

Committee on Banking and Insurance

CS/CS/HB 119 — Motor Vehicle Personal Injury Protection Insurance

by Economic Affairs Committee; Insurance and Banking Subcommittee; and Rep. Boyd and others (CS/CS/SB 1860 by Budget Committee; Banking and Insurance Committee; and Senator Negron)

Senate Bill 1860 revises the Florida Motor Vehicle No-Fault Law. The bill primarily amends laws governing Personal Injury Protection (PIP) benefits under the No-Fault law and laws related to PIP motor-vehicle insurance fraud. The major changes enacted by the bill are as follows:

PIP Medical Benefits

The bill revises the provision of Personal Injury Protection medical benefits under the Florida Motor Vehicle No-Fault Law, effective January 1, 2013. Individuals seeking PIP medical benefits are required to receive initial services and care within 14 days after the motor vehicle accident. Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider. Follow up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.

The bill applies two different coverage limits for PIP medical benefits, based upon the severity of the medical condition of the individual. An individual may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition. An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part. An individual who is not diagnosed with an emergency medical condition, the PIP medical benefit limit is \$2,500. Massage and acupuncture are not reimbursable, regardless of who the type of provider rendering such services.

PIP Death Benefit

Personal Injury Protection now offers \$5,000 in death benefits in addition to \$10,000 in medical and disability benefits. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000. The increased death benefit is effective January 1, 2013.

PIP Medical Fee Schedule

The bill revises provisions related to the PIP medical fee schedule in an effort to resolve alleged ambiguities in the schedule that have led to conflicts and litigation between claimants and insurers. The bill clarifies that the reimbursement levels for care provided by ambulatory surgical

centers and clinical laboratories and for durable medical equipment is 200 percent of the appropriate Medicare Part B schedule. The Medicare fee schedule on effect on March 1 will be the applicable fee schedule for the remainder of that year until the subsequent update. Insurers are authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit. The bill also requires insurers to include notice of the fee schedule in their policies. These provisions are effective January 1, 2013.

Attorney Fees

The bill amends provisions related to attorney fee awards in No-Fault disputes. The bill prohibits the application of attorney fee multipliers. The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage. The bill maintains current law allowing a party that obtains a favorable judgment from an insurer to recover reasonable attorney fees from the insurer. The bill also requires that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.

Investigation and Payment of Claims

Provisions relating to the investigation of PIP claims by insurers are revised, effective January 1, 2013. Insurers are authorized to take an examination under oath (EUO) of an insured. Compliance is a condition precedent for receiving benefits (the insurer owes zero benefits if the insured does not comply). An insurer that unreasonably requests EUOs as a general business practice, as determined by the Office of Insurance Regulation (OIR), is subject to s. 626.9541, F.S. of the Unfair Insurance Trade Practices Act. The bill also provides that if a person unreasonably fails to appear for an independent medical examination (IME), the carrier is no longer responsible for benefits. Refusal or failure to appear for two IMEs raises a rebuttable presumption that the refusal or failure was unreasonable.

Changes are made to the statutory process for the payment of PIP benefits, primarily to assist claimants in their claim submissions, effective January 1, 2013. A claimant whose claim is denied due to an error in the claim is given 15 additional days to correct the erroneous claim and resubmit it timely. The insurer must maintain a log of all PIP benefits paid on behalf of the insured and must provide the log to the insured upon his or her request if litigation has initiated. If a dispute between insurers and insureds occurs, the insurer must provide notice within 15 days of the exhaustion of PIP benefits. Insurers must reimburse Medicaid within 30 days. The electronic submission of records is authorized, effective December 1, 2012.

Prevention of PIP-Related Insurance Fraud

House Bill 119 contains numerous provisions designed to curtail PIP fraud. The bill defines insurance fraud as knowingly presenting a PIP claim to an insurer for payment or other benefits

on behalf of a person or entity that committed fraud when applying for health care clinic licensure, seeking an exemption from clinic licensure, or demonstrating compliance with the Health Care Clinic Law. Claims that are unlawful under the patient brokering law (s. 817.505, F.S.) are not reimbursable under the No-Fault Law. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.

All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members. The bill creates standards for evaluating whether an entity claiming it is exempt from the requirement to obtain clinic licensure is actually wholly owned by a physician.

The bill defines failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice. The OIR may order restitution to the insured or provider, but is not limited in its other administrative penalties, which may include suspending the insurer's certificate of authority.

