# GOVERNMENTAL REORGANIZATION – DEPARTMENT OF FINANCIAL SERVICES

## CS/CS/SB 1712 — Governmental Reorganization (Department of Financial Services)

by Governmental Oversight and Productivity Committee and Banking and Insurance Committee

The bill makes changes to the Florida Statutes to conform to the constitutional amendment that created the office of the Chief Financial Officer and to the 2002 act (ch. 2002-404, L.O.F.) that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003. A separate bill, SB 1488, makes conforming changes related to the restructuring of the Cabinet pursuant to the constitutional amendment.

The 2002 act created s. 20.121, F.S., which prescribes the organizational structure and regulatory duties of the Department of Financial Services (department), headed by the Chief Financial Officer. That act also created the Financial Services Commission (commission), headed by the Governor and Cabinet, as an independent body within the department. Two offices were created under the commission: the Office of Insurance Regulation and the Office of Financial Institutions and Securities Regulation, each headed by a director appointed by the commission, except that the commission is agency head for all rulemaking of each office. The 2002 act transferred the programs, employees, and trust funds of the Department of Insurance and the Department of Banking and Finance to the new department and commission, but did not make conforming changes to the Florida Statutes, which this bill addresses.

This year's bill amends various Florida Statutes to provide all state fiscal powers to the Chief Financial Officer (or the Department of Financial Services), which were previously assigned to the Treasurer or Comptroller. The bill consolidates in an amended ch. 17, F.S., all of the constitutional duties of the Chief Financial Officer for the accounting and auditing of state funds and the keeping of all state funds and securities.

The Department of Financial Services, headed by the Chief Financial Officer, is also authorized to:

- Approve financial institutions as qualified public depositories.
- Administer the Unclaimed Property Program.
- Administer the Deferred Compensation program for state employees.
- Have all duties of the State Fire Marshal.
- Administer the state's Risk Management (self-insurance) program.

- Have powers of investigation and arrest of insurance fraud crimes.
- Petition a circuit court for an order in a delinquency proceeding against an insurer or other risk bearing entity, upon being required to do so by the Office of Insurance Regulation, and to be appointed as receiver, liquidator, or rehabilitator.
- Approve plans of operation and have oversight responsibilities for insurance guaranty associations.
- License and regulate insurance agents and agencies, customer representatives, service representatives, viatical settlement brokers, reinsurance intermediaries, and bail bond agents.
- License and regulate cemeteries and pre-need funeral and burial contracts;
- Administer the workers' compensation act (ch. 440, F.S.), including enforcement of employer compliance, monitoring carrier compliance and sanctioning carriers for non-compliance, assisting employees with obtaining compensation, and approving and regulating individual self-insured employers and the guaranty fund for such employers.
- Have the powers of the Office of Insurance Consumer Advocate to represent the general public in any insurance matter or hearing.
- Have authority provided to the Division of Consumer Services to receive inquiries and complaints related to insurance or financial institutions from consumers, to fine insurers and others who fail to respond to requests for information, to provide assistance and advocacy to consumers, and to prepare and disseminate information about regulated products and services.
- Administer mediation of property and motor vehicle insurance claims.
- Administer insurance claims of Holocaust victims.
- Have the CFO act as agent for service of process in all cases where the Insurance Commissioner so acted.
- Receive notices of civil remedy actions against insurers and other entities.
- Hold or arrange for financial institutions to hold statutory deposits of persons regulated by either the department or the Office of Insurance Regulation.

The Financial Services Commission and its Office of Financial Regulation would be provided substantially all of the regulatory (non-constitutional) powers and duties of the former Department of Banking and Finance. This includes all activities relating to the regulation of banks, credit unions, mortgage brokers and lenders, the securities industry, finance companies, retail installment sales providers, title lenders, collection agencies, check cashers, deferred presentment ("pay-day loan") providers, money transmitters, certified capital companies, and other financial institutions.

The Financial Services Commission and its Office of Insurance Regulation would be authorized to have those powers and duties of the former Department of Insurance related to the regulation of insurers and other entities, including the authority to:

- License and regulate insurers, multiple employer welfare arrangements, commercial self-insurance funds (including workers' compensation group self-insurance funds), viatical settlement providers and contracts, purchasing groups and risk retention groups, fraternal benefit societies, warranty associations, prepaid limited health service organizations, health maintenance organizations, prepaid health clinics, legal expense corporations, and continuing care facilities.
- Conduct financial and market conduct examinations of insurers.
- Regulate all accounting, financial, solvency-related matters of insurers, including administrative supervision of insurers.
- License and regulate insurance adjusters, administrators, service companies, and premium finance companies and agreements.
- Approve eligible surplus lines insurers.
- Approve policy forms and rates for insurers.
- Approve plans of operation and regulate joint underwriting associations (not including appointment of board members).
- Approve donor annuity agreements.
- Receive reports of claims information from insurers.
- Approve local government self-insurance plans for health coverage.

The bill requires the Department of Financial Services and the two offices to each have an Office of Inspector General, and exempts each office from the requirement that written approval of the Attorney General be obtained before contracting with private attorneys.

The bill revises appointments to all boards and commissions for which appointments were formerly made by the Comptroller, Treasurer, Insurance Commissioner, or State Fire Marshal, for which most of such appointments are provided to the Chief Financial Officer.

The bill repeals the current laws (ss. 627.0623 and 655.019, F.S.) which limit campaign contributions to the Treasurer and Comptroller, respectively, and also repeals s. 624.305, F.S., which prohibits the Insurance Commissioner and employees of the Department of Insurance from having a financial interest in an insurer or agency. Other laws limiting campaign contributions and establishing standards of conduct for public officers and employees would still apply.

