exemption in the Florida Insurance Code since the general exemption, under s. 119.071(5)(b), F.S., already exempts these identical records from the Public Records Law.

If approved by the Governor, these provisions take effect October 1, 2007.
Vote: Senate 40-0; House 114-0

HEALTH MAINTENANCE ORGANIZATIONS

CS/SB 590 — Health Maintenance Contracts

by Health Regulation Committee and Senators Saunders, Atwater, and Lynn

This bill amends subsection (25) of section 641.31, F.S., to expand the right of a subscriber covered under a HMO contract who is a resident of a continuing care facility or a retirement

facility, to be referred to that facility's skilled nursing unit or assisted living facility. The bill deletes the current requirement that the HMO primary care physician make a determination that such care is in the best interests of the subscriber. Instead, the bill requires that such referral be requested by the subscriber and agreed to by the facility, if the primary care physician finds that such care is medically necessary. The bill retains the requirements that the facility agree to be reimbursed at the HMOs contract rate negotiated with similar providers for the same services and supplies; and that the facility meet all guidelines established by the HMO related to quality of care, utilization, referral authorization, risk assumption, use of the HMOs network, and other criteria applicable to providers under contract for the same services and supplies. The bill further requires that HMOs provide in writing a disclosure of such rights to new subscribers who reside at a continuing care facility or retirement facility, including the right to use a specified grievance process in the event their request to be referred to the skilled nursing unit or assisted living facility at their place of residence is not honored.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 37-0; House 117-0

SB 666 — Fiscal Intermediary Services Organizations/Health Care

by Senator Fasano

The laws regulating health maintenance organizations (HMOs) also provide for the regulation of fiscal intermediary services organizations (FISOs) by the Office of Insurance Regulation. The law is designed to protect funds received from an HMO and held by these entities, which have an obligation to distribute those funds to health care providers who contract with the HMO.

The bill revises the definition of entities that must be registered as a FISO by deleting the exemption for entities that are owned, operated, or controlled by certain licensed entities. Generally, under the provisions of the bill, only the licensed entities themselves would be exempt, including hospitals, authorized insurers, third party administrators, prepaid limited health service organizations, and HMOs. The current exemption for physician group practices would be limited to group practices providing services under the scope of licenses of the members of that group practice. The bill exempts from the FISO registration and regulatory provisions not-for-profit corporations that provide health care services directly to patients through employed, salaried physicians and that are affiliated with an accredited hospital licensed in Florida from the FISO registration and regulatory provisions. The bill exempts FISOs owned by third-party administrators (TPAs) from the surety bond requirements; however, the FISO would be subject to the other FISO requirements in the bill.

The bill further requires FISOs to comply with certain statutory requirements that apply to HMOs relating to payment of claims, including the prompt payment of claims; paying claims for which treatment authorization procedures have been followed; and requirements for adverse determinations of claims. In addition, the Office of Insurance Regulation would be required to periodically examine their operations and to take remedial action when necessary.

If approved by the Governor, these provisions take effect October 1, 2007.
Vote: Senate 37-0; House 113-3

CARBON MONOXIDE DETECTORS

CS/CS/SB 1822 — Carbon Monoxide Detectors

by Community Affairs Committee; Banking and Insurance Committee; and Senators Garcia, Deutch, and Justice

This bill requires that one or more carbon monoxide sensor devices be installed in any portion of a public lodging establishment that has an enclosed space or room containing a certain type of boiler regulated under ch. 554, F.S., in a portion of the establishment which also contains sleeping rooms. The bill exempts public lodging establishments that have adequately mitigated the carbon monoxide hazard as determined by the Division of Hotels and Restaurants (division) of the Department of Business and Professional Regulation. The bill also requires that each carbon monoxide device must have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent. The devices must be integrated into the establishment's fire detection system. The bill requires the division to adopt rules regarding the installation of the sensors and the determination of whether the establishment has adequately mitigated a carbon monoxide hazard.

The bill requires every building for which a building permit is issued for new construction on or after July 1, 2008, that has fossil-fuel-burning heaters or appliances, a fireplace, or an attached garage, to comply with installation of carbon monoxide alarms. It defines "carbon monoxide alarm" and "fossil fuel." The bill also requires the Florida Building Commission (commission) to adopt rules to administer the provisions of the bill and requires the commission to incorporate the requirements of the bill into the next revision of the Florida Building Code.

This bill is named "Janelle's Law" in memory of Janelle Bertot, Anthony Perez, and Tom Lueders, who all died from carbon monoxide poisoning in Florida.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 39-0; House 114-3