Law enforcement is required to complete a long-form crash report when there is an indication of pain or discomfort by any party to a crash. All crash reports completed by law enforcement must identify the vehicle in which each party was a driver or passenger. For all crashes that do not require a law enforcement report, the vehicle driver must submit a report on the crash to the Department of Highway Safety and Motor Vehicles within 10 days of the crash.

The bill creates a non-profit direct support organization, the Automobile Insurance Fraud Strike Force, which can accept private donations for the purposes of preventing, investigating, and prosecuting motor vehicle insurance fraud. Monies raised by the Strike Force may fund the salaries of insurance fraud investigators, prosecutors, and support personnel so long as such grants or expenditures do not interfere with prosecutorial independence. Funds may not be used to advertise using the likeness or name of any elected official or for lobbying.

Mandatory Rate Filings and Data Call

The Office of Insurance Regulation must contract with a consulting firm to calculate the expected savings from the act, which must be presented to the Governor and Legislature by September 15, 2012. By October 1, 2012, each insurer that writes private passenger automobile personal injury protection insurance must submit a rate filing. If the insurer requests a rate that does not provide at least a 10 percent reduction of its current rate, it must explain in detail its reasons for failing to achieve those savings. A second rate filing must be made by January 1, 2014. If the insurer requests a rate that does not provide at least a 25 percent reduction of the rate that was in effect on July 1, 2012, it must explain in detail its reasons for failing to achieve those

savings. The Office of Insurance Regulation must order an insurer to stop writing new PIP policies if the insurer requests a rate in excess of the statutorily required rate reduction and fails to provide a detailed explanation for that failure. The Office of Insurance Regulation must perform a comprehensive PIP data call and publish the results by January 1, 2015. The data call will analyze the impact of the act's reforms on the PIP insurance market.

If approved by the Governor, these provisions take effect July 1, 2012, except as otherwise provided.

Vote: Senate 22-17; House 80-34

Committee on Banking and Insurance

SB 140 — Repeal of Workers' Compensation Reporting Requirement

by Senator Bennett (HB 4019 by Rep. Nelson)

Section 440.59, F.S., requires the Department of Financial Services to prepare an annual report of the administration of ch. 440, F.S., for the preceding calendar year, including a detailed statement of the receipts of and expenditures from the Workers' Compensation Administration Trust Fund and a statement of the causes of the accidents leading to the injuries for which the awards were made. The bill repeals s. 440.59, F.S., which requires the DFS on or before September 15 of each year, to submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 38-0; House 118-0

Committee on Banking and Insurance

CS/CS/HB 643 — Title Insurance

by Economic Affairs Committee; Insurance and Banking Subcommittee and Rep. Moraitis (CS/CS/SB 1404 by Judiciary; Banking and Insurance and Senator Altman)

The bill requires any person who holds a license as a title insurance agent to complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which shall include at least 3 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

The bill allows the department to deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency for failure to timely submit data as required by s. 627.782, F.S.

The bill requires an attorney to deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of the Florida Bar.

The bill requires the Office of Insurance Regulation to approve or disapprove a form filed for approval within 180 days after receipt. When the office approves any form, it shall determine if the current rate in effect applies or if the coverages require the adoption of a rule pursuant to s. 627.782, F.S. The office may revoke approval of any form after providing 180 days' notice to the title insurer. An insurer may not achieve a competitive advantage over any other insurer, agency, or agent as to rates or forms. If a form or rate is approved for an insurer, the office shall expeditiously approve the forms of other insurers who apply for approval if those forms contain identical coverages, rates, and deviations which have been approved under s. 627.783, F.S.

The bill requires each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state to maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by March 31 of the year after the reporting year. The commission shall adopt rules regarding the collection and analysis of the data from the title insurance industry.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 40-0; House 118-0

Committee on Banking and Insurance

CS/CS/HB 645 — Public Record/Title Insurance Data/Office of Insurance Regulation

by Government Operations Subcommittee; Insurance and Banking Subcommittee; and; Rep. Moraitis (CS/CS/SB 1406 by Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senator Altman)

The bill requires title insurers, their direct or retail businesses in the state, and title agencies to submit to the Office of Insurance Regulation, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is required to adopt rules to assist in data analysis and collection. The Department of Financial Services is required to take action against the authority of any title insurance agent or agency that fails to timely submit the required data, including suspension or revocation of a license or appointment.