The bill repeals or deletes outdated provisions of the statutes related to the regulation of banking and insurance; changes references from the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association to the Citizens Property Insurance Corporation (Citizens) to conform to the act creating Citizens; updates references to the latest edition of publications that are cited in the Insurance Code for purposes of establishing accounting and actuarial standards for insurers and HMOs; allows for electronic (Internet) filing of certain insurance-related filings; and amends the law specifying percentage voting requirements for elected officials who are members of the state executive committee of a political party (to conform to the re-structuring of the Cabinet).

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 39-0; House 117-0*

## GOVERNMENTAL REORGANIZATION – CABINET ISSUES

### SB 1488 — Governmental Reorganization

by Banking and Insurance Committee and Senator Atwater

In November 1998, the voters of Florida approved an amendment to s. 4, Art. IV, State Constitution, which substantially restructured the Cabinet by merging two cabinet offices, the Comptroller and the Treasurer, into the newly created Chief Financial Officer and eliminating the Secretary of State and Commissioner of Education from the Cabinet. As a result, the new state Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. These provisions were effective January 7, 2003.

This bill (Chapter 2003-6, L.O.F.) provides the following conforming, statutory changes relating to the Governor, Cabinet, and the Governor and the Cabinet collectively, or the Governor and certain members of the Cabinet sitting as boards, commissions, or other collegial bodies, since these provisions were affected by the enactment of the amendment to the State Constitution restructuring the Cabinet:

- Clarifies the constitutional provision that in the event of a tie vote by the Governor and Cabinet, the side on which the Governor votes prevails. This applies to the Governor and Cabinet sitting in any capacity, unless otherwise provided by law. The Legislature may still require a super-majority vote, but if the law simply requires a majority vote, the side on which the Governor votes prevails.
- Requires a vote of at least three out of four, rather than at least five out of seven members of the Governor and Cabinet sitting as the Board of the Internal Improvement Trust Fund

and the Land Acquisition Trust Fund, in order to dispose of any lands for which title is vested in the board.

- Requires the approval of the Governor and at least two other members, rather than three, of the Cabinet sitting as the Administration Commission.
- Revises the clemency voting requirements to require the approval of the Governor and two other members of the Cabinet, rather than three other members. This would also apply to releasing any child on probation who has been convicted of a capital felony.
- Revises the appointments to the Florida Commission on the Status of Women, to delete the former Cabinet members from making appointments, but maintaining the current size of the commission by increasing appointments made by other officers.
- Provides that only the current Cabinet members would be subject to the prohibition against being absent from the state for more than 60 days without the approval of the Governor and Cabinet.
- Revises references to State Board of Administration to conform to the constitutional requirement that the State Board of Administration would consist of the Governor, the Chief Financial Officer, and the Attorney General. This also applies to the Division of Bond Finance, the Financial Management Information Board, and the coordinating council to the State Board of Administration.
- Changes the membership of the Governor's Committee on Interstate Cooperation to the current Cabinet members.
- Deletes provisions creating the Public Employee Optional Retirement Program Advisory Committee, since that committee has completed its recommendations.

These provisions became law upon approval by the Governor on April 1, 2003.
*Vote: Senate 40-0; House 116-0*

## INSURANCE FRAUD

### CS/CS/SB 1694 — Insurance Fraud

by Governmental Oversight and Productivity Committee; Banking and Insurance Committee; and Senators Posey, Fasano, and Atwater

This bill creates the "Pete Orr Insurance Anti-Fraud Act," that provides for the following:

- Allows a party to bring a civil action against an unauthorized insurer if such party is damaged by that insurer. An unauthorized insurer is an entity which has not obtained a certificate of authority to operate as an insurer from the Office of Insurance Regulation, as required under the Insurance Code.

- Makes it a third-degree felony for an affiliated party, who is removed or prohibited from participating in the affairs of an insurer, or for a licensee, whose rights and privileges under such license have been suspended or revoked, to knowingly act as an affiliated party or to knowingly transact insurance until expressly authorized by the Department of Financial Services or the Office of Insurance Regulation. The authorization by the department or office may not be provided unless the affiliated party or licensee has made restitution to all parties damaged by the actions of the party or licensee.
- Provides that a person who acts as an insurer without obtaining a certificate of authority commits insurance fraud and is subject to escalating criminal penalties depending upon the amount of premium involved.
- Provides investigators employed by the Division of Insurance Fraud within the Department of Financial Services with full statutory arrest and search powers.
- Increases the penalty from a first-degree misdemeanor to a third-degree felony for selling used motor vehicle goods as new, when charges are paid from the proceeds of a motor vehicle insurance policy.
- Increases the penalty from a second-degree misdemeanor to a third-degree felony for overcharging for motor vehicle repairs and parts which are paid from the proceeds of a motor vehicle insurance policy.
- Increases the ranking of specified insurance-related offenses on the Offense Severity Ranking Chart law within the Criminal Punishment Code.

The bill is named for Pete Orr, a former NASCAR-circuit driver from Monteverde, Florida, who died of cancer. Mr. Orr had purchased a health insurance policy from an out-of-state insurance company that was later determined to be an unauthorized insurer. Mr. Orr subsequently developed cancer and applied for benefits with his health insurer, but the company did not pay any of his claims. Under the provisions of this bill, an individual will be able to sue an unauthorized insurer if damaged by an unauthorized insurer.

If approved by the Governor, these provisions take effect July 1, 2003.
*Vote: Senate 39-0; House 108-0*

# INSURANCE (MISCELLANEOUS)

## CS/CS/SB 204 — Use of Credit Reports and Credit Scores by Insurers

by Commerce, Economic Opportunities, and Consumer Services Committee; Banking and Insurance Committee; and Senator Miller

This bill regulates and limits the use of credit reports and credit scores by insurers for underwriting and rating personal lines motor vehicle insurance and personal lines residential insurance. However, the bill provides that its January 1, 2004 effective date is contingent upon HB 1895 becoming a law, providing a public records exemption for trade secrets for credit scoring methodologies and related data required to be filed with the Office of Insurance Regulation.

