

## **FINANCIAL MATTERS**

### **SB 318 — Criminal Usury Laws/Discriminatory Language**

by Senators Sobel and Rich

This bill (Chapter 2009-22, L.O.F.) removes the terms “shylock” and “shylocking” from s. 687.071, F.S., Florida’s criminal usury/loan sharking statute, and s. 772.102, F.S. The removed terms are viewed as offensive and discriminatory towards Jewish people. The removed terms were not vital to the application of the statutes from which they were removed so the bill will have no substantive impact on the effect and application of ss. 687.071 and 772.102, F.S.

These provisions were approved by the Governor and take effect July 1, 2009.

*Vote: Senate 39-0; House 115-0*

### **CS/CS/CS/HB 569 — Financial Instruments**

by Finance and Tax Council; General Government Policy Council; Insurance, Business, and Financial Affairs Policy Council; and Rep. Roberson (CS/CS/SB 732 by Policy and Steering Committee on Ways and Means; Governmental Oversight and Accountability Committee; and Senator Smith)

#### ***Financial Instruments and Devices Issued in Payment of Wages or Salary***

Currently ss. 17.57 and 218.415, F.S., allow the Chief Financial Officer and local governments, respectively, to invest surplus public funds in certificates of deposit. This bill provides that both entities may now invest in any “financial deposit instruments insured by” the Federal Deposit Insurance Corporation (FDIC). These instruments include money market accounts, savings accounts, certificates of deposit, and other deposit instruments that are FDIC insured.

Section 532.01, F.S. provides for devices, such as a check, that may be used “in payment of wages or salary” so long as the device is “negotiable and payable in cash.” This bill expands the list of devices to include payroll debit cards.

#### ***The Florida Hurricane Catastrophe Fund (FHCF)***

Section 215.555, F.S. provides for the Insurance Capital Buildup Incentive Program within the FHCF. The bill extends for three years the sale of \$10 million in optional additional FHCF coverage below the fund’s mandatory coverage retention to limited apportionment companies and companies qualifying for the program in 2008. This bill further provides that this coverage is available before the mandatory coverage in the event of reimbursement.

If approved by the Governor, these provisions will become law on July 1, 2009.

*Vote: Senate 40-0; House 116-0*

### **HB 379 — Florida Uniform Principal and Income Act**

by Rep. Wood (SB 1222 by Senator Richter)

The Florida Uniform Principal and Income Act provides a means for allocating monies held in trust between principal and income where the terms of the trust do not provide for such allocation. This bill amends allocation provisions for payments from deferred compensation plans, annuities, and retirement plans or accounts in order to allow marital deduction trusts to continue to receive favorable federal estate tax treatment.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 40-0; House 112-0*

### **CS/CS/HB 483 — Investor Protection**

by General Government Policy Council; Insurance, Business, and Financial Affairs Policy Committee; and Rep. Grady and others (CS/SB 1126 by Judiciary Committee and Senators Richter, Ring, Storms, Oelrich, Lynn, Crist, and Aronberg)

The bill provides greater enforcement tools and regulatory oversight for securities transactions in Florida, which will increase the state's effectiveness in combating securities fraud. The bill provides the following changes:

- Authorizes the Office of Statewide Prosecution to initiate and pursue investigations for securities transactions and money laundering and to prosecute criminal violations;
- Authorizes the Attorney General to investigate and bring actions against violators of the fraud provisions of ch. 517, F.S., the Securities and Investors Protection Act. The Attorney General may seek injunctive relief, restitution, and civil penalties. Currently, the Office of Financial Regulation (OFR) has the jurisdiction under ch. 517, F.S.;
- Requires the OFR to adopt disciplinary guidelines for persons who violate ch. 517, F.S.;
- Increases the cap on administrative fines from \$5,000 to \$10,000 per violation; and
- Authorizes the emergency suspension of an individual's securities registration under ch. 517, F.S., for failure to promptly provide books and records to the OFR.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 40-0; House 114-0*

### **CS/SB 1534 — Money Services Businesses**

by Finance and Tax Committee and Senators Storms and Fasano

Money services businesses offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment.