The bill provides that proprietary business information provided to the Office of Insurance Regulation by a title insurance agency or insurer is confidential and exempt from public records requirements until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

The bill defines “proprietary business information” as information that is:

- Owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;
- Intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;
- Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public and;
- Concerns business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, trade secrets as defined in s. 688.002, F.S., or financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 40-0; House 114-0

Committee on Banking and Insurance

CS/CS/CS/HB 725 — Insurance Agents and Adjusters

by Economic Affairs Committee; Government Operations Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Hager (CS/SB 938 by Banking and Insurance Committee; Senators Richter and Oelrich)

The bill substantially revises the Licensing Procedures Law for insurance agents, adjusters, and limited lines licensees. The bill creates the new licensure classification of all-lines adjuster to replace the current licensure classifications of independent adjuster and company employee adjuster. The classifications of independent adjuster and all-lines adjuster are converted to appointment types for licensed all-lines adjusters.

The bill prohibits an employee or an agent or agency from initiating contact with any proposed insured for the purpose of soliciting title insurance unless the employee is licensed as a title insurance agent or exempt from such licensure. The bill also provides that failure to comply with any civil, criminal, or administrative action taken by child support enforcement program under Title IV-D of the Social Security Act is grounds for action against an applicant, licensee, or appointee.

The bill substantially revises the continuing education requirements for licensees. Each licensee will be required to complete a 5-hour update course every 2 years. The bill also revises licensure provisions related to a number of limited insurance licenses.

If approved by the Governor, these provisions take effect October 1, 2012, except as otherwise expressly provided in this act.

Vote: Senate 40-0; House 115-0

Committee on Banking and Insurance

SB 792 — Financial Institutions

by Senators Gaetz, Rich, Latvala, Thrasher, Fasano, Oelrich, Negron, Ring, Benacquisto, Sobel, Richter, Lynn, Detert, Joyner, Gardiner, Gibson, Margolis, Hays, Evers, Diaz de la Portilla, Dean, Siplin, Garcia, Montford, Simmons, Flores, Braynon, Storms, Sachs, Smith, Bullard, Haridopolos, Alexander, Altman, Bennett, Bogdanoff, Dockery, Jones, Norman, and Wise

The bill requires the Financial Services Commission to adopt rules establishing minimum standards that all state chartered financial institutions must adopt to detect whether any correspondent accounts or a payable-through accounts with a foreign financial institution are knowingly:

- Facilitating the efforts of the Iranian Government to develop weapons of mass destruction;
- Providing support to a foreign terrorist organization;
- Facilitating the activities of a person who is subject to financial sanctions by a United Nations Security Council's Iranian sanction resolutions;
- Engaging in related money laundering activity;
- Facilitating efforts by Iranian financial institutions to carry out prohibited activities; or
- Facilitating a significant transaction or providing significant financial services to an entity whose property interests are blocked pursuant to federal law associated with Iran's proliferation of weapons of mass destruction or support for international terrorism.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that they are in compliance with the new rules created by the Financial Services Commission and are not knowingly in violation of federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

The bill requires the Office of Financial Regulation to compile an annual report containing the rules, certifications and the status of each Florida-chartered financial institutions compliance. The compiled report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Office of Financial Regulation's website. The Office of Financial Regulation is permitted to impose an administrative fine, not to exceed \$100,000 per occurrence, on any Florida-chartered financial institution that fails to submit their annual certifications to the office.

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

Vote: Senate 39-0; House 118-0

Committee on Banking and Insurance

CS/HB 941 — Insurance

by Economic Affairs Committee and Rep. Holder (CS/CS/SB 1428 by Budget Subcommittee on General Government Appropriations; Banking and Insurance Committee; and Senator Smith)

The bill amends various provisions relating to commercial lines insurance.

The bill provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company. This type of transfer would be treated as a renewal of the policy, rather than a cancellation or nonrenewal. The insurer is required to provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The notice may be provided in the notice of renewal premium.