If effective, the bill would require that a rate filing that uses credit reports or credit scores must comply with the requirements of s. 627.062, F.S., or s. 627.0651, F.S., to ensure that rates are not excessive, inadequate, or unfairly discriminatory.

Insurers would be required to notify an applicant or insured, in the same medium as the application is received, that a credit report is being requested for underwriting or rating purposes. An insurer would be prohibited from requesting a credit report based upon the race, color, religion, marital status, age, gender, income, national origin, or place of residence of the applicant or insured. In the event an insurer makes an adverse underwriting or rating decision based upon a credit report, the insurer, or a designated third party, would be required to provide a copy of the credit report to the applicant or insured. The insurer would be required to include the four primary reasons, or fewer if applicable, that were the primary influences of the adverse decision. The bill would establish rights and responsibilities for the insured or applicant and the insurer to address adverse underwriting or rating decisions made by the insurer and would establish an appeal process for an insured or applicant whose credit report or credit score is unduly influenced by the death of a spouse or temporary loss of employment.

The bill would prohibit an insurer from making an adverse decision relating to underwriting or rating solely because of the credit information contained in a credit report or credit score. An insurer would be prohibited from making an adverse decision if based, in whole or in part, on any of the following factors: 1) the absence of, or insufficient credit history, in which case the insurer must treat the consumer as otherwise approved by the Department of Financial Services if the insurer presents information that such an absence or inability is related to the risk for the insurer; 2) collection accounts with a medical industry code, if so identified on the consumer's credit report; 3) place of residence; or 4) any other special circumstance that the Financial Services Commission determines, by rule, lacks sufficient statistical correlation and actuarial justification as a predictor of insurance risk. An insurer would be authorized to use the number of credit inquiries requested or made regarding the applicant or insured except in certain circumstances.

An insurer would be required to re-evaluate the credit history of an insured that was adversely impacted by the use of the insured's credit history, at the initial rating of the policy or at a subsequent renewal, every 2 years or upon the request of the insured, whichever occurs first. As an alternative, an insurer could re-evaluate the insured within the first 3 years after the inception of the policy based on other allowable underwriting or rating factors, excluding credit information, provided that the insurer does not increase the rates or premium charged to the insured based on the exclusion of credit reports or credit scores.

The Financial Services Commission would be authorized to adopt rules to administer the provisions of this act and the rules may include: 1) certain information in the filings to demonstrate compliance relating to adverse decisions by the insurer; 2) statistical information an insurer must retain and report annually to the Office of Insurance Regulation; 3) standards that ensure that the use of a credit report or credit score does not unfairly discriminate, based upon race, color, religion, marital status, age, gender, income, national origin, or place of residence; and 4) standards for reviewing methods to grade or rank credit report data.

If approved by the Governor, these provisions take effect January 1, 2004.
*Vote: Senate 35-1; House 115-1*

## HB 235 — Mutual Insurance Holding Companies

by Rep. Clarke (CS/SB 1464 by Commerce, Economic Opportunities, and Consumer Services Committee and Senator Bennett)

This bill revises several provisions in ch. 628, F.S., relating to mutual insurance holding companies. A mutual insurance holding company is a form of domestic insurance corporate organization established as an alternative method for a domestic mutual (policyholder-owned) insurance company to convert to a stock (stockholder-owned) insurance company. There are several advantages to converting into a stock insurance company, including that the conversion may significantly enhance an insurer's ability to raise capital, issue debt, and engage in mergers and acquisitions.

### *Membership Criteria of a Mutual Insurance Holding Company*

The bill amends the definition of a paid premium to mean all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company. The bill also revises the membership criteria of mutual insurance holding companies in the following ways:

- After the formation of a mutual insurance holding company, membership in the holding company is governed by ch. 628.727, F.S., which states that membership is to be based on the mutual insurance company's bylaws. The criteria for membership must be based upon each member holding a policy of insurance with a subsidiary insurer or a contract with a subsidiary HMO.

- At the time a mutual insurance holding company is formed, policyholders of another subsidiary of the mutual insurance holding company cannot be members of the holding company unless the subsidiary they belong to was a mutual insurer which merged with the holding company.

***Calculation of Distributive Shares and Corporate Equity***

The bill also specifies the methods used to calculate the distributive shares and corporate equity of mutual insurance holding company members. In the event of the voluntary dissolution or merger of the mutual holding company, the distributive share of each member is based upon a ratio comparing the total amount of premiums the member paid in the 3 years prior to dissolution or merger versus the total amount of premiums paid by all members during that period. When a mutual insurance holding company is converted, the corporate equity of each member is determined by the same ratio, so long as the equity is not based upon more than the company's net assets. Alternatively, a different formula may be used to calculate distributive shares or corporate equity if approved by the Department of Financial Services. If the mutual insurance holding company only owns life and health insurance subsidiaries, then the distributive share is to be determined by a reasonable formula that the Department of Financial Services may approve.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 38-0; House 118-0*

## SB 2190 — Continuing Education for Public Adjusters

by Senator Margolis

The bill increases the continuing education requirements for public adjusters by amending s. 626.869, F.S. A public adjuster is an adjuster who works on behalf of a claimant, not an insurance company. Public adjusters aid claimants in filing insurance claims, investigating claims, and negotiating the settlement of a claim (s. 626.855, F.S.).

