PROPERTY INSURANCE

CS/CS/SB 1790 — Florida Hurricane Catastrophe Fund

by Fiscal Policy Committee; Banking & Insurance Committee; and Senator Holzendorf

This bill makes the following changes to the Florida Hurricane Catastrophe Fund (Cat Fund):

- Limits the total amount the Cat Fund may reimburse all insurers for hurricane losses to $11 billion for any one year, subject to increase in future years under certain conditions. Currently, there is no identified limit an insurer may receive to cover 45 percent, 75 percent, or 90 percent of its losses, as selected by the insurer, above its retention. The total recovery is limited only by the balance of the Cat Fund and the maximum amount the State Board of Administration (SBA) is able to raise through the issuance of revenue bonds financed by a 4 percent assessment on property and casualty policies, estimated to be $11 billion in 1998 and expected to be about $11.6 billion for 1999.

- Limits each insurer's payment from the Cat Fund for any one year to the current minimum payment, which generally equals each insurer's proportionate share of Cat Fund premiums; however, the two state-created residual market insurers, the Florida Windstorm Underwriting Association (FWUA) and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) would *not* be subject to this limitation; and

- Increases the potential maximum assessments on property and casualty policies from 4 percent to 6 percent to fund Cat Fund bonds issued by the SBA, but limited to 4 percent for any one contract year. Any assessment authority not used for a contract year may be used for a subsequent contract year (subject to the 4 percent cap). For example, if hurricane losses in 1999 require the Cat Fund to use its $3 billion cash balance and issue bonds for $8 billion, to pay the $11 billion limit, funded by a 3.7 percent assessment (the estimated percentage needed), a new 2.3 percent assessment would be authorized to pay losses for future contract years, if necessary. There would be continuing authority to generate a new assessment of at least 2 percent and as great as 4 percent for any contract year following a year when some or all of the 4 percent

assessment authority is utilized, but limited by the 6 percent cap on aggregate assessments in any one year for all contract years.

The above changes are intended to preserve reinsurance capacity in the Cat Fund as a relatively stable and ongoing fund for the years following a major hurricane and to help minimize the rate increases and policy cancellations for residential property insurance policies that are likely to occur following a hurricane that significantly depletes the reinsurance capacity of the Cat Fund. This is due to the fact that insurers which depend on the Cat Fund for reinsurance capacity would be less likely to be forced to obtain more expensive private reinsurance to substitute for reduced Cat Fund claims-paying capacity.

Aggregate assessments in excess of 4 percent (up to 6 percent) would only be necessary to pay losses for a hurricane or hurricanes in subsequent years after Cat Fund bonds were first issued, until such bonds are satisfied. The effect of the bill is primarily to transfer existing assessment authority from the FWUA and RPCJUA to the SBA as administrator of the Cat Fund. However, the impact of the extra 2 percent assessment in the Cat Fund is transferred from all property insurance policyholders in the state (FWUA) and all residential property insurance policyholders in the state (RPCJUA) to all property and casualty policyholders in the state (Cat Fund), which includes motor vehicle insurance, commercial liability, medical malpractice, and other lines of liability insurance that are in the Cat Fund assessment base, but not the assessment base of the FWUA or RPCJUA.

The bill makes other changes to the operation of the Cat Fund, including: (1) specifying that the percentage growth in the insurers’ retention is based on the percentage growth in the exposure to the fund, rather than the percentage growth in premiums for covered policies; (2) clarifying the types of policies covered by the fund; (3) adding definitions to clarify the distinction between the estimated and actual claims-paying capacity of the fund; (4) deleting the requirement that the fund charge an equalization charge for insurers increasing their coverage level; (5) requiring insurers to report losses on an interim basis as directed by the SBA; (6) authorizing the SBA to audit records of each insurer’s covered policies; (7) authorizing the SBA to collect interest on late reimbursement payments; (8) various provisions intended to protect the interest of bondholders of Cat Fund bonds and, thereby, help assure their marketability; and (9) authorizing the SBA to take any action necessary to enforce its rules and contract requirements.

If approved by the Governor, these provisions take effect June 1, 1999.
Vote: Senate 37-0; House 116-0

SB 1464 — Depopulation/Florida Residential Property and Casualty Joint Underwriting Association

by Senator Dyer

This bill (Chapter 99-142, L.O.F.) repeals the provision under s. 627.3511, F.S., which specifies that an insurer or agent may not qualify for a bonus or exemption from payment of assessments to the Florida Residential Property and Casualty Joint Underwriting Association (JUA) after the number of risks insured by the JUA is less than 250,000. On January 1, 1999, the JUA policy count dropped below 250,000 policies. The effect of repealing this provision allows the JUA, which as of April 1 had approximately 199,808 policies with $32 billion in exposure, to continue to offer financial incentives to insurers to take over homeowner's policies and other risks insured by the JUA.

The JUA was created by the Legislature in 1992 in response to Hurricane Andrew to provide residential property insurance to homeowners. It has greatly reduced the number of policies in recent years after reaching a peak of 937,000 policies and $98 billion in insured value in September 1996.

