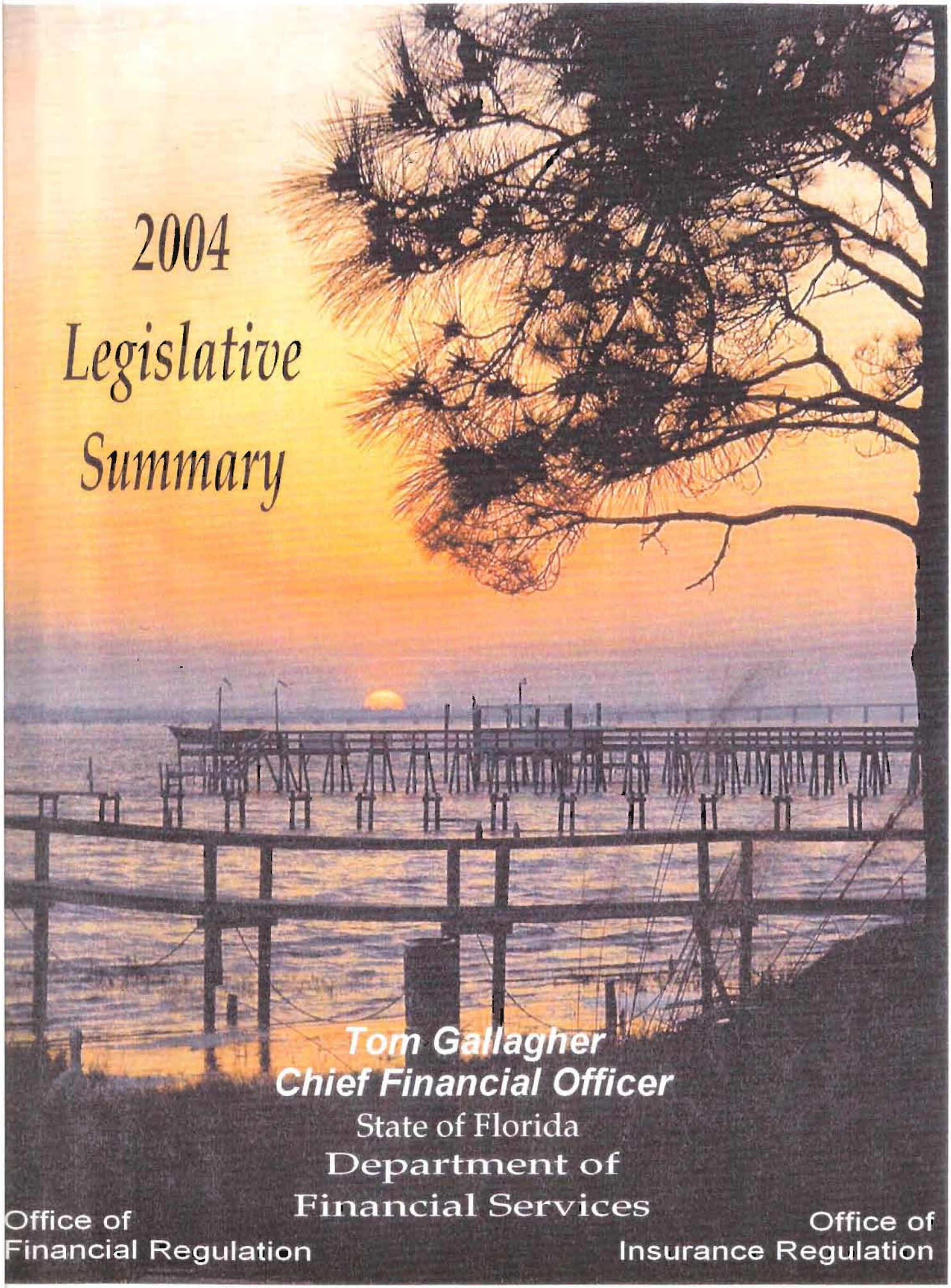
2004
Legislative
Summary
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Department of
Financial Services
Office of
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Office of
Insurance Regulation

INTRODUCTION

This document has been compiled to offer an overview of the legislation passed by the Florida Legislature during the 2004 Regular Session that affects the Department of Financial Services. Access to all bills, legislative staff analyses, floor amendments, bill history and Florida Statutes citations are available through the Internet. The Internet address for the Florida Legislature Online Sunshine web site is:

http://www.leg.state.fl.us

For additional information on legislation passed by the Florida Legislature, you may contact the Office of Legislative Affairs at (850) 413-2863 or SUNCOM 293-2862.

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EMERGENCY ELEVATOR ACCESS: HB 129; Chapter #2004-12, Laws of Florida; Effective April 6, 2004; by Representatives Kallinger and Zapata

The bill requires all elevators allowing public access in each building in Florida that is six or more stories, including, but not limited to, hotels and condominiums, on which construction is begun after June 30, 2004, to be keyed with one master key to allow emergency elevator access in fire emergencies. Buildings six or more stories that have undergone "substantial improvement" are also required to be keyed with one master key. Compliance for existing buildings six or more stories is required by July 1, 2007.

The bill allows the local fire marshal to allow substitute measures for the master key requirements for buildings in which it is technically, financially, or physically impossible to bring the building into compliance.

For noncompliance with the master key requirements, the bill provides for an administrative fine not greater than $1,000 in addition to any other penalty provided by law.

The bill waives permit requirements and fees for compliance with the master key requirements. The bill also requires elevator owners to report on their compliance.

The bill creates the Elevator Safety Technical Advisory Council in order to replace the Elevator Safety Technical Advisory Committee that was terminated by operation of statute on December 31, 2003. The bill sets forth the membership, appointment, terms, purpose, reimbursement, and consulting powers. The bill repeals the provisions related to the Elevator Safety Technical Advisory Committee.

The bill permits fees for inspections by municipalities and counties, but limits disciplinary actions by counties and municipalities. The bill allows for enforcement, fees, and fines by counties.

BURIAL RIGHTS/PURCHASE RECORDS: SB 204; Chapter #2004-24, Laws of Florida; Effective July 1, 2004; by Senator Crist and Lynn.

This bill provides that any person who purchases a burial right, below ground 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 right 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 bill would apply to all cemeteries in the state which sell burial rights.

SERVICE OF PROCESS: SB 222; Chapter #2004-273, Laws of Florida; Effective July 1, 2004; by Senator Crist.

Section 1 amends s. 48.031, F.S., to allow witness subpoenas in criminal traffic cases, misdemeanor cases, and second or third degree felony cases to be served by any form of United States mail. However, failure of a witness to appear may not be the basis of a contempt of court finding if the mailing was not certified. The section also permits the posting of any criminal witness subpoena after three unsuccessful attempts on different dates and at different times of day to serve the subpoena at the residence of a witness. It requires the person serving process to annotate certain information on the document after service. In cases in which the only address for the person to be served is a private mailbox, it allows service on the person in charge of the private mailbox if it is verified that the receiver maintains a private mailbox at that location.

Section 2 amends s. 48.081, F.S., relating to service on corporations. If service cannot be made on a corporation's registered agent because of a failure to comply with s. 48.091, F.S., it allows service on any employee of the corporation only at the principal place of business or upon any employee of the registered agent. The section also allows service in accordance with s. 48.031, F.S., if the address for a corporation's registered agent, officer, director, or place of business is a residence or a private mailbox.

Section 3 broadens the language of s. 48.21, F.S., to refer to "the person who effects service of process" rather than only "officers to whom process is directed." It also revises the section to require notation of the date of receipt and service and to refer to "service" rather than "execution" of process.

Section 4 deletes s. 48.29(6)(a), F.S., to eliminate the requirement for certified process servers to annotate certain information on the face of the original and any served copies of the process.

Section 5 amends s. 83.13, F.S., relating to levy of distress writs in non-residential tenancy cases, to make the party who had the writ issued responsible for delivering the writ to the appropriate county sheriff when the property has been removed from the county where the writ was issued.

Section 6 amends s. 624.307, F.S., permits the Chief Financial Officer, in lieu of sending service of process by registered or certified mail, to send process by any other verifiable means.

Section 7 amends s. 832.07, F.S., concerning *prima facie* evidence of intent to pass a worthless check, to allow the recipient of a worthless check to send notice to the maker by firstclass mail, evidenced by an affidavit of service. Current law requires that notice be sent by certified or registered mail with return receipt. The amendment also requires the maker of a worthless check to make the check good within 15 days after written notice is sent to the address printed on the check or given at the time of issuance. Current law allows 7 days from receipt of written notice without specification of where notice is to be sent.

