PROPERTY INSURANCE

CS/SB 1486 — Property Insurance

by Banking and Insurance Committee and Senators Garcia and Lynn

This bill makes significant changes to the laws regulating property insurance. The bill makes the following changes:

Florida Hurricane Catastrophe Fund (FHCF)

Lowers the "retention" or amount of residential hurricane losses that all insurers must meet in total (on average) in order to be reimbursed from the FHCF, from an estimated $4.96 billion to $4.5 billion per hurricane, for the 2005 contract year. The bill further reduces the retention to one-third of the full retention for the third and each additional hurricane in a year (in order of loss magnitude). As under current law, the retention increases each year by the same percentage as the increase in the Fund's exposure to losses.

Low-interest loan program for hurricane loss mitigation

Requires the Department of Community Affairs (DCA) to establish a low-interest loan program, by subsidizing or guaranteeing private sector loans, for homeowners to retrofit their homes to reduce hurricane losses, beginning in FY 2006-2007. For FY 2005-2006, up to $1 million of the $10 million annually appropriated to DCA from the FHCF could be used for establishing a pilot project in one or more counties.

Insurance Rating Law

- Requires a public hearing for property insurance rate filings exceeding 15 percent, (rather than 25 percent, currently) if based on a computer model.

- Provides that hurricane loss models approved by the Florida Commission on Hurricane Loss Projection Methodology are admissible and relevant in a rate proceeding only if the Commission, the Office of Insurance Regulation (OIR) and the insurance consumer advocate have access to all aspects of the model. This provision does not take effect unless HB 1939, which was passed by the Legislature, becomes law which provides a public records exemption for such information that qualifies as a trade secret.

- Requires OIR to propose to the Legislature, by January 15, 2006, a standard territory rating plan for residential property insurance, but not to be implemented unless authorized by further act of the Legislature.

- Prohibits an insurer from recouping more than one year of reimbursement premium paid to the FHCF at a time.

Public Hurricane Loss Model

Requires insurers to report loss and exposure data to OIR or to a type I center within the state university system (currently, the Hurricane Research Center at Florida International University) for developing and updating the public hurricane loss model. This provision does not take effect unless HB 1939 becomes law which provides a public records exemption for such data that is specific to a particular insurance company.

Citizens Property Insurance Corporation ("Citizens")

- Changes appointments to the board of governors from seven appointed by the Chief Financial Officer (CFO), to two members each appointed by the Governor, CFO, President of the Senate, and Speaker of the House or Representatives (eight total).

- Authorizes a pilot project in Monroe County to require that rates be actuarially sound and not excessive, inadequate, or unfairly discriminatory, rather than the highest average rate in a county compared to the 20 leading insurers in the state, for those areas where OIR determines that a reasonable degree of competition does not exist.

- Requires Citizens to create a Market Accountability Advisory Committee to report at each board meeting, consisting of members appointed by agent associations, insurers, OIR, the Citizens board, a realtor association, and a bankers association.

- Provides legislative intent that Citizens provide service that is of the highest possible level.

- Clarifies that Citizens may issue bonds to refinance outstanding debt.

- Requires Citizens to make its best efforts to procure reinsurance to cover its projected 100-year probable maximum loss.

- Requires the Auditor General to conduct an operational audit of Citizens.

- Requires Citizens to submit a report to the Legislature.

Standard Personal Lines Residential Policies

Requires the CFO to appoint an advisory committee to develop standard personal lines policies to submit to the Legislature by January 15, 2006, but insurers would not be required to offer a standard policy unless required by further act of the Legislature.

Disapproval of Policy Forms

Authorizes OIR to disapprove a policy form for residential property insurance if it contains provisions that are unfair, inequitable, or that encourage misrepresentation.

Checklist of Coverage

Requires that insurers provide a checklist of coverage for personal lines residential policies, on a form adopted by the Financial Services Commission, including whether certain specified risks are covered, premium discounts, deductibles, replacement cost or actual cash value coverage, etc.

Hurricane Deductibles

- Increases the maximum allowable deductible for personal lines residential policies from 5 percent to 10 percent of the dwelling limits.

- Requires insurers to offer deductibles of 2 percent, 5 percent, and 10 percent of dwelling limits for personal lines residential policies, rather than just 2 percent.

- Requires that the dollar amount of a percentage deductible be specified and provides other disclosure requirements.

- Requires that for condominiums and other commercial residential policies, the insurer must offer both an annual hurricane deductible and a per event deductible, beginning January 1, 2006. The mandatory annual hurricane deductible enacted in the December, 2004 Special Session, would be limited to personal lines residential policies.

Building Code ("Law and Ordinance") Coverage

Requires insurers to offer coverage in homeowners policies equal to 50 percent of dwelling limits for the additional costs to meet applicable building codes, as an option to the 25 percent coverage that must currently be offered or provided. The (OIR) would be required to study the issue of requiring insurers to provide law and ordinance coverage.

Replacement Cost Coverage

Requires that if a loss is insured for replacement cost, the insurer must pay the replacement costs without holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

Mediation Program

Expands the mediation program for resolving property insurance disputes, administered by the Department of Financial Services, to commercial residential policies, and provides a penalty for insurers failing to notify claimants of their right to mediation.

Valued Policy Law (Mierzwa)

In response to a recent district court opinion (*Mierzwa v. Florida Windstorm Underwriting Assoc.*, 877 So.2d 774, Fla. 4th DCA 2004) the bill provides legislative intent that the valued policy law is not intended to create new or additional coverage, or to require an insurer to pay for a loss caused by a peril other than the covered peril. If a loss is caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril. However, if the covered perils alone would have caused the total loss, then the valued policy law applies and the insurer must pay policy limits, not exceeding the amounts necessary to repair, rebuild or replace the insured structure. These provisions will not be applied retroactively and shall apply only to claims filed after the effective date of this bill.

Sinkhole Claims

Revises the law on sinkhole claims, as follows:

- Specifies that sinkhole coverage includes the costs to stabilize the land and building and to repair the foundation.

- Allows an insurer to deny a sinkhole claim if the insurer determines there is no sinkhole loss, but the insurer must provide written notice to the policyholder of their right to demand testing.

- If the policyholder demands testing, the insurer must engage an engineer or a geologist to conduct testing.

- Testing must be conducted in compliance with specified standards and a report must be issued as to the cause of the loss, with recommendations for stabilization and repair.

- The findings and recommendations of the engineer and geologist are presumed correct and the insurer must pay the costs of stabilization and repair in accordance with the recommendations.

- The insurer may limit its payment to the actual cash value of the sinkhole loss until such time as expenses related to land and building stabilization and foundation repairs are incurred, including underpinning and grouting. But, the insurer cannot require the policyholder to advance payments. The insurer must pay the expenses after a

policyholder enters into a contract for stabilization or foundation repairs, and pay amounts necessary to begin and perform repairs as the work is conducted.

