2017 POST-SESSION FLORIDA INSURANCE REPORT

GT GreenbergTraurig

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POLITICAL OVERVIEW

Shortly before 9:30 p.m. on Friday, May 5, the scheduled end of session, the Legislature adjourned without a final vote on the $82.4 billion budget. Agreement on the budget was reached on May 4; however, legislative rules require a 72 hour waiting period before a final vote can be taken. As such, legislators returned to the Capitol on the afternoon of Monday, May 8, to cast their votes on the budget agreement and a number of conforming bills. At around 8:50 p.m. on Monday, the House and Senate approved the budget compromise, accompanying conforming bills, and adjourned *sine die*.

Budget negotiations were particularly contentious this session due to differing personalities and priorities between the presiding officers, as well the appropriation chairs of each Chamber. Disagreement on health care spending, and more specifically Medicaid payments to hospitals, delayed the final agreement. In the end, these facilities will see a $250 million cut equaling seven percent in recurring funds beginning July 1. The final agreement also includes priorities of the presiding officers.

Senate President Negron's priority to develop a reservoir for cleaning and diverting discharges from Lake Okeechobee will receive $800 million in funding. The budget also includes $200 million for students in struggling schools along with $213 million for teacher bonuses, a priority of House Speaker Corcoran. Most notably, Speaker Corcoran succeeded in cutting funds to Enterprise Florida (EFI), charged with economic development activities and VISIT Florida, the state's tourism marketing arm.

Throughout the session, Speaker Corcoran sought to eliminate EFI altogether and drastically cut VISIT Florida. The final budget compromise cut the EFI operating budget from $25 to $16 million and did not provide any economic incentives funds. The governor had recommended $85 million for economic incentives and called for additional VISIT Florida funding. In the end, VISIT Florida saw a cut from $76 to $25 million. Both entities were also subjected to increased transparency measures.

The governor traveled to the home districts of legislators who supported the cuts during session in an attempt to turn the opposition. There is also speculation that he may use his veto pen. The funding for EFI and VISIT Florida, however, was placed in a conforming bill which includes the transparency measures. As such, the governor cannot veto the language without also vetoing the funding.

A total of 231 bills were approved this session and are heading to the governor for his action. A number of major policy bills fell victim to last-minute amendments, including workers' compensation reform, a reworking of the Statewide Medicaid Managed Care program, and the medical marijuana bill that would have implemented the constitutional amendment approved in November 2016. As a result, none of those measures gained final approval.

The 2018 Session is scheduled to run from January 9 to March 9 and we expect to see bills filed for the session almost immediately. Further, interim committee meetings will begin as early as September in preparation for the early start of session.

Chief Financial Officer (CFO) Jeff Atwater announced early in the session that he would vacate his Cabinet seat to assume the CFO position for Florida Atlantic University. Although his actual date of departure has not been announced, Governor Scott will appoint his successor. Names being floated for the CFO spot include former Commissioner of the Office of Financial Regulation (OFR) Tom Grady (R-Naples), a close friend of Scott and former Florida lawmaker Pat Neal (R-Sarasota). Jacksonville Mayor Lenny Curry was a favorite for the post; however, he recently announced that he did not want the position. Prior to Atwater's early departure, current

Senator Tom Lee (R-Brandon) and Lt. Governor Carlos Lopez-Cantera were mentioned as considering running for the position in 2018.

The legislative off-season will bring a number of special elections due to the departure of a senator and representative. Governor Scott has called a special election to fill the seat vacated by Sen. Frank Artiles (R-Miami). Artiles resigned after he made inappropriate comments about fellow senators. The primary election is scheduled for Tuesday, July 25, with the general election set for Sept. 26. This election has already had a ripple effect on a number of House seats.

Already filed for the seat is freshman Rep. Daisy Baez (D-Coral Gables). Another new House member, Robert Ascencio (D-Miami) has also expressed interest. On the Republican side, Rep. Jose "Pepe" Diaz (R-Miami), chair of the powerful Commerce Committee, has expressed a strong interest and former Senator Alex Diaz de la Portilla has already filed for the seat. Historically, the seat has been held by a Democrat until Artiles beat current Democratic Senator Dwight Bullard in 2016. The race to fill this seat will be a priority for both Democrats and Republicans.

Another special election will be held to fill the seat currently held by Rep. Eric Eisnaugle (R-Orlando). Governor Scott appointed Eisnaugle to serve on the Fifth District Court of Appeal which has a vacancy due to the appointment of Judge Alan Lawson to the Florida Supreme Court. An election has not yet been set for this seat which is in a strong Republican district.

Update – On June 7, 2017, the Legislature convened Special Session A to address education funding as well as the funding for VISIT Florida and Enterprise Florida (EFI). The call of the special session was later expanded to include funding for additional repairs to the Herbert Hoover Dike surrounding Lake Okeechobee and legislation to implement the medical marijuana constitutional amendment approved by the voters in November 2018.

At the end of the three-day special session, the Governor and the presiding officers of the House and Senate claimed victory for their priorities and went home for the summer. Outlined below are the general agreements of the deal approved on June 9, 2017:

- $75 million to fund VISIT Florida;
- $85 million for a corporate incentives fund which would provide dollars for infrastructure and job training;
- $50 million to couple with federal funding to fix the Herbert Hoover Dike on the south shore of Lake Okeechobee; and,
- $60 million for various higher education projects that were vetoed by the Governor in the regular session budget.

The Legislature also approved legislation that amended the current compassionate use of low-THC and medical cannabis program and statutes in order to implement the constitutional amendment passed by Florida voters in the 2016 General Election.

The constitutional amendment states that if the Department of Health (DOH) failed to issue new rules or regulations within six months of the amendment taking effect, or does not begin issuing identification cards and registering new medical marijuana treatment centers (MMTCs) within nine months, "any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties."

Because the constitutional amendment took effect January 1, 2017, it was imperative that lawmakers approve legislation prior to the July 1 deadline when a standing to seek judicial relief would begin.

ISSUES APPROVED BY THE LEGISLATURE

At this time, all bills passed during the 2017 Legislative Session of interest to the City of North Port have been acted on by the Governor. If you would like copies of these bills, please contact the GT Tallahassee Legislative Services Office at 850-222-6891

GENERAL INSURANCE

Anti-Fraud Efforts – *HB 1007 by Rep. Holly Raschein (R-Key Largo)*
This measure to require all insurers to adopt an anti-fraud plan was a priority of outgoing CFO Jeff Atwater. Smaller insurers are required to also establish and maintain a special investigative unit (SIU) for contract for SIU services. In addition, the bill requires every insurer to designate an employee who is responsible for implementing the requirements related to fraud investigation. Other provisions include:

- Granting an insurer obtaining a Certificate of Authority (COA) in Florida six months to establish and adopt an anti-fraud plan;

- Requiring an insurer to designate an employee who is responsible for implementing the fraud investigation requirements;

- Requiring insurers, by December 31, 2018, to provide at least two hours of initial anti-fraud training and, thereafter, one hour annually, to unit staff;