Section 8 amends s. 409.257, F.S., to allow the Department of Revenue to issue witness subpoenas by regular United States mail in child support enforcement cases. Current law requires that such witness subpoenas be served by certified mail.

FIREFIGHTER & POLICE PENSIONS: HB 251; Chapter #2004-21, Laws of Florida; Effective April 27, 2004; by Representative Sansom.

Requires the Department of Revenue (Department) to create and maintain an electronic database for insurers that report or remit excise taxes on property and casualty insurance premiums. Requires participating local taxing jurisdictions to provide information to enable the Department to properly allocate insurance premium tax remittances due to the firefighter and police pension plans under Chapters 175 and 185, Florida Statutes. Defines “due diligence” for insurance company participation and compliance as two attempted contacts with the agent responsible for a commercial property insurance application. Insurance companies exercising due diligence will be held harmless from any liability related to the payment of the tax. Subjects insurance companies to a 0.5% penalty of tax paid for not exercising due diligence in reporting requirements.

Provides a one-time appropriation of $300,000 to the Department to create and implement the initial database. Authorizes recurring appropriations to the Department from the Police and Firefighter’s Premium Tax Trust Fund for administrative and maintenance costs; not to exceed $50,000 annually, increased by an inflationary adjustment for future years. Provides the Department with rulemaking authority to implement these sections.

NEGOTIABLE INSTRUMENTS: SB 282; Chapter #2004-3, Laws of Florida; Effective March 29, 2004; by Senator Posey.

This bill authorizes 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.

PUBLIC RECORDS/EXEMPTION/BUILDING PLANS/BLUEPRINTS: HB 317; Chapter #2004-9, Laws of Florida; Effective March 29, 2004; by Representative Reagan.

Current law provides a public records exemption for building plans, blueprints, schematic drawings, and diagrams of buildings or other structures owned or operated by a government agency. The exemption does not apply to privately owned buildings or structures.

This bill creates a public records exemption for such information when it depicts the internal layout or structural elements of a privately owned facility, complex, or development. It authorizes the release of exempt information to other governmental entities, to the owner of the structure or the owner's legal representative, or upon a showing of good cause. This exemption does not apply to comprehensive plans or site plans submitted for approval or that have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

PERSONAL IDENTIFICATION INFORMATION: SB 348; Chapter #2004-95, Laws of Florida; Effective July 1, 2004; by Senators Peaden and Evers.

Creates exemptions from public records requirements. Diminishes the opportunity for fraud and identity theft by limiting the use of social security numbers. Exempts complete social security numbers of agency employees held by an agency from public disclosure if the employee or employing agency submits a written request for confidentiality. Allows commercial entities to continue to verify the accuracy of personal information received using only the last four digits of social security numbers of agency employees. Allows commercial entities to also use an employee's date of birth or maiden name to verify the accuracy of personal information. Provides that commercial entities shall have access to complete social security numbers provided in a lien filed with the Department of State.

FUNERAL & CEMETERY INDUSTRY: SB 528; Chapter #2004-301, Laws of Florida; Effective October 1, 2005; by Senator Pruitt and others.

The bill moves the licensing and regulation of all death care industry entities to

one agency, the Department of Financial Services (DFS), and to one chapter of Florida Statutes, Chapter 497. It eliminates inconsistencies among statutes, groups statutes according to subject matter, provides uniformity of procedure and statutory structure, and renames statutes to make it easier to discern their subject matter from their title.

The bill abolishes the Board of Funeral Directors and Embalmers, the board contained in the Department of Business and Professional Regulation (DBPR), which regulates and licenses funeral directors, embalmers, direct disposal facilities, direct disposers, and cinerator facilities. It also abolishes the Board of Funeral and Cemetery Services, the board contained in DFS that regulates cemeteries and preneed sales.

The bill creates a new board, the Board of Funeral, Cemetery and Consumer Services within DFS. The new board will assume regulation and licensing of all individuals and facilities involved in the death care industry. The bill transfers duties, responsibilities, rules, personnel, equipment, litigation, etc., relating to the death care industry from DBPR to DFS by a type-two transfer.

The bill increases most of the licensing, application, and renewal fees for licensees of the death care industry. It specifies application and renewal processes and requirements for all licenses issued for the death care industry. It requires background checks and fingerprints for all licensees.

The bill creates a regulatory scheme for monument establishments, an area of the death care industry left largely unregulated under current law. The bill authorizes monument establishments to sell preneed contracts upon licensure.

The bill addresses several areas relating to consumer concerns in the regulation of funeral and cemetery activities. Specifically, the bill:

- Sets statutory standards for grave spaces and sizes;
- Requires the creation of certified land surveys to map the location and identification of grave spaces;
- Provides for the identification of human remains on the inside and outside of burial containers; and
- Clarifies contract cancellation and refund provisions.

INSURANCE GUARANTY ASSOCIATION: HB 639; Chapter #2004-89, Laws of Florida; Effective May 21, 2004; by Representative Fields.

State insurance guaranty funds provide payment for claims of insolvent insurance companies, subject to certain limitations. Most states have imposed net-worth limitations that 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 the Florida Insurance Guaranty Association (FIGA), which covers property-and-casualty insurance, or the Florida Workers' Compensation Insurance Guaranty Association (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.

The bill provides that neither the FIGA or the 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 the insured's net worth is greater than that allowed under that state's guaranty fund or liquidation law.

FIGA and FWCIGA are both funded by assessing insurers who, in turn, seek to recoup the assessments in higher premiums to their Florida policyholders. The bill will have a marginal impact on assessments, since the claims affected represent less than one percent of claims.

LOCAL GOVERNMENT ACCOUNTABILITY: SB 708; Chapter #2004-305, Laws of Florida; Effective June 17, 2004; by Senator Atwater.

Creates a pilot program in Monroe County to explore alternatives for making affordable health insurance coverage available in rural counties. Allows Monroe County, through a non-profit corporation, to create a self-insurance health plan. The self-insurance plan will insure residents of a rural county or similar area, for those individuals unable to obtain adequate or affordable health insurance coverage. Requires the plan to be approved by the Office of Insurance Regulation and premiums to be actuarially sound. Requires the Office of Insurance Regulation to consult with the Department of Health, confirming the program is consistent with the purpose and scope of Chapter 381, Florida Statutes, relating to public health.

FOSTER CARE SERVICES: HB 723; Chapter #2004-356, Laws of Florida; Effective July 1, 2004; by Representative Murman.

Directs the Florida Coalition for Children, in consultation with the Department of Children and Families, to develop a statewide community-based care risk pool for the protection of eligible lead community-based care providers, their subcontractors, and providers of other social services. Requires the statewide

community-based care risk pool plan to be based on an independent actuarial study. Requires the Coalition and Department to develop the plan in consultation with the Office of Insurance Regulation. Requires the plan to be submitted to the Department, the Executive Office of the Governor, and the Legislative Budget Commission for adoption prior to January 1, 2005.

HMO/PROVIDER CONTRACTS/HEALTH CARE: SB 1088; Chapter #2004-321, Laws of Florida; Effective January 1, 2005; by Senator Cowin and others.

This bill requires an HMO that has a contract with a provider to disclose to the provider, in an electronic or written format, the complete schedule of reimbursement for which the HMO and the health care provider have contracted. This includes any deviations from the contracted schedule of reimbursement requested by the HMO and agreed upon by the provider. The HMO must provide a 30-day written notice before changes to the provider fee schedule can be made. The bill also defines a "schedule of reimbursement."

CONDOMINIUM & COMMUNITY ASSOCIATION: SB 1184; Chapter #2004-345, Laws of Florida; Effective October 1, 2004; by Senators Campbell, Lynn and Garcia.

The bill makes several changes to laws governing community associations, including condominium associations, cooperative associations, and homeowner's associations.
Specifically, the bill:

CONDOMINIUMS

- Provides immunity from liability to condominium associations and their agents for providing information to prospective purchasers that is not required to be provided by law.
- Requires non-developer sellers of condominium units to provide prospective purchasers with a document titled "Frequently Asked Questions and Answers."
- Requires condominium associations to provide written notice to all members 14 days before a meeting of the board of the association that will consider assessments and rules regulating the use of parcels.
- Provides that the only voting interests entitled to vote on reducing the funding of reserves or using the reserves for a purpose for which the reserves were not intended are the voting interests that funded the reserves.
- Provides that an amendment to a declaration of condominium that restricts the rental rights of unit owners applies only to unit owners that consent to

the restriction and to unit owners who purchase their units after the effective date of the amendment, unless expressly stated to the contrary in the amendment.
- Requires an amendment to a declaration of condominium that restricts the rental rights of non-consenting condominium unit owners to be approved by at least three-fourths of the voting interests in the association.