- If repair has begun and the engineer selected or approved by the insurer determines that the repair cannot be completed within the policy limits, the insurer must either complete the engineer's recommended repair or tender the policy limits to the policyholder without a reduction for the repair expenses incurred.

- If an insurer pays a sinkhole claim, it must file a copy of the professional report with the county property appraiser.

- Establishes a sinkhole database to track sinkhole insurance claims.

- Requires the seller of real property to disclose to the buyer that a sinkhole claim has been paid and whether or not the insurance proceeds were used to repair the sinkhole damage.

Notice of Premium Discounts for Hurricane Loss Mitigation

Requires insurers to notify applicants and policyholders of the availability and amount of premium discounts and credits for fixtures and construction techniques that reduce the amount of loss in a windstorm.

Prohibited Cancellation of Coverage

Prohibits an insurer from canceling or nonrenewing a residential property insurance policy covering a dwelling damaged by a hurricane until 90 days after the dwelling has been repaired, with certain exceptions. It also prohibits an insurer from canceling coverage for anyone during the duration of a hurricane, until 72 hours after the last hurricane watch or warning is issued anywhere in the state.

Additional Staffing for Insurance Consumer Advocate

Appropriates $350,000 from the Insurance Regulatory Trust Fund and four positions to the Office of the Consumer Advocate appointed by the CFO.

Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market

Creates the Task Force to consider issues relating to the creation and maintenance of insurance capacity in the private sector and public sector which is sufficient to ensure that all property owners in the state are able to obtain appropriate insurance coverage for hurricane losses. The Task Force is also charged with studying various issues relating to Citizens Property Insurance Corporation. The report and recommendations are due by April 1, 2006. The Task Force is administratively housed within the office of the CFO and has twelve members consisting of three members each appointed by the Governor, CFO, the Senate President, and Speaker of the House.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided in the act.
Vote: Senate 38-1; House 99-17

HB 1939 — Public Records and Meetings (Hurricane Loss Data)

by Insurance Committee and Rep. Ross and others (CS/CS/SB 1478 by Governmental Oversight and Productivity Committee; Banking and Insurance Committee; and Senator Garcia)

The bill creates a public records exemption for reports of hurricane loss and associated exposure data which are specific to a particular insurance company, as reported by an insurer or licensed rating organization to the Office of Insurance Regulation (OIR) or to a type I center at a state university, for the development of a public hurricane loss model. The bill defines "loss data and associated exposure data." A separate bill, CS/SB 1486, would require insurers to report such data in a time and manner as specified by OIR. The Legislature finds that revealing such information could substantially harm insurers in the insurance market and give competitor insurers an unfair economic advantage.

The bill would also provide a public records exemption for a trade secret, as defined in s. 812.081, F.S., that is used in designing and constructing a hurricane loss model, that is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (Commission), OIR, or the consumer advocate. The bill also creates a public meetings exemption for that portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which confidential information is discussed. This provision is also related to CS/SB 1486, that provides that the findings of the Commission are admissible and relevant in a rate proceeding only if OIR and the consumer advocate have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. The Legislature finds that disclosing a trade secret used in the design and construction of a hurricane loss model would negatively impact the business interests of a private company that has invested substantial economic resources in developing the model and that competitor companies would gain an unfair competitive advantage if provided access to such information. Also, reliable projections of hurricane losses are necessary in order to ensure that rates are neither excessive or inadequate and that this goal is served by enabling the Commission, OIR, and the consumer advocate to have access to all aspects of such models and encouraging private companies to submit such models for review without concern that trade secrets will be disclosed.

The exemptions are subject to repeal on October 1, 2010, unless reviewed and reenacted pursuant to the Open Government Sunset Review Act of 1995.

If approved by the Governor, these provisions take effect on the same date as HB 1937 or substantially similar legislation (CS/SB 1486) takes effect.
Vote: Senate 39-0; House 83-30

INSURANCE

HB 811 — Health Insurance

by Rep. Kreegel and others (CS/CS/SB 1660 by Ways and Means Committee; Banking and Insurance Committee; and Senators Fasano, Lawson, and Baker)

The bill makes the following statutory changes relating to the individual and group health insurance market:

- Provides that an insurance contract may not prohibit the payment of benefits directly to a licensed hospital, physician, or dentist who provides emergency care required under s. 395.1041, F.S. Claims forms are required to provide for direct payment to the licensed hospital, physician, or dentist that provides emergency care. The insurer may require written assignment of benefits. The reimbursement to the provider is limited to the amount the insurer would have paid without the assignment.

- Provides that the small group law requirements (guaranteed-issue and modified community rating) would not apply to individual coverage marketed to an employee of a small employer that provides for payroll deduction of the premium, if the employer does not contribute to the premium and has not had group coverage within the prior 6 months.

- Increases from 30 days to 63 days after group coverage has terminated, within which an individual is required to notify the insurance carrier of coverage termination and preserve the right to continue group coverage. This change comports Florida's law to the federal Health Insurance Portability and Accountability Act of 1996.

- Provides that insurers and health maintenance organization (HMOs) may offer high-deductible plans that meet the federal requirements for a health savings account, without being subject to Florida mandates that prohibit deductibles from applying to certain benefits.

- Authorizes the Office of Insurance Regulation to disapprove a health flex plan if the officers or directors are incompetent, untrustworthy, or lacking in insurance company managerial experience.

- Provides that individual health policies and individual HMO contracts, may elect to offer, rather than are required to offer, premium rebates to policyholders who participate in a wellness program. The bill also revises provisions relating to premium rebates for group policies and contracts.

- Changes the required frequency of financial examinations of HMOs by the Office of Insurance Regulation from once every 3 years to once every 5 years; deletes the use of an independent CPA audit by the HMO in lieu of an examination by OIR; and increases the maximum amount an HMO is charged for an examination from $20,000 to $50,000.

If approved by the Governor, these provisions take effect July 1, 2005, and shall apply to all policies or contracts issued or renewed on or after July 1, 2005, except as otherwise provided. *Vote: Senate 39-0; House 118-0*

CS/SB 1662 — Unauthorized Insurance

by Judiciary Committee and Senators Fasano and Atwater

Insurance companies transacting insurance in Florida or from offices located in the state are required to obtain a certificate of authority (COA) issued by the Office of Insurance Regulation. An unauthorized insurer is an insuring entity that does not have a COA to transact insurance business in Florida, and the law provides specific penalties for entities, or their representatives, that engage in such activity. This bill provides for the following changes to the unauthorized insurance law (ch. 626, part VIII, F.S.):

- Provides that the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS) may issue an immediate final order against an unauthorized insurer to cease and desist activity that violates the unauthorized insurance law.