- Requiring insurers to file their plan electronically with the Department of Financial Services (DFS) annually on or before December 1, 2017, and to include:
    - An acknowledgment that procedures have been established to detect and to report possible fraudulent insurance acts;
    - An acknowledgement that the insurer provides required anti-fraud education to employees;
    - A description of the anti-fraud unit and the education provided; and,
    - The rationale for staffing levels and resources provided to the anti-fraud unit;

- Requiring insurers, beginning in 2019, to provide anti-fraud statistics to DFS by March 1 each year for insurance lines written for that calendar year, which includes the number of:
    - Policies in effect and the amount of premiums written for policies;
    - Claims received and number of claims referred to the anti-fraud investigative unit;
    - Other insurance fraud matters referred, investigated, or accepted by the anti-fraud investigative unit;
    - Claims investigated or accepted by the anti-fraud investigative unit;
    - Cases referred to DFS, law enforcement agencies, or other entities; and,
    - The estimated dollar amount of damages in cases referred to DFS or other agencies;

- Requiring judicial circuits that receive appropriations for prosecuting insurance fraud cases to submit to DFS data on how the funds are used;

- Providing DFS with rulemaking authority for establishing annual submission requirements to the governor and Legislature beginning September 1, 2018;

- Creating a dedicated prosecutor grant program to allow state attorneys to seek funding from DFS for additional positions to prosecute insurance fraud cases;

- Requiring Medicare Advantage Plans sold by health maintenance organizations (HMOs) to be actively engaged in managed care within 24 months after licensure unless the time is extended by the Office of Insurance Regulation (OIR);

HB 1007 also included the provisions of two bills that were moving through the process but were unable to pass on their own. They were:

- Viatical Settlements – This language provides that a life insurance policy, a contract or transaction entered into for the furtherance of a Stranger Oriented Life Insurance (STOLI) practice, is void and unenforceable. Further, it allows a life insurer to contest a policy if it was obtained by a STOLI practice.

- PreInsurance Inspections – This issue allows insurers to opt out of pre-insurance inspection requirements for private passenger vehicles.

On June 26, 2017, the bill was signed by the Governor. It will take effect on September 1, 2017.

Anti-Fraud Efforts Public Records Exemption – *HB 1009 by Rep. Holly Raschein (R-Key Largo)*
This bill traveled with HB 1007 and provides that the following information about a Special Investigative Unit (SIU) held by DFS is confidential and exempt from the public records law:

- An insurer description of its anti-fraud education and training;

- A description of the insurers anti-fraud unit;

- The rationale for the staffing level and resources provided to the anti-fraud unit;

- The number of:
  - Claims referred to the insurer anti-fraud investigative units;
  - Other insurance fraud matters referred to the insurer anti-fraud units that are not claim related;
  - Claims investigated or accepted by insurer anti-fraud unit; and
  - Insurance fraud matters investigated or accepted by the insurer that are not claim related; and

- The estimated dollar amount or range of damages on cases referred to DFS or other agencies.

On June 26, 2017, the bill was signed by the Governor. It will take effect the same day as HB 1007, which is September 1, 2017.

Building Code – *HB 1021 by Rep. Bryan Avila (R-Hialeah)*
On the final day of session, the Senate added several building code provisions to a construction industry bill and sent it back to the House for final approval. The bill was one of the few the House concurred with the Senate on. Provisions include:

- Requiring the Florida Building Commission (Commission) to use the International-Codes (I-Codes), the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code (Code);

- Requires the Commission to adopt an updated Code every three years through reviews of the I-Codes and the National Electrical Code;

- Requires the Commission to adopt any provision from the I-Codes, the NFPA, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program (NFIP), the Federal Emergency Management Agency (FEMA), and the U.S. Department of Housing and Urban Development (HUD), and maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction;

- Provides that amendments or modifications made to the Code should be carried forward until the next edition of the Code and that the Code updating process remain on a three-year cycle; and,

- Requires the Commission to adopt the Code and amendments to it by a two-thirds vote of the members present.

On June 23, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Department of Financial Services (DFS) – *HB 925 by Rep. Mike Miller (R-Orlando)*
The DFS legislative package contained mostly clarifying provisions for the Divisions of Treasury, Accounting and Auditing, State Fire Marshal, Agents and Agency Services, and Risk Management, including:

- Applying timely payment and other requirements related to state payments, warrants, and invoices for payments made in relation to certain agreements funded with federal or state assistance;

- Updating the 1991 Boiler Safety Act regarding installation and inspection requirements, inspector continuing education and penalties for violations of the act;

- Allowing active participants in associations to receive two hours of continuing education credit each calendar year and defining "association" to include: Florida Association of Insurance Agents (FAIA); National Association of Insurance and Financial Advisors (NAIFA); Florida Association of Health Underwriters (FAHU); Latin American Association of Insurance Agencies (LAAIA); Florida Association of Public Insurance Adjusters (FAPIA); Florida Bail Agents Association (FBAA); and Professional Bail Agents of the United States (PBUS);

- Exempting persons who have the Universal Claims Certification from the Claims and Litigation Management Alliance (CLM) from the licensure examination for all-lines adjuster and adds this certification training to the approved continuing education requirements for certain adjusters and agents;

- Providing that, upon a grant of a pardon or the restoration of civil rights, criminal offenses that would otherwise temporarily or permanently bar certain individuals or entities seeking licensure as an insurance agent, agency, or public adjuster do not automatically bar or disqualify the applicant;

- Allowing trustees to advise persons, settlors, or beneficiaries regarding their interests in a trust regarding life or health insurance plans;

- Allowing a regular employee of a property insurer handling claims to adjust claims with respect to residential property insurance when the sublimit coverage does not exceed $500;

- Providing that any insurer doing business in Florida in receipt of a claim from a Holocaust victim or from a beneficiary, descendant, or heir of a Holocaust victim, must: (1) diligently and expeditiously investigate all such claims; (2) allow such claimants to meet a reasonable, not unduly restrictive, standard of proof to substantiate a claim, pursuant to standards established by DFS; and (3) permit claims irrespective of any statute of limitations or notice requirements imposed by any insurance policy issued, provided submission of the claim is on or before July 1, 2018;

- Providing that actions brought by Holocaust victims or by a beneficiary, heir, or a descendant of a Holocaust victim seeking proceeds of an insurance policy issued or in effect between 1920 and 1945, inclusive, may not be dismissed for failure to comply with the statute of limitations;

- Providing that, for purposes of the state's sovereign immunity provisions, a claimant does not have to provide notice to DFS for a claim against a county; and,

- Allowing the use of firefighter's confidential information for the purposes of certain studies.

On June 26, 2017, the bill was signed by the Governor. It will take effect January 1, 2018.

Insurance Company Regulation – *HB 359 by Rep. David Santiago (R-Deltona)*
The bill became the insurance train of the session and nearly died when controversial amendments were added in the final days of session. Ultimately, the troublesome language was taken off the bill and it was approved in the final hours of session. Provisions in the bill include:

- *Florida Hurricane Catastrophe Fund (FHCF) Emergency Assessments* – Repeals the sunset of the medical malpractice insurance exemption from FHCF emergency assessments making the exemption permanent.