The bill clarifies terminology in ch. 560, F.S., which regulates money services businesses. Currently, fees for authorized vendors are assessed by the Office of Financial Regulation (office) on a per location basis. The bill modifies s. 560.141, F.S., to reflect current administrative practices of the office relating to license applications. The bill does not impose any new fees.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 40-0; House 117-0*

### **CS/CS/SB 2226 — Mortgage Brokering and Mortgage Lending**

by Judiciary Committee; Banking and Insurance Committee; and Senators Fasano, Lynn, and Richter

In response to the recent turmoil in the housing market and reports of abusive lending practices in Florida as well as other states, the federal Housing and Economic Recovery Act was enacted on July 30, 2008. Title V of this act is titled “The Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (S.A.F.E.). The intent of S.A.F.E. is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements for loan originators. The act creates a national database for consumers to inquire about the credentials and disciplinary history of loan originators, mortgage brokers, and mortgage lenders.

The bill implements the minimum standards of S.A.F.E. and provides increased licensure and enforcement authority for the Office of Financial Regulation (OFR) to regulate loan originators, mortgage broker businesses, and non-depository, mortgage lender businesses. The bill provides the following changes in the regulation of loan originators, mortgage brokers and mortgage lenders:

- Establishes licensure requirements for individuals that work for mortgage brokers or mortgage lenders.
- Requires licensure and renewal on an annual, rather than biennial, basis.
- Prohibits licensure of a person who has had a felony conviction during the seven-year period preceding the date of the application (or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering).
- Authorizes the OFR to obtain and review credit reports of an applicant or licensee on annual basis to determine if a person demonstrates financial responsibility for purposes of licensure. The applicant is provided an opportunity to provide further information to mitigate adverse items contained in the credit report.
- Requires annual criminal background checks of licensees.
- Establishes a guaranty fund to compensate persons suffering monetary damages due to a violation of ch. 494, F.S., by a licensed mortgage broker or mortgage lender. Fees

assessed on loan originators, mortgage brokers and mortgage lenders finance the guaranty fund.

The bill also provides for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

If approved by the Governor, these provisions take effect July 1, 2009, except as otherwise provided.

*Vote: Senate 39-0; House 119-0*

## **HEALTH INSURANCE**

### **CS/SB 1122 — Health Insurance/Payment of Benefits/Claims Forms**

by Health Regulation Committee and Senators Gaetz, Sobel, Oelrich, Fasano, Bennett, Lynn, and Altman

The bill requires insurers to make payments directly to any provider not under contract with the insurer if the insured makes a written assignment of benefits. Under current law, direct payment by an insurer is only required for emergency services and care. The bill provides that OPPAGA is to complete a report to the President of the Senate and the Speaker of the House by March 1, 2012, and if that report finds that the act has caused a net loss in physicians in the preferred provider plan network of the state group health plan, the provisions of the act will be repealed.

This bill substantially amends s. 627.638, F.S.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 31-7; House 102-11*

### **CS/CS/HB 675 — Medicare Supplement Policies**

by General Government Policy Council; Health and Family Services Policy Council; and Rep. Workman and others (CS/CS/CS/SB 1022 by Policy and Steering Committee on Ways and Means; Health Regulation Committee; Banking and Insurance Committee; and Senators Altman, Fasano, Detert, Rich, Hill, Siplin, and Lynn)

The bill requires insurers that provide Medicare supplement policies (Medigap) to issue such policies on a guaranteed-issue basis to persons in Florida who are: under 65 years of age and eligible for Medicare due to a disability determination or diagnosis of end-stage renal disease (ESRD). Qualified Medicare beneficiaries must be enrolled in Medicare Part B and must purchase Medigap coverage within 6 months after initial Medicare eligibility or within 2 months following termination of coverage under a group health insurance policy.

The bill allows Medigap insurers that already offer coverage to Medicare beneficiaries under the age of 65 a process to make a one-time rate schedule change without activating the 5-year

lockout period required in s. 627.410(6)(e)2., F.S. The authorized rate change allows insurers to address concerns in the premium relativities between the premium class, which includes the under age 65 and the balance of the block, by redefining the age bands of the premium classes. A second rate change provided in the bill allows an insurer to address problems in the premium relativities between the premium class, which includes the under age 65 individual, and the balance of the block, in the first rate filing in 2012. This provision is intended to allow a company to consider the experience data for the premium class, including the under age 65 individuals, on a much more credible basis than the current rules authorize.