- Specifies a legislative finding that a violation of the prohibitions relating to representing or aiding unauthorized insurers constitutes an imminent threat to the health, safety, and welfare of the residents of this state.

- Authorizes the OIR to investigate the accounts, records, documents, and transactions pertaining to activities of any unauthorized insurer or person aiding or representing such insurer.

- Clarifies what is meant by independent procurement of insurance coverage for the purposes of an exception to the prohibition against aiding unauthorized insurers, to specify that such coverage is not solicited, marketed, negotiated, or sold in Florida.

- Requires that unauthorized insurers must initially obtain a COA or deposit, securities, cash, or a bond when such insurers seek to defend against an enforcement action filed in circuit court by the OIR or DFS.

- Places a time limit of 30 days after the service of process in which unauthorized insurers or their representatives may file a motion to challenge the service of process.

- Provides that the penalties for representing an unauthorized insurer do not apply to the actions of persons who assist the OIR, at the agency's direction, in the administration of OIR's responsibilities under the Unauthorized Insurers Process Law (ss. 626.904-626.912, F.S.).

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 40-0; House 116-0

CS/SB 1432 — Insurance Administrators

by Banking and Insurance Committee and Senator Baker

Insurance administrators provide various services to life or health insurers or self-insured programs such as soliciting coverage, collecting premiums, claims handling, and settling claims. Administrators must be licensed by the Office of Insurance Regulation (OIR) and are regulated under ch. 626, part VII, F.S., (ss. 626.88-626.899). CS/SB 1432 makes changes that are consistent with the National Association of Insurance Commissioners Model Act 090, the NAIC Third Party Administrator Statute. The bill amends the definition of "administrator" to exempt from licensure requirements wholly owned direct or indirect subsidiaries of an employer that provide administrative services for the employer or the employer's subsidiaries or affiliated corporations. The bill creates additional exemptions from licensure for entities meeting certain criteria.

New applicants for licensure as an administrator must file audited financial statements for the past two fiscal years. New applicants must also submit a business plan that details staffing levels and the applicant's ability to provide a sufficient number of qualified personnel to carry out specified duties. The annual report filed by an administrator must include an audited financial statement performed by an independent certified public accountant under the bill, which also provides authority for the electronic submission of such documents. The bill requires the insurer and its administrator to enter into a written agreement whereby the insurer determines the benefits, premium rates, underwriting criteria, and claims payment procedures the administrator is to follow. The insurer is solely responsible for the competent administration of its programs. Also, an insurer must semiannually review the operations of an administrator handling over 100 insurance certificateholders, with one such review being an on-site audit of the administrator's operations. The bill also provides rulemaking authority to the Financial Services Commission.

If approved by the Governor, these provisions take effect October 1, 2005.
Vote: Senate 39-0; House 118-0

SB 450 — Motor Vehicle Insurance

by Senators Geller and Lynn

Insurance companies are prohibited from committing various activities defined under the Unfair Insurance Trade Practices Act, ch. 626, part IX, F.S. Such activities range from misrepresentations in advertising of insurance policies and making false statements to defamation and illegal dealings in premiums. Insurers may be subject to suspension or revocation of their certificate of authority or fines for violations of the Act's provisions imposed by the Office of Insurance Regulation (OIR).

This bill creates a new unfair or deceptive trade practice provision which would prohibit auto insurers from imposing premium increases for persons in military service under certain circumstances. Specifically, the bill would make it unlawful for insurers to charge an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended by the insured solely for the reason that he or she was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve.

The bill also provides that it is an unfair or deceptive trade practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage, or his or her covered dependents, were previously insured with a different insurer and cancelled that policy solely for the reason that he or she was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums under these circumstances, an insurer shall consider such persons as having maintained continuous coverage.

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

HB 1081 — Discount Medical Plan Organizations

by Rep. Berfield and others (CS/SB 2214 by Banking and Insurance Committee and Senators Saunders and Wilson)

Discount medical plan organizations (DMPO) that provide access for plan members to providers of medical services at a discounted fee in exchange for fees or other consideration are subject to licensure and regulation under ch. 636, part II, F.S., by the Office of Insurance Regulation (OIR). The bill provides the following changes related to the licensure and regulation of these entities:

- Authorizes OIR to impose an administrative penalty and cease and desist orders in lieu of suspending or revoking the license of a DMPO.

- Provides that any charge or form is deemed approved on the 60th day after filing unless OIR has previously disapproved it.

- Authorizes OIR to disapprove any form that does not comply with ch. 636, part II, F.S., or that is unreasonable, discriminatory, misleading, or unfair.

- Authorizes a DMPO to retain up to a $30 one-time processing fee if a membership is canceled within 30 days of joining the plan.

- Revises the DMPO's liability for the actions of its marketer.

- Eliminates audited financial statement requirements for licensure, if the applicant is a subsidiary of a parent company and certain conditions are met by the parent company.

- Eliminates the filing of annual, audited financial statements for a subsidiary of a parent company if certain conditions are met, and instead, requires a DMPO to file a sworn affidavit certifying compliance with net worth requirements.

- Repeals the civil remedies provision.

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

HB 105 — Life Insurance and Annuity Contracts

by Rep. Liorente and others (CS/SB 1508 by Banking and Insurance Committee and Senator Garcia)

This bill provides that a certificate of authority (COA) is not required of an insurer domiciled outside the United States which operates from offices within Florida and which issues life insurance policies and annuity contracts covering only persons who, at the time of issuance, are not residents of the United States and are not nonresidents illegally residing in this country. The legislation requires the insurer to meet the following specified financial and disclosure provisions:

- The insurer must be an authorized insurer in its country of domicile for the prior 3 years, or a wholly owned subsidiary thereof, and must have offered the types of insurance it proposes to offer in Florida.

- The Office of Insurance Regulation (OIR) may waive the above 3-year requirement if the insurer has operated successfully for the past year and has capital and surplus of at least $25 million.

- Specific disclosures must be made to the applicant of a policy or contract, including:

  - A copy of the insurer's most recent quarterly financial statement;
  - The date of organization of the insurer;
  - The identity of and rating assigned by each rating entity that has rated the insurer or, that the insurer is unrated;
  - A statement that the insurer does not hold a COA from Florida and is not regulated by the OIR; and
  - The identity and address of the regulatory authority exercising oversight of the insurer.

- The insurer is required to provide the OIR with annual and quarterly financial statements in English; to maintain a surplus as to policyholders of at least $15 million represented by specified investments; to have a 'good reputation' as to providing service to insureds and the payment of losses and claims; and allow access to the OIR to its books and records.

- The OIR has no responsibility to determine the actual financial condition or claims practices of the insurer.

- If, at any time, the OIR has reason to believe the insurer is insolvent, in unsound financial condition, does not make reasonable prompt payments, or is no longer eligible under specified conditions, the OIR may conduct an examination or investigation (which would be done at the expense of the insurer) and, if the findings warrant, may withdraw the eligibility of the insurer to issue policies or contracts.

