FLORIDA HURRICANE CATASTROPHE FUND

CS/CS/CS/CS/SB 2488 — Florida Hurricane Catastrophe Fund

by Appropriations Committee; Finance and Taxation Committee; Governmental Oversight and Productivity Committee; Banking and Insurance Committee; and Senator Alexander

This committee substitute expands the amount of reinsurance coverage available from the Florida Hurricane Catastrophe Fund (FHCF or fund). The fund is a tax-exempt source of reimbursement to property insurers for a selected percentage of hurricane losses above the insurer's retention (deductible). By providing an additional source of reinsurance to what is available in the private market, the FHCF is designed to stabilize the residential property insurance market in the event of a major hurricane. The fund enables insurers to write more residential property insurance in the state and also acts to lower residential property insurance premiums for consumers, because FHCF reinsurance is significantly less expensive than private reinsurance. The committee substitute makes the following major changes to the Florida Hurricane Catastrophe Fund:

- Increases the capacity of the FHCF from $11 billion to $15 billion for both the initial and subsequent storm seasons, and provides for the capacity to be adjusted annually based upon the percentage change in the exposure of the fund from the previous contract year. The capacity cannot grow by an amount greater than the increase in the fund's cash balance from the previous year. (Effective June 1, 2004.)

- Lowers the aggregate insurer retention (deductible) from an estimated $4.866 billion for contract year 2004-2005, to $4.5 billion dollars. In subsequent years the new retention will be adjusted based upon the reported growth in exposure from the prior contract year. (Effective June 1, 2004.)

- Provides an option for insurers to select coverage for contract year 2004-2005 either under current law or under the expanded coverage offered in the bill. Insurers who select FHCF reinsurance coverage under current law will have coverage based on $11 billion capacity and $4.866 billion aggregate retention. In order to qualify for coverage under current law, an insurer must select that option by June 1, 2004.

- Increases the FHCF assessment authority against property and casualty insurers from 4 to 6 percent for any single year's storm and from 6 to 10 percent for multiple storm seasons, in order to fund the increased capacity of the fund.

- Includes surplus lines policies in the fund assessment base.

- Excludes medical malpractice premiums from the assessment base until May 31, 2007.

The committee substitute also allows insurers to collect a surcharge from policyholders to pay for an emergency assessment without making a rate filing with the Office of Insurance Regulation, and requires insurers to include an appropriate adjustment to reflect the provisions of the committee substitute no later than its next annual rate filing or certification.

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

WORKERS' COMPENSATION

CS/SB 1926 — Workers' Compensation
by Banking and Insurance Committee and Senators Atwater and Lynn

Pursuant to the workers' compensation legislation enacted last year, (Chapter 2003-412, L.O.F.), each of the respective presiding officers of the Legislative Branch appointed members to the Joint Select Committee on Workers' Compensation Rating Reform to study the merits of requiring each workers' compensation insurer to individually file its expense and profit portion of a rate filing, while permitting each insurer to use a loss cost filing made by a licensed rating organization. The committee was also charged with studying other rating options that would promote greater competition while protecting employers from rates that are excessive, inadequate, or unfairly discriminatory. The committee substitute incorporates the committee recommendations by making the following changes:

- Revises the criteria the Office of Insurance Regulation (OIR) must use in considering an application by an insurer for a rate deviation from the approved rate for worker's compensation filed by a licensed rating organization. In determining whether to approve or disapprove the deviation, the OIR would continue to consider standards related to the actuarial soundness of the rate and the financial condition of the insurer, but would no longer consider the impact of the deviation on the composition of the market, the stability of rates, and the level of competition of market.

- Requires each workers' compensation insurer to notify the OIR of a significant underwriting change that materially limits or restricts the number of policies or premiums written in Florida.

- Allows workers' compensation insurers to use rates in excess of their filed rates with the written consent of the policyholder for a period of 3 years, for employers the insurer takes

or keeps out of the Workers' Compensation Joint Underwriting Association, without these policies being subject to the current maximum limitation of 10 percent of an insurer's commercial policies.

- Requires the OIR to submit an annual report to the Legislature that evaluates competition in the workers' compensation market in Florida, including the availability and affordability of coverage and whether the current market structure and performance are conducive to competition, based upon economic analysis.

The committee substitute also allows a workers' compensation insurer to apply a rate deviation approved by the OIR "to a particular insured," meaning some employers, but not to all employers, based on underwriting guidelines filed with and approved by the OIR. This provision is particularly advantageous to an insurer that is not part of an insurer group since insurer groups are currently allowed to do this by having an approved deviation for one company but not in another company within the same insurer group. This provision would also allow an insurer that is part of an insurer group to apply a deviation to some employers and not to other employers, based on approved underwriting guidelines.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 116-0

HB 1251 — Workers' Compensation /Underwriting Plan

by Rep. Berfield and others (CS/CS/SB 2270 by Appropriations Committee and Banking and Insurance Committee)

This committee substitute provides significant changes to the Florida Workers' Compensation Joint Underwriting Association (JUA) that are designed to address availability and affordability of coverage for small employers that are new businesses or have good loss experience. The committee substitute provides a one-time appropriation of $10 million from the Workers' Compensation Administration Trust Fund (WCATF) in the Department of Financial Services (DFS) for transfer to the JUA to fund any deficit in the JUA. Additionally, the committee substitute authorizes the JUA to request from the DFS transfer of an amount not to exceed $15 million from the WCATF to fund any remaining subplan D deficits, subject to approval by the Legislative Budget Commission.

Last year, the Legislature addressed concerns regarding affordability and availability of workers' compensation coverage for small employers by capping rates in the JUA, the insurer of last resort, for these employers in subplan D of the JUA (Chapter 2004-412, L.O.F.). Although these policies were more affordable due to the artificial caps, the policies were assessable meaning that these employers could be assessed for additional premiums to cover any deficits in the subplan. Because of these premium caps in subplan D, the JUA could not charge actuarially sound rates,

resulting in a $10 million deficit in 2003. If no additional funding is received to cover this deficit, the JUA projects that it will incur a $35 million deficit by the end of 2004.