These provisions were approved by the Governor and take effect April 29, 1999.
Vote: Senate 36-0; House 116-0

HEALTH INSURANCE

CS/SB 232 — Health Care (Health Maintenance Organizations; Continuation of Care; Rate Filings; etc.)

by Banking & Insurance Committee and Senators Latvala, Campbell, Gutman, Silver, Meek and Mitchell

This bill declares it to be an unfair or deceptive act if a health maintenance organization (HMO) takes any retaliatory action against a health care provider for communicating information to the provider's patient regarding medical care or treatment options. This supplements the current law which prohibits a contract between an HMO and a health care provider from containing any provision restricting the provider's ability to make such communications.

The bill prohibits an HMO or health care provider from terminating a contract with a health care provider or HMO without providing the terminated party with a written reason for the contract termination, which may include termination for business reasons of the terminating party. Such notice may not be used as substantive evidence in a subsequent action relating to the termination.

The bill revises the requirement that HMOs allow subscribers to continue care with a terminated treating provider under certain circumstances. As required by the bill, when a contract between an HMO and a treating provider is terminated by either party for any reason other than for cause, each party must allow subscribers for whom treatment was active to continue coverage when medically necessary, through completion of treatment, until the subscriber selects another treating provider, or during the next open enrollment period offered by the HMO, whichever is longer, but not to exceed 6 months after termination of the contract. A subscriber who has initiated prenatal care must be allowed to continue care until completion of postpartum care. However, these requirements do not prevent a provider from refusing to continue to provide care to a subscriber who is abusive, noncompliant, or in arrears in payments for services provided. These same provisions are also specifically applied to state-contracted HMO coverage of state employees under the state group insurance plan, as an amendment to s. 110.123, F.S.

The bill also applies to HMOs the same rate filing procedures that apply to health insurers. This requires HMOs to file rates at least *30 days in advance of use*. The department may approve or disapprove the rate during this 30-day period, or during an extended period of an additional 15 days if the department gives notice of the extension. If the department disapproves the rate during this period, the HMO may not use the rate but may pursue its administrative hearing rights if it challenges the department's findings. If, however, the department does not affirmatively approve or disapprove the rate during this 30 to 45 day time period, the rate is deemed approved.

If approved by the Governor, these provisions take effect upon becoming law and shall apply only to contracts entered into after the effective date.
Vote: Senate 39-0; House 118-0

CS/SB 2554 — Insurance Contracts

by Banking & Insurance Committee and Senator King

This bill amends several provisions relating to insurance contracts to: (1) provide an exception from certain insurance licensing requirements for certified public accountants (CPAs); (2) require certain information be provided to health care providers; (3) require a health maintenance organization (HMO) to provide notice to contract holders under specified circumstances under a group contract; (4) require HMOs to cover licensed massage therapists under certain circumstances; (5) provide that contracts between HMOs and providers not restrict either the HMO or provider under certain circumstances; and, (6) protect employees' health insurance when group coverage is retroactively canceled.

(1) Certified Public Accountants — This provision allows CPAs to provide limited insurance services while acting within the scope of the practice of accounting and would exclude CPAs from the licensing and regulatory provisions for insurance agents. A CPA

may advise clients as to the need for obtaining insurance, and the amount and type of insurance recommended to be purchased. It prohibits a CPA from receiving any insurance commission or fee.

(2) Information to Health Care Providers — This provision would require that payments by a fiscal intermediary to a health care provider, pursuant to contracts with health maintenance organizations (HMOs), include the following information:

- For a "*noncapitated*" health care provider, an explanation of services being reimbursed which includes the patient's name, date of service, procedure code, amount of reimbursement and plan identification.
- For a "*capitated*" health care provider, a statement of services which includes the number of patients covered by the contract, rate per patient, total amount of payment, and the identification of the plan on whose behalf the payment is made.

Neither this provision nor the current law defines the terms "capitated" or "noncapitated" health care provider. A "capitated" provider is one who performs services for a specified dollar amount on a per patient basis for a specific period of time, regardless of the services provided. A "noncapitated" provider is paid on a fee for service basis. A "fiscal intermediary" is a person or entity which performs various financial services to health care professionals who contract with HMOs.

(3) Health maintenance organization (HMO) notice requirements — This part allows HMOs to increase the copayment for any benefit, or amend, delete or limit benefits to which a subscriber is entitled under a group contract, subject to written notice to the contract holder at least 45 days in advance of the time of coverage renewal. Such notice must identify deletions, limitations, or amendments to any benefits provided in the group contract which will be included in the group contract upon renewal. This provision does not apply to any increases in benefits and the 45-day notice requirement does not apply if the benefits are amended, deleted, or limited at the request of the contract holder.

(4) Massage Coverage — This part requires that HMO contracts providing for massage must also cover the services of persons licensed to practice massage if the massage is prescribed by a contracted physician as medically necessary and the prescription specifies the number of treatments. Such massage services are subject to the same terms, conditions, and limitations as other covered services.

(5) Health maintenance contracts — This provision mandates that a contract between a HMO and a health care provider may not contain a provision which prohibits or restricts either the HMO or the provider from entering into a commercial contract with another provider or HMO, respectively. The term "commercial" is not defined, but would appear to exclude Medicare and Medicaid HMO contracts.