- The insurer is not exempt from the agent licensure requirements under the Insurance Code; is subject to the Unfair Trade Practices provisions under ch. 626, F.S., and its written policies are exempt from the Florida premium tax provisions.

- The provisions of the Florida Money Laundering Act (ch. 896, F.S.) apply to all single premium life insurance policies and annuity contracts issued to persons who are not residents of the United States and who are not nonresidents illegally residing in the United States.

- The insurer must provide a disclosure in its life insurance application in specified point type that the policy is primarily governed by the laws of a foreign country; that the rating and underwriting laws applicable to policies filed in Florida do not apply to this coverage; and, if the insurer becomes insolvent, the policy is not covered by the Florida Life and Health Insurance Guaranty Association.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 118-0

INSURANCE AGENTS

SB 1912 — Insurance Agents and Agencies

by Judiciary Committee; Banking and Insurance Committee; and Senator Argenziano

Under current law, the Department of Financial Services (DFS) licenses insurance agents while the Office of Insurance Regulation (OIR) issues certificates of authority to insurance companies to operate in Florida. However, insurance agencies, which employ agents and agency owners, are not licensed. According to the National Association of Insurance Commissioners, Florida is the only state in the country that does not require insurance agencies to obtain licenses.

This bill mandates that insurance agencies be licensed or registered with the DFS and provides for the following regulatory changes:

- Requires insurance agencies to be licensed or registered by October 1, 2006.
- Provides that insurance agencies that are wholly owned by licensed agents and were engaged in business before January 1, 2003, incorporated agencies whose voting shares are traded on a securities exchange, and agencies that offer insurance as a service to members of nonprofit corporations must register with the DFS in lieu of obtaining a license.
- Authorizes the DFS to obtain background information on insurance agency applicants and to obtain additional information as required to ascertain the trustworthiness and competence of such applicants.
- Authorizes fingerprints of agency sole proprietors, partners, owners, and other persons to be taken by a law enforcement agency or other entity approved by the DFS.
- Authorizes the DFS to impose administrative penalties for insurance agencies that are not licensed or registered, as required.
- Prohibits the use of deceptive insurance agency names that may mislead the public or imply that the agency is a state or federal entity or a charitable organization.
- Repeals the requirement that a primary agent be designated for each agency location.
- Requires each agency to display its license or registration prominently in a manner that is clearly visible to a customer.
- Allows persons who live outside the state, but who work in a Florida insurance agency, to obtain a Florida “resident” agent’s license.

- Allows DFS to electronically scan records of insurance entities and agents related to investigations or examinations.

- Eliminates the examination requirement for adjusters who apply to change from one adjuster license type to another.

- Requires insurers to be bound by the acts of their agents that are committed within the scope of the agent's appointment.

- Deletes the disciplinary authority that allowed DFS to take action against an insurance agent when such agent committed acts that were "detrimental to the public interest," because the phase was ruled unconstitutionally vague.

- Clarifies that an agent who had his or her license revoked or suspended will not necessarily be granted a new license after the required waiting period.

- Provides a minimum age of 18 to qualify for a customer representative license.

- Allows nonresident title insurance agents to become licensed in Florida in the same manner as nonresident general lines agents.

- Provides that licensed insurance agents may not be prohibited from competing or negotiating for any insurance product purchased by any political subdivision of the state on the basis of the compensation, contractual, or employment arrangement granted to the agent by the employer, insurer, or licensed agency.

If approved by the Governor, these provisions take effect October 1, 2005.
Vote: Senate 39-0; House 117-0

HB 501 — Insurance Agents and Communication Equipment Insurance

by Rep. Berfield (CS/CS/SB 1002 by Commerce and Consumer Services Committee; Banking and Insurance Committee; and Senator Posey)

This bill provides for changes pertaining to entities offering communications equipment insurance for wireless phones and similar devices and for qualifications for general lines agents. Specifically the legislation does the following:

- Allows entities offering communications equipment property insurance and communications equipment inland marine insurance to sell service warranty agreements for such equipment without having to obtain a separate license to sell service warranties.

- Authorizes limited agent licenses to be issued to the "lead" business location of a retail vendor of communications equipment and its branch locations.

- Allows a communications equipment branch location to obtain a single appointment from its associated lead business licensee, in lieu of obtaining an appointment from an insurer or warranty association.

- Allows a communications equipment branch location appointed by an insurer prior to January 1, 2006, to replace its appointment with an appointment from its associated lead business licensee at no charge, and to renew its appointment every 24 months thereafter with the Department of Financial Services.

- Reduces the renewal appointment fee for branch locations from $60 to $30 beginning July 1, 2006.

- Allows a general lines agent to be licensed in Florida and be licensed as a managing general agent in another state.

- Deletes the requirement that an insurance company include in its rate filing a $10 maximum per-policy fee currently allowed by law to be charged by insurance agents for administrative costs associated with selling only a personal injury protection and property damage liability policy.

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

TITLE INSURANCE/MORTGAGES

HB 75 — Title Insurance

by Rep. Mahon and others (CS/SB 638 by Banking and Insurance Committee and Senators Wise, Geller, King, and Campbell)

The bill authorizes the issuance of personal property title insurance policies for Uniform Commercial Code (UCC) transactions under Article 9 of the Revised UCC. The insurance product will be available for sale in conjunction with a transaction involving a UCC security interest. It is designed to insure against challenges to attachment, perfection, and priority (such as fraud, filing office errors, inaccuracies in a search report, and errors in documentation and perfection) and provides for the defense of the insured lender if a claim is made regarding the lender's collateral position.

The legislation will allow a title insurer to sell UCC personal property insurance, but would disallow a property and casualty insurer from selling the product no later than January 1, 2006, because of the title insurance monoline statute contained in s. 627.786, F.S., which prohibits an insurer from selling both title insurance and any other kind of insurance in Florida. The provisions of the bill authorizing the issuance of such insurance as a title product shall be

effective once the Office of Insurance Regulation has approved the title insurance form and rate for UCC personal property insurance, which it must do no later than January 1, 2006.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 114-0

HB 531 — Mortgages/Certificates of Release

by Rep. Hasner and others (CS/CS/SB 1258 by Judiciary Committee; Banking and Insurance Committee; and Senator Atwater)

The bill permits a title insurer to execute and record a certificate of release of a mortgage in the event that a satisfaction or release of a mortgage with a principal amount of $500,000 or less has not been executed and recorded after the mortgage has been paid in full. The certificate of release operates as a release of the mortgage described in the certificate. The certificate of release is to be recorded in the real property records of each county in which the mortgage is recorded. A title insurer who records a certificate of release is liable to the holder of an obligation under the mortgage (mortgagee) for actual damage sustained due to the recording of the certificate of release, unless the title insurer relied upon a payoff statement provided by the mortgagee and can prove that the mortgage was paid in full in accordance with the payoff statement.