FIRE-SAFETY

- Authorizes voting by limited proxy on votes to forego retrofitting a condominium or cooperative with a fire sprinkler system.
- Requires condominium unit owners or cooperative members to be provided with 14-days notice before voting to forego retrofitting with a fire sprinkler system.

HOMEOWNERS' ASSOCIATIONS

- Provides a method for the revival of a homeowners' associations expired declarations of covenants.

AUTOMATED EXTERNAL DEFIBRILLATORS

- Provides immunity from liability under certain circumstances to community associations for damages caused by the use of an automated external defibrillator owned by the association.

LONG-TERM CARE SERVICE DELIVERY: SB 1226; Chapter #2004-386, Laws of Florida; Effective June 30, 2004; by Senate Health, Aging, and Long-Term Care Committee.

Implements the recommendations contained in Senate Interim Project Report 2004-144, "Model Long-Term Care System/Analyzing Long-Term Care Initiatives in Florida." Requires the Department of Elderly Affairs to select long-term care community diversion pilot project providers that are determined by the Department of Financial Services (Chapter 641 is regulated by the Office of Insurance Regulation) to demonstrate the following:

- surplus requirements comparable to HMO's contained in s. 641.225, F.S.;
- HMO financial solvency standards in s. 641.285, F.S.;
- HMO prompt payment of claims in s. 641.3155, F.S.;
- strong data collection technology capabilities that meet federal HIPAA security requirements; and
- the capacity to contract with multiple providers of the same service type.

EMPLOYEE BENEFITS: SB 1250; Chapter #2004-347, Laws of Florida; Effective June 23, 2004; by Senator Pruitt.

Co-payments for state employees effective January 1, 2004, are $10 for generic drugs; $25 for brand name drugs; $40 for non-preferred brand name drugs; $20 for generic mail order drugs; $50 for brand name mail order drugs; and $80 for non-preferred brand name mail order drugs.

Currently, section 110.1239, F.S., requires the Department of Management Services to determine the level of premiums necessary to fully fund the state group health insurance program for the next fiscal year, specifically for fiscal year 2003/2004. The law also provides legislative intent that the insurance program should be managed, administered, operated, and funded in a manner to maximize the protection of health benefits for the employees and carries an expiration date of July 1, 2004. The bill strikes the provisions of this section that reference the specific fiscal year and expiration date.

This bill provides an exemption from the regulation of multiple employer welfare arrangements for the State Health Insurance program administered by the Department of Management Services.

This bill also provides an exception to the preexisting condition limitations in the State Health Insurance program for certain state court system employees, state attorney office employees and public defender employees.

The bill provides the maximum amount of annual and sick leave that may be transferred into the state attorney offices and public defender offices by employees moving from county government to state employment as a result of the implementation of Revision 7 to Article 5 of the Florida Constitution.

JOINT UNDERWRITING PLAN OF INSURERS: HB 1251; Chapter #2004-266, Laws of Florida; Effective July 1, 2004, except as otherwise provided; by Representatives Berfield and Holloway.

This bill revamps the Workers' Compensation Joint Underwriting Association (WCJUA) in order to reduce and eliminate an anticipated deficit and to insure future deficits will not occur. It proposes a three-tier system to replace the WCJUA's current four-subplan system and provides a transitional mechanism. The new system will insure employers are written insurance policies in tiers that better define their risk and provide for a premium better associated with that risk. Initially, the premiums for Tiers 1 and 2 are 25 percent and 50 percent above the voluntary market rate, respectively. The premiums for Tier 3 are actuarially sound. Beginning January 1, 2007, the premiums in all tiers will be actuarially sound.

The bill provides a minimum premium of $2,500 for employers qualifying for a minimum premium policy. It allows the WCJUA to charge an administrative fee of $475 for all policies the WCJUA writes. The bill provides for additional WCJUA depopulation measures and changes to the consent-to-rate law, which will encourage insurers in the voluntary market to write insurance for existing and potential WCJUA policyholders.

It proposes a one-time capital contribution of $10 million from the Workers' Compensation Administration Trust Fund (WCATF) to the WCJUA to help defray the existing deficit. **This $10 million contribution was vetoed by the Governor.** It proposes establishing a contingency reserve in the WCATF of up to $15 million to help the WCJUA meet its cash needs for subplan "D." This need for any transfer of funds from the contingency reserve is subject to verification by the Office of Insurance Regulation. The Legislative Budget Commission determines the amount of the capital contribution based on information presented by the WCJUA. If Tiers 1 or 2 incur a deficit, the bill provides a surcharge on all workers' compensation policyholders that are not in the WCJUA. The surcharge, however, is suspended on July 1, 2007. A deficit in Tier 3 is paid by assessments against the policyholders in Tier 3. The bill provides assessment and collection mechanisms for assessments against Tier 3 insureds. If assessments against Tier 3 insureds prove to be insufficient to eliminate any Tier 3 deficit, the bill provides a mechanism for deficit funding for any future Tier 3 deficits via a transfer of funds from the WCATF to meet cash needs of the WCJUA.

The bill requires an operational audit, including an audit of the WCJUA's reserves and costs, by December 31, 2004, by an actuary hired by the Auditor General. The bill subjects the WCJUA to the Florida Single Audit Act in s. 215.97, F.S.

The bill exempts the WCJUA from WCATF and Special Disability Trust Fund assessments and premium taxes. It provides additional measures for the WCJUA to combat fraud by existing and potential policyholders. The bill precludes any assessment against current subplan "D" policyholders.

MOBILE & MANUFACTURED HOMES: SB 1414; Chapter #2004-283, Laws of Florida; Effective June 10, 2004; by Senators Diaz de la Portilla and Russell.

Contains a number of statutory changes relating to the regulation of mobile and manufactured homes. Requires each new mobile or manufactured home manufactured or sold in Florida to meet the manufactured home construction and safety regulations promulgated by the U.S. Department of Housing and Urban Development (HUD), pursuant to the Manufactured Housing Improvement Act. Deletes some provisions relating to standards in local building codes, ordinances, and regulations to include: blocking and leveling, tie-downs, utility

connections, conversions of appliances, and external improvements on the mobile home. Requires that mobile homes, manufactured homes, and park trailers must be installed on a permanent foundation that resists wind, flood, flotation, over-turning, sliding and lateral movement. Provides that the owner of the mobile or manufactured home is responsible for the installation in accordance with the Department of Highway, Safety, and Motor Vehicle rules. Removes specific standards such as "hurricane and windstorm resistive". Defines "manufactured homes" to conform to terminology used in the industry. Extends the repeal date of the Hurricane Loss Mitigation Program from June 30, 2006 to June 30, 2011.

AFFORDABLE HEALTH CARE: HB 1629; Chapter #2004-297, Laws of Florida; Effective July 1, 2004, except as otherwise provided; by Representative Farkas.

2004 AFFORDABLE HEALTH CARE FOR FLORIDIANS ACT

This bill creates the 2004 Affordable Health Care for Floridians Act and represents many of the recommendations of the Select Committee on Affordable Health Care for Floridians. Significant provisions affecting the health insurance markets include:

- Each licensed facility not operated by the state shall provide, prior to provision of any medical services, an estimate of charges for the proposed service upon request of a prospective patient who does not have insurance coverage or whose insurer or health maintenance organization does not have a contract with the hospital and an emergency medical condition does not exist or the service is not a covered service.
- The Agency for Health Care Administration (Agency) adopts the 3M All Patient Refined DRG software risk and severity adjustment methodology to adjust data submitted.
- Data shall be reported electronically and certified by the facility's chief executive officer or other representative.
- Insurers report percentage of claims denied, percentage of claims meeting prompt pay requirements, and medical and administrative loss ratios. Data reported by insurers must be certified by a qualified insurer representative.
- The Agency make available information regarding patient charges, volume, length of stay and performance outcome data for medical conditions and specifies considerations for determining which medical conditions may be used.
- The Agency shall collect and report on its website by 10/1/05 a statistically valid sample of data on retail prices charged by pharmacies for a 30-day supply at a standard dose for the 50 most frequently prescribed medicines for licensed pharmacies to provide comparative information.