(6) Retroactive Cancellation of Group Coverage — This provision limits the right of an insurance company or health maintenance organization (HMO) to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer and protects the employee's right to elect an individual conversion health insurance policy in this event. Specifically, it prohibits an insurer or HMO from retroactively canceling a group health insurance contract, due to nonpayment of premium by the employer, prior to the date the notice of cancellation is mailed to the employer *unless* the notice is mailed within 45 days after the date the premium was due. If a group policy is canceled for nonpayment of premium, the employee's 63-day time limit to apply for an individual conversion policy does not begin to run until notice of cancellation is mailed to the employee by either the insurer or the employer, whichever is earlier. Additionally, the premium for the conversion policy must be set at the previous group rate for the time period *prior* to the date the insurer or HMO mails the notice to the employee. (For the period of coverage after such date, the premium for the converted policy is subject to the requirements of current law which provides that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.)

The provision also clarifies current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 38-0; House 115-0

CS/HB 377 — Bone Marrow Transplants

by Insurance Committee, Rep. Bense and others (CS/SB 62 by Banking & Insurance Committee and Senators Thomas, Mitchell, Gutman, Geller, Dawson-White, Campbell, Casas, Childers, Forman, Clary and Dyer)

This bill requires health insurers and health maintenance organizations (HMOs) to cover the costs associated with the *donor patient* to the same extent that the current law requires the insurer or HMO to cover costs associated with the insured for covered bone marrow transplant procedures that are determined to be scientifically acceptable and non-experimental for certain types of cancer. Insurers may limit the reasonable costs of searching for the donor to immediate family members and the National Bone Donor Program.

The bill also expands the membership of the Organ Transplant Advisory Council from 8 to 12 members and increases the term of the council chair from 1 to 2 years under s. 381.0602, F.S. The current responsibilities of the Organ Transplant Advisory Council are to formulate guidelines and standards for organ transplants and to recommend

indications to the Agency for Health Care Administration for adult and pediatric organ transplants. The bill includes a legislative finding that it fulfills an important state interest.

If approved by the Governor, these provisions take effect January 1, 2000.
Vote: Senate 40-0; House 110-0

AUTOMOBILE INSURANCE

HB 295 — Personal Injury Protection

by Rep.Villalobos and others (CS/SB 1978 by Banking & Insurance Committee and Senator Diaz-Balart)

This bill addresses several provisions relating to motor vehicle insurance coverage. It allows policyholders to elect a deductible amount in combination with the exclusion of wage loss benefits under personal injury protection (PIP) coverage which is required by Florida law for motor vehicle owners. Policyholders will receive a premium reduction associated with each coverage limitation. The bill requires insurance companies to provide sufficient notice to insureds of these coverage deductibles and modifications and that such notice be made in clear and unambiguous language at the time of initial application and before each annual renewal. In lieu of the above referenced notice, the insurer may use notice forms approved by the Department of Insurance. The current law provision which makes Medicare and the coordination of military benefits primary to an insured's PIP coverage is deleted, due to conflict with federal law.

The bill also requires motor vehicle insurers to give policyholders at least 30 days' advance written notice of the renewal premium of the policy, to be sent to the policyholder's last address as shown by the insurer's records. Failure to provide the notice of a premium increase results in coverage remaining in effect at the existing rate until 30 days after the notice is given or until the effective date of replacement coverage obtained by the insured, whichever occurs first.

The bill further provides that to be exempt from the requirement of having to make a down payment equal to at least 2 months' premium on a motor vehicle insurance policy by paying through a payroll deduction plan or an automatic electronic funds transfer plan, an applicant must agree to pay all premiums in that manner, provided the *first* policy payment is made by cash, cashier's check, check, or a money order. This provision and the prohibition against the insurer canceling the policy during the first 60 days do not apply if all policy payments to an insurer are paid pursuant to an automatic electronic funds transfer plan from an agent and if the policy includes at least the minimum amounts of

personal injury protection insurance and property damage liability, in addition to bodily injury liability in the amount of $10,000/$20,000.

If approved by the Governor, these provisions take effect July 1, 1999, except that section 1 (relating to coverage election options) and section 2 (relating to the 30-day notice of renewal premium) shall apply to policies issued or renewed on or after July 1, 2000.
Vote: Senate 39-0; House 112-1

INSURANCE (MISCELLANEOUS)

HB 897 — Sale of Insurance by Financial Institutions

by Rep. Sublette (CS/CS/SB 2402 by Agriculture & Consumer Services Committee; Banking & Insurance Committee; and Senator Rossin)

This bill repeals Florida's "anti-affiliation statute" which generally limits affiliations between banks and insurance entities by prohibiting certain insurance activities by persons employed or associated with financial institutions such as banks, savings and loan associations or their subsidiaries under s. 626.988, F.S. It repeals the provision which limits insurance agents engaging in insurance activities through a bank located in a city with a population of less than 5,000. The effect of this repeal is to permit insurance agents associated with or employed by a financial institution to engage in insurance agency activities regardless of the population of the city in which the financial institution is located. These activities include the negotiation or sale of insurance products or the servicing of insurance policies. The bill makes no distinction between nationally-chartered (national banks), federally-chartered (savings and loans) and state-chartered financial institutions.