Eligibility and Premiums for Tiers One, Two, and Three

The committee substitute restructures the existing JUA by eliminating the current subplans and creating three tiers with eligibility based on an employer's loss experience, effective July 1, 2004. Tier One provides coverage for employers that have an experience-rating modification factor of less than 1.0 or, if nonrated, the employers must have a continuous three-year history of workers' compensation coverage and a good loss history, as specified. Tier Two provides coverage for new employers, employers with moderate experience (experience-rating modification factor equal to or greater than 1.0 but not greater than 1.10), and employers with good experience who do not have a continuous 3-year history of workers' compensation coverage. Tier Three provides coverage for all other employers.

Premiums in Tier One and Tier Two are capped at 25 percent and 50 percent above the premiums of the voluntary market, respectively, until there is sufficient experience for the JUA to establish actuarially sound rates for the tiers, but no earlier than January 1, 2007. Employers in Tier Three will be charged actuarially sound rates and only these policies will be assessable meaning that policyholders could be assessed additional premiums to cover any deficits. Policyholders in all tiers are subject to a $475 annual administrative fee.

The JUA is required to establish actuarially sound premiums for minimum premium policies in Tiers One and Two for employers that do not employ nonexempt employees or report payroll, which is less than minimum wage for one employee for one year at 40 hours per week. However, premiums for such policies may not exceed $2,500. This premium cap will exist until there is sufficient experience for the JUA to establish actuarially sound rates for Tiers One and Two or no earlier than January 1, 2007.

Funding for Deficits in the JUA

In the event a deficit attributable to subplan D remains after the $10 million appropriation to the JUA, the JUA is authorized to request from the DFS transfer of an amount not to exceed $15 million from the WCATF subject to approval by the Legislative Budget Commission. This additional funding mechanism will sunset on July 1, 2007.

Any deficit remaining in Tier One or Tier Two or any deficit remaining from any of the former subplans are funded by an assessment on all workers' compensation policies in the voluntary market for a period of 1 year. This "below-the-line" assessment mechanism will sunset July 1, 2007. The JUA is authorized to request funding for any deficit in Tier Three in the event assessments on Tier Three policyholders are inadequate to fund such a deficit. Subplan D policyholders will not be subject to assessments for the funding of any deficits.

This committee substitute also exempts the JUA from the premium tax and assessments for the WCATF and the Special Disability Trust Fund.

Independent Evaluations and Reports

This committee substitute requires the Auditor General to conduct an operational audit of the JUA and engage an independent actuary to evaluate the adequacy of the rates and reserves of the JUA and report to the Legislature no later than December 31, 2004. The committee substitute appropriates $50,000 from the Workers' Compensation Administration Trust Fund for the independent actuarial analysis. The committee substitute also provides that the JUA is subject to Single Audit Act provisions, as provided in s. 215.97, F.S., if the JUA expends more than $300,000 in state funds in any year.

If approved by the Governor, these provisions take effect July 1, 2004, except as otherwise provided.
Vote: Senate 40-0; House 119-0

INSURANCE

CS/CS/SB 2038 — Insurance

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

This committee substitute provides for comprehensive changes pertaining to property and casualty insurance; automobile insurance; credit life and disability insurance; premium finance companies; adoption of mortality tables; reinsurance; and local government workers' compensation self insurance. Specifically, the measure provides for the following changes to current law:

Property Insurance

- Mandates that the Division of Consumer Services of the Department of Financial Services designate an employee of the division as a primary contact for consumers on insurance issues relating to sinkholes.

- Requires the Florida State University Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance. The university must submit a preliminary report of its analysis, findings, and recommendations to the Financial Services Commission and the Legislature by February 1, 2005, with a final report due on April 1, 2005. The study is to be funded

through an assessment on insurers issuing property insurance in this state and the budget for the study may not exceed $300,000.

- Provides that if a mortgage lender fails to timely pay an insurance premium, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years.

- Mandates that insurers follow the following requirements, unless the insurance policy provides otherwise, when a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or settlement costs.

    - Any physical damage that occurs as a result of the repair or replacement and that is covered by the policy shall be included in the loss to the extent of any applicable limits.
    - The insurer may not require the insured to pay for betterment required by ordinance or code, except the applicable deductible, unless specifically excluded or limited by the policy.
    - When a loss requires the repair or replacement of portions of a home, and the replaced items do not match in quality, color, or size, the insurer must make reasonable repairs or replacement of items in adjoining areas of the home. In determining the extent of repairs or replacements of items in adjoining areas, the insurer may consider cost, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors. This requirement does not make the insurer a warrantor of repairs, and does not authorize or preclude enforcement of policy provisions relating to settlement disputes.

- Provides that an insurer cannot use a single claim on a property insurance policy which is the result of water damage to cancel or non-renew coverage, unless the insured failed to take action (reasonably requested by the insurer) to prevent a future similar occurrence of damage to the insured property. This provision is effective upon the act becoming a law.

- Requires the Legislative Auditing Committee to contract with the Department of Risk Management and Insurance at Florida State University to conduct a detailed analysis of factors affecting costs and potential assessments on consumers, and availability, of personal lines property and casualty insurance in Florida generally and, in particular, in those areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company. The analysis is due no later than February 1, 2005, and shall be

funded by assessments on insurers issuing personal lines property and casualty insurance in this state. The budget for the study may not exceed $250,000. The Office of Insurance Regulation is authorized to collect the assessments, which shall be pro rated among the insurers using a prescribed formula based on direct earned premiums.