If approved by the Governor, these provisions take effect October 1, 2009.

*Vote: Senate 39-0; House 115-0*

## **MISCELLANEOUS**

### **CS/CS/SB 926 — Cemeteries**

by Higher Education Appropriations Committee; Banking and Insurance Committee; and Senators Altman, Oelrich, Rich, King, and Dockery

This bill provides for an exemption from the rules pertaining to cemeteries under the Florida Funeral, Cemetery, and Consumer Services Act (Act) to allow for a columbarium consisting of five acres or less to be located on the main campus of any of the eleven state universities. A university or direct-support organization which establishes the columbarium must ensure that it is constructed and maintained in a manner consistent with the Act. The bill allows containers and caskets used in cremation to be made of chemically “consumable” materials to allow for the use of a new cremation process.

If approved by the Governor, these provisions will become law on July 1, 2009.

*Vote: Senate 39-0; House 116-0*

### **CS/SB 198 — Firefighter Memorial Flag**

by Banking and Insurance Committee and Senators Justice, Smith, Joyner, Bennett, Lawson, Fasano, Storms, Diaz de la Portilla, Gaetz, Rich, Dockery, Baker, Deutch, Lynn, Jones, King, Wise, Detert, Gelber, Wilson, Aronberg, Dean, Peaden, Oelrich, Constantine, Hill, and Crist

This bill requires the Division of State Fire Marshal within the Department of Financial Services (Department) to design, create, and distribute an official state firefighter memorial flag. The flag will honor firefighters who have died in the line of duty. The flag may be displayed at fire stations, firefighter memorials, funeral services, and otherwise as the State Fire Marshal deems proper. The bill mandates a specific design for the flag which includes the Great Seal of the State of Florida and the phrase “Florida Fallen Firefighters” over a blue background. The bill grants the Department authority to adopt rules relating to the production and distribution of the flag.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 38-0; House 118-0*

### **CS/SB 2282 — First-Responder Services**

by Banking and Insurance Committee and Senators Bennett, Lynn, and Lawson

The legislation prohibits counties and cities from imposing fees or obtaining reimbursement for costs or expenses incurred for services provided by first responders (law enforcement officers, firefighters, emergency medical technicians or paramedics), including volunteer first responders, which include costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident. The bill provides exceptions for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by ambulance services.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 39-0; House 102-15*

### **HB 741 — Insurance Premium Financing**

by Rep. Patterson and others (SB 1432 by Senator Storms)

This bill provides that the provisions in parts XV and XVI of chapter 627 of the Florida Insurance Code do not apply to any discount granted an insured if the insured pays the premium for the entire policy term at the term's inception so long as the discount is actuarially justified and approved by the Office of Insurance Regulation (OIR). The bill further provides that no actuarially justified discount approved by the OIR is a component of or related to premium financing.

If approved by the Governor, these provisions will become law on July 1, 2009.

*Vote: Senate 39-0; House 118-0*

### **CS/CS/SB 2252 — Professional Liability Claims**

by General Government Appropriations Committee; Banking and Insurance Committee; and Senator Baker

Section 627.912, F.S., requires that insurers providing professional liability coverage to specified health care providers or to members of The Florida Bar must report to the Office of Insurance Regulation (OIR) any claim or action for damages due to injuries claimed to have been caused by error, omission, or negligence in the performance of the insured's professional services, if the claim results in a settlement, final judgment, or disposition of a medical malpractice claim with no indemnity payment on behalf of the insured.