The bill further provides a broad range of consumer safeguards relating to disclosure and advertising provisions as well as establishing guidelines for the sale of insurance on the premises of financial institutions, such as requiring written disclosure to customers that choice of insurance will not affect credit decisions; requiring federally insured or state insured depository institutions and credit unions to provide in writing, prior to the sale of any insurance policy, that such a policy is not a deposit and not guaranteed by the bank, and where appropriate, involves investment risk, including loss of capital; and, prohibiting extensions of credit or the furnishing of services on the condition the customer obtain insurance from the financial institution.

The bill also requires that persons associated with financial institutions who solicit or sell insurance must be Florida-licensed agents representing Florida-authorized insurers or

eligible surplus lines insurers and must comply with all applicable state insurance regulations and licensing requirements.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 117-0

CS/SB 312 — Insurance

by Banking & Insurance Committee and Senator Lee

This bill address three different insurance issues including: (1) protection of employees' health insurance when group coverage is retroactively canceled, (2) insurance fraud, and (3) classification of "collateral protection insurance" for purposes of specified insurance statutes.

Retroactive Cancellation of Group Coverage — This bill limits the right of an insurance company or health maintenance organization (HMO) to retroactively cancel a group health insurance policy due to nonpayment of premium by the employer and protects the employee's right to elect an individual conversion health insurance policy in this event. Specifically, the bill prohibits an insurer or HMO from retroactively canceling a group health insurance contract, due to nonpayment of premium by the employer, prior to the date the notice of cancellation is mailed to the employer *unless* the notice is mailed within 45 days after the date the premium was due. If a group policy is canceled for nonpayment of premium, the employee's 63-day time limit to apply for an individual conversion policy does not begin to run until notice of cancellation is mailed to the employee by either the insurer or the employer, whichever is earlier. Additionally, the premium for the conversion policy must be set at the previous group rate for the time period *prior* to the date the insurer or HMO mails the notice to the employee. (For the period of coverage after such date, the premium for the converted policy is subject to the requirements of current law which provides that such premium may not exceed 200 percent of the standard risk rate as established by the Department of Insurance.)

The bill also clarifies current law to allow group insurers to contract with another insurer to issue conversion contracts on its behalf, provided that the other insurer is authorized in Florida and the policy has been approved by the Department of Insurance.

Insurance Fraud — The bill establishes the Anti-Fraud Reward Program within the Department of Insurance, funded from the Insurance Commissioner's Regulatory Trust Fund. The department is authorized to pay rewards of up to $25,000 to persons who provide information leading to the arrest and conviction of persons committing "complex or organized crimes" which are investigated by the Division of Insurance Fraud and which arise from violations of specified criminal workers' compensation violations, willful

violations of the Insurance Code, unfair methods of competition and unfair or deceptive acts, fraudulent insurance acts, or false and fraudulent insurance claims and applications.

The bill applies to HMOs the requirements that currently apply to insurance companies which require the establishment, of special investigative units or to submit anti-fraud plans to the Division of Insurance Fraud, depending on the amount of their direct premiums written. The bill also extends to HMOs the limited civil immunity contained in s. 626.989(4), F.S., which applies to persons who provide confidential information to the division relating to insurance fraud and to persons within special investigative units (SIUs) who share information with other persons relating to insurance fraud.

The bill amends s. 775.15, F.S., to extend the statute of limitations from 3 to 5 years for prosecutions of violations of s. 817.234, F.S., related to false and fraudulent insurance claims and applications.

The bill amends s. 817.234, F.S., relating to fraudulent insurance claims and applications, to clarify that the various criminal offenses contained in this section are "insurance fraud" and provides a sliding scale of penalties based on the value of the money or property involved in the offense. When the value of any property involved in a violation of this section is less than $20,000, the act remains a third-degree felony, as under current law. When the amount involved is $20,000 or more, but less than $100,000, the act would be a second-degree felony, and when the amount involved is $100,000 or more, the act would be a first-degree felony. A third-degree felony is punishable by up to 5 years in prison and a fine of $5,000, while a second-degree felony is punishable by up to 15 years in prison and a fine of up to $10,000. A first-degree felony is punishable by up to 30 years and a fine of up to $10,000. Health maintenance organization subscriber or provider contracts are included within the fraudulent insurance claims provisions and the term "insurer" would include a HMO.

The bill amends s. 817.505, F.S., relating to patient brokering. Under current law, it is unlawful for any person, including any health care provider or health care facility, to offer or pay any bonus or rebate to induce the referral of patients from a health care provider or health care facility, or to solicit or receive any bonus or rebate in return for referring patients. The current penalty for violations of this section are a first-degree misdemeanor for the first violation and a third-degree felony for subsequent violations. The bill revises the law so that all violations of this section, including first violations, are third-degree felonies.

The bill amends s. 626.321, F.S., relating to credit life or disability insurance licenses, to allow entities applying for licensure under this provision to submit only one application, obtain a license for each branch office, and apply for licensure using an abbreviated or simplified application form. Such entities are not required to pay any additional application

fees for a license issued to a branch office, but are required to pay certain appointment fees. It further requires posting of the license at the business location.