Automobile Insurance

The committee substitute provides consumer protections for settlement practices which apply to adjustment and settlement of personal and commercial motor vehicle insurance claims. The legislation codifies many of the provisions under former Rule 4-116.027, F.A.C., pertaining to motor vehicle consumer protections. The measure provides as follows:

- Insurers may not, when liability and damages owed under the policy are reasonably clear, recommend that a third-party claimant make a claim under his or her own policy solely to avoid having to pay the claim under the policy issued by that insurer.
- Insurers that elect to repair a vehicle, and require a specific repair shop for vehicle repairs, shall cause the damaged vehicle to be restored to its physical condition as to performance and appearance immediately prior to the loss at no additional cost to the insured or third-party claimant other than as stated in the policy.
- Insurers may not require the use of replacement parts in the repair of a motor vehicle which are not at least equivalent in kind and quality to the damaged parts prior to the loss in terms of fit, appearance, and performance.
- Insurers must use specified methods when an insurance policy provides for the adjustment and settlement of first-party motor vehicle total losses on the basis of actual cash value or replacement provisions.
- When the amount offered in settlement reflects a reduction by the insurer because of betterment or depreciation, the information relating to a deduction must be maintained with the insurer's claim file.
- Insurers shall, if partial losses are settled on the basis of a written estimate, supply insureds with a copy of the estimate upon which the settlement is based.
- Insurers shall provide notice to insureds before termination of payment for previously authorized storage charges and such notice shall provide 72 hours for insureds to remove the vehicle from storage.
- Insurers may defer payment of the sales tax (unless and until the obligation has been incurred), if such tax will be incurred by a claimant upon replacement of a total loss or upon repair of a partial loss.

Prior to a civil cause of action being filed against the Florida Automobile Joint Underwriting Association (FAJUA) under s. 624.155, F.S., the FAJUA and the Department of Financial Services must be given 90 days' written notice of the violation which is the basis for the cause of action. This change represents a 30-day increase from the 60-day notice provision mandated under s. 624.155, F.S. The authority for this notice expires on October 1, 2007. The measure also provides that the FAJUA may require from its insured proof that he or she has obtained the

mandatory types and amounts of insurance from another admitted carrier prior to the cancellation of a policy the insured obtained from the FAJUA. This section is effective July 1, 2004, and is applicable to cancellation requests and notices received on or after that date.

Refusal to Insure

Provides that when an insurer refuses to provide coverage (includes private passenger automobile or personal lines residential property insurance) to an applicant due to adverse underwriting information, the insurer must provide to the applicant specific information regarding the reasons for the refusal to insure. If the refusal to insure is based on a loss underwriting history or a report from a consumer reporting agency, the insurer must identify the loss underwriting history and notify the applicant of his or her right to obtain a copy of the report from the consumer reporting agency.

Workers' Compensation

Authorizes the Division of Workers' Compensation to enter into a penalty payment agreement schedule with an employer who is unable to pay the penalty in full at the time a stop-work order is issued at a jobsite for noncompliance with workers' compensation coverage requirements and allows an employer to resume business operations if the employer meets coverage requirements and the terms of the penalty payment agreement.

Mortality Tables and Reserve Requirements

- Exempts credit disability insurance from the requirement that a health insurer's active life reserve must not be less than the pro rata gross unearned premiums for such policies. The exemption will allow reserves to be set using new mortality and disability tables adopted under this legislation. Use of these tables should enable insurers to set more accurate reserves.

- Permits the Financial Services Commission to adopt the National Association of Insurance Commissioner's (NAIC) mortality and disability tables by rule. Under current law, mortality and disability tables are periodically updated and adopted for use by all states. This provision permits the commission to adopt updated tables by rule for policies issued on or after July 1, 2004. The provision applies to ordinary life policies; disability benefits in or supplemental to ordinary policies; accidental death benefits in or supplemental to policies; annuities and pure endowment contracts.

- Prescribes minimum reserves for single-premium credit disability insurance, monthly premium credit life insurance, monthly premium credit disability insurance, and single-premium credit life insurance policies issued prior to or after January 1, 2004.

- Permits an insurance company to substitute the ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners for use in determining the minimum non-forfeiture standard. The tables would have to be adopted by rule of the Financial Services Commission.

- Repeals s. 625.131, F.S., which requires the minimum reserve for credit life and disability policies to be the unearned gross premium, and contains reserve requirements. The section is repealed due to the adoption of new standard ordinary mortality tables in s. 625.121(13), F.S., which will be used to set reserves. The new mortality tables should enable insurers to set more accurate reserves.

Premium Finance Contracts

The committee substitute provides the requirements for canceling an insurance contract when a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement. The legislation adds a time requirement that, when a financed insurance contract is canceled, the insurer must return the unpaid balance due under the finance contract to the premium finance company and any remaining unearned premium to the agent or insured, within 30 days of the cancellation date. The premium finance company must refund to the insured any refund due on the account within 15 days of the account being overpaid. However, if the refund is sent or credited to the agent, the premium finance company must return or credit to the agent the amount of the overpayment and notify the insured of the refunded amount.

The committee substitute also eliminates the $10 fee for filing forms with the Department of Financial Services regarding premium financing.

Reinsurance

The committee substitute revises requirements for reinsurance through use of a trust fund by a single assuming insurer (reinsurer) to provide that at least 50 percent of the funds in the trust, covering the assuming insurer's liabilities related to reinsurance ceded by United States ceding insurers, and that the trusted surplus must consist of assets of a quality substantially similar to the requirements under ch. 625, part II, F.S. The balance of the trust and trusted surplus may be funded through clean, irrevocable, unconditional, and evergreen letters of credit issued by a qualified U.S. financial institution.

Limited Insurance Agent Licenses

The committee substitute provides that a limited license for personal accident insurance may be issued to a business entity that offers motor vehicles for rent or lease and such entities may use part-time employees to offer such coverage. The measure also provides that a limited license for baggage and motor vehicle excess liability insurance may be issued to a business entity that

offers motor vehicles for rent or lease if the insurance activities are in connection with and incidental to the rental of motor vehicles. An entity applying for such a license is required to submit only one application for a license; is required to obtain a license for each office; and is required to pay applicable license fees. Such business entities may also use part-time employees.