The bill defines the term “claim” for reporting purposes, requires that the claim be in writing, and specifies the circumstances under which an insurer is to report a claim to the OIR. Under the legislation, an insurer will be obligated to report a claim when any of the following occurs:

- Upon the entry of a judgment against the provider;
- Upon the execution of a settlement;
- Upon the final payment of indemnity on behalf of any provider for damages alleged in the performance of professional services; or
- Upon a final disposition of a claim for which no indemnity payment was made, but for which loss adjustment expenses exceeded \$5,000.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 40-0; House 119-0*

### **CS/SB 2158 — Public Records Exemption for the Florida Insurance Guaranty Association**

by Governmental Oversight and Responsibility Committee and Senator Haridopolos

The Florida Insurance Guaranty Association (FIGA) services the claims of insurers that have become insolvent. This bill creates a public records exemption for the following records of FIGA: claim files; medical records that are part of a claims file and other medical information relating to the claimant; and information relating to matters covered by privileged attorney client communications.

If approved by the Governor, these provisions will become law on July 1, 2009.

*Vote: Senate 39-0; House 119-0*

### **CS/CS/HB 845 — Self-Insurance Funds**

by General Government Policy Council; Insurance, Business, and Financial Affairs Policy Committee, and Rep. Drake and others (CS/CS/CS/SB 1138 by Policy and Steering Committee on Ways and Means; Higher Education Committee; Communications, Energy, and Public Utilities Committee; and Senator Gaetz)

The bill requires an application for workers’ compensation coverage issued by a group self-insurance fund to contain a notice in 10-point boldface type that it is a fully assessable policy and that, if the fund is unable to pay its obligations, policyholders must contribute, on a pro rata earned premium basis, the money necessary to meet any unfilled obligations.

The legislation authorizes any two or more electric cooperatives to operate a self-insurance fund for pooling and spreading liabilities of group members in securing payment of benefits for workers’ compensation purposes. The legislation establishes standards for these electric cooperative self-insurance funds including requiring members to be jointly and severally liable for the obligations of the fund; maintain excess insurance coverage and reserves; subscribe to a

rating organization; employ an independent certified public accountant; limit membership to Florida electric cooperatives; provide members with a specified disclosure statement and require payment of premium taxes. The bill also exempts the electric cooperative self-insurance fund and the independent educational institution self-insurance fund from being members of the Florida Workers' Compensation Insurance Guaranty Association.

The bill changes the financial data reporting period for administrators of an association representing health care providers, administrators of a pooled governmental self-insurance program or of a university from a calendar year to a fiscal year and provides reporting deadlines.

If approved by the Governor, these provisions take effect July 7, 2009.

*Vote: Senate 39-0; House 117-0*

## **PROPERTY INSURANCE**

### **CS/CS/SB 714 — Condominiums**

by General Government Appropriations Committee; Regulated Industries Committee; and Senators Jones, Fasano, and Ring

This bill revises and clarifies the property insurance and other requirements of condominium associations and condominium unit owners under ch. 718, F.S., known as the Condominium Act. The legislation corrects inconsistencies with terms used under the Insurance Code and repeals certain insurance requirements placed on condominium unit associations and owners. Specifically, the bill contains the following provisions:

- Creates a provision under the Insurance Code to require that residential condominium unit owner policies issued or renewed on or after July 1, 2009, must include loss assessment coverage of \$2,000 for certain assessments. The bill authorizes insurers to apply a deductible of no more than \$250 per direct property loss under certain conditions.
- Requires that every unit owner's residential property insurance policy contain a provision stating that the coverage is excess coverage over the amount recoverable under any other policy covering the same property.
- Deletes the requirement that a unit owner's hazard insurance policy, issued or renewed on or after January 1, 2009, include special assessment coverage of \$2,000 per occurrence and removes a provision prohibiting the policy from providing rights of subrogation against the owner's condominium association.
- Deletes the requirement that a unit owner's hazard insurance policy provide that the policy coverage is "excess coverage" over the amount recoverable under any other policy covering the same property.
- Clarifies what property is the responsibility of the unit owner and covered by the owner's property insurance policy.



- Deletes the requirement that all improvements or additions to the condominium property that benefit fewer than all unit owners be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having such use.
- Removes the provision that the association must require owners to provide evidence of hazard and liability insurance upon written request, and, should the owner fail to provide such proof of insurance, the association may purchase a policy on the owner's behalf wherein the owner is responsible for the cost.
- Deletes the requirement that the association be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.
- Clarifies that adequate "property" insurance, as opposed to "hazard" or "casualty" insurance, be provided by the condominium association and condominium unit owner.
- Provides that adequate property insurance be based upon the "replacement cost" of the insured property, which must be determined at least once every 36 months.
- Deletes the requirement that notices of association board meetings contain specified provisions relating to deductibles and that such meetings may be held in conjunction with budget meetings.