Collateral Protection Insurance — The bill creates s. 624.6085, F.S., to define "collateral protection insurance" as commercial property insurance and would expressly not be "residential coverage," for purposes of the laws that establish the Florida Hurricane Catastrophe Fund and the various joint underwriting associations (ss. 215.555, 627.311, and 627.351, F.S.). The bill further defines collateral protection insurance as commercial property insurance of which a creditor (such as a bank) is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document.

The effect of the bill is to exclude collateral protection insurance policies from participation in the Florida Hurricane Catastrophe Fund. Such policies are currently excluded by contract and rules of the State Board of Administration, but the bill's exemption is somewhat broader. The bill further excludes collateral protection insurance from the assessment base for the personal lines residential property insurance account of the Residential Property and Casualty Joint Underwriting Association (RPCJUA). However, as commercial property insurance, such coverage would, instead, be included in the assessment base for the commercial residential risk account. The bill has no effect on the assessment base for the Florida Windstorm Underwriting Association, since commercial property insurance is currently included.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 40-0; House 115-0

CS/HB 403 — Title Insurance

by Insurance Committee, Rep. Byrd and others (CS/SB 746 by Banking & Insurance Committee and Senator Grant)

This bill deletes the authority for the Department of Insurance to establish title insurance premiums during the 3-year period from July 1, 1999, through June 30, 2002, and the bill establishes the title insurance premiums in s. 627.7285, F.S., for this time period. The department is further prohibited from granting a rate deviation from such rates during this period. The bill specifies the percentage of the premium that must be retained by the insurer (rather than paid to the title agent), which ranges from 30 percent to 40 percent, depending on the value of the policy, which the current law states may not be less than 30 percent for all policies.

The premium rates for original title insurance policies (both owner and mortgage policies) specified by the bill for policies covering property values of $1 million or more represent a premium reduction ranging from 11 percent to 25 percent, compared to the current title insurance rates established by department rule. For policies below $1 million, the rates are the same as currently provided by department rule, except that the bill provides that the first purchaser of a new home receives a credit (discount) on the cost of the title policy equal to the cost of any prior loan policy that the builder obtained, subject to a minimum premium of $200. The lower, reissue title insurance rates in the bill are the same as the current reissue rates promulgated by the department, except that the reissue rates would apply if the prior policy was issued within the previous 3 years, rather than 1 year as provided in the current rule. The bill revises the reduced rates for a substitution loan as currently provided by rule in two ways: the reduced rates will apply only to policies of $250,000 or more, but such reduced rates will apply regardless of whether the lender is the original lender. All of these rate changes negate the department's proposed rule changes (which may have been subject to an administrative challenge) to reduce all title insurance rates by 9 percent across the board for all policy values.

The bill prohibits title insurers and their agents from paying a rebate of the agent's or insurer's share of the premium or any charge for related title services below the cost for providing such services, or provide any special favor or advantage, or any monetary consideration or inducement whatsoever to a person obtaining a title insurance policy. In the case of *Butler et al. v. State of Florida, et al.*, the Circuit Court of the Second Judicial Circuit for Leon County, held as unconstitutional the current statutes and Department of Insurance rule interpreted by the court as prohibiting title insurance agents from rebating commissions or fees. It is not clear if this bill will cure the constitutional defects as determined by the Circuit Court. The bill may add to the argument that such rebating may be constitutionally prohibited for title agents by making legislative findings and changes that emphasize the differences between the services rendered by title insurance agents and services rendered by agents for other lines of insurance, such as the new definition of "primary title services" that includes determining insurability in accordance with sound underwriting practices.

The bill adds a provision that prohibits any portion of the premium attributable to a primary title service from being paid to or retained by any person who does not actually perform or is not liable for the performance of such services, for any transaction subject to the Real Estate Settlement Procedures Act of 1974 (RESPA).

The bill also revises the schedule that title insurers must follow for releasing the unearned premium reserve required to be established for each policy, which may then be applied by the insurer to profit and surplus. The bill does not change the amount of the reserve which is equal to 30 cents for each $1,000 of net retained liability under each policy written. Under the current law, the insurer is allowed to release the amounts reserved in 12 equal

annual installments. The bill requires the unearned premium reserve to be released over a 20-year period, rather than over a 12-year period, but it is heavily “front-end loaded” to allow a greater percentage release in the early years.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 39-0; House 107-5

CS/CS/SB 1242 — Viatical Settlement Contracts

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

This bill revises current law regarding viatical settlement contracts under part XI of chapter 626, F.S. A viatical settlement contract is a written agreement under which the owner of a life insurance policy who has a terminal illness (“viator”) sells the policy to another person in exchange for a bargained-for payment, which is generally less than the expected death benefit under the policy. In 1996, Florida established the framework for regulating the viatical industry (ch. 96-336, L.O.F., creating part XI of ch. 626, F.S.). The changes to current law are the following:

- Revises definitions of “viatical settlement broker,” “viatical settlement contract,” “viatical settlement provider,” “viator,” and, “related provider trust.” Creates the following terms: “viatical settlement purchase agreement,” “viatical settlement purchaser,” and “viatical settlement sales agent.”