The bill repeals s. 701.05, F.S., which provides that any person entitled to and receiving payment for money due upon a mortgage, lien, or judgment who fails for 30 days after written demand to cancel and satisfy the record (as provided in s. 701.04, F.S.) is guilty of a second degree misdemeanor.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 37-0; House 118-0

VIATICAL SETTLEMENT AGREEMENTS

CS/SB 2412 — Viatical Settlement Investments

by Banking and Insurance Committee and Senators Garcia and Fasano

This bill provides that viatical settlement investments are securities for purposes of regulation under the Florida Securities and Investor Protection Act (Act) under ch. 517, F.S. The effect of declaring such investments to be securities is that these investments must be registered with either the Florida Office of Financial Regulation (OFR) under the Department of Financial Services (DFS) or the federal Securities and Exchange Commission (SEC). In addition, persons offering such investments must register with the OFR and provide full and fair disclosures concerning viatical settlement investments to prospective investors.

In 1996, Florida established the framework for the regulation of the viatical settlement industry under ch. 626, F.S. In general, a viatical settlement transaction is an agreement under which the owner of a life insurance policy ("viator") sells the policy to another person ("viatical settlement provider") in exchange for an up-front payment, which is generally less than the expected death benefit under the policy. Rather than retaining the policy, the provider usually sells all or a part of the policy to one or more investors ("viatical settlement purchasers"). In return for providing funds, these investors receive the death benefit, or a proportionate share thereof, upon the passing of the insured. It is the investment transaction which would be regulated as a security under this legislation. The bill also makes the following changes:

- Defines a viatical settlement investment as an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any legal or equitable interest in a viaticated policy as defined in ch. 626, part X, F.S. (Viatical Settlement law).

- Clarifies that a viatical settlement investment does not include certain transfers or assignments of a viaticated policy to large institutional financial investors, banks, special purpose entities, qualified institutional buyers, accredited investors, or transfers of viaticated policies pursuant to a court's order.

- Provides that a viatical settlement investment is not an exempt security under certain provisions in the Act and that the offering of a viaticated settlement investment is not an exempt transaction under certain provisions in the Act, unless the offering is to a qualified institutional buyer.

- Defines a "qualified institutional buyer" to mean a designated institution under the federal SEC rule which invests at least $100 million of either its own funds or funds of others on a discretionary basis or any foreign buyer that satisfies the minimum financial requirements set forth under the SEC rule.

- Grants rule authority to the Financial Services Commission to:

    - establish requirements and standards for the filing, content, and circulation of a prospectus or other sales literature for several types of securities in order to determine whether such offering is fair, just, and equitable;
    - establish disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of such investments;
    - specify requirements for investment advisors deemed to have custody of client funds; and,
    - govern the conduct by and prohibited business practices for investment advisors, dealers, and their associated persons.

- Amends the definition of a "special purpose entity" which is an entity created by a licensed viatical settlement provider to provide access to institutional capital markets to provide that such entity "may not obtain capital from any natural person or entity with less than $50 million in assets" and may not enter into a viatical settlement contract.

- Eliminates the requirement for a separate viatical settlement broker license because brokering may now be done by a licensed life insurance agent who is self appointed and requires brokers to obtain an agent's license by October 1, 2006.

- Outlines grounds for the DFS to deny an application, or suspend or revoke a license, for specified persons involved in viatical settlement contract transactions.

- Defines "life expectancy provider" as a person who determines the life expectancies or mortality ratings used to determine life expectancies and mandates that after July 1, 2006, a person may not perform the functions of a life expectancy provider without being registered with and providing specified information to the Office of Insurance Regulation (OIR).

- Requires life expectancy providers to develop an anti-fraud plan and file such plan with the Division of Insurance Fraud and authorizes the OIR to deny the application, suspend, revoke, fine, or refuse to renew the registration of a life expectancy provider under specified circumstances.

- Provides that it is a prohibited practice for any person to knowingly or with intent to defraud, for the purpose of depriving another of property, issue or use a pattern of false, misleading, or deceptive life expectancies or to intentionally facilitate the change of state of residency of a viator to avoid the provisions of the Viatical Settlement law.

- Requires viatical settlement providers to:

    - file annual audited financial statements prepared by independent certified public accountants and reports of all life expectancy providers who have provided life expectancies for use in connection with a viatical settlement contract to the OIR;
    - maintain a deposit of $100,000 in securities to ensure faithful performance of their obligations to viators;
    - utilize life expectancies from registered life expectancy providers or be subject to suspension, revocation, or denial of their license.

- Clarifies that the OIR regulates viatical settlement purchase agreements prior to the effective date of the bill (July 1, 2005) and may examine persons in possession of records relating to viatical settlement purchase agreements executed before that date.

- Repeals s. 626.99245(4), F.S., which provides that the offer, sale and purchase of viatical settlement contracts, and the regulation of viatical settlement providers shall be within the exclusive jurisdiction of the OIR.

- Establishes a "grace period" to provide that any person who, on July 1, 2005, is effectuating a viatical settlement purchase agreement made before July 1, must proceed within 30 days after July 1, to conclude all viatical settlement purchase transactions in progress, provided, if funds have not been matched with a viaticated policy, such funds must be returned to the viatical settlement purchaser within 30 days after July 1.

- Eliminates definitions, deletes obsolete references, and makes changes in the Viatical Settlement law to conform to the security requirements of the Act.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 25-15; House 112-0

FINANCIAL INSTITUTIONS

CS/SB 1330 — Financial Institutions/Credit Unions

by Judiciary Committee and Senator Atwater

The bill amends provisions contained in chapters 655 and 657, F.S., of the financial institutions codes relating to financial institutions, in general, and the regulation of credit unions in particular. The bill:

- Incorporates changes to provide consistency with the National Credit Union Administration guidelines and federal regulations.

- Authorizes the Financial Services Commission to adopt rules to establish criteria under which the Office of Financial Regulation may place a credit union in involuntary liquidation.

- Updates accounting requirements to conform with generally accepted accounting principles of the United States.

- Revises procedures governing a merger of credit unions.

- Removes specific powers of a credit union in favor of broader business powers.

- Broadens the authority of the Office of Financial Regulation to issue an emergency order to require merger, conversion, or other appropriate action for a failing bank or trust company to apply to other financial institutions, including credit unions.

- Removes obsolete language relating to the Florida Credit Union Guaranty Corporation, which no longer exists, and provides other clarifying and conforming changes.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 117-1

HB 897 — Trusts and Other Agency Relationships

by Rep. Hukill and others (CS/SB 1688 by Judiciary Committee and Senator Atwater)

The bill amends the definition of "security account" within the Florida Uniform Transfer-on-Death Security Registration Act (ch. 711, F.S.) to allow banks and trust companies to open investment management accounts or other accounts that include transfer on death benefits.