The bill revises the following non-insurance provisions related to condominiums:

- Clarifies requirements related to the election of board members, the terms of board offices, vacancies on the board, and the qualifications of board members.
- Exempts timeshare condominiums from the requirement that the terms of all members of the condominium board expire at the annual meeting.
- Exempts condominium associations that do not include timeshares from the prohibition that co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit and are not co-occupants of a unit.
- Extends the deadline for the retrofitting of sprinkler systems in common areas in high-rise condominiums from 2014 to 2025.
- Exempts specified condominiums from the requirement to install a manual fire alarm system. The exemption is limited to one and two story condominiums that have an exterior means of egress corridor.
- Repeals the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height. The repeal is based on the recommendations of an interim report by the Regulated Industries Committee (Interim Report 2009-125).

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 38-0; House 114-2*

## **CS/CS/CS/HB 1495 — Property Insurance**

by Full Appropriations Council on General Government and Health Care; General Government Policy Council; Insurance, Business, and Financial Affairs Policy Committee; and Reps. Nelson, Hays, and others (CS/CS/SB 1950 by Policy and Steering Committee on Ways and Means; Banking and Insurance Committee; and Senator Richter)

The bill makes wide-ranging changes to the regulation of property insurance, including:

### ***Citizens Property Insurance Corporation (“Citizens”)***

- Implements a rate “glide path” capped at 10 percent per year for Citizens’ policyholders until rates are actuarially sound. This provision will go into effect on or after January 1, 2010. The incremental rate increase was a recommendation of the Citizens Mission Review Task Force.
- Allows Citizens to increase its rates to pay the Florida Hurricane Catastrophe Fund’s (FHCF) “cash build up” program for 5 years. Estimated rate impact is less than 1 percent.
- Staggers the terms of office for members of the Board of Governors.
- Insurers may offer ex-wind policies to homeowners within the boundaries of the HRA (high risk account) area who are no longer eligible for coverage by Citizens because the replacement value of the home exceeds \$2 million or because the replacement value of the home exceeds \$750,000, but the home does not have hurricane shutters.
- Deletes the provision that required on January 1, 2010, a seller of a home which is insured by Citizens and located in the wind-borne debris region, with an insured value of \$500,000 or more, to disclose in writing to the prospective purchaser its windstorm mitigation rating based on the uniform home grading scale, prior to sale.
- Extends from February 1, 2010 to December 1, 2010, the requirement that Citizens reduce its HRA area boundaries in order to lower its 100-year probable maximum loss (PML).

### ***Florida Hurricane Catastrophe Fund (“FHCF” or “Fund”)***

- Implements provisions to reduce the FHCF’s exposure and increase its cash reserves. The bill phases out the Temporary Increase in Coverage Limit (TICL) layer of coverage over a 6-year period at a rate of \$2 billion per year.
- Increases the price of the TICL layer by an additional multiple each year until TICL is eliminated in 6 years.
- Authorizes the Fund to implement a “cash build up” factor which would increase the reimbursement premiums that the Fund charges property insurers for the mandatory layer of coverage provided by the Fund. The cash build up factor is based on a 5 percent annual increase which will be phased in over a 5-year period, at which time the increase will be 25 percent.

- Allows small insurers to continue to purchase an additional amount of FHCF reimbursement coverage up to \$10 million until December 31, 2011.
- Establishes the contract period for the Fund to be the calendar year (January through December).

### ***My Safe Florida Homes Program (“MSFH”)***

- Adds mitigation improvements relating to roof hardening to help facilitate the MSFH program to access federal “weatherization” stimulus money and FEMA grant money.
- Clarifies that the MSFH program provide grants rather than participate in a no-interest loan program.
- Authorizes the Department of Financial Services to adopt by rule the maximum grant allowances for mitigation improvements.
- Revises the threshold for grant and contract review by the Legislative Budget Commission.