- Provides that a viatical settlement broker must disclose to a prospective viator the amount and method of calculating the broker’s compensation. The term “compensation” includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

- Provides for 30 days’ advance notice to the Department of Insurance of a change in name or address of viatical settlement sales agent licensees. Also, requires such viatical settlement sales agents to be licensed as life insurance agents by the department.

- Authorizes the department to examine advertising and solicitation materials pertaining to viatical settlements. Provides that viatical settlement purchase agreements must be maintained for 3 years by the licensee after the death of the insured and be available to the department for inspection.

- Strengthens disclosure and advertising requirements relating to viatical settlement sales agents and viatical settlement purchasers. Authorizes the department to adopt rules regarding disclosure forms.

- Authorizes the department to promulgate rules establishing record keeping requirements for viatical settlement purchase agreements.

- Prohibits rate regulation by the department as to the consideration paid in connection with a viatical settlement purchase agreement. Provides such agreements are subject to the unfair trade practices law.

- Increases the powers of the Department of Insurance to issue cease and desist orders against persons violating viatical settlement provisions. Authorizes the department to impose an administrative fine of $10,000 for each nonwillful violation and $25,000 for each willful violation of any provision of this part.

- Provides that it is a prohibited practice for any person to employ any device, scheme, or artifice to defraud in the solicitation or sale of viatical settlement purchase agreements. Also, provides that it is unlawful for a person in the advertisement, offer, or sale of a viatical settlement purchase agreement to misrepresent such agreement as being guaranteed, recommended or approved by the state or any agency of the United States. Provides a grace period for viatical settlement sales agents that are transacting business on June 30, 1999, to continue to transact such business, in the absence of any orders to the contrary, until the department approves or disapproves the sales agent's application for licensure if the agent files no later than November 1, 1999.

- Florida-based viatical companies will not be subject to Florida law when they enter into agreements with purchasers or viators in a state that regulates viatical settlements. In a state where viatical settlements are not regulated, Florida law will apply.

- The current law provision which prohibits a viator with minor children from viaticating more than 50 percent of a policy is amended to provide that it does not apply to out-of-state viators (e.g., located in states that have not enacted viatical settlement laws) who enter into agreements with Florida-based viatical settlement providers. This entire provision is repealed on June 1, 2000.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 118-0

CS/HB 1749 — Service Warranties

by Insurance Committee and Rep. Farkas and others (CS/SB 1234 by Banking & Insurance Committee and Senator Latvala)

This bill makes the following changes regarding motor vehicle service agreements, home warranties, and service warranties:

- Clarifies that all funds or premiums remitted to a contractual liability insurer by a motor vehicle service agreement company must remain in the custody of the contractual liability insurer and be counted as an asset of that insurer. However, this requirement does *not apply* when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with the contractual liability provisions, but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

- Provisions of motor vehicle service agreements pertaining to limitations on benefits or rental car provisions will no longer be required to be set forth in conspicuous, boldfaced-type. However, the relevant section headings of the service agreements must be in conspicuous, boldfaced-type.

- Requires home warranty contracts to state in conspicuous, boldfaced type that the home warranty may not provide free coverage for the period that the home is listed for sale.

- Provides that a maintenance service contract that is longer than 1 year in length will be included in the definition of service warranty. A maintenance service contract for less than 1 year that also provides a combination of parts and labor discounted by more than 20 percent will also fall under the definition of a service warranty. As such, these types of maintenance service contracts will be subject to regulation by the Department of Insurance.

- Disallows a service warranty association from using a policy from a surplus lines insurer to meet its requirements for contractual liability insurance.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 114-0

HB 717 — Bail Bonds

by Rep. Crow and others (CS/CS/SB 1516 by Criminal Justice Committee; Banking & Insurance Committee; and Senator Clary)

The bill revises bail bond provisions relating to continuing education, discharge of forfeitures, judgments against sureties, remissions of forfeitures, and original appearance bonds.

This bill revises various provisions in ch. 903, F.S., relating to requirements for bail bonds including:

- extending the time frame within which the court can discharge a forfeiture of a bail bond (from 35 to 60 days) and reducing the time frame after a judgment within which a bail bond agent must pay the judgment (from 60 to 35 days);
- requiring (rather than allowing) the court to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction prior to judgment;
- providing that original appearance bonds expire 36 months after the date the bond is posted; and.
- inaccuracies or omissions in applications for bail provided by county, correctional, or court employees shall not be grounds for discharging a forfeiture and setting aside bond.

The bill also amends s. 648.386, F.S., relating to continuing education requirements for bail bond agents, to allow guest lecturers to teach continuing education courses in the presence of the supervising instructor.