The bill creates a streamlined exemption process for construction and non-construction corporate officers and members of a limited liability company (LLC) by requiring both to elect to be exempt (opt-out) from consideration as an employee for workers' compensation purposes. Presently, under ch. 440, F.S., Florida employers are required to maintain workers' compensation coverage for "employees." In the construction industry, corporate officers and members of a LLC who are at least 10 percent owners of the corporation or LLC may elect to be exempt (opt-out). In contrast, full-time sole proprietors or partners not engaged in the construction industry may include themselves in the definition of "employee" by mailing a notice of election (opt-in) as provided in s. 440.05(2), F.S. There is no ownership requirement for non-construction industry exemptions. If no notice is made, the sole proprietor or partner engaged in a non-construction business is not considered an employee and is not eligible for workers' compensation benefits. Current law also provides that full-time members of a non-construction LLC are not currently afforded such an opt-in provision.

The bill removes requirement for workers' compensation insurers to refund excess profits to businesses they insure in the form of cash or credit, as determined by the Office of Insurance Regulation (OIR). Under current law, an excess profit is triggered when an insurer's underwriting gain is greater than the anticipated profit, plus 5 percent, for the 3 most recent calendar years.

The bill eliminates the mandatory onsite premium audits of policyholders if a workers' compensation insurer meets certain financial requirements. This change will provide insurers with flexibility to implement risk-based audits.

The bill authorizes the Office of Insurance Regulation to expend funds within existing resources for professional development of its employees.

If approved by the Governor, these provisions take effect July 1, 2012, except as otherwise expressly provided in this act.

Vote: Senate 40-0; House 99-16

Committee on Banking and Insurance

CS/CS/HB 1011 — Warranty Associations

by Government Operations Appropriations Subcommittee; Insurance and Banking Subcommittee; and Rep. Abruzzo, and others (CS/CS/SB 1262 by Budget Subcommittee on General Government Appropriations; Banking and Insurance Committee and Senator Oelrich)

The bill provides criteria for motor vehicle service agreement companies to effectuate refunds through the issuing salesperson or agent. The bill deletes the provision excluding service agreements sold to persons other than consumers that cover motor vehicles used for commercial purposes. Therefore, motor vehicle service agreement coverage for commercial vehicles having a gross weight rating of less than 10,000 pounds will be required to be offered through a regulated company and vehicles over 10,000 pounds will continue to not be covered.

Under the bill if a motor vehicle service agreement company effectuates refunds through the issuing salesperson or agent, the company must send to the salesperson or agent effectuating the refund the unearned pro rata premium refund due less any unearned pro rata commission. The salesperson or agent must then refund the unearned pro rata premium including any unearned pro rata commission and the sales tax to the service agreement holder. The bill requires the salesperson, agent, or company maintain a copy of certain specified documents demonstrating the occurrence of the refund to the service agreement holder. The salesperson or agent effectuating the refund shall provide a copy of the required documentation to the company within 45 days after a request is made by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR). If the OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the required documentation, the OIR shall notify the DFS.

The bill authorizes home and service warranty associations to effectuate refunds through the issuing sales representative. The bill provides that refunds for service warranties may be made by cash, check, store credit, gift card, or other similar means. The bill provides that upon the request of the service warranty holder the refund must be remitted by check.

The bill provides that the OIR is not required to conduct periodic examinations of motor vehicle service agreement companies, home warranty associations, or service warranty associations but may at the OIR's discretion. An examination may only cover a period of the most recent 5 years. The bill provides that the costs of an examination conducted by an independent examiner is limited to no more than 10 percent of the companies' prior year reported net income. The bill maintains that if the OIR examines a service warranty association that has less than \$20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Additionally, the bill creates new provisions that allow a governmental unit, public agency, institution, person, firm, or legal entity to provide money to the DFS to enable the DFS to pursue unauthorized entities operating in violation of provisions relating to warranty associations. The DFS may transfer the funds to the OIR to pursue unauthorized entities. The bill requires all donations to the DFS be deposited into the Insurance Regulatory Trust Fund (fund) and separately accounted for. The bill allows money deposited into the fund to be appropriated by the Legislature pursuant to ch. 216, F.S., for the purpose of enabling the DFS or the OIR to pursue unauthorized warranty

entities. The bill provides that any balance of moneys deposited into the fund for the purpose of pursuing unauthorized warranty entities and remaining at the end of any fiscal year shall be available for carrying out the duties of the DFS or the OIR.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 40-0; House 116-0

Committee on Banking and Insurance

CS/SB 1050 — Fiduciaries

by Banking and Insurance Committee and Senator Bogdanoff

Current law allows mortgagors to request and receive, within 14 days, information about their loan, such as the payoff, from the mortgagee. This information is provided by a mortgagee and is known as an estoppel letter. The bill allows a record title owner of a property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property to obtain an estoppel letter. To receive the information, these authorized persons must provide a copy of the instrument proving title in the property ownership interest or lawful authorization. Once a request is made, the mortgagee must provide the total unpaid balance on a per-day basis, but may also include additional information in the estoppel letter.