- The Agency provides an interactive website allowing consumer to view and compare information, with a map that allows consumer to select information based on geographical region.
- The Agency may collect information from licensed health care providers for special study.
- The Agency make available on its Internet website no later than October 1, 2004 and in a hardcopy format upon request, patient charge, volumes, length of stay, and performance outcome indicators collected from health care facilities pursuant to s. 408.061(1)(a), F.S., for specific medical conditions, surgeries, and procedures provided in inpatient and outpatient facilities as determined by the agency.
- The Agency submit an annual status report on the collection of data and publication of performance outcome indicators to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the substantive legislative committees with the first status report due January 1, 2005.
- Each health insurance issuer shall make available on its Internet website a link to the performance outcome and financial data that is published by the Agency pursuant to s. 408.05(3)(m), F.S.
- A penalty of $500/ instance is assessed for each of a facility's failure to provide requested information to consumers.
- The Agency must develop and implement a strategy for the adoption and use of electronic health records and report to the Governor and Legislature.
- A facility must make available to a patient upon request all of the patient's records necessary for verification of the accuracy of the patients bill. The bill provides a time frame for disclosure.
- All facilities must establish a method for reviewing a patient's billing question. The bill provides a time frame for the facility to review and respond to a billing question.

FLORIDA PATIENT SAFETY CORPORATION

This bill creates s. 381.0271, F.S., to establish the not-for-profit, Florida Patient Safety Corporation, to provide coordination to and direction to efforts in the state to improve the quality and safety of health care, and reduce harm to patients. The corporation is not a state agency and shall not regulate health care providers in the state. It must work collaboratively with state agencies in the development of electronic health records.

- Creation of the Florida Health Insurance Plan as the high risk pool for uninsurable medical risks, replacing the Florida Comprehensive Health Care Association;
- Expansion of the Health Flex Program statewide;

- Modification of the Small Employers Health Access Act to eliminate one-life groups, contingent on the Florida Health Insurance Plan accepting new enrollment;
- Creation of the Small Employers Access Program to provide additional options for small businesses of up to 25 employees;
- Requirement that certain plans providing discount medical services to be licensed as prepaid health plans;
- Modification of health insurance agent's ability to collect a consulting fee; and
- Updating the ability of the Office of Insurance Regulation (OIR) to regularly collect data from insurers describing the health insurance marketplace.

FLORIDA HEALTH INSURANCE PLAN

The bill establishes the Florida Health Insurance Plan (FHIP) as the state's high risk pool. The FHIP is run by a nine person Board of Directors and chaired by the OIR Director. There are five Governor appointees; one Senate appointee; one House appointee; and one Chief Financial Officer appointee. The bill requires that a majority of the board must be composed of individuals who are not representatives of insurers or health care providers without further definition. By December 1, 2004, the board must provide to the Governor, Senate President and Speaker of the House an actuarial study regarding funding of the FHIP and impact of the FHIP on small employers. The bill requires the initial meeting of the board to occur no later than September 1, 2004. However, prior to opening the FHIP, the actuarial study must be completed with identified funding needs.

SMALL GROUP MARKET

There are several reforms to the small group market designed to enhance flexibility of the coverages offered. The bill requires:

- the offering of a high deductible plan that meets the federal requirements of a health savings account or health reimbursement accounts; and
- a limit of the allowable variation from the approved rate for cumulative use of health status and claims experience rating factors to 4 percent.

The bill amends s. 627.6487, F.S., making individuals (one-life groups) ineligible for guaranteed issue in the small group market if the FHIP is accepting new enrollment.

The bill amends s. 627.9175, F.S., authorizing the annual collection of market data from health insurers, prepaid plans, and HMO's and provides the Department of Financial Services (DFS) with rulemaking authority governing the submission of such information.

DISCOUNT MEDICAL PLAN ORGANIZATIONS

The bill establishes a comprehensive regulatory scheme for discount medical plan organizations. It involves the creation of a new license, forms and rate filings and approval, procedures for examinations and investigations by the OIR, prohibited activities, required disclosures to plan members, better tracking of providers, annual report filing, minimum capital requirements, a process for suspension and revocation of licenses, sale by licensed agents only, service of process through the DFS, security deposits, criminal penalties, injunctive relief by the OIR, civil remedies, and unlicensed activities by the plans.

The bill repeals the requirement that the Agency develop practice parameters, thus eliminating the duplicative and costly development of practice parameters that are now widely available to the medical community.

HEALTHY COMMUNITIES/WELLNESS PROGRAMS

This bill addresses the importance of healthy lifestyles by providing educational material through the Healthy Communities program and providing financial incentives by giving rebates on health insurance for healthy lifestyles.

This bill requires the Department of Health (DOH) to include health care providers and small businesses and health insurers in the organizations that the Healthy Communities, Healthy People program serves. It requires DOH to provide information about DOH's health promotion and wellness programs and healthy lifestyle information on its Internet web page.

The bill authorizes health insurers and health maintenance organizations to provide for an appropriate rebate of premiums paid in the last calendar year when the majority of members of a health plan have enrolled and maintained participation in any health wellness, maintenance, or improvement program offered by the employer.

EMERGENCY CARE

This bill address the inappropriate utilization of emergency department care on several levels; federally qualified health centers mission is expanded to include the provision of providing urgent care (explained in more detail below); statutorily, hospitals are encouraged to develop "fast track" programs; insurers are required to provide the insured with information regarding appropriate venues for care and a list of alternative care sites for non-emergent care; insurers are required to develop community emergency department diversion programs; insurers are authorized to charge higher co-pays for services that rendered for non-emergent care, insurers are required to provide information on their website about appropriate utilization of emergency care services.

The bill permits county health departments and community health centers to treat non-emergency patients in conjunction with local hospital emergency room diversion programs. The bill requires DOH to include “urgent care” in an expansion program for community health centers and permits the centers to participate in community diversion programs.

This bill requires hospitals to report specific outpatient data and allows the Agency for Health Care Administration to use the data collected to determine and report the effectiveness of the policies implemented by this act.

STATE FINANCIAL MATTERS/FRS: SB 1650; Chapter #2004-71, Laws of Florida; Effective July 1, 2004; by Senators Wise and Lynn.

The bill revises both the defined benefit and defined contributions plans administered, respectively, by the Department of Management Services and the Board of Administration. Specifically, the bill provides the determination of the beneficiary of a deceased member of the defined contribution plan, defines “retiree” for purposes of the defined contribution plan, allows de minimus accounts to be cashed out, changes the dates of election to participate in the defined contribution plan, and revises the investment guidelines for the funds in the defined benefit plan.

PUBLIC RECORDS REVISER BILL: SB 1678; Chapter #2004-335, Laws of Florida; Effective October 1, 2004; by Senate Governmental Oversight and Productivity Committee and Senate State Administration Committee.

Rearranges the Public Records Act into topical sections. Transfers and alphabetizes all terms with definitions into one section. Defines the term "redact" to mean "...to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information." Repeals various sections but requirements remain in effect because they are simultaneously transferred to other sections of the act. Requires that when an agency's duty or responsibility is transferred to another agency or entity, the receiving agency or entity becomes the official records custodian. Designates the Executive Office of the Governor as the official records custodian when an agency or entity is dissolved. Specifies that any public officer who knowingly violates the provisions of this act is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree. Organizes public record penalty provisions pursuant to modern statutory law. Removes references to "general or special law" due to conflicts with the State Constitution. Reduces the retention time for various types of records such as the Office of Financial Regulation (OFR) examination reports, investigation records, and applications (from 10 years to three years). Provides that application records and related information compiled

by OFR be retained for at least two years. Removes language requiring the Office of Insurance Regulation (OIR) to reproduce each page of a public record in exact conformity with the original and allows OIR to keep electronic records. Removes antiquated language referring to programs no longer in existence and makes conforming changes.

MULTISERVICE SENIOR CENTERS: SB 1748; Chapter #2004-367, Laws of Florida; Effective June 24, 2004; by Senators Jones and Lynn.

The bill redefines the term "multi-service senior center" as a community facility that organizes and provides a broad spectrum of services, including health, mental health, social, nutritional, and educational services and recreational activities and facilities for persons 60 years of age or older.

The bill also appropriates $240,000 to the Department of Elderly Affairs (Department) to purchase automated external defibrillators (AED) for placement in multiservice senior centers. A multiservice senior center may purchase an AED from the Department for half of the cost of the AED. A multiservice senior center located in a rural community may request a free AED from the Department. Senior centers having an AED are required to ensure that their personnel are trained to use the device. The location of the AED must be registered with the local emergency medical services medical director.

The bill extends immunity under the Good Samaritan Act and the Cardiac Arrest Survival Act from civil liability to an employee or volunteer of a senior center who uses an AED to provide medical care.