Local Government Self-Insurance Funds

The committee substitute provides requirements for the creation of self insurance funds by two or more local governmental entities for paying workers' compensation benefits. The legislation specifies that local government self-insurance funds created after October 1, 2004, must initially be subject to the requirements of a commercial fund under s. 624.4621, F.S., and for the first 5 years, it will be subject to the requirements applied to commercial self-insurance funds or to group self-insurance funds. A local government self-insurance fund created after January 1, 2005, must, for its first 5 fiscal years, file with the Office of Insurance Regulation annual and quarterly financial statements of its financial condition, transactions, and affairs, including a statement of opinion on loss and loss adjustment expense reserves by a member of the American Academy of Actuaries.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 38-0; House 116-0

CS/SB 2588 — Insurance

by Banking and Insurance Committee and Senator Diaz de la Portilla

This committee substitute includes various changes related to insurance, listed below.

Nonresident Insurance Agents (Sections 1-14)

The committee substitute deletes certain statutory restrictions on nonresident insurance agents licensed in Florida, in response to a recent U.S. District Court ruling that such provisions are unconstitutional, as follows:

- Deletes the requirement that all insurance policies written under a nonresident general lines agent's license be countersigned by a Florida resident agent.
- Deletes the requirement that a nonresident agent must pay part of his or her commission to the countersigning resident agent.
- Deletes the prohibition against a nonresident agent having an office or place of business in this state and from having any pecuniary interest in any insurance agent or agency licensed as a resident of this state.
- Deletes the prohibition against a nonresident agent soliciting, negotiating, or effecting insurance contracts in this state unless accompanied by the countersigning resident agent.
- Deletes the prohibition against a nonresident agent being licensed as a surplus lines agent and establishes requirements for licensure of nonresident surplus lines agents.

Personal Lines Agent License (Sections 16-22)

The committee substitute authorizes the Department of Financial Services to issue a new type of insurance agent's license for a personal lines agent. Currently a general lines agent license is issued for all types of property and casualty insurance. The new license would be limited to property and casualty insurance sold to individuals and families for noncommercial purposes, such as auto insurance and homeowners insurance. (These provisions were originally contained in Senate Bill 2800 by Senator Argenziano.)

Rehabilitation and Liquidation of Insurers (Sections 28-36)

The committee substitute amends provisions in ch. 631, part I, F.S., Insurer Insolvency; Rehabilitation and Liquidation (which were originally included in Senate Bill 3024 by Senator Smith). These provisions are generally intended to strengthen the powers of the Department of Financial Services, as receiver of an insolvent insurer, to acquire the assets belonging to the insurer and thereby lessen the amount that must be assessed against other insurers to fund payment of the insolvent insurer's claims and debts. These changes include the following:

- Amends s. 631.021, F.S., to give exclusive jurisdiction to domiciliary courts that acquire jurisdiction over persons subject to this chapter in an insurance delinquency proceeding, and to give the Circuit Court of Leon County exclusive jurisdiction with respect to assets or property of any insurer subject to such proceedings.
- Amends s. 631.041, F.S., to provide that the estate of an insurer in rehabilitation or liquidation is entitled to actual damages, including costs and attorney's fees if it is injured by a willful violation of an applicable stay or injunction, plus additional sanctions as may be imposed by the receivership court.
- Amends s. 631.0515, F.S., to provide that a managing general agent or holding company with a controlling interest in a Florida domestic insurer is subject to jurisdiction of the court under the provisions of s. 631.025, F.S. The purpose is to enable a court to exercise jurisdiction over "shell corporations" designed to shelter an insurance company's assets.
- Amends s. 631.141(7), F.S., to allow the Department to recover expenses for employing a special agent, counsel, clerks, or assistants in a delinquency proceeding in which recovery of administrative expenses is authorized.
- Amends s. 631.205, F.S., to specify that an order of conservation, rehabilitation, or liquidation against an insurer cannot be deemed an anticipatory breach of a reinsurance contract, and cannot be used to retroactively revoke or cancel a reinsurance contract.
- Creates s. 631.206, F.S., which provides a standard arbitration provision to replace any other arbitration provision the insurer in receivership has entered into for resolution of disputes, which shall be void.
- Amends s. 631.261, F.S., to delete the intent requirement of current law so that any transfer of property by an insurer is voidable if it is made within 4 months prior to the commencement of any delinquency proceeding and gives any creditor a greater percentage of debt than any other creditor of the same class. The committee substitute

also provides that a transfer or lien upon the property of an insurer or its affiliate made between 4 months and 1 year prior to the commencement of a delinquency proceeding is void if the transfer or lien benefited a director, officer, employee, or other specified parties.

- Amends ss. 631.262 and 631.263, F.S., to provide that a transfer made within 1 year of a successful petition for a delinquency proceeding, or made after such petition, is not made until the insurer or affiliate has acquired rights in the transferred property.

Other Insurance Agent Issues

The committee substitute includes the following additional provisions related to insurance agents:

- Eliminates the requirement that at least 2 hours of instruction on the subject of unauthorized entities that sell insurance be included in the required 24 hours of continuing education classes for insurance agents every 2 years. (Section 15)
- Requires that each branch office of a general lines agent or agency have at least one licensed general lines agent who is appointed to represent one or more insurers. (Section 23)
- Provides that a salaried employee of Citizens Property Insurance Corporation who performs policy administrative services after the effectuation of a policy is not required to be a licensed insurance agent. (Section 24)
- Provides that an entity applying for a limited insurance agent license for baggage and motor vehicle excess liability insurance is required to submit only one application for all licenses to be issued for each office, and that a business entity offering this type of insurance or personal accident insurance under a limited license may use part-time employees to offer such insurance. (Section 25)
- Requires the completion of continuing education (CE) courses for the reinstatement of an insurance agent's license, appointment, or eligibility, after a second suspension. (Sections 44 and 45)

Notice of Workers Compensation Discount for Drug Free Workplace

The committee substitute requires workers' compensation insurers to notify employers of the availability of a discount for a drug free workplace plan at the time of the initial quote for the policy and at the time of each renewal of the policy. (Section 26)