To ensure that public adjusters will have the necessary knowledge to adjust claims in accordance with the given policy or contract, and with the insurance laws of Florida, the Legislature increased continuing education requirements. The bill requires licensed public adjusters to complete 24 hours of continuing education courses every 2 years, with 2 of the course hours relating to ethics. The courses will cover subject areas designed to inform the licensee regarding current Florida law pertaining to all lines of insurance, except for life and annuity insurance. The bill also specifies that the Financial Services Commission shall adopt rules necessary to implement and administer the continuing education requirements of this bill.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 38-0; House 112-0*

## CS/CS/SB 2264 — Health Insurance

by Health, Aging, and Long-Term Care Committee; Banking and Insurance Committee; and Senator Atwater

The bill revises the criteria for a policy issued to a group outside of Florida, but which covers Florida residents ("out-of-state group policy"), to be exempt from the requirements that apply to group health insurance policies issued in Florida related to disclosures on applications for certificates of coverage, unfairly discriminatory rating practices, rights to conversion policies, and other requirements of part VII of ch. 627, F.S. Currently, out-of-state group policies are exempt from most of the requirements that apply to group policies issued in Florida, including rate filing and approval requirements, if certain criteria are met.

The bill adds new criteria that must be met for out-of-state group policies to be exempt. Out-of-state group policies are 1) prohibited from using any pricing structure that results in rate escalations producing a death spiral, which the bill constitutes as a form of unfair discrimination; 2) required to provide an insured within such a group, upon termination, the option of a conversion policy; and 3) required to provide additional disclosures, with exceptions, in an application for coverage offered to Florida residents that specify that the policy is primarily regulated by another state and, as a result, all of the rating laws of Florida would not apply to the coverage. The Financial Services Commission is authorized to adopt rules to define other unfairly discriminatory or predatory health insurance rating practices.

The bill also revises the grounds for disapproval of rate filings for health insurance policies issued in Florida by providing more specific criteria. Health insurance policies must meet a minimum loss ratio of at least 65 percent, meaning that at least 65 percent of the premium dollar must be used to pay claims. A policy would be disapproved if it contained provisions that apply rating practices that result in unfair discrimination, between individuals of the same actuarially supportable class in premiums, fees, or rates, at the original time of issuance of the coverage, as provided in s. 626.9541(1)(g)2., F.S.

Current law generally exempts out-of-state group policies from rate filing and approval requirements, which the bill does *not* change. The impact of the bill, however, would effectively require insurers to make one of three choices, to either: 1) meet the new criteria for an exemption from Florida's group insurance requirements; 2) issue individual health insurance policies in Florida, subject to the amended rating law requirements; or 3) withdraw from the Florida market and cease issuing new coverage in the state.

The bill also exempts health maintenance organizations (HMOs) from certain regulatory requirements relating to contracts for groups of 51 or more persons which were authorized for a group health insurance policy insuring 51 or more persons last session. The bill provides that any law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum

payments would not apply to any HMO contract that provides health insurance coverage consisting of medical care offered or delivered to an individual or a group of 51 or more persons. The bill also exempts certain group HMO contracts insuring 51 or more persons from the requirement of filing any changes in rates 30 days in advance of the effective date.

If approved by the Governor, these provisions take effect July 1, 2003.
*Vote: Senate 38-0; House 116-0*

## CS/SB 2364 — Insurance

by Banking and Insurance Committee and Senator Diaz de la Portilla

This bill provides for comprehensive changes to Florida's insurance agent licensing laws as well as other changes to the state's Insurance Code as noted below:

- Conforms insurance agent licensing provisions to the National Association of Insurance Commissioner's (NAIC) "Model Act" to provide that applicants for licensure must be at least 18 years of age and United States citizens, or legal aliens who possess work authorization from the U.S. Immigration and Naturalization Service (INS).
- Conforms insurance continuing education (CE) and prelicensing education to the NAIC Model Act by reducing the number of required hours for most types of insurance agents from 28 hours to 24 hours every 2 years, and requiring that all courses include 3 hours of training on ethics. Provides that specified public adjusters complete 24 hours of courses, 2 hours of which relate to ethics, in subjects relating to current laws relating to all lines of insurance other than life and annuities. Provides for the Financial Services Commission to adopt rules pertaining to continuing education.
- Provides that the prohibition against "sliding" applies to all lines of insurance, not just motor vehicle insurance. This is a prohibition against selling an ancillary coverage or product as part of the policy and representing that it is required by law, included without an additional charge, or sold without informed consent.
- Provides for compliance with the Federal Bureau of Investigation's (FBI) requirement that Florida's insurance licensing provisions expressly authorize the use of FBI records for the screening of applicants for licensure.
- Provides for the automation of appointments of agents by insurers to permit persons designated by the Department of Financial Services (Department) to carry out the appointment process.
- Increases the allowable maximum face value of a preneed burial insurance contract that agents may sell under contract with a funeral director from $10,000 to $12,500 plus an annual percentage increase based on the annual consumer price index.

- Increases the per-policy fee cap from $10 to $20 that a general lines agent may charge on motor vehicle policies, and allowing the fee for all motor vehicle policies, not just policies limited to the minimum mandatory coverage of PIP and property damage liability.
- Provides for late renewal filing fees and delinquent fees pertaining to appointments and for continuing education fees applicable only to adjusters.
- Clarifies that the applicant for a temporary bail bond license must be employed full-time by a licensed bail bond agent at the time of application and provides for rule authority for the Department to establish standards for such employment. Provides a presumption that the insurer performed a background investigation and found the applicant to be of good moral character.
- Simplifies the application process for all limited lines agents to require only one application for a license which may cover multiple locations.
- Requires licensees to advise the Department in writing within 30 days after having been found guilty of or having pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under federal or state laws.
- Provides for technical changes including: deleting references to "solicitor," "runner," and "administrative agent"; clarifies certain dates for expiration of appointments; provides the Department with rulemaking authority in specified instances; updates the reference to the Florida Association of Insurance and Financial Advisors (FAIFA); and provides for delinquent fees, late filing fees, and continuing education fees.