The bill also makes a number of clarifying and substantive changes to the Florida Principal and Income Act (act). This bill represents the first broad revision of the act since it was enacted in 2002. The bill implements a smoothing rule where fiduciaries calculate the average fair market value of the current year assets and the preceding years' assets to address spikes due to fluctuations in the market. The bill modifies the default guidelines applicable to unitrusts, distribution of income, the partial liquidation rule, marital tax deductions, liquidating assets, income taxes, and property improvements.

If approved by the Governor, these provisions take effect January 1, 2013.

Vote: Senate 39-0; House 116-0

Committee on Banking and Insurance

CS/CS/HB 1101 — Insurance

by Economic Affairs Committee; Insurance and Banking Subcommittee; and Rep. Horner (CS/CS/SB 1620 by Budget Subcommittee on General Government Appropriations; Banking and Insurance Committee; and Senator Richter)

The bill changes the exemption provisions for alien insurers, substantially revises the regulation of captive insurers, and changes a number of provisions relating to various types of insurance and insurance coverage as well as the regulation of insurance companies, insurance agents, and insurance adjusters.

Alien Insurers

The bill revises the current exemption provisions relating to alien insurers by providing that an insurer who has an affiliate would not be disqualified from obtaining an exemption, and by expanding the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States. The bill creates an exemption from the certificate of authority (COA) requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets the following requirements:

1. The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
 - o has been an insurer for at least the last 3 consecutive years; or
 - o is the wholly owned subsidiary of an authorized insurer; or
 - o is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding 3 years.
2. Prior to the OIR granting eligibility to an alien insurer to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
 - o Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
 - o Maintain a surplus of at least \$15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under ch. 625, part II, F.S.
 - o Have a good reputation for providing service and paying claims.
 - o Furnish the OIR with annual and quarterly financial statements.
 - o Provide certain disclosures to policy or contract applicants.

Captive Insurance Companies

The bill deletes the current definition of captive insurer and establishes capital and reserve requirements for each type of captive insurer and removes the current requirement that captive insurers are also subject to the same level of surplus specified for various lines of insurance written in this state.

Definitions -

The bill redefines captive insurer as meaning a domestic insurer established under ch. 628, part V, F.S., including any of three specified types of captive formation, defined as:

- Pure captive insurance company means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof. A pure captive must have at least \$100,000 of unimpaired paid-in capital, and in the case of a pure captive incorporated as a stock insurer, at least \$250,000 of unrestricted net assets. A pure captive must possess and maintain unimpaired surplus of at least \$150,000.
- Industrial insured captive insurance company means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies. An industrial insured captive insurance company incorporated as a stock insurer must have at least \$200,000 of unimpaired paid-in capital. If it is incorporated as a stock insurer or organized as a limited liability company, it must possess and maintain unimpaired surplus of at least \$300,000. If it is incorporated as a mutual insurer, it must possess and maintain unimpaired surplus of at least \$500,000. An industrial insured captive insurance company can also provide reinsurance, but only on risks written for the industrial insured group.
- Special purpose captive insurance company means a captive insurance company licensed under ch. 628, F.S., that does not meet the definition of any other type of captive insurance company. A special purpose captive insurance company must have an amount of unimpaired paid-in capital, unrestricted net assets, and unimpaired surplus determined by the OIR.

The bill also defines the following:

- Industrial insured means an insured that: (a) has gross assets in excess of \$50 million; (b) procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in that person's state of domicile; (c) has at least 100 full-time employees; and (d) pays annual premiums of at least \$200,000 for each line of insurance purchased from the industrial insured captive insurer or at least \$75,000 for any line of coverage in excess of at least \$25 million in the annual aggregate.
- Captive reinsurance company means a reinsurance company that is formed or licensed under ch. 628, F.S., and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company cannot directly insure risks, it can only reinsure risks. A captive reinsurance company may write reinsurance contracts covering risks in any state. A captive reinsurance company must possess and maintain capital or unimpaired surplus of the greater of \$300 million or 10 percent of reserves. At least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in Florida.
- Qualifying reinsurer parent company means a reinsurer that is authorized in Florida to write reinsurance and that has a consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of no more than 0.50.
- Controlled unaffiliated business means a company that is not in the corporate system of a parent, but that has an existing contractual relationship with the parent or affiliated company and has its risks managed by a captive insurance company.