Mutual Insurance Holding Company

The committee substitute provides an additional option to a mutual insurer that converts to a stock insurance company, through the formation of a mutual insurance holding company with a subsidiary stock insurance company. Prior law provided that policyholders of the subsidiary insurance company which was formerly the mutual insurer must be members of the mutual insurance holding company. Policyholders of any other subsidiary insurance company of the

mutual insurance holding company could not be members of the mutual insurance holding company unless they were policyholders of a subsidiary which was a mutual insurer which merged with the holding company. The committee substitute provides another option to allow policyholders of an affiliated stock insurer to be members of the mutual insurance holding company and have stock in the newly formed mutual insurance holding company if they were policyholders of a mutual insurer whose policies were assumed by the affiliated stock insurer. (Section 27)

Limitations on Coverage from Insurance Guaranty Associations

The committee substitute provides that neither the Florida Insurance Guaranty Association (FIGA) or the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) will provide coverage for an insurance claim against an insolvent insurer if the claim has been rejected by any other state guaranty fund on the grounds that the insured's net worth is greater than that allowed under that state's guaranty fund or liquidation law. An exception is provided for the FWCIGA for employers who, prior to April 30, 2004, entered into an agreement with FWCIGA preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund. (Sections 37 and 38)

Warranty Associations

The committee substitute authorizes a sales representative who sells motor vehicle service agreements, home warranties, or service warranties for consumer products to offer rebates of his or her sales commission to consumers. The rebate amount must conform to a schedule that is prominently displayed in the sales representative's office and the same rebate must be offered to all similarly situated individuals. (Sections 39, 40, and 42)

The committee substitute also provides that a service warranty association is not required to maintain an unearned premium reserve or contractual liability insurance and may allow its premiums to net assets ratio to exceed 7-to-1 if the association has a net worth of at least $100 million; or the association maintains at least $750,000 in net assets and is a wholly owned subsidiary of a parent corporation with a net worth of at least $100 million which guarantees the performance of the warranty obligations of the association. (Section 41)

Cancellation of a Workers' Compensation Policy

The committee substitute provides that the cancellation of a workers' compensation policy, if requested by the policyholder, is effective on the date the insurer sends the notification to the insured, and would not be subject to the 30 days notice requirement of s. 440.42(3), F.S. (Section 43)

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 116-1

CS/CS/SB 2994 — Department of Financial Services

by Appropriations Committee; Banking and Insurance Committee; and Senator Posey

The committee substitute addresses various issues related to the Department of Financial Services as follows:

Regulation and Licensure of Insurance Adjusters

The committee substitute transfers the authority to license and regulate insurance adjusters from the Office of Insurance Regulation (OIR) to the Department of Financial Services (DFS). This was considered to be more efficiently and appropriately done by DFS which licenses and regulates insurance agents, rather than by OIR, which licenses and regulates insurance companies and other risk-bearing entities. (Sections 6, 15, 16, 18-75, and 81-83)

Titles of Agency Heads

- Allows the Chief Financial Officer, who is the agency head of DFS, to also be known as the "Treasurer."
- Allows the Director of the OIR, who is agency head of OIR for all matters other than rulemaking, to also be known as the "Commissioner of Insurance Regulation."
- Allows the Director of the Office of Financial Regulation (OFR), who is the agency head of OFR for all matters other than rulemaking, to also be known as the "Commissioner of Financial Regulation." (Section 6)

Board Appointments

The committee substitute provides that the Director of the OIR, rather than the Chief Financial Officer will make appointments to:

- The board of directors for the Florida Employee Long-Term Care Plan Act (Section 7);
- The State Comprehensive Health Information System Advisory Council;
- The Florida Commission on Hurricane Loss Projection Methodology (Section 79); and
- The board of the Small Employer Health Reinsurance Program (Section 80).

The committee substitute adds the Commissioner of Agriculture to the Financial Management Information Board and to the board's coordinating council and extends the date for repeal of the Enterprise Resource Planning Integration Task Force to July 1, 2008. (Sections 9 and10)

Investment and Financial Authority of the Chief Financial Officer

- Clarifies how the Chief Financial Officer administers a collateral management service for government agencies. (Section 4)

- Specifies that boards created by law or the State Constitution may invest in the Treasury Special Purpose Investment Account. (Section 5)
- Clarifies that the State Deferred Compensation Program is funded in part from fees charged by investment providers to plan participants. (Section 8)
- Clarifies that State University System employees are eligible to continue participation in the State Deferred Compensation Program. (Section 8)
- Allows for a centralized financing process under the Chief Financial Officer for the financing of Guaranteed Energy Performance Savings Contracts. (Section 11)
- Authorizes the Department of Financial Services to contract with entities that receive state funds for accounting and payroll services. (Section 1)

Banking

The committee substitute (Sections 84 through 108) makes various changes related to banks and financial institutions that are regulated by the Office of Financial Regulation. These provisions are identical to the provisions of CS/SB 2960 by Banking and Insurance Committee and Senator Alexander. See the summary of that committee substitute for details.

Viatical Settlement Contracts

The committee substitute provides that the offer, sale, and purchase of viatical settlement contracts and the regulation of viatical settlement providers shall be within the exclusive jurisdiction of the Office of Insurance Regulation under the provisions of ch. 626, part X, F.S. (Section 78)

Florida Deceptive and Unfair Trade Practices Act

The committee substitute specifies persons and entities that are not subject to the Florida Deceptive and Unfair Trade Practices Act (FDUPTA). The committee substitute more clearly matches the substance of this Section as it existed prior to 2003, to revise the changes made in 2003 that were intended to conform to the reorganization of the Department of Financial Services. Instead of exempting persons or activities regulated under laws administered by the Department of Financial Services, the committee substitute exempts any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.