The bill further amends Florida's Insurance Code as follows:

- Amends s. 627.4035, F.S., to clarify that premiums for insurance may be paid by debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.
- Amends s. 627.7015, F.S., to exempt certain types of claim disputes from the statutory mediation program for the resolution of property insurance claims, to codify exemptions that are currently in rule, and to exempt claims for which the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact.
- Amends s. 627.901, F.S., to allow insurers and general lines agents to charge a service charge of $3 per payment installment, if an annual premium is paid monthly or in installments, with a maximum annual service charge of $36 (as an alternative to the current law allowing a rate of interest not exceeding 18 percent simple interest per year on the unpaid balance).
- Amends s. 626.9541(1)(o), F.S., by limiting the applicability of the current unfair or deceptive practices law, which prohibits insurers from charging rates in excess of or less

than those specified in the policy, for premiums or rates that are not required to be filed or approved by the Office of Insurance Regulation. As amended, this would apply only to premiums and charges "collected from a Florida resident."

- Amends s. 626.9541(1)(x), F.S., to prohibit insurers from refusing to insure any individual or risk solely because of the fact that the insured or applicant is a public official.
- Amends s. 631.914, F.S., by expanding the assessment base for funding the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA or "association"), which pays workers' compensation claims of insolvent insurers and self-insurance funds. It provides that the assessments levied against insurers and self-insurers of a specified percentage of workers' compensation premiums written in the state, would be applied to the full policy premium value, without taking into account any discount or credit for deductibles. This provision does not increase the percentage caps on assessments, but the expanded assessment base significantly increases funding for FWCIGA, which is facing mounting liabilities. (This provision and the following two paragraphs were originally included in CS/SB 1766. See the Senate staff analysis of that bill for additional information.)
- Amends s. 631.913, F.S., to provide that the FWCIGA's obligation to return any unearned premium to an employer shall not exceed $50,000 per policy.
- Amends s. 631.924, F.S., to provide for a 6-month stay of all legal proceedings in which an insolvent insurer is a party, as the law currently provides if a self-insurance fund is a party to a legal proceeding.
- Amends s. 624.406, F.S., to provide that a health insurer may transact reinsurance for the medical and lost wages benefits provided under a workers' compensation insurance policy.
- Amends s. 631.141, F.S., to provide a contingent appropriation relating to delinquency proceedings. It provides that if, at the initiation of such a proceeding, either the Department of Financial Services is not appointed as a receiver, or if the funds of an insurer for which the department is appointed as receiver are not sufficient to cover costs of compensating attorneys, agents, or assistants, there is appropriated, upon the approval of the Chief Financial Officer and the Legislative Budget Commission, from the Insurance Regulation Trust Fund to the Division of Rehabilitation and Liquidation, a sum that is sufficient to cover the unreimbursed costs.
- Amends s. 627.679, F.S., relating to credit life insurance. Current law requires certain written disclosures to be made to borrowers before credit life insurance may be sold. This provision limits these disclosures to credit life insurance sold in connection with a specific installment loan or home equity line of credit. It further provides that such disclosures do not apply to credit life insurance relating to open-end or revolving credit arrangements (such as credit cards).

- Amends s. 648.50, F.S., to provide that one or more taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may provide financial responsibility by providing evidence of holding a motor vehicle liability policy with minimum limits of $125,000/$250,000/$50,000. Currently, such vehicles must obtain liability policies with minimum limits of $10,000/$20,000/$10,000. (Other options for meeting financial responsibility requirements, such as self-insurance or deposits are not changed.)

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 40-0; House 116-0*

## HB 513 — Insurance Claims and Premium Payments

by Rep. Benson and others (CS/SB 2428 by Banking and Insurance Committee and Senators Atwater and Siplin; CS/SB 1308 by Banking and Insurance Committee and Senator Alexander)

This bill makes various changes to the laws related to insurance, as follows:

- Amends s. 627.4035, F.S., to clarify that premiums for insurance may be paid by debit card, credit card, automatic electronic funds transfer, or payroll deduction plan.
- Amends s. 627.7015, F.S., to exempt certain types of claim disputes from the statutory mediation program for the resolution of property insurance claims, to codify exemptions that are currently in rule, and to exempt claims for which the insurer has a reasonable basis to believe that the claimant has intentionally made a material misrepresentation of fact.
- Amends s. 627.901, F.S., to allow insurers and general lines agents to charge a service charge of $3 per payment installment, if an annual premium is paid monthly or in installments, with a maximum annual service charge of $36 (as an alternative to the current law allowing a rate of interest not exceeding 18 percent simple interest per year on the unpaid balance).
- Amends various sections in ch. 626, F.S., related to insurance agents, which are also contained in CS/SB 2364. (See the summary of that bill for details.)
- Amends s. 627.351(6), F.S., related to rates charged by Citizens Property Insurance Corporation (Citizens). (These provisions are similar to provisions contained in CS/SB 1308, which did not pass. See the Senate staff analysis of that bill for additional background.) The Legislature created Citizens in 2002 to assume the operations of the former Florida Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). In general, Citizens provides residential property insurance in all areas of the state (like the former RRPCJUA) and provides wind-only coverage for both residential and non-residential risks in designated coastal areas (like the former FWUA). The bill provides as follows:

- The maximum allowable rate increase is 20 percent for personal lines residential wind-only policies (formerly, FWUA policies) issued or renewed between July 1, 2003, and June 30, 2004, as compared to the rate in effect on June 30, 2003, as adjusted for coverage changes and seasonal occupancy surcharges.
- Requires Citizens, in conjunction with the Office of Insurance Regulation (office), to develop a wind-only rate-making methodology to be contained in a rate filing made by January 1, 2004, to implement the requirement that such rates be non-competitive with rates charged by authorized insurers. The office must provide a report on the methodology to the Senate and the House of Representatives by January 31, 2004.
- Citizens must certify to the office at least twice annually that its personal lines rates comply with the current requirement that its average rates for each county (excluding wind-only policies, which are addressed in the above paragraph) must be no lower than the average rates charged by the insurer that had the highest average rate in that county among the 20 insurers with the greatest total direct written premium in the state. To assist Citizens in this regard, it must appoint a rate methodology panel consisting of representatives of specified associations, insurers, and public officials. By January 1, 2004, the panel must provide a report to Citizens of its findings and recommendations, and within 30 days after such report, Citizens must present a plan to the Senate and House of Representatives for implementing the ratemaking methods and an outline of any needed legislation.
- The above plan must include a provision that producer (agent) commissions shall not be calculated to include any rate-equalization surcharge. However, regardless of the report, commissions must remain fixed until January 1, 2004.
- By January 1, 2004, Citizens must develop a notice to policyholders or applicants that its rates are intended to be higher than the rates of any admitted carrier and providing other information to assist consumers in finding other coverage.

- Provides that it shall not be considered insurance if a telecommunication company, public utility, or water system charges customers for an optional waiver of liability, at the election of the customer, where the entity agrees to waive all or a portion of the customer's liability for service from a defined period, in the event of the customer's death, disability, call to active military service, involuntary unemployment, qualification for family leave, or similar qualifying event. (This provision was originally adopted as an amendment by the Banking and Insurance Committee to SB 2466.)
- The bill creates s. 717.1071, F.S., related to unclaimed property, providing that property that becomes distributable over the course of an insurance company's demutualization, rehabilitation or related organization is considered abandoned 2 years after the distribution if certain conditions are met. First, at the time of distribution, the last known address of the owner of property (in possession of the holder of the property) must be

known to be incorrect or the distribution or statement is returned by the post office as undeliverable. The second requirement is that the owner does not communicate in writing or otherwise to the holder of property, regarding the property interest. Property from a demutualization that is not covered by these provisions is reportable as otherwise provided by ch. 717, F.S. Property subject to s. 717.1071, F.S., must be reported and delivered no later than May 1 for the preceding year. (This provision may be in conflict with SB 2680, which also creates s. 717.1071, but contains different language regarding when property is considered unclaimed.)

- Amends s. 624.430, F.S., to require an insurer that is surrendering its certificate of authority, withdrawing from the state, or discontinuing the writing or any kind or line of insurance, to avail itself of all reasonably available reinsurance. Such insurer must engage an independent third party to search for unrealized reinsurance and certify to the Office of Insurance Regulation that it has done so. The compensation to the third party may be a percentage of unrealized reinsurance identified and collected. The bill also amends s. 624.81, F.S. to impose these same requirements on any insurer subject to administrative supervision.

- Amends s. 626.7451, F.S., to increase the maximum allowable per-policy fee that a managing general agent may charge from $25 to $40. It further provides that if a managing general agent collects a per-policy fee, it must remit at least $5 per policy to the Division of Insurance Fraud of the Department of Financial Services, which must be dedicated to the prevention and detection of motor vehicle insurance fraud. It must remit an additional $5 per policy, 95 percent of which ($4.75) to the Justice Administration Commission, which must distribute the fees to the state attorneys of the 20 judicial circuits for investigating and prosecuting cases of motor vehicle insurance fraud. The remaining 5 percent ($0.25) must be remitted to the Office of Statewide Prosecution for the same purposes. By July 1, 2005, the state attorneys and the Office of Statewide Prosecutor must provide a report to the Senate and the House of Representatives evaluating the effectiveness of the investigation, detection, and prosecution of motor vehicle insurance fraud related to such funds.

- Creates s. 624.4623, F.S., to allow any two or more independent nonprofit colleges or universities accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, or independent, nonprofit, accredited secondary educational institutions, located in an chartered by the state of Florida to form a self-insurance fund for any property or casualty risk or surety insurance or securing the payment of workers' compensation benefits. The bill establishes certain criteria that must be met for any such self-insurance fund.

- Amends s. 626.9541(1)(x), F.S., to prohibit insurers from refusing to insure any individual or risk solely because of the fact that the insured or applicant is a public official.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 37-0; House 118-1*

## SB 2466 — Premium Finance Company Applications

by Senator Diaz de la Portilla

This bill amends s. 627.826, F.S., to revise the definition of a "premium finance company" to exempt any person who purchases or acquires premium finance agreements from a licensee (premium finance company), if the licensee retains the possession of and the legal obligation to service the agreements, collects payments due under the agreements, and remains responsible for the premium finance agreements being administered.

Pursuant to the Insurance Code, consumers may finance their insurance premiums through premium finance companies. Under this financial arrangement, the premium finance company advances money to the consumer in the form of payment of premiums on an insurance contract. Such companies are licensed by the Office of Insurance Regulation and must meet specified net worth and other requirements.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 40-0 House 113-0*

## HB 821 — Florida Automobile Joint Underwriting Association/Service of Process

by Rep. Gannon (CS/SB 1960 by Banking and Insurance Committee and Senator Margolis)

This bill amends s. 627.311(6), F.S., to designate the General Manager of the Florida Automobile Joint Underwriting Association (FAJUA) as the agent to receive service of all legal process issued against the FAJUA in any civil action or proceeding in this state and that the process so served is valid and binding upon the FAJUA. It provides that service of process upon the General Manager is the sole method of service of process upon the association.