DONATED FIREFIGHTING EQUIPMENT: SB 1764; Chapter #2004-368, Laws of Florida; Effective July 1, 2004; by Senators Lynn and Bullard.

The bill creates the "Good Samaritan Volunteer Firefighters' Assistance Act" to provide immunity from civil liability for a state agency or subdivision, including its officers, employees, and agents who are acting within the scope of their duties or functions, which donates qualified fire control or fire rescue equipment to a volunteer fire department. The immunity provided by the bill is from liability for personal injury, property damage, or death that is proximately caused, after the donation, by a defect in the equipment. This immunity, however, does not apply when: (a) the defect that proximately caused the injury, damage, or death is the result of malice, gross negligence, recklessness, or intentional misconduct or the result of alterations or modifications by the agency or subdivision after recertification of the donated equipment; or (b) the agency or subdivision is the manufacturer of the qualified equipment.

The bill also clarifies that nothing in the section is to be construed as waiver of sovereign immunity.

The bill defines the terms “authorized technician,” “qualified fire control or fire rescue equipment,” and “state agency or subdivision.” The bill applies to any action that accrues on or after July 1, 2004.

RISK MANAGEMENT BUDGET STABILIZATION FUND: HB 1841; Chapter #2004-239, Laws of Florida; Effective May 25, 2004; by Representative Brummer.

This legislation allows for a substantial savings in the cost of property insurance for state properties. By self-insuring up to $40 million, the state can save approximately $6-$9 million per year in premiums. Experience shows that the risk of claims above the current self-insurance reserve is low; however, provision is made to access the Budget Stabilization Fund in the event of an emergency. An emergency exists when uninsured losses exceed $2 million per occurrence or $5 million annual aggregate in a fiscal year.

WORKERS’ COMPENSATION: SB 1926; Chapter #2004-82, Laws of Florida; Effective July 1, 2004, by Senator Atwater and Lynn.

This bill implements the recommendations of the Joint Select Committee on Workers’ Compensation Rating Reform, created by Chapter 2003-413, Laws of Florida. The Select Committee was charged with studying insurance rating options that would promote greater competition and would encourage insurers to write workers’ compensation policies while protecting employers from rates that are excessive, inadequate, or unfairly discriminatory.

It amends current law to revise the standards for approval and disapproval of deviation filings for workers’ compensation rates to provide for disapproval of a filing if it results in premiums that are excessive, inadequate, or unfairly discriminatory. An approved rate deviation may be offered to only select policyholders of the insurer and does not have to be offered to all policyholders. This should make it easier for an insurer to get a deviation approved by the Office of Insurance Regulation (OIR), which in turn should encourage insurers to write more policies or encourage more insurers to join the Florida market.

The bill amends current law to exclude workers’ compensation policies from the 10 percent limitation consent to rate limitation, if the policy issued takes an employer out of the Florida Workers’ Compensation Joint Underwriting Association (FWCJUA). It also provides an additional exclusion from the 10-percent limitation for insurers who write a policy for an employer who has been

offered coverage by the FWCJUA. The exclusions provided by the bill are only valid for the first 3 years of the policy's coverage.

The bill requires OIR to submit an annual report to the Legislature evaluating competition in the workers' compensation insurance market, so the Legislature can determine whether any changes to the workers' compensation rating laws are warranted.

The bill requires each workers' compensation insurer to notify OIR in writing of a significant underwriting change that materially limits or restricts the number of policies or premiums written in this state.

STATE VEHICLES/LAW ENFORCEMENT: SB 1934; Chapter #2004-83, Laws of Florida; Effective July 1, 2004; by Senator Atwater and others.

This bill 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 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 bill 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 a reimbursement 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 is required to adopt rules for determining the reimbursement.

FLORIDA KIDCARE PROGRAM: SB 2000; Chapter #2004-1, Laws of Florida; Effective March 11, 2004, except as otherwise provided; by Senator Dockery and others.

The bill makes the following changes to the Florida KidCare program:

- Eliminates continuous enrollment and replaces it with no more than two 30-day open enrollment periods per fiscal year (September 1 – 30 and

January 1 – 30) on a first-come, first-served basis using the date the new open enrollment application is received.

- Provides an exception to the open enrollment period for the Children's Medical Services Network to enroll up to an additional 120 children based on disability criteria.
- Provides disenrollment procedures on a last-in, first-out basis, except for children enrolled in the Children's Medical Services network, based on a determination of insufficient funds.
- Clarifies eligibility requirements, effective July 1, 2004, to limit Title XXI eligibility to children under 19 years of age; requires proof of family income; and requires a statement from the applicant that employer insurance is not available, the potential enrollee is not covered or eligible for coverage under a family member's employer group health insurance plan, and the incremental cost to enroll the child.
- Provides for reserves to be established to assure transfers of children between program components, under conditions of cost neutrality, effective July 1, 2004.
- Provides for the withholding of benefits and for prosecution of an individual or applicant under certain circumstances, effective July 1, 2004.
- Requires coverage of dental services; provides that dental services may include those dental services provided to children under the Medicaid program; and removes the maximum cap of $750 per enrollee per year, effective July 1, 2004.
- Clarifies that the Agency for Health Care Administration is to contract, either directly or through the services of a third-party, with authorized insurers or providers of health care services for the provision of comprehensive insurance coverage for KidCare enrollees.
- Repeals obsolete language related to outreach programs operated by the Department of Health.
- Clarifies that the Florida Healthy Kids Corporation may provide benefits to legal aliens who do not qualify for Title XXI and to other children whose family pays the full costs of the premiums including any administrative costs.
- Requires the Auditor General to perform an analysis of ineligible children enrolled in the program for the purpose of making recommendations to prevent such enrollment.
- Clarifies that insurers under contract with the Florida Healthy Kids Corporation are the payors of last resort and that benefits must be coordinated with other third party payors.
- Provides an appropriation for Fiscal Year 2003-2004.

CONSUMER PROTECTION: SB 2038; Chapter #2004-370, Laws of Florida; Effective July 1, 2004, except as otherwise provided; by Senator Fasano.

PROPERTY AND CASUALTY INSURANCE

- Requires the Division of Consumer Services of the Department of Financial Services to designate an employee as a primary contact for consumers on sinkhole issues.
- Forbids an insurer from canceling or non-renewing a policy because of a single claim on a property insurance policy resulting from water damage, unless the insurer can demonstrate that the insured policyholder failed to take action to prevent a recurrence of damages as reasonably requested by the insurance company.
- Mandates that when an insurer refuses to provide coverage due to adverse underwriting information, the insurer must provide the applicant specific information on the reasons for the refusal to insure and inform the applicant how to obtain the loss underwriting if it is a basis for a refusal to insure.
- Requires a lender to reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy, if a lender fails to timely pay a premium. If the payment is not over 90 days overdue, the insurer must reinstate the insurance policy retroactive to the day of cancellation. 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 comparable, new policy for 2 years.
- Requires the insurer to pay for any consequential physical damage that is the result of repairs undertaken to repair or replace damage that was covered under the policy, unless the insurance policy says otherwise.
- Provides that, when a portion of a home must be repaired or replaced, the repair or replacement must include adjoining areas as necessary.
- Provides that industrial fire insurance policies are exempt from the requirement that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate differentials for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented.
- Requires the Florida State University Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study for a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance.

AUTO INSURANCE

- Allows businesses that sell personal accident and motor vehicle excess liability insurance to submit one application to the Department of Financial Services in order to obtain licenses for each location of the business.

- Establishes guidelines to apply to the adjustment and settlement of personal and commercial motor vehicle insurance claims.
- Provides specified consumer protections pertaining to: third-party claimants; motor vehicle repairs; replacement parts; adjustment and settlement of first-party motor vehicle total losses; settlements; partial losses; storage charges; and sales taxes.
- Specifies that, before an action may be brought against the Florida Automobile Joint Underwriting Association (FAJUA), the department and the FAJUA must have been given 90 days' written notice of the violation, and provides that the FAJUA may require from the 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 joint underwriting plan. The 90-day notice represents a 30-day increase over current law.

PERSONAL LINES PROPERTY AND CASUALTY INSURANCE

- Provides for a study by the Florida State University Department of Risk Management and Insurance on factors affecting costs and potential assessments on consumers of personal lines property and casualty insurance in this state and, in particular, in areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company.

CREDIT LIFE AND DISABILITY INSURANCE

- Allows credit life and disability insurers to use newly adopted disability and mortality tables to set reserves, and repeals the previous requirement that the minimum reserve for credit life and disability policies be the unearned gross premium.