- *Florida Workers' Compensation Insurance Guaranty Association Assessments (FWCIGA)* – Allows receivables related to FWCIGA assessment recoupment surcharges to be treated as assets in the same manner currently provided for Florida Insurance Guaranty Association (FIGA) assessment-related receivables.

- *Medical Malpractice Rate Filing* – Removes the requirement to submit an annual base rate filing regardless of whether the insurer is proposing a rate change and would permit medical malpractice insurers to file a certification in lieu of a rate filing when no rate change is proposed.

- *Payments for Premium and Insufficient Funds Fee* – Adds payments by "draft" or "electronic check" to the list of acceptable payment methods for paying premiums. In certain instances, a property, casualty, or surety insurer, a premium finance company, or a motor vehicle insurer may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). The bill authorizes most insurers to charge $15, pursuant to policy terms, if an electronic premium payment fails due to insufficient funds.

- *Compliance of Electronic Documents with Insurance Code Requirements* – The Insurance Code establishes content, readability, and formatting requirements for a wide variety of documents used in the transaction of insurance. The bill provides that electronic documents will satisfy certain standards applicable to paper documents if the elements have reasonably similar proportions or emphasis in their electronic format and context or are displayed in a reasonably conspicuous manner.

- *Motor Vehicle Insurance Policy Exclusions* – While motor vehicle insurers may exclude specified vehicles from coverage under a policy, they cannot exclude named individuals if coverage is required by law. The bill authorizes an insurer to specifically exclude named individuals from private passenger motor vehicle insurance coverage, except for periods when the excluded individual is not operating a covered vehicle, it is unfairly discriminatory, or it is inconsistent with filed underwriting guidelines.

- *Property Information Report* – Changes property information reports, formerly called ownership and encumbrance reports, issued by title insurers, title agents, or title agencies.

- *Minimum Surplus for Insurers Writing Only Renters' Insurance* – Requires newly-licensed and current insurers that write only renters', tenants', or cooperative unit owners' residential property insurance to have $10 million minimum surplus.

On June 23, 2017, the bill was signed by the Governor and it took effect immediately.

NAIC Insurer Receivership Model Act – *HB 837 by Rep. Jake Raburn (R-Valrico)*
The bill adds the National Association of Insurance Commissioners (NAIC) Insurer Receivership Model Act to the list of acts that extend reciprocity in the treatment of policyholders. Specifically, the bill:

- Limits certain defenses that may be raised by third parties in actions brought by or against DFS in its capacity as receiver;
- Limits third parties from asserting or raising obligations, claims, and defenses not recorded in the records of the insurer in receivership;
- Allows the court more flexibility in approving procedures for the "deem filing" of claims or when DFS deems a claim filed and can distribute funds, such as a refund of unearned premium, to the claimant without the need of a formal claim;
- Allows the court to set a deadline for the filing of claims;
- Prohibits claims for post-judgment interest accrued after the liquidation date;
- Creates a process for administering large deductible workers' compensation policies and the collateral for these policies;
- Adds all costs and expenses related to administrative supervision to Class 1 of the priority of claims to be paid in distribution;
- Adds claims related to health care coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization to Class 2 of the priority of claims to be paid in a distribution;
- Adds claims of residents which arise out of a continuing care contract to Class 2 of the priority of claims to be paid in a distribution;
- Adds claims of certain creditors, including claims for punitive damages, bad faith, or wrongful settlement practices to Class 6 of the priority of claims to be paid in a distribution; and
- Removes notice requirements related to early access distributions to guaranty associations.

On June 23, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Public Insurance Adjusters – *HB 911 by Rep. Sean Shaw (D-Tampa)*
The bill, which was pushed by the Florida Association of Professional Insurance Adjusters (FAPIA), makes the following changes to the DFS adjuster licensing process:

- Prohibits individuals from directly or indirectly performing the duties of a public adjuster or soliciting, investigating, or adjusting claims on behalf of a public adjuster, unless licensed;
- Repeals language that prohibits a public adjuster from contacting a policyholder within 48 hours of an occurrence which may be the basis of an insurance claim. In 2012, the Florida Supreme Court ruled this provision unconstitutional;
- Permits a policyholder to cancel a public adjuster contract by any means;
- Prohibits a public adjuster from charging a fee based on the policy deductible portion of a claim;
- Prohibits a public adjuster, a public adjuster apprentice, or any person working on a public adjuster's behalf from contracting for salvage or any other repair related to an insurance claim;

- Prohibits any person not licensed as a public adjuster or otherwise exempt from licensure from directly or indirectly performing the duties of or advertising as a public adjuster;

- Decreases from one year to six months the time an all-lines adjuster must be licensed and appointed as an independent adjuster, company adjuster, or public adjuster apprentice before becoming eligible for licensure as a public adjuster;

- Eliminates licensure for public adjuster apprentices and instead requires licensure as an all-lines adjuster and appointment by a public adjuster or a public adjusting firm;

- Replaces the requirement for a public adjuster apprentice to work under the supervision of a public adjuster for 12 months before becoming eligible for licensure with requiring the apprentice to be continually appointed as a public adjuster for six months;

- Reduces the number of public adjuster apprentices that may be appointed by a firm concurrently to four and reduces the number of public adjuster apprentices that may be supervised by a public adjuster simultaneously to one;

- Allows insurer employees to handle residential property insurance claims with coverage limits of $500 or less;

- Establishes administrative penalties for public insurance adjusters that do not license their firms and provides penalties beginning at $2,500 for a first offense with a cap of $10,000;

- Exempts individuals from licensure when their scope of work is limited to photography, inventory of personal property, or acting as a paid spokesman in a public adjuster advertisement; and,

- Prohibits a public adjuster from entering into an agreement that vests in the public adjuster the authority to select a vendor to complete the repairs.

On June 23, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Public Records Requests Attorney Fees – *SB 80 by Sen. Greg Steube (R-Sarasota)*
This issue, which has been advanced over the last few sessions, grants discretion to a court to award attorney fees and costs for cases regarding public records requests. Specifically, the court could award attorney fees when it determines that a public records request was unlawfully refused and the plaintiff provided written notice of the request to the agency's custodian of public records at least five business days before filing suit. The bill also:

- Gives the court guidance when determining whether a public record was unlawfully refused for inspection;

- Provides that attorney fees may be awarded against a complainant if the court finds the action was filed in bad faith or was frivolous; and

- Provides that if a complainant can show by a preponderance of the evidence that an agency intentionally or willfully refused to permit a public record to be inspected or copied, the court shall award attorney's fees.

On May 23, 2017, the bill was signed by the Governor and took effect immediately.

Unclaimed Property Public Records Exemption – *HB 7045 by Rep. Dan Raulerson (R-Plant City)*
The bill removes the repeal date of the current public records exemption for social security numbers and property identifiers in unclaimed property reports kept by DFS. If the Legislature had not removed the date, the language would have been automatically repealed October 2, 2017.