House Bill 897 makes changes to the powers of trustees under ch. 737, part IV, F.S. It specifies that a trustee has the authority to use trust assets to pay compensation and costs incurred in connection with employing attorneys, auditors, investment advisers or agents to assist the trustee in performing his or her administrative duties. The bill also states that trust assets may be used to prosecute or defend a legal action and to pay compensation and costs to attorneys and other agents that assist the trustee in doing so. The bill adds "appeals" to the legal proceedings covered under this authority.

This legislation also establishes the means by which a trustee may resign his or her post by creating s. 737.309, F.S. The trustee may resign upon giving at least 30 days written notice to the settler (if living), all co-trustees, and all persons entitled to a trust accounting (beneficiaries), or with approval of the court. The resignation of a trustee does not affect or discharge any liability the trustee or surety on the trustee's bond may have for acts or omissions. If the resignation requires a successor trustee, the resigning trustee must continue to serve until the successor assumes the trusteeship. Notice of the resignation must be provided to beneficiaries, and notice and all records pertaining to the resignation must be provided to a co-trustee or the successor trustee.

The bill amends various provisions of the Florida Uniform Principal and Income Act. Chapter 738, F.S., governs the identification of principal and income in or from a trust property through a trust instrument, will, or other governing instrument, the allocation of principal and income, and the apportionment of assets between income and principal. It provides four situations for which a trustee does not need court authorization to exercise power that may currently be considered a conflict of interest. The legislation enacts an exception to the rule that the trustee may not make an adjustment if the adjustment would benefit the trustee, allowing a trustee to make an adjustment if the trustee's compensation is based upon the value of trust assets. The bill defines the terms "fair market value" and "unitrust amount," and amends the definition of "income trust" and "undistributed income."

If a trustee or disinterested person does not act in good faith, the provisions of s. 738.105(3), F.S., apply. Thus, if a trustee of a unitrust does not act in good faith in submitting or failing to submit a unitrust plan or modification, a court will have authority to correct the trustee's actions. The bill makes it clear that when the administration of a trust is governed by Florida law, but the substantive provisions are governed by the laws of another state, adjustments under s. 738.104, F.S., are administrative and thus governed by Florida law. The bill also allows the settlor of a trust to create a unitrust from the inception of the trust. This will allow settlors the option to initially draft their trust documents in unitrust form. The legislation also provides guidelines for the allocation of certain types of money and property received from targeted entities and investment entities.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 40-0; House 114-0

HB 871 — Investment of Public Funds

by Rep. Bilirakis and others (SB 1998 by Senator Alexander)

The bill allows banks and savings associations that serve as qualified public depositories for state and local governments to accept public deposits in amounts greater than $100,000 that would maintain full Federal Deposit Insurance Corporation coverage, if the following conditions were met:

- The funds must be initially deposited through a qualified public depository, as defined in s. 280.02, F.S., selected by the Chief Financial Officer or unit of local government;
- The selected depository must arrange for deposit of the funds in certificates of deposit in one or more federally insured banks or savings and loans associations, wherever located, in the account of the state or unit of local government;
- The full amount of principle and accrued interest of each certificate of deposit must be insured by the Federal Deposit Insurance Corporation;
- The selected depository is to act as custodian for the state or unit of local government with respect to such certificates of deposit issued for its account; and
- At the same time the state's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other federally insured financial institutions, wherever located, equal to or greater than the amount of the funds initially invested by the Chief Financial Officer or unit of local government through the selected depository.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 117-0

HB 627 — Office of Financial Regulation/Public Records

by Rep. Detert (CS/CS/SB 698 by Governmental Oversight and Productivity Committee; Judiciary Committee; and Senator Sebesta)

The bill creates a public records exemption for information obtained by the Office of Financial Regulation (OFR) of the Financial Services Commission in connection with investigations and examinations under the Florida Consumer Finance Act, ch. 516, F.S. The effective date of this bill was contingent on the passage of HB 381 or similar legislation, CS/CS/CS/SB 304; however, neither bill passed.

If approved by the Governor, these provisions take effect October 1, 2005, if HB 381 or substantially similar legislation is adopted in the same legislative session or an extension thereof becomes a law. Since the legislation was contingent upon passage of substantive legislation which ultimately did not pass, this bill will not become a law.
Vote: Senate 39-0; House 115-0

WORKERS' COMPENSATION

HB 423 — Workers' Compensation Employee Definition

by Rep. Ross (SB 2118 by Senators Atwater and Lynn)

The bill loosens the requirements that must be met in order for an owner-operator of a motor vehicle to be excluded from workers' compensation coverage as an employee of a motor carrier. These changes make it less likely that an owner-operator would be considered an employee who is required to be covered by the workers' compensation of the motor carrier. The changes in criteria for an owner-operator to be excluded from the definition of "employee" are as follows:

- Requires the owner-operator to furnish the motor vehicle equipment "identified in the written contract" between the motor carrier and the owner-operator, rather than furnishing the "necessary equipment" as currently required;

- Requires the owner-operator to furnish the "principal costs" rather than "all costs" incidental to the contract between the motor carrier and the owner-operator;

- Allows the motor carrier to advance costs to the owner-operator as long as the written contract between the motor carrier and the owner-operator requires the owner-operator to reimburse the advanced costs;

- Deletes the requirement that the owner-operator must be paid on commission (but retains the prohibition on being paid by the hour or other time-measured basis).

If a person meets the preceding criteria as well as the other aspects of the definition of "owner-operator," provided under s. 440.02, F.S., the person would be excluded from the definition of "employee" and the motor carrier would not be required to provide workers' compensation benefits for work-related injuries.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 38-0; House 117-0

HB 729 — Florida Self-Insurers Guaranty Association/Public Records Exemption

by Rep. Goodlette (CS/CS/SB 1442 by Governmental Oversight and Productivity Committee; Banking and Insurance Committee; and Senator Atwater)

The Legislature created the Florida Self-Insurers Guaranty Association, Incorporated (association), as a nonprofit entity, effective January 1, 1994. Generally, most self-insured employers are required to join the association and meet certain financial requirements to self-insure for purposes of workers' compensation coverage requirements. In the event a self-insured employer becomes insolvent, the association assumes responsibility for the administration and payment of the employer's workers' compensation claims.

The bill creates a public record exemption for certain claims files and minutes of portions of meetings of the association until termination of all litigation and settlement of all claims arising out of the same accident. Once the litigation is resolved regarding all claims related to an accident, the medical records contained in the claims files and other information relating to the medical condition of a claimant would continue to be exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.