Authority of Captives to Write Insurance; Restrictions -

The bill allows captives to write any insurance authorized by the insurance code except workers compensation and employer's liability, health, personal motor vehicle, life, or personal residential property insurance, with the following restrictions:

- A pure captive insurance cannot insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.
- An industrial insured captive insurance company cannot insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.
- A special purpose captive insurance company can only insure the risks of its parent.
- A captive insurance company may not accept or cede reinsurance except as explicitly provided.

Requirements to Obtain Licensure; OIR Regulatory Authority -

The bill requires that to conduct business in Florida, a captive must obtain from the OIR a license to conduct insurance in Florida and must: hold at least one board of directors' meeting each year in Florida; maintain its principal place of business in Florida; and appoint a resident registered agent to act on its behalf in Florida. The bill provides that a captive insurance company must have at least three incorporators, of whom at least two must be residents of Florida. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors must be a resident of Florida.

The bill defines restrictions on eligibility of officers and directors. The bill requires that a prospective captive insurer filing for a license must include background investigations, biographical affidavits, and fingerprint cards as evidence of the trustworthiness and competence of its officers and directors.

The bill provides that the OIR may prescribe additional capital or net asset requirements, depending on the type, volume, and nature of the insurance. The bill states a captive insurance company may not pay a dividend out of capital or surplus in excess of the limitations specified in ch. 628, F.S., without the prior approval of the OIR.

Upon approval by the OIR, a foreign or alien captive insurance company may become a domestic captive insurance company by complying with the requirements of a domestic captive insurance company. The bill retains the provision in current law that an industrial insured captive insurer does not need to be incorporated in Florida if it has been validly incorporated in another jurisdiction.

Exemptions -

The bill exempts captives from the following statutory requirements that had previously applied to captives:

- Sections 624.407, F.S., and s. 624.408, F.S., which require that captives maintain the same level of surplus specified for various lines of insurance in this state.

- Section 624.4085, F.S., which defines the requirements for risk-based capital for insurers in Florida.
- Section 624.4095, F.S., which establishes standards for required ratios of written premiums to surplus for various lines of insurance.

Other Changes Enacted

The bill also enacts the following changes:

- Licensure of Agents, Adjusters, and Entities –
 - Allows the DFS to provide licensing examinations in Spanish at the expense of the applicant.
 - Expands the list of entities to whom a limited license for travel insurance may be issued.
 - Allows a licensed independent adjuster or a licensed agent to supervise up to 25 individuals who are not required to obtain a license to perform functions in connection with entering data into an automated claims adjudication system for portable electronics insurance claims. Provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purpose of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another U.S. state.
- Motor Vehicle Insurance
 - Specifies that a salvage motor vehicle dealer is not required to carry the \$25,000 combined single-limit liability coverage for bodily injury and property damage, or the \$10,000 PIP coverage, for vehicles that cannot be operated legally on state roads.
 - Clarifies that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate that applies to judgments and decrees, whichever is greater, that is in effect on the date the payment became overdue.
 - Specifies that an insurer providing PIP coverage does not have a right of reimbursement from an owner or registrant of a motor vehicle used as a taxi cab.
 - Allows the cancellation of a private passenger motor vehicle insurance policy, regardless of whether the first 2 months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored.
- Residential and Commercial Property Insurance
 - Provides a definition of the term “rebate” within the context of performing repairs made pursuant to sinkhole damage.
 - Specifies that the alternative dispute resolution procedure for personal and commercial residential property insurance claims can be requested only by the policyholder, as a first-party claimant, or by the insurer.
 - Provides that when the notice of loss is reported more than 36 months after a declaration of a state of emergency by the Governor in response to a hurricane, the alternative claim dispute resolution process is not available.
- Citizens Property Insurance Company