The bill amends s. 648.44, F.S., to provide that a bail bond agent may not execute a bond if a judgment has been entered on a bond executed by the bail bond agent, which has remained unpaid for 35 days, unless the amount of the judgment is first deposited with the court.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-0

BANKING

CS/CS/SB 150 — State Financial Matters

by Governmental Oversight & Productivity Committee; Banking & Insurance Committee; and Senators Horne, Bronson, McKay, Klein and Dyer

This bill makes various changes that relate to state financial matters. The bill exempts the Department of Banking and Finance from the requirement of s. 20.04, F.S., to be organized along division, bureau, and section lines. The divisions within the Department of Banking and Finance, designated by statute, are eliminated, thereby providing greater flexibility to the department to revise its organizational structure. The Office of Financial Investigations is created, as a separate subunit within the department, to operate as a criminal justice agency within the meaning of s. 943.045(10)(d), F.S.

The bill generally requires new retirees participating in the Florida Retirement System to receive their retirement payments through direct deposit, effective July 1, 2000.

The dollar threshold for classifying state property as tangible personal property, or "Other Capital Outlay," is increased from $500 to $1,000, for which agencies are required to maintain property records and take physical inventory. The bill also authorizes the head of an agency to delegate approval of all travel expenses to his or her designee.

The Comptroller's authority to issue subpoenas, administer oaths, and examine witnesses is clarified. The statute of limitations for seeking recovery in all disputes over compensation for work performed by a state officer or employee is clarified and limited to 2 years from the date of the alleged error in payment. The Comptroller is authorized to provide financial statements and the Comprehensive Annual Financial Report through an electronic format.

Statutory references to the State Automated Management Accounting Subsystem are eliminated and replaced by the term, "Florida Accounting Information Resource Subsystem," since the state accounting system was renamed in 1997.

If approved by the Governor, these provisions take effect October 1, 1999.
Vote: Senate 37-0; House 116-0

CS/SB 1264 — Consumer Finance

by Banking & Insurance Committee and Senator Rossin

This bill makes changes to ch. 516, F.S. (consumer finance) and ch. 520, F.S. (retail installment loans). Chapter 516, F.S., provides for the regulation of consumer finance companies by the Department of Banking and Finance. Persons licensed under this chapter are allowed to make consumer finance loans up to $25,000. Ch. 520, F.S., provides for the regulation by the department of retail installment transactions, both sales and loans. The bill makes the following changes:

- Increases license application and renewal fees, eliminates the authority of the Department of Banking and Finance to set fees by rule, eliminates fees and expenses charged to a licensee for an examination at a Florida location, and limits charges to a licensee for travel and per diem expenses for department examinations in another state;

- Eases notification requirements for relocation of offices;

- Requires licensees to notify the department if the licensee is the subject of a bankruptcy action;

- Expands the grounds for disciplinary action by the department to include a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude;

- Requires motor vehicle installment contracts to disclose certain additional information and requires lenders to provide the borrower evidence of satisfaction and to ensure that the title or contract indicates that the lien has been satisfied or released;

- Authorizes lenders who make simple interest loans pursuant to the motor vehicle sales finance act to impose up to a $75 charge if the contract is prepaid within 6 months after the effective date of the contract, and to defer the scheduled due date of any installment payment, upon the request of the buyer, and to collect a $15 fee for such deferment; and

- Authorizes retail sellers to collect a $10 processing fee for retail installment contracts which would not be considered interest or finance charges.

If approved by the Governor, these provisions take effect October 1, 1999, except as otherwise provided.
Vote: Senate 38-0; House 117-0

CS/SB 1280 — Financial Institutions
by Banking & Insurance Committee and Senator Laurent

This bill (Chapter 99-138, L.O.F.) amends s. 655.0385, F.S., relating to disapproval of directors and executive officers of state financial institutions. A state financial institution which has been chartered for less than two years, has undergone a change in control or conversion within the preceding two years, is not in compliance with the minimum capital requirements applicable to such financial institutions, or is otherwise operating in an unsafe and unsound condition, must provide 60 days' advance notice, rather than 30 days required under current law, before the appointment of a proposed member to the board of directors or executive officer of a state financial institution. The bill also gives the department the discretionary authority to exempt a financial institution which has undergone a change in control or conversion within the preceding 2 years, and which is operating in a safe and sound manner, as set forth in departmental rules, from the requirement of notifying the department of the proposed appointment of board members or executive officers. The bill authorizes the department to adopt rules to implement this section.

The bill also amends s. 655.948, F.S., regarding disclosure by financial institutions of significant events, to allow the department to exempt a financial institution operating in a safe and sound manner, pursuant to departmental rules. Only newly chartered financial institutions are required to notify the department of certain specified "significant events" for 3 years.

The bill amends s. 658.26, F.S., exempting financial institutions operating in a safe and sound manner, as provided by departmental rules, from filing an application and application fee to open a branch office. Instead, the institution is directed to file a written notice with the department 30 days prior to opening the branch.

These provisions were approved by the Governor and take effect July 1, 1999.
Vote: Senate 36-0; House 116-0

CS/SB 1326 — Mortgage Brokers and Lenders
by Banking & Insurance Committee and Senator Lee

This bill revises the regulatory and operational provisions for mortgage brokers and lenders under the Department of Banking and Finance within ch. 494, F.S. It makes the following changes:

General Provisions (Ch. 494, F.S.)