On May 23, 2017, the bill was signed by the Governor. It will take effect October 1, 2017.

Workers' Compensation Public Records Exemption – *HB 1107 by Rep. Ben Albritton (R-Bartow)*
This measure clarifies that personally identifying information of an injured or deceased worker filed with the Department of Financial Services (DFS), the Agency for Health Care Administration (AHCA), and the Division of Administrative Hearings (DOAH) is confidential and exempt from the public records mandates, both constitutional and statutory. Disclosure would be allowed under the following circumstances:

- To an injured employee or the surviving spouse or dependents of a deceased employee;
- In an aggregate reporting format, subject to content and time limitations;
- To participants in workers' compensation claims litigation at DOAH;
- Pursuant to a court order or subpoena;
- To an anti-fraud unit of an insurer; or,
- To other agencies in the furtherance of such agency's official duties and responsibilities who must maintain the confidentiality of the information.

The exemption would be repealed October 2, 2022, unless the Legislature acts to save it from repeal.

On June 26, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

AUTOMOBILE INSURANCE

Motor Vehicle Certificates of Title – *SB 164 by Senator Denise Grimsley (R-Lake Placid)*
The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) and tax collectors from charging a surviving spouse who co-owns a vehicle, any fees or service charges for the sole purpose of removing the deceased spouse's name from the certificate. The bill would allow fees for the expedited transfer of a certificate. Currently, the DHSMV is allowed to charge $70 for original and duplicate certificates, $49 for for-hire vehicle certificates, and $2 for salvage certificates.

On June 14, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Preinsurance Inspections – *HB 1007 by Rep. Holly Raschein (R-Key Largo)*
The language originally contained in SB 1316 and HB 1299 was approved on the anti-fraud efforts bill that passed on the last night of session. The language exempts motor vehicle insurers from the requirement that they inspect each private passenger motor vehicle before issuing an insurance policy providing physical damage coverage. The inspection requirement currently applies only to Broward, Duval, Hillsborough, Palm Beach, Pinellas, and Dade counties.

The bill requires insurers using the exemption to file a manual rule with the Office of Insurance Regulation (OIR) and allows an insurer to file with the OIR their own preinsurance inspection requirements before insuring a private passenger motor vehicle.

On June 26, 2017, the bill was signed by the Governor. It will take effect September 1, 2017.

Transportation Network Companies (TNCs) – *HB 221 by Rep. Chris Sprowls (R-Clearwater)*
Following several attempts in previous legislative sessions, this bill was approved in the final weeks of session. The bill pre-empts regulation of these entities to the state to address the proliferation of local ordinances that have recently passed. It also sets up a regulatory framework for TNCs. The bill provides the following:

- Requires, beginning July 1, 2017, a TNC driver, or a TNC on behalf of the TNC driver, to maintain primary automobile insurance that:
  - Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
  - Covers the TNC driver while the TNC driver is logged onto the TNC's digital network or while the TNC driver is engaged in a prearranged ride.

- Requires, while a TNC driver is logged on to the digital network, but not engaged in a prearranged ride, to have automobile insurance that provides:
  - Primary coverage of at least $50,000 for death and bodily injury (BI) per person, $100,000 for death and BI per incident, and $25,000 for property damage; and,
  - Personal Injury Protection (PIP) benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law ($10,000 for emergency medical disability, $2,500 non-emergency medical, and $5,000 for death).

- Requires, when a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:
  - Primary coverage of at least $1 million for death, BI, and property damage; and
  - PIP benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law. Currently, limos are exempt from the No-Fault Law.

  The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.

- Provides that, if the driver's insurance policy lapses or does not provide the required coverage, the TNC's insurance must cover, beginning with the first dollar of a claim, and the TNC has the duty to defend the claim. The coverage must be provided through an insurer authorized to do business in Florida or through an eligible surplus lines insurer with a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to OIR.

- Requires a TNC driver to carry proof of insurance coverage at all times while using a TNC vehicle. If there is an accident, the TNC's insurance coverage must directly pay the vehicle repair person or jointly to the vehicle owner or the primary lienholder.

- Requires that, before a driver can accept a ride, the TNC must disclose, in writing: (1) the insurance coverage provided by the TNC to the driver; (2) that the driver's own auto policy might not provide any coverage while the TNC driver is logged onto the digital network or is engaged in a ride; (3) that providing rides that are not prearranged subjects the driver to the coverage requirements in the amount of $125,000/$250,000/$50,000; and (4) that failure to meet coverage requirements subjects the driver to penalties.

- Allows insurers to exclude any coverage for loss or injury occurring while a TNC driver is logged onto a digital network or while a TNC driver provides a prearranged ride and does not require the personal auto policy to cover when the TNC driver is logged on to a digital network, while the TNC driver is

engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation.

- Requires TNCs to conduct a local and national criminal background check that includes a search of the Multi-State/Multi-Jurisdiction Criminal Records Locator and the National Sex Offender Public Website. The TNC must conduct the background check for a TNC driver every three years.

- Provides that, no more than once every three years, the Department of Financial Services (DFS) may direct a TNC to submit a procedures report prepared by an independent Certified Public Accountant for the purpose of verifying that the TNC is complying with the driver requirements.

- Provides that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

  - Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if it relates to providing prearranged rides;

  - Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or,

  - Require a TNC or TNC driver to obtain a business license to operate within the local governmental entity's jurisdiction.

The Governor signed the bill into law on May 9. It will take effect July 1, 2017.

LIFE & HEALTH INSURANCE

Discount Plan Organizations – *HB 577 by Rep. Cary Pigman (R-Sebring)*
In 2004, the Legislature established a regulatory scheme for Discount Medical Plan Organizations (DMPOs). This bill renames DMPOs to "Discount Plan Organization" (DPO) and clarifies the definition of a "Discount Plan" to exclude any plan that does not charge a fee to members. It also removes all rate and form filing and approval requirements for DPOs and reduces administrative barriers for these entities by:

- Defining "first page," upon which certain disclosures must appear, to mean the first page of any marketing material that first includes information describing benefits;

- Allowing DPOs to delegate functions to marketers and binding DPOs to the actions of the marketers; and

- Allowing marketers and DPOs to commingle certain information on forms, advertisements, marketing materials, or brochures.

Consumer protection provisions in the bill include:

- Requiring acknowledgement and acceptance of the disclosures before enrollment and creating visibility and follow up requirements for disclosures made by electronic means or telephone;

- Establishing new cancellation and reimbursement requirements for DPOs to prohibit any charges beyond the effective cancellation date;

- Requiring pro-rata reimbursement of charges paid by a member for the months beyond the effective cancellation date; and

- Requiring pro-rata reimbursement for members who cancel during an open enrollment period, upon return of his or her discount card.

On June 14, 2017, the Governor signed the bill into law and it took effect immediately.

Florida Life & Health Guaranty Fund – *HB 307 by Rep. Brad Drake (R-DeFuniak Springs)*
The bill will increase the maximum claim limit from $300,000 to $500,000 on health insurance claims for insolvent insurers from the Florida Life and Health Insurance Guaranty Association (FLHIGA). The increase would take effect January 1, 2020. Further, the bill also expands the FLHIGA scope of coverage to include annuities issued by an insurer pursuant to an individual retirement account (IRA) and annuities issued by an insurer and held by a third party custodian or trustee pursuant to an IRA.