### ***Insurance Rate Filings***

- Allows insurers to make a separate expedited rate filing limited solely to an adjustment of its rates for reinsurance or financing costs relating to the purchase of reinsurance or financing products to replace or finance the payment of the amount covered by the Fund’s TICL layer, including replacement reinsurance for the TICL reductions, as well as the cash build up factor and the increase in the price for the remaining TICL layers. All costs contained in the filing are capped at 10 percent per policyholder; however, financing products such as a liquidity instrument or line of credit may not result in an overall premium increase exceeding 3 percent. The bill provides that insurers purchasing this reinsurance do so at a price no higher than would be paid in an “arms-length” transaction. An insurer may make only one filing under this provision in any 12-month period.
- Prohibits “use and file” rate filings until December 31, 2010.

### ***Public Adjusters***

- Prohibits public adjusters, public adjuster apprentices and persons acting on behalf of public adjusters or apprentices from accepting referrals of business from any person with whom the public adjuster conducts business.
- Prohibits a public adjuster from compensating any person, except for another public adjuster, for the purpose of referring business to the public adjuster.
- Requires an applicant for a public adjuster apprentice license to pass a written examination prior to licensure and receive a specified designation.
- Limits the number of public adjuster apprentices that are maintained by public adjusting firms.

- Requires OPPAGA to review the claims practices and laws relating to public adjusters and submit a report to the Governor, President of the Senate, Speaker of the House of Representatives, the CFO, and the Insurance Commissioner by February 1, 2010.

### ***Other Provisions***

- Authorizes the Florida Hurricane Loss Projection Methodology Commission to study and issue a report on mitigation credits, discounts and deductibles.
- Provides that premium discounts resulting from the home grading scale (due in 2011 from OIR) will supersede the current mitigation discounts approved by OIR.
- Authorizes reinsurers to issue coverage directly to a self-insuring public housing authority.
- Allows an insurer to repair damaged property in compliance with its policy.
- Allows insurance agents to explain the applicability of FIGA to consumers.
- Repeals the statute that prevents OIR attorneys from asserting attorney-client privilege or work-product confidentiality on certain communications with other OIR personnel.
- Changes recoupment by insurers for Citizens assessments, eliminating the need to receive prior OIR approval before recouping costs from policyholders. Instead, OIR would review the final accounting report of the recoupment after it has been completed.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 32-6; House 80-35*

### **CS/CS/HB 1171 — Residential Property Insurance**

by General Government Policy Council; Insurance, Business, and Financial Affairs Policy Committee; and Reps. Proctor, Wood, and others (CS/SB 2036 by Banking and Insurance Committee and Senator Bennett)

The bill allows certain insurers to use a rate in excess of the filed rate if:

- The insurer has surplus as to policyholders of \$500 million or more;
- The insurer has a surplus of \$200 million or more and a ratio of net written premium to surplus of two to one or less; or
- The insurer has a surplus of \$150 million or more, and offers insurance primarily as a service to members of a nonprofit corporation.

An insurer using this provision cannot purchase coverage from the temporary increase in coverage limit (TICL) of the Florida Hurricane Catastrophic Fund. An insurer may not use this provision for policies that exclude coverage for wind or hurricane. An insurer using this provision must provide notice in bold type that the rate is not approved by the Office of Insurance Regulation (OIR), and that a rate regulated policy may be available from Citizens

Property Insurance Corporation (Citizens) or another carrier. The insured must be given a quote from Citizens or another carrier and sign an acknowledgement form.

The bill creates Section 627.7031, Florida Statutes.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 27-9; House 105-13*

## **CS/SB 742 — Sinkhole Losses**

by Banking and Insurance Committee and Senators Fasano and Storms

This bill allows an insurer offering sinkhole coverage to nonrenew those policies in Pasco and Hernando Counties, and instead offer coverage for catastrophic ground cover collapse. The insurer must offer an endorsement for sinkhole coverage, subject to an inspection and subject to the insurer's underwriting guidelines. The bill mandates the creation of a building code effectiveness grading schedule to be adopted by the Financial Services Commission by rule. Four years after a county amends the Florida Building Code with a "sinkhole loss prevention ordinance," the Office of Insurance Regulation will use the building code effectiveness grading schedule to evaluate the effectiveness of the county ordinance in reducing the number of sinkholes and the severity of sinkhole losses. The bill further mandates the creation of insurance premium discounts or surcharges on personal residential property insurance based on a property's compliance with sinkhole loss prevention ordinances and the effectiveness of the ordinance as determined by the grading schedule.