- Requires Citizens to begin offering a basic personal lines policy similar to an HO-8 policy by January 1, 2013.
- Requires that in establishing replacement costs for dwelling coverage, Citizens must accept the lowest valuation from 3 specified sources.
- Other Provisions
 - Allows a not for profit self insurance fund to purchase excess insurance from surplus lines insurers or reinsurers and to purchase for its members coverage for health, accident, or hospitalization if certain conditions are met.
 - Clarifies that a current exemption from filing specified reinsurance information applies to any insurer with less than \$500,000 in direct written premiums in Florida in the preceding calendar year, and not more than \$250,000 of premium during the preceding calendar quarter and less than 1,000 policyholders at the end of the preceding calendar year.
 - Provides that a surplus lines carrier is not required to provide 45 days' notice of nonrenewal if the insurer has manifested its willingness to renew.
 - Specifies that it is an unfair or deceptive act or practice for someone to knowingly present a property and casualty certificate of insurance that has been altered after being issued.
 - Provides that an insurer with surplus as to policyholders of \$25 million or less can qualify as a limited apportionment company (LAC) for all statutory purposes.
 - Provides that mandated health benefits are not intended to apply only to limited benefit types of health benefit plans, unless specifically designated otherwise.
 - Adds accumulated interest on allowed claims as a new class for distribution of claims from an insurer's estate, which precedes the priority of claims of shareholders and other owners.

If approved by the Governor, these provisions take effect July 1, 2012, except as otherwise expressly provided in this act.

Vote: Senate 40-0; House 114-0

Committee on Banking and Insurance

HB 1127 — Citizens Property Insurance Corporation

by Rep. Albritton and Rep. Weinstein (CS/SB 1346 by Budget Committee and Senators Oelrich and Lynn)

House Bill 1127 reduces the Citizens Property Insurance Corporation (Citizens) regular assessment from 6 percent per account to 2 percent for deficits in the Coastal Account and eliminates the regular assessment in the Personal Lines Account (PLA) and the Commercial Lines Account (CLA). The reduction of the regular assessment in the Coastal Account and its elimination for deficits in the PLA and CLA will not reduce the overall assessment authority of Citizens. Instead, greater levies will be imposed through emergency assessments, which are levied on all lines of property and casualty policies (except workers' compensation and medical malpractice) in the state, including Citizens' own policies.

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. Citizens is authorized to levy the policyholder surcharge, a regular assessment for the Coastal Account, and emergency assessments upon a determination by the Citizens Board of Directors that a Citizens account has a projected deficit. The Office of Insurance Regulation (OIR) is authorized to assist Citizens to collect assessments in any way that the OIR deems appropriate. Assessable insurers and the Florida Surplus Lines Service Office (FSLSO) must begin collecting and paying the emergency assessments within 90 days after Citizens levies such assessments. Limited apportionment companies must also begin collecting regular assessments within 90 days of their levy by Citizens. However, the bill expands the time limited apportionment companies have to pay regular assessments in full from 12 months to 15 months after Citizens levies the assessment.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 38-0; House 89-25

Committee on Banking and Insurance

CS/HB 1277 — Money Services Businesses

by Insurance and Banking Subcommittee and Rep. Davis (CS/CS SB 1586 Budget Subcommittee on General Government Appropriations, Banking and Insurance Committee and Senator Thrasher)

Money services businesses (MSBs), also known as money transmitters, offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. The Office of Financial Regulation (OFR) is responsible for the regulation of money services businesses.

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Currently, legitimate contractors are placed at a significant competitive disadvantage by unscrupulous contractors avoiding the payment of workers' compensation insurance, as well as state and federal employment taxes. The bill incorporates the following consensus recommendations of the work group to provide increased regulatory oversight of MSBs that are designed to provide greater prevention, detection, and prosecution of workers' compensation premium fraud:

- Requires licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within 5 business days.
- Prohibits any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizes the OFR to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by ch. 560, F.S., for noncompliance with the following: maintaining a federally insured depository account; depositing all checks accepted into its depository account; or submitting transactional information to the office.
- Requires a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and prohibits the resumption of check cashing operations until the licensee has secured a new depository relationship

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 40-0; House 115-0

Committee on Banking and Insurance

HB 4061 — Uniform Home Grading Scale

by Rep. Bernard (SB 1814 by Senator Smith)

In 2006, the Legislature required the Office of Insurance Regulation (OIR) to develop a program to provide an objective rating system allowing homeowners to evaluate the relative ability of Florida properties to withstand the wind load from a sustained severe tropical storm or hurricane. In 2007, the Legislature created s. 215.55865, F.S., requiring that by 2007, the Financial Services Commission adopt a uniform home grading scale consistent with the 2006 legislation. In 2007, pursuant to the statutory requirement, the Commission adopted the uniform home grading scale. Section 215.5586, F.S., established within the Department of Financial Services (DFS) the My Safe Florida Home Program (MSFH), which was created to provide Florida residential property owners with mitigation inspections and grants for installation of specified mitigation features in order to make property less vulnerable to hurricane damage. The MSFH program expired on June 30, 2009, and is no longer operative. All funds originally appropriated to the program were exhausted and no additional funding has been appropriated.