The bill provides statements of public necessity and provides for future review and repeal of the exemptions.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 109-0

WARRANTY ASSOCIATIONS

CS/SB 2006 — Warranty Associations

by Banking and Insurance Committee and Senators Garcia and Lynn

Committee Substitute for Senate Bill 2006 permits the inclusion in motor vehicle service agreements of paintless dent-removal services performed by a company whose primary business is paintless dent removal. Paintless dent removal is the process of removing dents, dings, and

creases, including hail damage from a vehicle without affecting the existing paint finish. It does not include services that involve replacing vehicle body panels, sanding, bonding, or painting.

The committee substitute permits a licensed motor vehicle service agreement company that maintains net assets of $10 million or greater and that files audited financial statements with the Department of Financial Services, to use either a 50 percent reserve or contractual liability coverage for specific blocks of new service. "Specific new blocks of service agreements" are the service agreements sold by a single designated licensed salesperson. The service agreement must distinguish how each individual service agreement is covered, and the service agreement company must maintain in its register information regarding whether the agreement is covered by contractual liability insurance or the unearned premium reserve account. If the 50 percent reserve is used for new blocks of service agreements, the company must obtain contractual liability insurance for any future deficits in the premium reserve caused by the new agreements.

The bill also expands the definition of a "service warranty" that may be sold by a licensed service warranty association. Currently, service warranties cover "repair or replacement" of a consumer product. The bill expands the possible coverage to include normal wear and tear, power surge damage, and accidental damage from handling. But, any warranty contract that includes coverage for accidental damage from handling must be covered by a contractual liability policy purchased by the warranty association covering 100 percent of its total claim exposure. The bill also revises the definition to cover warranties of 1 year or longer. The current definition refers only to warranties that are longer than 1 year.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 38-0; House 117-0

CS/CS/SB 2498 — Warranty Associations

by Judiciary Committee; Banking and Insurance Committee; and Senator Campbell

The bill creates an exception to certain specific penalty provisions for any violation of ch. 520, ch. 521, and ch. 634, part I, F.S., relating to the sale or the failure to disclose in a retail installment contract or lease, a vehicle protection product or agreement that provides for vehicle protection expenses as defined in s. 634.011(7)(b)1., F.S. The failure to disclose must have occurred prior to April 23, 2002, the date on which legislation became effective classifying vehicle window etching as a vehicle protection product authorized to be sold under a motor vehicle warranty contract. The exception applies only if the sale of the product, contract, or agreement was otherwise disclosed to the consumer in writing at the time of the purchase or lease of the automobile. In the case of a violation of these sections for which the specified statutory penalties do not apply, the court must award actual damages and costs, including a reasonable attorney's fee. The exception applies retroactively to January 1, 1998.

The bill also expands the definition of a "service warranty" that may be sold by a licensed service warranty association. Currently, service warranties cover "repair or replacement" of a consumer product. The bill expands the possible coverage to include normal wear and tear, power surge damage, and accidental damage from handling. However, any warranty contract that includes coverage for accidental damage from handling must be covered by a contractual liability policy purchased by the warranty association covering 100 percent of its total claim exposure. The bill also revises the definition to cover warranties of 1 year or longer. The current definition refers only to warranties that are longer than 1 year.

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

UNCLAIMED PROPERTY

HB 1527 — Disposition of Unclaimed Property

by Rep. Lopez-Cantera and others (CS/CS/SB 2494 by Judiciary Committee; Banking and Insurance Committee; and Senator Clary)

The bill makes the following changes to the Florida Disposition of Unclaimed Property Act:

- Reduces the period after which the Department of Financial Services (department) must provide information contained in an unclaimed property report to a qualified party from 90 to 45 days after the report is added to the unclaimed property database.

- Simplifies the "due diligence" process required of property holders before they turn property over to the department. The holder of an inactive account must attempt to notify the owner between 60 and 120 days before filing an unclaimed property report.

- Defines "health care provider" and "managed care payor" and provides a limited exception to the reporting requirements for certain types of accounts maintained by these types of entities.

- Increases the threshold amount at which the department must make at least one attempt to contact the owner of an unclaimed property from $100 to $250.

- Requires a power of attorney to be executed by the claimant in order to give a claimant's representative the authority to recover property on his or her behalf.

- Voids a power of attorney or agreement for compensation to recover or purchase unclaimed property worth more than $250 if entered into less than 45 days after the holder or examination report was processed and added to the unclaimed property data base.

- Caps the fees and costs that a claimant's representative may charge on any unclaimed property account at $1,000. The cap may only be exceeded if, as a condition of exceeding the cap, the claimant's representative makes full disclosure as required by law.

- Mandates that the purchaser of unclaimed property cannot pay a purchase price that is over $1,000 less than the value of the unclaimed property account, unless the required full disclosure statement is made that the property is held by the Bureau of Unclaimed Property.

- Presumes that stock, equity interests in a business, dividends, profits, or other specified sums are unclaimed after three years with no contact from the owner, rather than five years.

- Requires funds from the sale of unclaimed firearms be deposited in the State School Fund.

- Prohibits entering of false information on the Bureau of Unclaimed Property website.

- Permits the department to sell certificates for unclaimed stock or other equity interests of business associations at auction for the value of the certificate (collector's value) if it cannot be placed in the department's name or readily sold and converted to cash.

- Requires a claimant using a notarized statement to establish identity to present a United States, state, or foreign government issued photographic identification to the notary.

- Changes the filing requirements for claims made on behalf of a corporation.

- Clarifies the rules the department applies when it receives multiple claims for the same unclaimed property account. Contains a series of tiebreakers that apply when the bureau receives multiple property claims on the same day.

- Makes clear that an unclaimed property buyer's sole remedy for damages is against the claimant's representative, seller (owner of property), or both.

- Requires an estate or estate heir to pay the department's costs and attorney's fees in opposing a probate court order directing payment of property to a specified party, if the department is the prevailing party.

- Permits the department to require any information necessary to make a determination of entitlement to property when an estate beneficiary uses an affidavit to make a claim for unclaimed property. Permits the department to take live testimony in lieu of the affidavit.

- States that if any person files a petition for writ of garnishment seeking to obtain property, the petitioner must pay the department's costs and attorney's fees if it opposes,

appeals, or collaterally attacks the petition or writ if the department is the prevailing party.

- Clarifies that claimants' representatives and the buyers of unclaimed property must maintain records for three years following each power of attorney or agreement between the property owner and the claimant's representative or buyer.

- Allows a court to impose a fine on a person the department finds has committed a violation.

- Provides for civil enforcement of the chapter's provisions in a court with jurisdiction.

- States that a license of a claimant's representative may be suspended for up to five years, and that a license that is revoked must be revoked for a minimum of five years.

- Permits the department to estimate the amount of unclaimed property due and owing by a holder if the records of a property holder are insufficient make a clear determination.