This bill creates s. 627.7063, F.S.

If approved by the Governor, these provisions take effect January 1, 2010.

*Vote: Senate 39-0; House 117-0*

## **CS/HB 853— Surplus Lines Insurers**

by General Government Policy Council and Rep. Patterson and others (CS/CS/SB 1894 by Finance and Tax Committee; Judiciary Committee; and Senators Bennett and Baker)

Surplus lines insurance is the market of last resort for difficult to place commercial and personal lines risks in Florida. Historically, surplus lines insurers have not been subject to the majority of insurance requirements under ch. 627, F.S., or the regulatory authority of the Office of Insurance Regulation due to a specific exemption under the chapter. However, two recent rulings by the Florida Supreme Court and a federal appellate court have altered the manner in which surplus lines insurers have historically been regulated.

This legislation is in response to these court decisions and amends the surplus lines law (s. 626.913, F.S.) by providing that except where specifically stated, the provisions of ch. 627, F.S., do not apply to surplus lines insurance. The bill specifies that the amendment to s. 626.913, F.S., is remedial in nature and operates retroactively to the regulation of surplus lines insurers

from October 1, 1988, except with respect to lawsuits that are filed on or before May 15, 2009. The bill also imposes the following requirements on surplus lines insurers:

- Requires surplus lines policies to have printed on the face of the policy a statement in 14-point boldface type that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency;
- Specifies the types of claims payments that can be made under surplus lines insurance contracts;
- Specifies the policy information that must be included in a disclosure statement by surplus lines insurers regarding liability insurance claims;
- Provides for an award of attorney's fees upon a judgment or decree by any Florida court against a surplus lines insurer in favor of any named or omnibus insured or named beneficiary;
- Requires surplus lines insurers to have printed on the face of a personal lines residential property insurance policy a statement in 14-point boldface type that the policy contains a separate deductible or a co-pay provision for hurricane or wind losses, which may result in high out-of-pocket expenses to the insured; and
- Provides that if a provision of the act is held invalid, that invalidity shall not affect the other provisions of the act.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 38-0; House 116-0*

## **WORKERS' COMPENSATION**

### **CS/HB 903 — Attorney's Fees in Workers' Compensation Cases**

by General Government Policy Council and Rep. Flores and others (CS/CS/SB 2072 by General Government Appropriations Committee; Judiciary Committee; and Senators Richter and Baker)

Prior to the 2003 reforms, Florida was ranked as having the highest or second highest workers' compensation insurance premiums nationwide. The Legislature enacted significant changes to the workers' compensation laws in 2003 that were designed to increase the affordability and availability of coverage, expedite the dispute resolution process, provide greater compliance and enforcement authority to combat fraud, and revise certain indemnity benefits for injured workers. This legislation continued the contingency fee schedule for attorney's fees, but eliminated hourly fees.

In October 2008, the Florida Supreme Court in *Murray-v.-Mariner Health and ACE USA* determined that the attorney's fee schedule, when read with a provision that entitles certain prevailing claimants to "a reasonable attorney's fee," creates an ambiguity as to whether the fee schedule is the sole basis for determining a reasonable attorney's fee. The court concluded that the fee schedule is not the sole basis, and held that the factors set forth in a Florida Bar rule for

determining attorney's fees (which includes the discretionary factors removed from the workers' compensation statute in 2003), were to be applied to determine a "reasonable attorney's fee" when the term is not otherwise defined. This decision eliminated workers' compensation attorney fee caps and allowed hourly fees in Florida.

The bill clarifies that the attorney's fee schedule provisions in ch. 440, F.S., are to be calculated based solely on the fee schedule, except in certain medical-only cases.

If approved by the Governor, these provisions take effect July 1, 2009.

*Vote: Senate 22-16; House 84-35*