On June 23, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Medication Synchronization – *SB 800 by Sen. Doug Broxson (R-Gulf Breeze)*
Medication synchronization is a process where a pharmacist synchronizes refills for a patient taking multiple covered prescriptions, allowing them to be filled on the same day each month. The bill:

- Requires health insurers and HMOs providing prescription drug coverage to offer insureds or members the option to align the refill dates of their prescriptions through a network pharmacy at least once during the plan year;

- Prohibits controlled substances, prescription drugs dispensed in an unbreakable package, or a multidose unit of a prescription from being partially filled for the purpose of aligning refill dates;

- Requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy unless otherwise agreed to by the plan and the network pharmacy; and,

- Requires the health insurer or HMO to prorate the insured's cost-sharing obligations for each partial refill of a covered prescription dispensed to align refill dates.

On June 14, 2017, the bill was signed by the Governor. It will take effect January 1, 2018.

Viatical Settlements – *HB 1007 by Rep. Holly Raschein (R-Key Largo)*
This bill addresses ongoing litigation regarding the relationship between the state's insurable interest requirement for obtaining life insurance and the two-year window within which a party may challenge a policy after its inception. The bill provides that, notwithstanding the two-year limitation on contestability of a life insurance policy, a contract or transaction entered into for the furtherance of a Stranger-Originated Life Insurance (STOLI) practice is void and unenforceable. It also allows a life insurer to contest a policy if it was obtained by a STOLI practice.

"STOLI practice" and "fraudulent viatical settlement act" are defined in the bill, and criminal penalties are laid out for either practice. Lastly, the contestability period for a viaticated life insurance contract is expanded from two to five years.

On June 26, 2017, the bill was signed by the Governor. It will take effect September 1, 2017.

PROPERTY & CASUALTY INSURANCE

Bail Bonds – *HB 361 by Rep. David Santiago (R-Deltona)*
A number of ambiguities and inconsistencies within the statutes addressing bail bonds are addressed in this bill. Specifically, the bill:

- Narrows the obligation of the bail bond agent, such that the defendant's failure to appear at proceedings not specifically ensured by the bond and the defendant's breach of any other condition no longer constitute a breach of the bail bond agent's commitment and obligation;

- Removes any breach of the bond as a basis on which a forfeiture can occur and narrows it to only a defendant's failure to appear before the court in a proceeding for which the surety bond was posted;

- Provides the reasons for which a forfeiture can be discharged to include circumstances when:
    - The court determines it was impossible for the defendant to appear as required or within 60 days after the required appearance due to circumstances beyond the defendant's control;

    - The court determines that, at the time of the required appearance or within 60 days after the required appearance, the defendant was confined in an institution or hospital or in any county, state, federal, or immigration detention facility, was deported, or is deceased;

    - The defendant has been surrendered or arrested at the time of the required appearance or within 60 days after the required appearance in any county, state, or federal jail or prison, and a hold is placed to return the defendant to the jurisdiction of the court;

    - The court determines that the state is unwilling to seek nationwide extradition of the fugitive defendant within 30 days after a request by the surety agent to do so, and contingent upon the surety agent's consent to pay all costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond;

    - The defendant has been arrested and returned to the county of the jurisdiction of the court or has posted a new bond for the case at issue before judgment, in which case, the clerk of court shall automatically discharge a bond without further hearing or order by the court;

    - Adds to the circumstances in which a bond is considered satisfied to include cases in which 36 months have passed since the original bond was posted but excludes cases in which a bond was declared forfeited before the 36-month expiration period from the application of the cancelation provisions; and,

    - Adds placement in any court-ordered program, including a residential mental health facility, to the list of circumstances in which the original bond is not considered to guarantee the defendant's appearance.

On June 26, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Flood Insurance – *HB 813 by Rep. Larry Lee (D-Fort Pierce)*
In an attempt to increase the availability of private flood insurance coverage in the state, the bill allows insurers wanting to provide Florida-authorized coverage to continue to apply the "file and use" review process until October 1, 2025. The bill also:

- Allows flood policies to be placed with a surplus lines insurer without the agent first receiving three declinations from admitted insurers until July 1, 2019, or whenever the Insurance Commissioner determines there is an adequate admitted market to provide coverage, whichever is earlier;

- Provides that if there are less than three authorized insurers providing coverage upon the exemption expiration, the number of declinations needed to meet the diligent effort requirement, cannot be less than the number of authorized insurers providing coverage;

- Excludes excess flood insurance from the requirement to notify Office of Insurance Regulation (OIR) 30 days prior to writing coverage and to file and update the plan of operation and financial projections;

- Requires agents, moving a NFIP policy to a private insurer, to give written notice to an insured which they must sign that provides the full risk and the subsidized risk rate in the event they return to NFIP;
- Requires agents to obtain the signed written notice within the earlier of: (1) 21 days after expiration of the NFIP policy or (2) seven days before the expiration of any timeframe during which the applicant may return to NFIP a subsidized rate; and,

- Changes from once every odd-numbered year to at least once every four years, the frequency for which the Commission on Hurricane Loss Projection Methodology would revise adopted actuarial methods, principles, standards, models, or output ranges for flood loss projections.

On June 23, 2017, the bill was signed by the Governor. The bill will take effect July 1, 2017.

Insurance Policy Transfers – *HB 805 by Rep. Blaise Ingoglia (R-Spring Hill)*
This bill allows an insurer to transfer a personal lines or commercial residential policy to an affiliated insurer or holding company at renewal. Under the measure, insurers may transfer a personal lines residential or commercial residential policy to another authorized insurer that is a member of the same group or owned by the same holding company if the following conditions are met:

- The insurer transferring the policy is admitted in Florida and other states and writes residential property insurance in multiple states;

- The policy does not include conversion to a surplus lines policy;

- It results in substantially similar coverage;

- The insurer to which the policy is being transferred provides the policyholder with notice of the transfer, change in any terms, the renewal premium and the new insurer's financial rating at least 60 days in advance;

- There is no discrimination in the selection of the policy being transferred; and,

- The Office of Insurance Regulation (OIR) determines that the insurer receiving the policy has the same or better financial strength as the transferring insurer, and OIR approves the transfer.

The Governor signed the bill into law May 9. It will take effect July 1, 2017.

Natural Hazards – *HB 181 by Rep. Kristen Jacobs (D-Coconut Creek)*
This bill creates an interagency workgroup to address the impacts of natural hazards in Florida. The bill provides that natural hazards shall include, but are not limited to, extreme heat, drought, wildfires, sea-level change, high tides, storm surge, saltwater intrusion, storm water runoff, flash floods, inland flooding, and coastal flooding.