The committee substitute also provides an exemption to FDUPTA for: 1) causes of action pertaining to commercial real property if the parties executed a written lease that provides for the resolution of any dispute and the award of damages, and 2) causes of action concerning the failure to maintain real property if the Florida Statutes require the owner to comply with specified building code and maintenance requirements and provide a cause of action for failure to maintain property which provides remedies including attorney's fees. This provision does not affect actions by the Attorney General under FDUPTA or any action concerning residential

tenancies covered under ch. 83, part II, F.S., the Florida Residential Landlord and Tenant Act. (Section 13)

Cancellation of Workers' Compensation

The committee substitute provides that the cancellation of a workers' compensation policy, if requested by the policyholder, is effective on the date the insurer sends the notification to the insured, and would not be subject to the 30 days notice requirement of s. 440.42(3), F.S. (Section 109)

Unclaimed Property

The committee substitute makes various changes to The Florida Disposition of Unclaimed Property Act (ch. 717, F.S.) and related statutes, which provides the procedure for the escheat (reversion) and disposition of abandoned property to the state. The general purpose of the Act, which is administered by the Department of Financial Services, through its Bureau of Unclaimed Property, is to protect the interest of missing owners of property. These provisions are similar to those contained in CS/CS/SB 2288 by Judiciary Committee, Banking and Insurance Committee, and Senator Clary, which died in House Messages. The committee substitute makes the following changes (Sections 110 through 145):

- Requires electronic reporting of property by holders that have unclaimed property that identifies 25 or more apparent owners.
- Clarifies that unclaimed patronage refunds from rural electric cooperatives are not subject to reporting and delivering requirements, as well as intangible property held, issued, or owing by a business association in certain circumstances.
- Permits the sale of unclaimed property via the Internet.
- Provides a sales tax exemption for the sale of unclaimed property by the Department.
- Increases the amount of money held in the Unclaimed Property Trust Fund from $8 million to $15 million, before a transfer of the excess is made to State School Trust Fund.
- Allows the Bureau of Unclaimed Property 90 days to attempt to notify and return to the account owners, unclaimed property prior to releasing information regarding the unclaimed property.
- Revises the order of priority for claims filed by multiple parties on the same account.
- Requires hearings regarding the disposition of unclaimed property to take place in Tallahassee, Florida.
- Requires claimants to include photographic identification or a notarized sworn statement for unclaimed property claims, claims on behalf of a business entity or trust, and for certain persons intending to acquire ownership or entitlement of unclaimed property.
- Requires claimants to file certified copies of death certificates or court documents necessary to show entitlement to unclaimed property.

- Establishes requirements for making a property claim on behalf of a business or trust.
- Specifies grounds for disciplinary action and penalties against a property holder or locator, including not complying with the provisions of the chapter or rules or orders of the Department, or not abiding by a written agreement entered into with the Department, criminal conduct, and other grounds.
- Authorizes the Department to impose certain penalties, adopt rules regarding disciplinary guidelines, and seek any appropriate civil legal remedy against a person who wrongfully submits a claim.
- Establishes a formal registration process for owner representatives and states the causes for disciplinary action and penalties for violating registration regulations.
- Authorizes the Bureau of Unclaimed Property to initiate actions against property holders and to collect attorney's fees if successful.
- Authorizes the Department to impose penalties for willful failure to report property to the Department along with necessary information.
- Prohibits a person from receiving property that he or she is not entitled to receive or making an invalid or false claim to receive property. Authorizes the Department to bring a civil or administrative action to recover property remitted to a person not entitled to receive it, or against a person involved in receiving or attempting to receive unclaimed property they are not entitled to. Establishes criminal penalties for knowing involvement in filing a claim for unclaimed property the person is not entitled to receive.
- Changes the fee cap on locator agreements to 20 percent per property account on all claims unless the locator discloses to the rightful owner that the property is being held by the Bureau of Unclaimed Property and other required information. The fee cap does not apply to property that has not been through probate proceedings. Establishes a standard form for a Recovery Agreement, and authorizes either a percentage or a flat fee to be paid for recovery. Mandates that a contract to acquire ownership or entitlement to unclaimed property from the person entitled to the property must have a purchase price that discounts the value of the unclaimed property 20 percent or less.
- Allows the Department to gain access to digital driver's license images held by the Department of Highway Safety and Motor Vehicles (DHSMV). The DFS or its agents are also given authority to access patient records held by the health care industry for the purpose of auditing the health care industry for unclaimed property.
- Amends s. 732.103, F.S., which lists the persons entitled to inherit the estate of a decedent if there is no will, to provide that if there are none of the persons currently listed, the estate would descend to the lineal descendants of the great-grandparent if any of the descendants of the decedent's great-grandparents were holocaust victims, subject to a "reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage." This provision applies only to escheated property and shall cease to be effective for proceedings filed after December 31, 2004.

Annuity Protections for Seniors

The committee substitute adds the provisions based on model regulations adopted by the National Association of Insurance Commissioners (NAIC), designed to help protect senior consumers (age 65 or older) when they purchase or exchange annuity products. These provisions are identical to the provisions of CS/SB 2280 by Banking and Insurance Committee and Senator Atwater, which died in the House Commerce Committee. The measure is designed to ensure that the insurance needs and financial objectives of senior consumers are appropriately addressed by establishing standards and procedures for insurance agents, or insurance companies if no agent is involved. It requires that a reasonable determination be made by the agent or insurer that the annuity transaction is suitable for the senior consumer, based on the financial information disclosed by the consumer. The agent or insurer must make a reasonable effort to obtain information about the senior consumer's financial situation, tax status, and investment objectives as to whether the recommendations being considered fit into the consumer's needs. (Section 146)

Miscellaneous Insurance Provisions

The committee substitute (Sections 147 through 166) address provisions pertaining to property and casualty insurance; automobile insurance; credit life and disability insurance; premium finance companies; adoption of mortality tables; reinsurance; and local government workers' compensation self insurance, and other insurance issues. These provisions are the same as those in CS/CS/SB 2038 by Commerce, Economic Opportunities, and Consumer Services Committee, Banking and Insurance Committee, and Senator Fasano. See the summary of that committee substitute for details.