Under current Florida law, there is no statutory provision for service of process on the FAJUA and lawsuits are often served upon incorrect parties, which has caused unnecessary delays for the FAJUA to respond to such lawsuits.

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

# FINANCIAL SERVICES (MISCELLANEOUS)

## HB 283 — Secured Transactions: Uniform Commercial Code

by Rep. Seiler (CS/SB 218 by Banking and Insurance Committee and Senator Campbell)

The bill revises two provisions related to secured transactions, as part of the Florida law that incorporates provisions of the Uniform Commercial Code. The first revised provision is the creation of two additional requirements in s. 679.509(3), F.S., for filing certain amendments to financing statements. The additional requirements are that the debtor must authorize the filing of the termination statement, and that the termination statement must indicate that the debtor authorized it to be filed.

The second revised provision amends s. 679.513(4), F.S., and provides that if a termination statement falls under the provisions of s. 679.510, F.S., then the provisions of that section govern the termination statement to the extent they are in conflict with s. 679.513(4), F.S. The bill also corrects an incorrect citation in s. 679.509(3), F.S. The purpose of the bill is to better enable creditors to challenge fraudulent termination statements, and make the Florida Commercial Code more consistent with the statutory commercial codes of other states.

If approved by the Governor, these provisions take effect July 1, 2003.
*Vote: Senate 38-0; House 117-0*

## CS/SB 738 — Worthless Checks

by Judiciary Committee and Senator Bennett

This bill amends s. 68.065, F.S., which contains the procedures for filing a civil action for the recovery of a worthless check. A civil action may be brought to collect a check, draft, or order of payment when payment was refused by the drawee because of lack of funds, credit, or an account, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days following a written demand from the payee. If the payee prevails in the civil action, the maker or drawer is liable to the payee for the amount owing on the check plus damages of three times the amount owing, court costs, and reasonable attorney's fees incurred by the payee in the civil action.

Before recovery for a worthless check may be claimed in a civil action, written notice must be delivered to the maker or the drawer of the check. This bill allows notice to be delivered by first-class mail, evidenced by an affidavit of service of mail as an alternative to notice may be delivered by certified or registered mail, evidenced by return receipt. The bill also states that notice is to be mailed to the address on the check, the address given by the drawer when the instrument was issued, or to the drawer's last known address.

If approved by the Governor, these provisions take effect July 1, 2003.
*Vote: Senate 39-0; House 118-0*

## SB 2680 — Unclaimed Property

by Senator Campbell

The bill amends ch. 717, F.S., The Florida Unclaimed Property Act, which provides the statutory procedure for the escheat (reversion) and disposition of presumed abandoned property to the state. Unclaimed property constitutes funds or other property that has remained unclaimed by the owner for a certain number of years. If the property remains unclaimed, all proceeds from abandoned property are then deposited by the Department of Financial Services into the Department of Education School Trust Fund (State School Fund), except for an $8 million balance that is retained in a separate account for the prompt payment of verified claims by the rightful owners of property. The general purpose of the Act is to protect the interest of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever.

The bill amends or creates four sections of ch. 717, F.S. The definition of "intangible property" contained in s. 717.101, F.S., is amended to include bearer bonds and original issue discount bonds. This change makes bearer bonds and original issue discount bonds subject to s. 717.102, F.S., which states that intangible property held for more than 5 years after the property becomes payable or distributable is presumed unclaimed.

The bill creates s. 717.1071, F.S., to govern when property from the demutualization of an insurance company is presumed unclaimed. Property that becomes payable or distributable in the course of the demutualization of an insurance policy is presumed unclaimed 5 years after the earlier of the date of last contact with the policyholder or the date the property became available or distributable. (House Bill 513 also creates s. 717.1071, F.S., with provisions that may be in conflict with the version enacted by this bill.)

Section 717.1101, F.S., is revised with its title changed to "unclaimed equity and debt of business associations." The section explains when stock or other equity interest in a business association is presumed unclaimed, and provides guidelines for the handling of investments that do not pay out actual dividends. Stock or another equity interest in a business association is presumed unclaimed 5 years after the earliest of the following dates:

- The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner.
- The date of a statement of account or other notification or communication that was returned as undeliverable.

- The date the holder discontinued mailings, notifications, or communications to the apparent owner.

The changes to s. 717.1101, F.S., also state that unmatured or unredeemed debt is presumed unclaimed 5 years after the date of the most recent interest payment unclaimed by the owner. Matured or redeemed debt is presumed unclaimed 5 years after the date of maturity or redemption.

The 5-year period that determines if property is considered unclaimed ceases to run when the owner or person entitled to the property communicates with the association or its agent regarding the interest or a dividend, distribution, or other sum payable as a result of the interest. The 5-year period also ends if the owner or entitled person presents an instrument issued to pay interest or a dividend or other cash distribution.

This bill amends s. 717.119, F.S., to mandate that firearms or ammunition found in an unclaimed safe deposit box or other repository is to be delivered by the holder to a law enforcement agency for disposal.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 40-0; House 118-0*

## WARRANTY ASSOCIATIONS

### CS/SB 2278 — Motor Vehicle Service Agreements

by Commerce, Economic Opportunities, and Consumer Services Committee and Senator Atwater

The bill amends ss. 634.011, 634.041, and 634.121, F.S., relating to motor vehicle service agreements to revise the requirements for coverage of "vehicle protection expenses," including allowance for benefits that are payable in the form of a pre-established flat amount of $5,000 or less.