PREMIUM FINANCE COMPANIES

- Eliminates the filing fee specified in s. 627.849, F.S., for submission of premium finance forms.
- Requires that, when a financed insurance contract is canceled, an 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. In turn, the committee substitute places a time requirement on the premium finance company to refund to the insured any refund due on the account within 15 days of the account being overpaid or, if the refund is sent or credited to the agent, return or credit the amount of the overpayment and notify the insured of the refunded amount.

REINSURANCE

- Provides that a single assuming insurer may use letters of credit to fund up to half of the trust fund and trusteed surplus required to be maintained under current law.

ADOPTION OF MORTALITY TABLES

- Allows the Financial Services Commission to adopt the latest revisions to the minimum standards for valuation of life insurance policies, produced by the National Association of Insurance Commissioners, by rule rather than having the standards adopted through legislation.

LOCAL GOVERNMENT SELF-INSURANCE FUNDS

- Provides that a local government self-insurance fund providing for workers' compensation benefit coverage must file a full statement of its financial condition, transactions, and affairs.

PUBLIC HEALTH: SB 2448; Chapter #2004-350, Laws of Florida; Effective July 1, 2004; by Senator Saunders.

Establishes within the Department of Health an Officer of Women's Health Strategy that reports directly to the Secretary of Health. Creates duties for the Officer of Women's Health Strategy that considers gender-specific health care needs of women and takes into account the distinct characteristics of women's health issues. Requires the Officer to review the state's insurance code as it relates to women's health issues. Creates an interagency Committee for Women's Health for the purpose of integrating women's health programs in current operating and service delivery structures. Comprises the committee of the heads or directors of state agencies, including, but not limited to: the Department of Health, the Agency for Health Care Administration, the Department of Education, the Department of Elderly Affairs, the Department of Corrections, the Office of Insurance Regulation of the Department of Financial Services, and the Department of Juvenile Justice.

Establishes a Governor's statewide conference on women's health, co-sponsored by the agencies participating in the Committee for Women's Health and other private organizations and entities impacting women's health in Florida. Requires the Officer of Women's Health Strategy to provide the Governor, the President of the Senate, and the Speaker of the House of Representatives a report with policy recommendations on women's health care needs by January 15 of each year. Requires the chief financial officer of MRI clinics that bill less than 15 percent of its scans to personal injury protection insurance, to ensure billings are not fraudulent.

FLORIDA HURRICANE CATASTROPHE FUND: SB 2488; Chapter #2004-27, Laws of Florida; Effective May 11, 2004, except as otherwise provided; by Senator Alexander.

The Florida Hurricane Catastrophe Fund (CAT Fund) was created after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The CAT Fund is a source of reimbursement to property insurers for excess losses due to hurricanes. The CAT Fund derives its revenue from actuarially determined "reimbursement premiums" paid by insurers. It has the ability to levy assessments against all property-and-casualty insurance premiums (other than workers' compensation) when reimbursement premiums and other fund resources are insufficient to cover the fund's obligations. Assessments are capped at 4 percent of premium with respect to losses from any one storm season and an absolute maximum of 6 percent of premium. Payouts are capped at $11 billion for losses from any one storm season, with provision for a higher cap after the fund is capable of paying $22 billion to cover losses from two storm seasons. The bill also adds several administrative and clarifying provisions.

The bill expands the capacity of the CAT Fund as follows:

- Creates an effective date of June 1, 2004.
- Increases capacity from $11 billion to $15 billion.
- Allows capacity to grow with exposure growth (the growth of insured values).
- Provides language that restricts the dollar growth in capacity to no greater than the dollar growth of the cash balance.
- Fully recharges the CAT Fund following a major event (creates $15 billion of subsequent season capacity which also grows over time).
- Provides a transitional provision which provides an option for insurers to select coverage for the year 2004-2005 based on a capacity of $11 billion and an aggregate insurance industry retention of $4.866 billion (similar to coverage before the law change).
- Resets the insurance industry aggregate retention (deductible) to $4.5 billion, which grows with exposure growth.
- Increases the emergency assessment authority to finance the increased capacity from 4 percent per year and 6 percent aggregate to 6 percent /10 percent.
- Provides a 3-year exclusion from emergency assessments for medical malpractice insurers.
- Changes the way insurers recoup the emergency assessments from their policyholders.
- Adds surplus lines to the emergency assessment base.
- Clarifies emergency assessments may be used for debt service coverage and may also be used to refinance debt.

The bill also addresses a number of administrative issues designed to allow the CAT Fund to operate more efficiently, which include the following:

- Clarifies mitigation appropriations are to be based on the most recent fiscal year-end audited financial statements.
- Increases the exposure limit for insurers who opt to be exempted from participation from $500,000 to $10 million.
- Broadens the selection of reinsurers.
- Provides for rulemaking to allow the charging of interest on late remittances.
- Allows for the exclusion by rule of deductible buy-back and commercial residential excess policies.
- Clarifies how excess recoveries will be allocated between accounts of the Citizens Property Insurance Corporation (Citizens).
- Provides greater flexibility for covering additional living expenses.
- Adds a definition of "corporation" to avoid confusion when referring to the Florida Hurricane Catastrophe Fund Finance Corporation and Citizens.
- Clarifies the publication of borrowing capacity estimates and notification requirements to insurers.
- Deletes language requiring recoveries from reinsurers and the CAT Fund to not exceed 100 percent of the insurer's losses.
- Changes language related to auditing requirements.

MONEY TRANSMITTERS: SB 2562; Chapter #2004-85, Laws of Florida; Effective May 21, 2004; by 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 Chapter 560, F.S. The 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.
- 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 price 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.

AGENTS/INSURANCE: SB 2588; Chapter #2004-374, Laws of Florida; Effective July 1, 2004; by Senator Diaz de la Portilla.

This bill deletes certain statutory restrictions on non-resident insurance agents licensed in Florida, in response to the recent U.S. District Court ruling that such provisions are unconstitutional to the extent that they deny to nonresident insurance agents the same rights and privileges that they afford to resident insurance agents. The bill makes the following changes:

- Deletes the requirement that all insurance policies written under a nonresident general lines agent's license be countersigned by an agent who is a resident of this state.
- 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.

CONTINUING EDUCATION FOR INSURANCE AGENTS

The bill eliminates a requirement that continuing education (CE) classes for insurance agents (life, health and property and casualty agents) include instruction on the subject of unauthorized entities that sell insurance. The eliminated provision required a minimum of 2 hours of CE every 2 years as part of the minimum 24 hours of CE every 2 years.

PERSONAL LINES AGENTS

Creates a new type of insurance agent license for a “personal lines agent” to mean a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes. It amends the scope of Chapter 626, F.S., (including licensing procedures and general requirements for insurance representatives; general lines agents; customer representatives; services representatives; and managing general agents) to clarify that provisions of Chapter 626, F.S., that apply to general lines agents and applicants also apply to personal lines agents and applicants, except where otherwise provided. It provides that an examination for licensure as a personal lines agent consist of 100 questions and is limited in scope to the kinds of insurance transacted under a personal lines license. Requires specified pre-licensing education requirements for personal lines agents and general lines agents that pertain to completion of classroom courses, correspondence courses, or employment experience. Provides that the Department of Financial Services is not required to begin issuing personal lines insurance agent licenses on the effective date of this act, if its licensing systems have not been changed to accommodate the new license.

BRANCH OFFICES

Amends s. 626.747, F.S., requiring that one licensed general lines agent, who is appointed to represent one or more insurers, be located at each branch office including the headquarters location.

CITIZENS PROPERTY INSURANCE CORPORATION

Amends s. 627.351, F.S., related to the Citizens Property Insurance Corporation (Citizens), to provide that a salaried employee of Citizens who performs policy administrative services *after* the effectuation of a policy is not required to be a licensed insurance agent under s. 626.112, F.S.

LIMITED LICENSES

Amends s. 626.321, F.S., to provide 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 a license; is required to obtain a license for each office; and is required to pay applicable license fees. 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. Statutory cross-reference is also corrected. These provisions are also contained in SB 2994, as passed by the Legislature.

NOTICE OF WORKERS’ COMPENSATION DRUG FREE WORKPLACE DISCOUNT

Amends s. 627.0915, F.S., to require an insurer who offers a workers' compensation rate plan that provides a drug-free workplace premium discount to notify the employer of the discount's availability at the time of the initial quote for the policy and at the time of each renewal of the policy.