If approved by the Governor, these provisions take effect July 1, 2004, except as otherwise expressly provided in the act.
Vote: Senate 37-1; House 111-1

HB 639 — Insurance Guaranty Associations

by Rep. Fields (CS/SB 2070 by Banking and Insurance Committee and Senator Diaz de la Portilla)

The bill provides that neither the Florida Insurance Guaranty Association (FIGA) or the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) will provide coverage for an insurance claim against an insolvent insurer if the claim has been rejected by any other state guaranty fund on the grounds that the insured's net worth is greater than that allowed under that state's guaranty fund or liquidation law. An exception is provided for the FWCIGA for employers who, prior to April 30, 2004, entered into an agreement with FWCIGA preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund.

State insurance guaranty funds provide payment for claims of insolvent insurance companies, subject to certain limitations. Most states have imposed net worth limitations which preclude payment if the insured, such as a large corporation, has a net worth exceeding a certain amount, typically $25 million or $50 million, but as low as $3 million in Georgia. Florida, however, does not have a net worth limitation for either FIGA, which covers property and casualty insurance, or FWCIGA, which covers workers' compensation insurance. This can result in either association providing payment as the fund that is "next in line" to pay the claim when the state fund that is primary denies the claim due to the net worth limitation. For FWCIGA, this occurs if a workers' compensation claimant (employee) is a resident of another state with a net worth limitation, and the employer is a multi-state employer with its home office in Florida. For FIGA, this can occur if a third party claimant is a resident of Florida who has a claim against an insured corporation in another state.

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

CS/SB 2696 — Insurance

by Banking and Insurance Committee and Senator Atwater

This committee substitute restricts the authority of certain public agencies (i.e., state agencies, political subdivisions, state universities, community colleges, and airport authorities) to purchase an owner-controlled-insurance program (OCIP) in connection with a public construction project, except under specified conditions. An "owner-controlled-insurance program" is defined as a consolidated insurance program or series of insurance policies issued to a public agency which may provide one or more of the following types of insurance coverage for any contractor or subcontractor working at specified or multiple contracted work sites of a public construction project: general liability, property damage excluding coverage for damage to real property, workers' compensation, employer's liability, or pollution liability coverage.

These conditions include a requirement that the estimated total cost of the public construction project must be at least $75 million, at least $30 million if the project is for construction or renovation of two or more public schools during a fiscal year, or at least $10 million if the project is for construction or renovation of one public school. The committee substitute exempts from these restrictions OCIPs in connection with road projects of the Department of Transportation, with existing projects that are the subject of ongoing OCIPs, or with projects advertising bids before October 1, 2004.

The committee substitute requires each OCIP to maintain insurance coverage with respect to completed operations for a term that is reasonably commercially available, but for at least 5 years. In addition, the committee substitute requires insurers to offer insurance coverage at an appropriate additional premium for liability arising out of current or completed operations under an OCIP for the period beyond the period covered by the OCIP.

The committee substitute does not restrict a contractor of a public agency from mandating that its subcontractors participate in a contractor-controlled-insurance program (CCIP) in connection with a public construction project. The committee substitute also does not restrict a business in the private sector from mandating that its contractors or subcontractors participate in an OCIP or CCIP.

If approved by the Governor, these provisions take effect October 1, 2004.
Vote: Senate 38-0; House 115-0

CS/SB 1934 — State Vehicles/Law Enforcement

by Banking and Insurance Committee and Senators Atwater, Dockery, Peaden, Bennett, Haridopolos, and Garcia

This committee substitute expands the definition of the term, "official state business," for state law enforcement officers using motor vehicles to permit the use of the vehicle during normal duty hours going to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business. This change would expand liability, property damage, and workers' compensation coverage for such employees using vehicles for such purposes since the state's Risk Management Program currently provides liability coverage for operators of state-owned vehicles if the operator is acting in the course and scope of employment, which does not generally include travel to and from lunch breaks or meal breaks, and incidental stops for personal errands. Each state agency retains financial responsibility for property damage to a vehicle that is used for "official state business" which would also include such expanded use.

This committee substitute also provides that if the law enforcement officer uses the vehicle for off-duty work for which the employee is required to reimburse the state, the reimbursement must include an amount to cover the actual costs for property damage coverage on the vehicle that is used for off-duty work. Currently, such employees are required to secure their own liability and property coverage for a state vehicle used for off-duty work. The Division of Risk Management of the Department of Financial Services is required to adopt rules for determining the reimbursement.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 118-0

BANKING AND OTHER FINANCIAL MATTERS

CS/SB 2960 — Banking

by Banking and Insurance Committee and Senator Alexander

The committee substitute makes various changes to the laws regulating financial institutions in Florida, as follows:

- Allows a bank or trust company to be formed as a limited liability company, rather than a corporation.
- Prohibits any person from using the name or logo of a financial institution in marketing materials, if done without the written consent of the financial institution and in a manner that indicates it was endorsed by the financial institution.
- Clarifies that a financial institution must notify the Office of Financial Regulation (OFR) of an "appointment" as well as employment of any individual as an executive officer or equivalent position, and adds a $35 fee for each notification of a proposed appointment of an individual to the board of directors, beginning 1 year after the opening of the state financial institution.
- Exempts any state financial institution open less than 4 months from the annual (end of year) audit requirement.
- Shortens the statute of limitations from 1 year to 180 days within which a customer must assert against a financial institution an unauthorized signature or alteration of an item (such as a check) and from 5 years to 1 year for asserting any unauthorized endorsement.
- Amends the current law requiring bank records to be produced as required by a court, to provide that it must be pursuant to a subpoena and that the party seeking the production must reimburse the financial institution for its reasonable costs and fees.
- Clarifies the authority of out-of-state banks that have no operating presence in Florida to engage in certain banking related activities in the state.
- Adds the terms, "banco" and "banque" to the list of names that a business other than a financial institution is prohibited from using.
- Clarifies that the laws that apply to an international banking corporation also apply to a branch of such corporation.
- Deletes the requirement that a copy of the bylaws of a bank or trust company must be filed with the OFR.
- Provides that the allowance for a bank operating in a safe and sound manner to merely notify, rather than obtain approval from the OFR for establishing a new branch also applies to relocating an existing office.
- Provides that the 1-year experience requirement for a president or chief executive officer of a bank also applies to any other person, regardless of title, who has an equivalent rank or who leads the overall operations of a bank.
- Prohibits a bank from paying a dividend or making loans if the bank has been determined by the OFR to be imminently insolvent, and repeals the current law that prohibits a bank