The workgroup will be comprised of a liaison from each state agency, each water management district, and from the Florida Public Service Commission. The director of the Florida Division of Emergency Management (FDEM), or the director's designee, will serve as both the agency liaison and the coordinator. Further, FDEM is required to prepare an annual progress report on the implementation of the state's enhanced hazard mitigation

plan as it relates to natural hazards, which is due to the governor and the Legislature by January 1, 2019, and each year thereafter.

The Governor signed the bill into law on June 2. It will take effect July 1, 2017.

Public Housing Authority Self-Insurance Fund – *HB 421 by Rep. Sean Shaw (D-Tampa)*
The bill increases the kinds of entities allowed to form a public housing authority self-insurance fund (SIF) to include for-profit or not-for-profit corporations, limited liability companies, or similar business entities in which a public housing authority holds an ownership interest or participates in its governance. Current law provides that two or more public housing authorities may form a SIF.

On June 14, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

Recovery of Real Property – *HB 377 by Rep. Tom Leek (R-Daytona Beach)*
The bill defines the date of completion of a construction contract to be used when determining the start of the statute of limitations and statute of repose in construction defect cases. The measure was advanced in response to a recent court decision that found that a construction contract is complete when the final payment is made.

Current law provides that a cause of action founded on the design or construction of a building is subject to a four-year statute of limitations and a 10-year statute of repose. The statute of limitations and the statute of repose begin at the latest date of the following:

- The date of actual possession;
- The date a certificate of occupancy is issued;
- The date construction, if not completed, is abandoned; or,
- The date the contract is completed or terminated.

The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose, therefore, may limit a cause of action for a latent defect even if the injured party has no knowledge of it.

The bill provides that a construction contract is considered complete on the latter of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made. It will apply to causes of action that accrue on or after July 1, 2017, the effective date of the bill.

On June 14, 2017, the bill was signed by the Governor. It will take effect July 1, 2017.

ISSUES NOT APPROVED BY THE LEGISLATURE

GENERAL INSURANCE

Attorney Fees in Insurance Rates – *SB 1684 by Sen. Gary Farmer (D-Ft. Lauderdale)*
The bill would have prohibited plaintiff and defense attorney fees, costs, and expenses associated with litigation against an insured to be used in justifying rates or rate changes or from being included in a base rate in a filing. The provisions would have applied to property, casualty, surety, motor vehicle, workers' compensation, employer liability and health insurance. The provisions of the bill were filed to a number of bills that were moving on the final day of session; however, the language ultimately died.

Insurance Premium Tax Repeal – *SB 378 by Sen. Anitere Flores (R-Miami)*
Elimination of the employee salary tax credit taken by insurers was held off for another session. Senate President Negron made this a priority again this year. As a result, President Pro-Tempore and Banking and Insurance Chair Flores pushed the repeal on a bill that would have used those revenues to reduce the state communications services tax (CST) and the direct-to-home satellite service tax.

In an effort to gain support from statewide business organizations, the Senate changed the bill to lower the commercial rental sales tax for lease payments due on or after January 1, 2018. Over the last two sessions, the business community had pushed for lowering this tax. Ultimately, businesses stayed with the insurance industry and did not support this measure.

Prejudgment Interest – *SB 334 by Sen. Greg Steube (R-Sarasota)/HB 469 by Rep. Shawn Harrison (R-Tampa)*
Both bills would have provided that prejudgment interest must be awarded in actions where a plaintiff recovers economic and noneconomic damages. During the session, the Senate bill was watered down to provide that, in a negligence action where a plaintiff recovers economic damages, final judgment interest on each component of the economic damages would be included. Further, interest would have accrued from the date of the loss. Lastly, if the plaintiff recovered costs, the final judgment interest on the cost would begin on the first day of the month, after the month in which the costs were paid.

The House bill remained close to what was originally filed and would have provided that the interest on economic damages would begin to accrue on the date of the loss of an economic benefit. The interest on noneconomic damages would have accrued on the date the defendant received the notice of the claim. Lastly, the House bill would have required prejudgment interest on attorney fees or costs to begin to accrue on the date of entitlement to those fees or costs.

Promotional Items – *HB 1029 by Rep. Clay Yarborough (R-Jacksonville)/SB 1032 by Sen. Debbie Mayfield (R-Melbourne)*
Language in these bills appeared headed for final passage on another bill in the final hours of session. However, a late amendment to HB 1007 eliminated the provisions. The language would have allowed a licensed insurer or its agent to give advertising and promotional gifts to insureds and prospective insureds that do not exceed a total value of $100 within one calendar year.

Advertising and promotional gifts would have included articles of merchandise, goods, wares, gift cards, gift certificates, event tickets, and other items. Further, a licensed insurer or its agent would have been able to make charitable contributions up to $100 per calendar year on behalf of each insured or prospective insured. The bills would not have applied to title insurers.

Workers' Compensation – *SB 1582 by Sen. Rob Bradley (R-Orange Park)/HB 7085 by Rep. Danny Burgess (R-Zephyrhills)*
In April and June of 2016, the Florida Supreme Court held unconstitutional portions of the 2003 workers' compensation law which weakened legislative reforms approved in 1994 and 2003. The rulings in *Castellanos v. Next Door Company* and *Westphal v. City of St. Petersburg* were released almost two years after the Court first heard oral arguments in the cases. The decisions struck down Florida laws that restricted the fees for claimants' attorneys to a statutory formula tied to the benefits secured by the claimant and limited the recovery of benefits to 104 weeks for temporary total disability, respectively.

As a result, the National Council of Compensation Insurers (NCCI) proposed a workers' compensation rate increase of 19.6 percent. Ultimately, the OIR approved a 14.5 percent increase effective December 1, 2016. The premium increase resulted in the Senate and House advancing competing measures this session. The provisions in both bills are outlined below:

House Proposal

- Permitted direct payment of attorneys by or for claimants making the injured worker responsible for any remaining attorney fees if required by their retainer agreement. Retainer agreements must be filed with Judges of Compensation Claims (JCC);

- Increased total combined temporary total disability/temporary permanent disability (TTD/TPD) benefits from 104 weeks to 260 weeks;

- Closed a benefit gap occurring when TTD/TPD ends, but the injured worker is not at overall maximum medical improvement (MMI) and/or no overall permanent impairment rating;

- Required claimants to be notified that they may be responsible for their own attorney's fees if they do not prevail;
- Required more specificity on a petition and required a JCC to dismiss a petition for lack of specificity, without prejudice, within 10 days or 20 days, depending upon whether a hearing is required;

- Required claimants' attorneys to detail hours worked in the form of an attestation to a JCC at certain intervals before a hearing on a petition for benefits (PFB);

- Required a good faith attempt to resolve issues before a PFB is filed and allowed JCCs to dismiss PFBs when a good faith effort was not made;

- Allowed deviations from the current statutory fee schedule (departure fee) if the fees under the schedule are less than 40 percent or greater than 125 percent of the customary fee when the amount allowed under the fee schedule was converted to an hourly rate;

- Required a JCC, in determining the departure fee, to consider certain factors, and compute a new hourly rate capped at $150/hour which is the average hourly rate of defense attorneys;

- Allowed employers and carriers to contest departure fees within 20 days of an award which would be reviewed by a JCC in another district;

- Eliminated carrier paid attorney fees for services occurring before the filing of a petition and attached attorney fees 45 days following the filing of a petition;

- Allowed insurers to uniformly reduce premiums by no more than five percent, if they file an information-only notice within 30 days, subject to regulatory oversight;

- Created a mechanism to fill vacancies on the Three-Member Panel (Panel) and granted the Panel authority to fill gaps in statutory reimbursement when adopting schedules of maximum reimbursement allowances for medical care;

- Eliminated the charge-based reimbursement of health care facility outpatient medical care in favor of reimbursing them at 200 percent (unscheduled care) and 160 percent (scheduled surgery) of Medicare. If no Medicare fee exists, then current reimbursement standards would apply, which are incorporated into statute;

- Required authorization or denial of medical care authorization requests, unless there is a material deficiency; and,

- Required vacancies on the Panel to be filled by the governor within 120 days, and if the governor does not fill the vacancy within that time period, the Chief Financial Officer (CFO) would appoint a new member.