MUTUAL INSURANCE HOLDING COMPANY

Amends s. 628.709, F.S., related to the conversion of a mutual insurer to a stock insurer, through the formation of a mutual insurance holding company. Currently all of the initial shares of the capital stock of the insurance company which reorganized as a subsidiary insurance company must be issued either to the mutual insurance holding company, or to an intermediate holding company which is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the subsidiary insurance company must become membership interests in the mutual insurance holding company. Policyholders of the subsidiary insurance company which was formerly the mutual insurer must be members of the mutual insurance holding company. At the time of formation, policyholders of any other subsidiary insurance company of the mutual insurance holding company may not be members of the mutual insurance holding company unless they are policyholders of a subsidiary which was a mutual insurer which merged with the holding company. The amendment 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 in connection with a conversion from a mutual insurance company to a mutual insurance holding company with subsidiary stock insurer.

INSURERS REHABILITATION AND LIQUIDIATION ACT

The bill amends provisions in Part I of Chapter 631, F.S., the Insurers Rehabilitation and Liquidation Act ("the act"). The act governs the receivership process for insurance companies in Florida. The Office of Insurance Regulation (OIR) oversees active insurance companies and monitors their financial health. When insurers experience severe financial difficulty and are impaired or insolvent, they are subject to a delinquency proceeding such as rehabilitation, liquidation, reorganization or conservancy whereby the insurer is placed into receivership. Federal law specifies that insurance companies cannot file for bankruptcy. Thus the receivership provisions of Chapter 631, F.S., are the sole means by which an insurance company may be placed into receivership. A delinquency proceeding is initiated when the director of the OIR notifies the Department of Financial Services (DFS) that a determination has been made that ground(s) exist for initiating a delinquency proceeding against an insurer. The DFS may then commence the delinquency proceeding by applying to the court for an order directing the insurer to show cause why the DFS should not be the

receiver of the insurance company pursuant to receivership proceedings. A full hearing is held and the court either grants or denies the application. The DFS may also commence a delinquency proceeding by applying to the court by petition for the entry of a consent order of conservation, rehabilitation, or liquidation.

Rehabilitation and liquidation are the most commonly utilized delinquency proceedings by the Division of Rehabilitation and Liquidation (division) of the Department of Financial Services. Each seeks to apportion equitably any unavoidable losses and to maximize the recovery of assets for the benefit of policyholders, creditors, the public, and other claimants of the insurer. In rehabilitation, the DFS takes possession of the property of the insurer (referred to as a receivership) and conducts the insurer's business in such a way as to attempt to correct the financial condition of the company. If the rehabilitation is successful, the insurance company regains possession of its property and continues operations. However, if the rehabilitation is unsuccessful, then liquidation is likely to occur. An insurer is subject to liquidation if it is, or is about to become, insolvent. In liquidation the DFS takes possession of all property and assets of the insurer and gives notice to all creditors who have claims against the insurer to present claims. The outstanding claims against the insurer are settled and at the end of the liquidation process the insurance company ceases to exist because it has no assets with which to operate.

In both rehabilitation and liquidation, receivership estates are created whereby the receiver (the DFS) receives control over the insurer and its assets. The division administers the receivership estates. Generally, all receivership expenses are paid for out of the assets of the receivership estate (the insurance company's assets). The receiver has authority to hire outside attorneys, accountants, and other experts to audit the accounts and policies of the impaired insurer, though the court must approve the use of any company funds to hire professionals to aid in the receivership process.

Once the division successfully places an insurer into receivership, staff and any contractors hired by the division spend their time marshalling the assets of the company and paying claims. This process includes selling real property and other assets of the company, as well as prosecuting lawsuits against negligent actuaries, auditors, company directors and officers of the insurer. The division also collects any reinsurance that is due, which is often of the insurer's largest assets. Representatives from the division indicate that receivership is often a long-term undertaking that can last over 10 years.

The bill also makes the following changes:

- Amends s. 631.021, F.S., to give domiciliary courts that acquire jurisdiction over persons subject to s. 631.021, F.S., in an insurance delinquency proceeding exclusive jurisdiction except as limited by the section.

- 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. Additional sanctions may be imposed if appropriate.

- 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. Arbitration must be conducted pursuant to the American Arbitration Association Commercial Arbitration Rules and Chapter 682, F.S. Venue is in Leon County, Florida. Disputes must be submitted to a panel of three arbitrators, with each party choosing one arbitrator, and the third being selected by the two arbitrators chosen by the parties.

- The arbitrators must be selected from a list of qualified arbitrators with 10 years experience in the insurance industry. The legislation also contains a section regarding "mediators," stating if the parties cannot agree on a mediator, each party shall select one from a list approved by the receivership court, but the reference to "mediator(s)" is in error and should refer to "arbitrator(s)."

- Amends s. 631.261, F.S., related to the current law that provides that a transfer of property by an insurer is voidable if it is made within 4 months

prior to the commencement of any delinquency proceeding "with the intent" of giving any creditor a preference or of enabling the creditor to obtain a greater percentage of his or her debt than any other creditor of the same class. The bill eliminates the intent requirement so that any transfer within this 4 month period is voidable if it gives any creditor a greater percentage of debt than any other creditor of the same class.

- A transfer or lien upon the property of an insurer or its affiliate that is made between 4 months to 1 year prior to the commencement of a delinquency proceeding under the chapter is void if the transfer or lien benefited a director, officer, employee, stockholder, member, subscriber, affiliate, managing general agent, insider, of the insurer, or a relative of any of the foregoing. A transfer is not made or created until the insurer or its affiliate has acquired rights in the transferred property.

- Amends s. 631.262, F.S., to state that a transfer made within 1 year of a successful petition for a delinquency proceeding is not made until the insurer or affiliate has acquired rights in the transferred property. Conforms to changes made to s. 631.261, F.S.

- Amends s. 631.262, F.S., to state that a transfer made after a successful petition for a delinquency proceeding is not made until the insurer or affiliate has acquired rights in the transferred property. Conforms to changes made to s. 631.261, F.S.

INSURANCE GUARANTY ASSOCIATIONS

The changes to ss. 631.54 and 631.904, F.S., provide that neither the Florida Insurance Guaranty Association (FIGA) or the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) would 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.

WARRANTY ASSOCATIONS

The bill 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. The sales representative must offer the same rebate to all similarly situated individuals.

The bill 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.

The bill amends s. 627.4133, F.S., to provide that the cancellation of a workers' compensation policy and employer's liability insurance policy, at the request of the policyholder, would be effective on the date the carrier sends the notification to the insured rather than be subject to the 30 days notice requirement of s. 440.42(3), F.S. This provision is also included in SB 2994, as passed by the Legislature.

INSURANCE AGENT LICENSE SUSPENSION OR REVOCATION

Amends s. 626.641, F.S., to require the completion of continuing education (CE) courses for the reinstatement of an insurance agent's license, appointment, or eligibility, after a second suspension. The Department of Financial Services or the Office of Insurance Regulation is authorized to prescribe and approve the CE courses.

This legislation also reenacts s. 626.935(4)(a), F.S., which applies the requirements of s. 626.641, F.S., (amended in the section above) to apply that section to surplus lines agent's licenses.

INSURANCE/PUBLIC CONSTRUCTION: SB 2696; Chapter #2004-377, Laws of Florida; Effective October 1, 2004; by Senator Atwater.

The bill 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. 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 bill exempts from these restrictions OCIPs in connection with road projects of the Department of Transportation, existing projects that are the subject of ongoing OCIPs, or projects advertising bids before October 1, 2004.

The bill 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 bill 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 bill defines an "owner-controlled insurance program" as a consolidated insurance program or series of insurance policies issued to a public agency that may provide one or more specific types of insurance coverage for any contractor or subcontractor working at specified or multiple contracted work sites of a public construction project. The types of insurance are general liability, property damage, workers' compensation, employer's liability, builder's risk, or pollution liability coverage. An OCIP is commonly cited as a "wrap-up" insurance policy.

The bill 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 bill also does not restrict a business in the private sector from mandating that its contractors or subcontractors participate in an OCIP or CCIP.

BANKING: SB 2960; Chapter #2004-340, Laws of Florida; Effective July 1, 2004; by Senator Alexander.

This bill makes various changes to the laws regulating financial institutions in Florida, based upon recommendations made jointly by the Office of Financial Regulation (OFR) and the Florida Bankers Association. The bill makes the following changes:

- 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 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 90 days within which a customer must assert against a financial institution an unauthorized signature or alteration 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 one-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 repealing 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.

DEPARTMENT OF FINANCIAL SERVICES: SB 2994; Chapter #2004-390, Laws of Florida; Effective July 1, 2004, except as otherwise provided; by Senators Posey and Clary.