In 2008, the Legislature passed a law that established a two-part phase-in of a requirement that sellers of homes located in the state's wind borne debris region disclose the home's windstorm mitigation rating based on the home grading scale to prospective purchasers: However, both phase-in provisions were repealed before they took effect. In addition, in 2008, the Legislature passed s. 627.0629(1)(b), F.S., which required the OIR to develop a method by February 1, 2011, to establish mitigation discounts for hurricane mitigation measures that correlate to the home's rating calculated by the uniform home grading scale. In 2011, the Legislature repealed s. 627.0629(1)(b), F.S., thereby removing the requirement that the OIR establish a new wind mitigation discount scale to correlate with the uniform home grading scale.

The bill repeals s. 215.55865, F.S., requiring the development of the uniform home grading scale. The bill amends s. 215.5586, F.S., by removing the requirement that the MSFH program adopt a hurricane resistance rating scale that conforms to the uniform home grading scale.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 39-1; House 114-1

Committee on Banking and Insurance

HB 4139 — Repeal of Health Insurance Provisions

by Rep. Brodeur (SB 1220 by Senator Garcia)

The bill deletes s. 627.64872(6), F.S., which requires the Board of Directors of the Florida Health Insurance Plan to submit to the Governor, the President of the Senate and the Speaker of the House of Representatives, an annual report including an independent actuarial study. The bill also deletes s. 627.6699(15)(1), F.S., which requires the Office of Insurance Regulation to submit to the Governor, the President of the Senate and the Speaker of the House of Representatives, an annual report summarizing the activities of the Small Employer Access Program, including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 39-0; House 118-0

Committee on Banking and Insurance

HB 7033 — OGSR/ Personal Injury Protection and Property Damage Liability Insurance Policies

by Government Operations Subcommittee; and Rep. Broxson (SB 1232 by Committee on Banking and Insurance)

The bill is the result of an Open Government Sunset Review and saves the exemption, in s. 324.242, F.S., from public records requirements for personal identifying information and the insurance policy number contained in personal injury protection (PIP) and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles. The information exempt from public records includes the name, address, and driver's license number of insureds and former insureds and the insurance policy number contained in PIP and property damage liability motor vehicle insurance policies.

If approved by the Governor, these provisions take effect October 1, 2012.

Vote: Senate 39-0; House 114-0

Committee on Banking and Insurance

HB 7107 — OGSR/ Consumer Complaints and Inquiries

by Government Operations Subcommittee; and Rep. Mayfield (CS/SB 1230 by Governmental Oversight and Accountability Committee and Banking and Insurance Committee)

The bill is the result of an Open Government Sunset Review and saves the exemption in s. 624.23, F.S., from public records requirements for certain personal financial and health information of a consumer held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code or s. 440.191, F.S., (Workers' Compensation Employee Assistance and Ombudsman Office). The bill retains the current law that defines "consumer" and "personal financial and health information" that is considered exempt. Under current law the personal financial and health information may be disclosed to another governmental entity when necessary to perform its duties and the National Association of Insurance Commissioners, the bill adds to this list the consumer or the consumer's legally authorized representative.

If approved by the Governor, these provisions take effect October 1, 2012.

Vote: Senate 39-0; House 114-0

Committee on Banking and Insurance

HB 7111 — Open Government Sunset Review/Unclaimed Property

by Government Operations Subcommittee and Rep. Mayfield and others (CS/CS/SB 1208 by Rules Committee; Governmental Oversight and Accountability Committee and Banking and Insurance Committee)

The bill reenacts current exemptions of public records for social security numbers and other unique identifiers for owners of unclaimed property held by the Department of Financial Services.

The bill allows for the limited release of information to registered locators and expands the exemption with regards to the release of social security numbers for locator services. Registered locators include certified public accountants licensed by the Department of Business and Professional Regulation; private investigators licensed by the Department of Agriculture and attorneys in good standing with the Florida Bar.

The bill provides for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act, and provides a public necessity statement as required by the State Constitution.

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

Vote: Senate 40-0; House 114-0