- Prohibits the purchaser of unclaimed property from paying a purchase price that is over $1,000 less than the value of the unclaimed property account, unless the required full disclosure statement is made that the property is held by the Bureau of Unclaimed Property.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 115-0

FIRE MARSHAL

HB 69 — Fire Prevention and Control

by Rep. Quinones and others (CS/SB 108 by Criminal Justice Committee and Senator Constantine)

This bill amends several provisions relating to the Division of State Fire Marshal (SFM) within the Department of Financial Services and is named for two firefighters who lost their lives during a live fire training exercise. Cited as the "Lieutenant John Mickel and Dallas Begg Act," the bill requires the SFM to adopt rules for the purpose of protecting firefighters during live fire training exercises by January 1, 2006. The legislation requires that these safety rules be modeled upon safety and training standards recommended in National Fire Protection Association, Publication 1403. The legislation also mandates live fire training instructors be state certified and that all live fire training commenced on or after January 1, 2007, is conducted by certified live fire instructors. This bill does not apply to wild land or prescribed live fire training exercises

sanctioned through the National Wildfire Coordinating Group or the Division of Forestry of the Department of Agriculture and Consumer Services.

The bill creates a Fire and Emergency Incident Information Reporting Program (Program) within the SFM for the purpose of establishing an electronic communication system which is designed to transmit and receive fire and emergency incident information among fire protection agencies. The SFM must adopt rules for the Program and prepare annual reports to the Governor, President of the Senate, Speaker of the House of Representatives and fire protection agencies. An advisory panel is created (Fire and Emergency Incident Information System Technical Advisory Panel) to make recommendations to the SFM regarding the Program. The SFM is directed to consult with the Division of Forestry within the Department of Agriculture and Consumer Services and the Bureau of Emergency Medical Services within the Department of Health to coordinate data, ensure its accuracy, and limit duplication of efforts in data collection, analysis, and reporting.

The legislation strengthens the regulation of pyrotechnic displays by making it a third-degree felony for persons to initiate pyrotechnic displays within "any structure" unless:

- The structure has a fire protection system;
- The owner of the structure has authorized in writing the pyrotechnic display;
- The local government requires a permit for use of a pyrotechnic display in an occupied structure, and the permit has been obtained and all conditions of the permit are complied with. If the government does not require a permit, the person initiating the display has complied with the National Fire Protection Association standard for pyrotechnic displays. An exception is provided for the manufacture, distribution, wholesale or retail sale, or seasonal sale of products, e.g., fireworks and sparklers, regulated under ch. 791, F.S., so long as such products are not used in an occupied structure. Pyrotechnic terms are defined in the bill.

The legislation further requires that proceeds from property seized under the Florida Contraband Forfeiture Act (ss. 932.701-932.707, F.S.) by the SFM be deposited into the Insurance Regulatory Trust Fund to be used for arson suppression, arson investigation, and funding anti-arson rewards. Currently, such proceeds are required to be deposited in the State's General Revenue Fund.

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

HB 41 — Criminal Penalties Relating to Fire Alarm Systems

by Rep. Gibson and others (CS/CS/SB 634 by Regulated Industries Committee; Criminal Justice Committee; and Senator Bennett)

The Division of State Fire Marshal within the Department of Financial Services (DFS) and certified local firesafety inspectors are responsible for inspecting any building or fire alarm system regarding the issues of fire safety, prevention, and control under ch. 633, F.S. The Electrical Contractors Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) under ch. 489, part II, F.S., regulates fire alarm system contractors, certified unlimited electrical contractors, and their employees, who are termed fire alarm system agents, as to the installation, testing, inspection, and repair of fire alarm systems.

This bill amends ch. 633, F.S., to provide that it is a first degree misdemeanor for a person to intentionally or willfully install, service, test, repair, improve, or inspect a fire alarm system unless that person is one of the following:

- A holder of a valid and current active license as a certified unlimited electrical contractor;
- A holder of a valid and current active license as a licensed fire alarm contractor;
- An authorized fire alarm system agent; or
- A person who is exempt under the contract licensing provisions of s. 489.503, F.S.

If approved by the Governor, these provisions take effect October 1, 2005.
Vote: Senate 38-0; House 116-0

HB 1267 — Nursing Homes

by Rep. Stargel and others (SB 2572 by Senator Webster)

This legislation requires all nursing homes licensed under ch. 400, part II, F.S., to be protected by approved, supervised automatic sprinkler systems in accordance with the following schedule:

- Each “hazardous area” of a nursing home must be protected by a sprinkler system by December 31, 2008; and

- The “entire” nursing home must be protected by a sprinkler system by December 31, 2010.

The bill authorizes the Division of State Fire Marshal (SFM) within the Department of Financial Services (DFS) to grant two 1-year extensions for installing sprinkler systems in the “entire” nursing home (or non-hazardous areas) if it determines that the nursing home has been prevented from complying for reasons beyond its control.

The bill establishes a loan guarantee program called the "State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program" (Program) which will help nursing homes defray the cost of installing sprinkler systems. This Program provides up to $4 million in any fiscal year from the Insurance Regulatory Trust Fund (Fund) to provide nursing homes that might not otherwise be able to secure a loan for capital improvements, e.g., installing sprinkler systems.

The SFM, with the assistance of the Division of Treasury, may enter into limited loan guarantee agreements with one or more qualified public depositories in Florida and such agreements must provide a limited guarantee by the state covering up to 50 percent of the principal sum loaned by the financial institution to an eligible nursing home for the sole purpose of the initial installation of a fire protection system approved by the SFM. The funds may not be used to guarantee any limited loan guarantee agreement for a period longer than 10 years. Further, no limited loan guarantee agreement based on invested funds may be entered into after December 1, 2005.

The Agency for Health Care Administration (AHCA) estimates that there are 35 nursing homes in the state which would have to comply with the measure's provisions at a total cost of $4.41 million. The agency estimates that Medicaid would pay a total of $669,419 or $275,198 in General Revenue, and $394,221 from the Medical Care Trust Fund. The bill authorizes use of Medicaid funds for capital improvements to help pay for sprinkler system installation and authorizes a 5 year repayment period. Any Medicaid funds used for sprinkler system installation must come from existing Medicaid appropriations. The total estimated cost to Medicaid over the 5 year period is $3,347,097. The bill authorizes DFS to adopt rules, enforce the sprinkler system standards, impose administrative sanctions for nursing homes in violation of these provisions, and govern the establishment and operation of the loan guarantee program.

The bill authorizes that residents of nursing homes may request a change in the placement of their bed in their room under certain conditions, even though the placement will not comply with the Florida Building Code. The location of the bed may be changed only if it does not infringe on any roommate or interfere with care or safety of the resident as determined by the facility. The bill requires documentation of the resident's request.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 40-0; House 115 -0