This bill transfers the authority to license and regulate insurance adjusters from the Office of Insurance Regulation (OIR) to the Department of Financial Services (DFS). The OIR currently licenses and regulates insurance companies and other risk-bearing entities. The DFS currently licenses and regulates insurance agents. The Division of Agents and Agency Services of the DFS currently perform the administrative functions related to the licensure and regulation of insurance adjusters based on an informal agreement with the OIR as the administrative functions are similar to those performed for insurance agents.

The bill allows the Chief Financial Officer (CFO) to also be known as the “Treasurer”. Further, the bill allows the Director of the Office of Insurance Regulation to also be known as the “Commissioner of Insurance Regulation” and allows the Director of the Office of Financial Regulation to also be known as the “Commissioner of Financial Regulation.” The bill provides that the Director of the

Office of Insurance Regulation, rather than the Chief Financial Officer, will make appointments to: 1) the board of directors for the Florida Employee Long-Term Care Plan Act; 2) the State Comprehensive Health Information System Advisory Council; 3) the Florida Commission on Hurricane Loss Projection Methodology; and 4) the board of the Small Employer Health Reinsurance Program.

The bill also:

- Clarifies that the State Deferred Compensation Program is funded in whole or in part from fees charged by investment providers to plan participants. Continues current law and clarifies that State University System employees are eligible to continue participation in the State Deferred Compensation Program.
- Adds the Commissioner of Agriculture to the Financial Management Information Board and to the board's coordinating council.
- Extends the sunset date for the Enterprise Resource Planning Integration Task Force from July 1, 2004 to July 1, 2008.
- Allows for a centralized financing process under the CFO for the financing of Guaranteed Energy Performance Savings Contracts, similar to the process currently used in the Consolidated Equipment Financing Program.
- Clarifies the persons and entities that are not subject to the Florida Deceptive and Unfair Trade Practices Act. Provides an exemption to the act pertaining to commercial real property and provides an exemption for specific causes of action concerning the failure to maintain real property if the Florida Statutes require the owner to comply with specified building codes and provide a cause of action for failure to maintain property.
- Provides authority to the DFS to contract with entities that receive state funds for accounting and payroll services. Requires all remuneration received to be deposited in the General Revenue Fund. The DFS is to request cost recovery of expenses from the Legislative Budget Commission.
- Changes incorrect references to the Department of Financial Services and the Office of Insurance Regulation.

PROPERTY AND CASUALTY INSURANCE

- Requires the Division of Consumer Services of the DFS to designate an employee as a primary contact for consumers on sinkhole issues.
- Forbids an insurer from canceling or non-renewing a policy because of a single claim on a property insurance policy resulting from water damage, unless the insurer can demonstrate that the insured policyholder failed to take action to prevent a recurrence of damages as reasonably requested by the insurance company.
- Mandates that when an insurer refuses to provide coverage due to adverse underwriting information, the insurer must provide the applicant specific information on the reasons for the refusal to insure and inform the

applicant how to obtain the loss underwriting if it is a basis for a refusal to insure.

- Requires a lender to reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy, if a lender fails to timely pay a premium. If the payment is not over 90 days overdue, the insurer must reinstate the insurance policy retroactive to the day of cancellation. 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 comparable, new policy for 2 years.
- Requires the insurer to pay for any consequential physical damage that is the result of repairs undertaken to repair or replace damage that was covered under the policy, unless the insurance policy says otherwise.
- Provides that, when a portion of a home must be repaired or replaced, the repair or replacement must include adjoining areas as necessary.
- Provides that industrial fire insurance policies are exempt from the requirement that a residential property insurance rate filing must include actuarially reasonable discounts, credits, or other rate differentials for properties on which fixtures or construction techniques that reduce windstorm loss have been installed or implemented.
- Requires the Florida State University Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study for a potential Florida Sinkhole Insurance Facility and other matters related to the affordability and availability of sinkhole insurance.

AUTO INSURANCE

- Allows businesses that sell personal accident and motor vehicle excess liability insurance to submit one application to the DFS in order to obtain licenses for each location of the business.
- Establishes guidelines to apply to the adjustment and settlement of personal and commercial motor vehicle insurance claims.
- Provides specified consumer protections pertaining to: third-party claimants; motor vehicle repairs; replacement parts; adjustment and settlement of first-party motor vehicle total losses; settlements; partial losses; storage charges; and sales taxes.
- Specifies that, before an action may be brought against the Florida Automobile Joint Underwriting Association (FAJUA), the department and the FAJUA must have been given 90 days' written notice of the violation, and provides that the FAJUA may require from the 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 joint underwriting plan. The 90-day notice represents a 30-day increase over current law.

PERSONAL LINES PROPERTY AND CASUALTY INSURANCE

- Provides for a study by the Florida State University Department of Risk Management and Insurance on factors affecting costs and potential assessments on consumers of personal lines property and casualty insurance in this state and, in particular, in areas in which coverage is underwritten by the Citizens Property and Casualty Insurance Company.

CREDIT LIFE AND DISABILITY INSURANCE

- Allows credit life and disability insurers to use newly adopted disability and mortality tables to set reserves, and repeals the previous requirement that the minimum reserve for credit life and disability policies be the unearned gross premium.

PREMIUM FINANCE COMPANIES

- Eliminates the filing fee specified in s. 627.849, F.S., for submission of premium finance forms.
- Requires that, when a financed insurance contract is canceled, an 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. In turn, the bill places a time requirement on the premium finance company to refund to the insured any refund due on the account within 15 days of the account being overpaid or, if the refund is sent or credited to the agent, return or credit the amount of the overpayment and notify the insured of the refunded amount.

REINSURANCE

- Provides that a single assuming insurer may use letters of credit to fund up to half of the trust fund and trusteed surplus required to be maintained under current law.

ADOPTION OF MORTALITY TABLES

- Allows the Financial Services Commission to adopt the latest revisions to the minimum standards for valuation of life insurance policies, produced by the National Association of Insurance Commissioners, by rule rather than having the standards adopted through legislation.

LOCAL GOVERNMENT SELF-INSURANCE FUNDS

- Provides that a local government self-insurance fund providing for workers' compensation benefit coverage must file a full statement of its financial condition, transactions, and affairs.

WORKERS' COMPENSATION

- Provides for the Division of Workers' Compensation to remove a stop work order once provisions for payment of any fines or penalties have been arranged with the Division.
- Provides clarification that cancellation of a workers' compensation policy is effective upon notification of the Division by the carrier.

UNCLAIMED PROPERTY

- Requires electronic reporting of property by holders that have unclaimed property that belongs to 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 DFS.
- 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 DFS, or not abiding by a written

agreement entered into with the DFS, criminal conduct, and other grounds.

- Authorizes the DFS 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 DFS to impose penalties for willful failure to report property to the DFS 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 DFS 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 DFS to gain access to digital driver's license images held by the Department of Highway Safety and Motor Vehicles. 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.

ANNUITY INVESTMENTS BY SENIORS

This legislation is based on model regulations adopted by the National Association of Insurance Commissioners (NAIC), which is intended to help protect senior consumers (age 65 or older) when they purchase or exchange annuity products. 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, so that:

- A reasonable determination has been 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.
- A reasonable effort has been made by the agent or insurer 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.
- If a senior consumer refuses to provide relevant information, or fails to provide complete or accurate information, to an agent or insurer, but insists on entering into an annuity transaction regardless of the agent's or insurer's recommendation, the actions of such agent or insurer will be considered reasonable based on the information provided at the time.
- An agent or insurer is required to actively supervise compliance with the provisions of this regulation, either through internal means or contracting with a third party to assure necessary oversight.
- Information records that formed the basis for the recommendation of an annuity transaction must be kept on file by the insurer or agent for 5 years after the transaction is completed, for review by the OIR or the DFS, respectively.
- Corrective action may be ordered by the OIR or the DFS upon determination that a senior consumer has been harmed by a violation of this regulation.

BANKING

This language is also contained in SB 2960 which was passed by the Legislature and makes various changes to the laws regulating financial institutions in Florida, based upon recommendations made jointly by the Office of Financial Regulation (OFR) and the Florida Bankers Association. The bill:

- 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 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 90 days within which a customer must assert against a financial institution an unauthorized

signature or alteration 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.

VIATICALS

- Creates Chapter 626.99245, F.S. regulating viatical settlement providers and the sale, purchase and offering of viatical settlement contracts. Specifying that this regulation is under the sole purview of the Office of Insurance Regulation.