Senate Proposal

- Codified the *Westphal* ruling by increasing TTD/TPD from 104 weeks to 260 weeks;
- Addressed the *Castellanos* ruling by requiring the JCC to consider certain factors in determining if the attorney fees should be increased or decreased, based on a maximum hourly rate of $250;
- Removed the criminal penalty for claimant attorneys receiving fees that are not approved by the JCCs, which would allow claimants to have retainer agreements with their attorney;
- Eliminated the attorney fee cap of $1,500 on medical-only claims;
- Required greater specificity in the information provided in petitions for benefits, including the specific date of MMI and the date permanent benefits are claimed to begin;
- Clarified that deadlines within multiple provisions related to medical care are based on business days, not calendar days;
- Implemented loss cost rating in Florida which requires insurers to seek approval for rates based on aggregate claim information filed by a rating organization with individual company data used for the final rate, subject to OIR approval;
- Limited defense and cost containment expenses of insurers to 15 percent of incurred losses and provided that excessive defense and cost containment fees must be returned to policyholders; and,
- Created a presumption that firefighters who have multiple myeloma or non-Hodgkin's lymphoma are presumed to have contracted the disease in the course of employment.

On the final day of session, Sen. Bradley offered a strike-all amendment that was designed to gain House approval. That amendment would have, among other provisions, lowered the cap on attorney's fees from $250 to $200. However, Sen. Gary Farmer (D-Fort Lauderdale), a trial attorney, offered a motion which led to the Senate's rejection of the Bradley amendment. As a result, the Senate sent the original SB 1582 to the House. The House rejected that version and offered its original proposal along with an increased attorney fee cap from $150 to $180. The Senate did not accept the offer, and the bill died at the close of the session.

Workers' Compensation Firefighters Presumption – *SB 158 by Sen. Jack Latvala (R-St. Petersburg)/HB 143 by Rep. Heather Fitzenhagen (R-Ft.Myers)*

These bills would have provided that any condition or impairment of the health of a firefighter employed full-time by a state or local government caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or testicular cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered "in the line of duty" unless the contrary is shown by competent evidence. To be entitled to the presumption, a firefighter must have:

- Successfully passed a pre-employment physical examination that did not reveal any evidence of a health condition;
- Been employed as a firefighter with the current employer for at least five continuous years before becoming disabled or before the employee's death;
- Not used tobacco products for at least five years before becoming disabled or before the employee's death; and,

- Not been employed during the preceding five years in any other position that is proven to create a higher risk for the named diseases.

A firefighter employed on July 1, 2017 would not have been required to meet the physical examination requirement in order to be entitled to the presumption. Attempts to add provisions included in these bills to other measures ultimately approved were unsuccessful.

AUTOMOBILE INSURANCE

PIP Repeal & Mandatory Bodily Injury – *SB 1766 by Sen. Tom Lee (R-Brandon)/HB 1063 by Rep. Erin Grall (R-Vero Beach)*
A 2016 report by Pinnacle Actuarial Resources indicated that repealing the Florida Motor Vehicle No Fault Law could result in lowering auto insurance premiums. As a result, the House and Senate advanced measures to repeal the PIP statutes and replace them with mandatory Bodily Injury (BI) coverage this session. However, both bills died at the close of session due to a disagreement about requiring Floridians to carry Medical Payment (MedPay) coverage.

The House measure would have repealed the PIP statutes on July 1, 2018, and replaced it with mandatory BI coverage from $10,000 per person and $20,000 per incident to $25,000 per person and $50,000 per incident. It would have maintained the property damage (PD) coverage limit at $10,000. Further, it would have changed the minimum security limits for self-insuring to the following:

- For individuals: Certificate of deposit – increased from $30,000 to $60,000; Certificate of self-insurance – increased from $40,000 to $60,000.

- For businesses: Certificate of deposit – increased from $30,000 to $60,000; Certificate of self-insurance – increased from $40,000 for the first vehicle and $20,000 for each additional vehicle to $60,000 and $30,000, respectively.

The bill was approved by the full House and ultimately died in the Senate. Other provisions of the bill included:

- Requiring, beginning July 1, 2018, proof of BI coverage compliance at the time of registering a motor vehicle instead of post-registration or at the time of an accident;

- Providing a transition for policies to comply with the law if the policies were issued prior to July 1, 2018, but are in force on that date;

- Requiring insurers to allow policyholders with PIP coverage to obtain BI coverage that complies with the bill without charge other than changes in premium due;

- Requiring insurers to provide a notice, by March 1, 2018, informing motor vehicle policyholders that, effective July 1, 2018:
    - The Florida Motor Vehicle No-Fault Law (PIP) is repealed, policyholders are no longer required to carry PIP coverage, and PIP is no longer available for purchase;
    - New BI requirements begin on July 1, 2018, which are 25/50/10;
    - A policyholder may obtain uninsured/underinsured motorist coverage to protect themselves and their insureds from damages caused by an uninsured/underinsured driver;
    - Policies complying with the law at the time of issue are deemed to meet the new requirements, until the policy is renewed, nonrenewed, or canceled; and,
    - Policyholders may change their policy to comply with the new requirements, and they may contact the name and telephone number provided in the notice with questions.

- Requiring notice stating that PIP provides medical payments coverage for the policyholder, passengers, and resident relatives, while BI protects the insured against loss if they are at fault in an accident and are legally responsible for bodily injuries or deaths of others. The notice is subject to approval by OIR;

- Providing that resident relatives must be included in coverage provided by motor vehicle liability policies;

- Limiting coverage of vehicles not identified on the policy, if an individual has owned the vehicle, or the temporary vehicle was furnished for regular use, for more than 30 consecutive days;

- Providing that when drivers are at fault in an accident, they would be fully liable for damages they cause; and,

- Expanding the scope of legal liabilities covered under an uninsured/underinsured motorist policy to include tort claims for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future.