from paying dividends or making loans if it fails to maintain a specified daily liquidity position.
- Allows a bank to value foreclosed property based on an appraisal obtained within 90 days after acquisition of the property, as an alternative to within 1 year prior to the acquisition.
- Lowers the threshold for the definition of control of an international banking corporation to any person or persons owning 25 percent, rather than 50 percent of the voting stock.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 37-0; House 113-0

CS/CS/SB 2682 — Credit Counseling Services

by Commerce, Economic Opportunities, and Consumer Services Committee; Banking and Insurance Committee; and Senators Aronberg, Atwater, Lynn, Campbell, and Wilson

This bill creates ch. 817, part IV, F.S., which contains a framework for regulating the relationship between a consumer and a credit counseling agency that provides credit counseling or debt management services. Credit counseling agencies (an organization providing debt management or credit counseling services) are prohibited from charging fees in excess of prescribed amounts for the following services:

- A fee greater than $50 for an initial consultation;
- Fees amounting to greater than $120 per year for additional consultations;
- For debt management services, a fee many not exceed the greater of 7.5 percent of the amount paid monthly by a debtor, or $35 per month.

The bill requires a person providing credit counseling or debt management services to be audited annually, and to maintain insurance coverage for employee dishonesty, depositor's forgery, and computer fraud. A person engaged in credit counseling or debt management is required to disburse a consumer's funds within 30 days after receiving such funds, and must maintain a separate trust account for the receipt of any funds and their subsequent disbursement for each debtor.

A violation of any provision of this bill is an unfair or deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act. A consumer harmed by a violation of this bill may bring an action for recovery of damages, costs and attorney's fees. A person who violations any provision of the bill commits a third degree felony, punishable by not more than 5 years in prison and a fine of up to $5,000.

There are various exemptions from the provisions of ch. 817, part IV, F.S. The requirements of the bill do not apply to debt management or credit counseling services provided in the practice of law in Florida or to a person who engages in debt adjustment to adjust the indebtedness owed to that person. The Federal National Mortgage Association, the Federal Home Loan Mortgage

Corporation, and the Florida Housing Finance Corporation, or their subsidiaries are exempt from the act. The bill exempts a bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank if it is regulated by a prescribed federal or state banking regulator. Consumer reporting agencies are exempt, as are subsidiaries or affiliates of a bank holding company and their employees and exclusive agents acting under a written agreement.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 39-0; House 115-0

SB 282 — Enforcement of Lost, Destroyed, or Stolen Negotiable Instruments

by Senator Posey

This bill (Chapter 2004-3, L.O.F.) amends s. 673.3091(1), F.S., by authorizing a person to transfer ownership of a negotiable instrument even if the person lost the physical document creating the instrument. Further, the bill permits a person who has acquired ownership of a lost negotiable instrument to transfer ownership of the instrument. Additionally, the bill permits a person with a security interest in a negotiable instrument who never had possession of the negotiable instrument to enforce a lost instrument if the secured person had the right to enforce the instrument when the instrument was lost. The bill conforms Florida law to changes made in 2002 to Section 3-309 of the Uniform Commercial Code.

These provisions became law upon approval by the Governor on March 29, 2004.
Vote: Senate 39-0; House 119-0

CS/SB 2562 — Money Transmitters

by Banking and Insurance Committee and Senator Dockery

The Office of Financial Regulation (OFR) of the Financial Services Commission regulates the money transmitter industry, which includes payment instrument sellers, foreign currency exchangers, check cashers, funds transmitters, and deferred presentment providers (payday loans) under the provisions of ch. 560, F.S. This bill provides the OFR with additional compliance and enforcement tools to assist in the regulation of money transmitters by requiring money transmitters to comply with certain federal regulations and authorizing the OFR to take enforcement action against money transmitters for noncompliance. The bill makes the following changes related to the regulation of money transmitters:

- Requires money transmitters to develop and implement anti-money laundering programs pursuant to federal regulations;

- Requires money transmitters to develop and implement customer identification procedures for new accounts pursuant to federal regulations;
- Authorizes the OFR to take disciplinary action if a money transmitter fails to maintain records or make available documents required by certain federal regulations;
- Authorizes the OFR to conduct investigations or conduct examinations pursuant to s. 560.118, F.S., to determine whether violations of applicable provisions of the Code of Federal Regulations have occurred; and
- Expands the definition of "unsafe and unsound" to include the failure to adhere to certain federal regulations which would authorize the OFR to take regulatory action.

The bill also authorizes a money transmitter to conduct business within the state by means of electronic transfer and to charge a different fee for funds transmission based on the mode of transmission used in the transaction so long as the price charged for a service paid with a credit card is not greater than a price charged when that service is paid by currency or similar means.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

CS/SB 204 — Recording Purchase of Burial Rights

by Banking and Insurance Committee and Senators Crist and Lynn

This committee substitute provides that any person who purchases a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden for the disposition of human remains may, at his or her option, permanently record the purchase of such burial right with the clerk of the court in the county where the burial site is located. The purpose of the recordation is for public notification and to establish a permanent official record in the county; however, such recordation does not create any priority of interest or ownership rights as to the purchaser who records such burial rights.

The committee substitute requires the court clerk to record the evidence of the purchase of such burial right upon receiving payment by the purchaser of a service charge as provided by law. This legislation would apply to all cemeteries in the state which sell burial rights.

If approved by the Governor, these provisions take effect July 1, 2004.
Vote: Senate 38-0; House 117-0