Legislation in 2002 allowed motor vehicle service agreement companies to provide coverage for vehicle protection expenses, which is a type of vehicle theft protection warranty, when theft protection products such as car alarms, window-etched vehicle ID numbers, and other applications are installed in motor vehicles. Vehicle protection expenses are payable if loss or damage to the vehicle results from the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in its recovery. The 2002 act specified the types of benefits that must be paid, including the deductible under the comprehensive coverage of the contract holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a like replacement vehicle; and the difference between the benefits paid for

the stolen vehicle under the comprehensive coverage and the actual cost of a like replacement vehicle. The 2002 law also allowed payment of a preestablished flat amount, but provided that payments could not duplicate any benefits or expenses paid to the contract holder by an insurer providing comprehensive coverage under a motor vehicle insurance policy.

The bill specifies that motor vehicle service agreements paying a flat amount of $5,000 or less do not violate the prohibition against duplicating benefits payable under a comprehensive motor vehicle insurance policy. If a motor vehicle service agreement provides vehicle protection expenses of a flat amount, the agreement must clearly state the amount.

The bill also requires a company offering vehicle protection expense coverage to maintain contractual liability insurance covering 100 percent of its vehicle protection claim exposure. Additionally, the bill allows a company that maintains an unearned premium reserve on all of its current service agreements to offer vehicle protection expense coverage if it maintains contractual liability insurance on any future service agreements providing such coverage. The company must continue to maintain the 50 percent reserve for all other types of service agreements.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 39-0; House 113-0*

## SB 2294 — Communications Equipment Property Insurance

by Senator Alexander

The bill amends s. 626.321, F.S., dealing with limited licenses to sell communications equipment property insurance.

The bill permits limited insurance agent licensees to sell communications equipment property insurance certificates to consumers under a group master policy. The bill also states that persons holding or applying for a limited license to sell communications equipment property insurance are exempt from the fingerprint requirements of ch. 626, F.S. The bill also states that a "person" (an individual or corporation) who applies for or holds a limited license is subject to the same requirements and responsibilities that apply to general lines agents, unless otherwise expressly provided. Previously, the responsibilities and exceptions were applicable to "individuals," a term that does not include corporations. This change in tandem with the elimination of the fingerprint requirement means that corporate directors will no longer have to submit their fingerprints in order to hold a limited license for the sale of communications equipment property insurance.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 39-0; House 116-0*

### HB 721 — Warranty Association Regulation

by Rep. Llorente and others (CS/CS/SB 2414 by Finance and Taxation Committee; Banking and Insurance Committee; and Senator Diaz de la Portilla)

The bill amends ss. 634.031, 634.303, and 634.403, F.S., all of which relate to warranty association regulation. Chapter 634, F.S., governs warranty associations in the state, and is divided into three parts for the regulation of three types of warranty associations. Part I covers motor vehicle service agreement companies. Part II covers home warranty associations. Part III covers service warranty associations. An entity must have a license issued by the Office of Insurance Regulation in order to transact, administer, or market any of these three types of warranty association agreements.

The bill creates an exemption from licensure for affiliates of domestic insurers that issue motor vehicle service agreement policies, home warranties, or service warranties under certain conditions. Licensure is not necessary if the affiliate does not issue, market, or cause to be marketed, such warranty policies to residents of Florida and does not administer policies that were originally issued to a Florida resident who then moved out of state.

A domestic insurer or its wholly owned Florida licensed insurer must be the direct obligor of all motor vehicle service agreements, home warranties, or service warranties issued by the affiliate, or must issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.041(8)(b), F.S. The bill also provides that the affiliate will be subject to licensure if the Office of Insurance Regulation determines, after notice and an opportunity for a hearing, that the affiliate is not complying with the conditions of the exemption.

If approved by the Governor, these provisions take effect upon becoming law.
*Vote: Senate 40-0; House 116-0*

## PUBLIC RECORDS EXEMPTIONS

### HB 1041 — Florida Automobile Joint Underwriting Association/Public Records

by State Administration Committee and others (CS/CS/SB 280 by Governmental Oversight and Productivity Committee and Banking and Insurance Committee)

This bill reenacts with certain changes the public records and public meetings exemptions for the Florida Automobile Joint Underwriting Association (FAJUA) pertaining to open claims, underwriting, and audit files; proprietary information; specified employee records; on-going negotiations; and portions of meetings relating to open claims and underwriting files. The bill removes the public records exemption for "matters reasonably encompassed in privileged attorney client communications" because current law already provides a public records

exemption for such information under ch. 119, F.S. The bill further adds technical conforming language and makes changes to conform to ch. 2002-404, L.O.F., which abolished the Department of Insurance and created the Department of Financial Services, the Office of Insurance Regulation, and the office of the Chief Financial Officer.

This bill is the result of an Open Government Sunset Review performed by the Banking and Insurance Committee during the interim. The exemption would have been repealed on October 2, 2003, unless the Legislature abrogated the repeal.

If approved by the Governor, these provisions take effect October 1, 2003.
*Vote: Senate 39-0; House 112-0*

## HB 1035 — Workers' Compensation/Public Records

by State Administration Committee and others (CS/SB 284 by Governmental Oversight and Productivity Committee and Banking and Insurance Committee)

This bill reenacts an exemption for certain investigatory records of the Division of Workers' Compensation of the Department of Financial Services relating to workers' compensation employer compliance. The bill also authorizes the department to share such investigatory records with administrative and law enforcement agencies, if such agencies maintain the confidentiality of such records, as specified by s. 440.108, F.S.

This bill is the result of an Open Government Sunset Review performed by the Banking and Insurance Committee during the interim. The exemption would have been repealed on October 2, 2003, unless the Legislature abrogated the repeal.

If approved by the Governor, these provisions take effect October 1, 2003.
*Vote: Senate 39-0; House 114-0*