- Authorizes the Department of Banking and Finance to conduct out-of-state examinations, consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees. Specifies that application, renewal and reactivation fees for mortgage brokers, mortgage broker business, mortgage lenders, and correspondent mortgage lenders are nonrefundable.
- Adds a definition of "mortgage loan" that has the effect of eliminating regulation of mortgage loans on commercial real property if the borrower is a business entity and the lender is an institutional investor (a business entity that invests in mortgage loans). The bill adds and revises other definitions for certain terms that are commonly used in statute and by the industry.
- Provides that a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude, as well as failure to timely pay any fee, charge, or fine, are grounds for disciplinary action.
- Prohibits certain false and misleading advertising.
- Prohibits licensees from paying a fee or commission to an unlicensed person.
- Authorizes independent contractors to contract directly with mortgage lenders and prohibits independent contractors from contracting with more than one mortgage lender at a time.
- Provides that employees of mortgage brokers and mortgage lenders whose activities are ministerial and clerical are not required to obtain a license as a mortgage broker or mortgage lender, respectively.
- Authorizes the department to adopt rules to allow electronic submission of application forms, documents, and fees by licensees.

Mortgage Brokerage Business and Mortgage Brokers (Part II of Ch. 494, F.S.)

- Clarifies procedures for reactivation of a mortgage brokerage business license. Requires prominent display of a license in offices.
- Eliminates the requirement to physically locate a principal place of business in Florida. Requires each mortgage brokerage business to file quarterly reports to the department listing information relating to associates of the mortgage business.
- Requires licensees to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude and report any felony conviction.

Mortgage Lenders and Correspondent Mortgage Lenders (Part III of Ch. 494, F.S.)

- Clarifies procedures for reactivation of a mortgage lender, correspondent mortgage lender, or branch office business license. Requires prominent display of mortgage lender and correspondent mortgage lender licenses in offices.

- Requires each mortgage lender or correspondent mortgage lender to file quarterly reports to the department listing information relating to associates or other specified employees.
- Corrects and conforms statutory language to state that a mortgage lender or correspondent mortgage lender is not prohibited from acting as a "mortgage brokerage business."
- Requires licensees to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude and report any felony conviction.

If approved by the Governor, these provisions take effect October 1, 1999, except as otherwise provided in this act. The exception refers to the filing of quarterly reports by mortgage brokerage businesses, mortgage lenders, and correspondent mortgage lenders to the department which is effective January 1, 2000.
Vote: Senate 39-0; House 116-0

CS/SB 990 — Banks; Trust Powers

by Banking & Insurance Committee and Senator Grant

This bill amends s. 660.41, F.S. to retain a provision scheduled for repeal on September 1, 1999, which exempts banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank, pursuant to s. 658.2953, F.S., from a prohibition against corporations conducting trust business in Florida. The bill will continue the authority provided by section 18 of ch. 97-30, L.O.F., allowing non-Florida state-chartered banks to merge with Florida state-chartered banks without losing their local trust powers. The bill also technically revises the existing statutory language which exempts from the prohibition against conducting trust business, banks or associations and trust companies incorporated in Florida and national banking or federal associations authorized and qualified to exercise trust powers in Florida.

The bill also resolves a potential conflict with federal law, by providing that a national bank, based in another state with no branches in Florida, be authorized and qualified to exercise trust powers in Florida in order to perform fiduciary duties prescribed by s. 660.41, F.S.

If approved by the Governor, this provision takes effect September 1, 1999.
Vote: Senate 39-0; House 117-0

CS/HB 1659 — Banks; Trust Powers

by Real Property & Probate Committee and Rep. Bilirakis and others (CS/SB 2068 by Banking & Insurance Committee and Senator Grant)

This bill allows costs and attorney's fees incurred in trust proceedings to be paid out of a trust if the court determines that the attorney rendered services to the trust for services rendered by an attorney on or after July 1, 1999.

Specifically, if an attorney "has rendered services to a trust," the attorney may apply to the court for an order awarding attorney's fees, and after notice and service upon the trustee and all beneficiaries entitled to an accounting from the trustee, the court must enter an order on the attorney's application. If the court grants the attorney's application for fees, the court may direct the attorney's fees to be paid from a particular part of the trust.

When a trustee's interest may be adverse, the attorney shall give reasonable notice in writing to the trustee of the attorney's retention by an interested person and the attorney's claim to entitlement to fees under this section. A court may reduce any fee award for services rendered by the attorney prior to the date of actual notice to the trustee, if the actual notice date is later than a date of reasonable notice.

The language in the bill is closely modeled after the probate code, which allows recovery of costs and attorney's fees from an estate under certain circumstances. (s. 733.106, F.S.). Accordingly, case law construing that provision of the probate code may be persuasive to a court during its review of an application for attorney's fees incurred in a trust proceeding.

The bill also provides statutory limitations on the liability of successor trustees under certain circumstances. Specifically, a successor trustee will not have a duty to institute any action against any prior trustee, or file any claim against any prior trustee's estate, for any of the prior trustee's acts or omissions under specified circumstances. The bill does not affect the liability of a prior trustee or the right of a successor trustee, or any beneficiary, to pursue an action or claim against the prior trustee.

If approved by the Governor, these provisions take effect July 1, 1999.
Vote: Senate 40-0; House 113-0