The Senate proposal was approved in one committee but did not reach the Senate Floor. It would have repealed PIP as of December 31, 2017, and replaced it with mandatory $5,000 MedPay and BI in the following, increasing amounts:

- Until December 31, 2019 – $20,000 for BI death of one person in any one crash and $40,000 for BI injury or death of two or more people in any one crash; and $10,000 PD; or MedPay with combined PD and BI for one crash of $60,000 minimum;

- From January 1, 2020, to December 31, 2021 – $25,000 for BI or death of one person in any one crash and $50,000 for BI or death of two or more people in any one crash; with $10,000 PD or MedPay with combined PD and BI for one crash of $60,000 minimum; and,

- From January 1, 2022, and thereafter – $30,000 for BI or death of one person in any one crash and $60,000 for BI or death of two or more people in any one crash with $10,000 PD or MedPay with combined PD and BI for one crash of $70,000 minimum.

The MedPay provisions resembled the current PIP law; however, MedPay would have reimbursed 100 percent for covered medical services while PIP reimburses at 80 percent. Other provisions of the bill included:

- Allowing owners and operators for vehicles that are not for-hire to prove financial responsibility by showing evidence of having coverage by either furnishing a certificate of self-insurance with a cash deposit in a financial institution or furnishing a DHSMV-issued certificate of self-insurance based on demonstrating sufficient net unencumbered worth.

    - For a certificate of self-insurance (1) beginning January 1, 2018, the deposit must be the number of vehicles owned times $50,000 to a maximum of $200,000; (2) beginning January 1, 2020, the deposit must be the number of vehicles owned times $60,000 to a maximum of $240,000; and (3) beginning January 1, 2022, the deposit must be the number of vehicles owned times $70,000 to a maximum of $280,000.

    - A DSHMV certificate of self-insurance may be obtained by an individual for private passenger vehicles who demonstrate sufficient net unencumbered worth of: (1) at least $80,000 beginning January 1, 2018; (2) at least $100,000 beginning January 1, 2020; and (3) at least $120,000 beginning January 1, 2022, and thereafter.

- Applying the financial responsibility requirements for for-hire passenger vehicles to the operators of the vehicles and retain current law requiring the owner or lessee to meet the financial responsibility requirement;

- Requiring policies to insure any resident relative of a named insured and require it to provide coverage for newly-acquired and temporary substitute vehicles not described in the policy. The policy may only exclude a vehicle not described in the policy if it was owned by an insured or furnished for an insured's

regular use for more than 30 consecutive days before an event resulting in a claim which is not newly-acquired or a temporary substitute vehicle;

- Requiring policies issued to a person who does not own a Florida-registered vehicle (and is not already a named insured, resident relative, or permissive operator) to insure named-insureds against loss from liability. The coverage would not be required if the vehicle was furnished for the named insured's regular use and was used by them for more than 30 consecutive days before an event resulting in a claim;

- Require policies to insure for litigation costs or attorney fees in any civil action defended by the insurer;

- Allow policies to exclude coverage for a vehicle used outside the United States or Canada at the time of the accident;

- Require policies delivered or issued in Florida for a vehicle registered or principally garaged in state to include BI, PD, and MedPay coverages; and,

- Specify the policy for uninsured motorist (UM) coverage include tort damages for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and future.

The Senate proposal had a corresponding public records exemption proposal which would have exempted certain information of insureds and former insureds held by the DHSMV regarding insurance policies providing any of specified coverages.

Surplus Lines Coverage for Taxis – *SB 784 by Sen. George Gainer (R-Panama City)*
Language that would have allowed taxis to obtain insurance from surplus lines carriers deemed acceptable to the OIR was added to the Senate version of the DHSMV bill late in session. The language which was ultimately deleted from the bill was a way of helping taxi companies who were not pleased with the passage of the TNC regulation bill.

The amendment also adopted the same autonomous vehicle provisions included in the Florida Department of Transportation (DOT) package along with clarifying that a human operator is not required to be present in a vehicle in full autonomous mode. It also would enlarge a functional definition of an automobile dealer or to prohibit the entity from acting like an automobile dealer when they do not have the appropriate dealer license.

TNC Autonomous Vehicle Insurance Coverage – *HB 865 by Rep. Jayer Williamson (R-Pensacola)*
Language that was added to, but later taken out of, the Department of Transportation (DOT) package would have addressed insurance requirements for autonomous vehicles used by transportation network companies (TNCs). The language would require these vehicles to have motor vehicle insurance that mirrors the coverage requirements set out in HB 221. That bill, which has been signed by the governor, establishes insurance requirements for TNCs and TNC drivers.

For autonomous vehicles, proof of coverage would be required to be carried at all times while operating the vehicle and the below amounts would be required, regardless of whether a human operator is physically present within the vehicle during the ride:

- When a TNC driver is logged onto the digital network but not engaged in a prearranged ride – coverage of at least $50,000 for death and bodily injury (BI) per person, $100,000 for death and BI per incident, and $25,000 for property damage (PD); personal injury protection insurance (PIP) benefits that meet the minimum coverage amounts required under current PIP statutes; and, uninsured and underinsured vehicle coverage as required by law.

- When a TNC driver is engaged in a prearranged ride – PIP coverage of at least $1 million for death, BI, and PD; PIP benefits that meet the minimum coverage amounts required of a limousine under current PIP statutes; and uninsured and underinsured vehicle coverage as required by law.

Further, the language would have allowed surplus lines insurers to provide the required coverage if the carrier had at least an AA rating from A.M. Best Company or an equivalent rating from an equivalent rating agency.

LIFE & HEALTH INSURANCE

Certificate of Need (CON) Repeal – *HB 7 by Rep. Alex Miller (R-Sarasota)/SB 676 by Sen. Rob Bradley (R-Orange Park)*
The bills would have eliminated CON review requirements for hospitals and hospital services as well as for increasing the number of comprehensive rehabilitation beds in a facility offering those services. If the bills had passed, an applicant meeting the licensure requirements contained in rules and statutes would have been allowed to offer new or additional health care facilities or services to patients in the state.

The bills set up a battle against those that said the measure would allow a free-market approach and would ultimately lead to increased access for care for patients. Those who opposed the bills, primarily safety-net hospitals, argued that the bills would result in facilities being built in wealthy areas thereby leaving poor communities with limited options and safety net hospitals with limited revenue. Although the House approved its version, the Senate companion did not receive a hearing this session.

Direct Primary Care – *HB 161 by Rep. Danny Burgess (R-Zephyrhills)/SB 240 by Sen. Tom Lee (R-Brandon)*
For the third year in a row, this bill that would have established a framework for direct primary arrangements to thrive in the state did not pass. The bill moved easily through the committee process this session and appeared it was headed for passage. However, several controversial issues were added to the bill which led to its death.

Direct primary care is a medical practice model that connects the patient directly with their provider for services, eliminating third party payers from the equation. Through a contractual agreement, a patient pays a monthly fee to the primary care provider for defined primary care services. After paying the fee, a patient can use all the services under the agreement at no extra charge. The bill would have provided that a direct primary care agreement and the act of entering into that agreement is not insurance and therefore is not subject to regulation under the Florida Insurance Code (Code). It also exempts primary care providers, including a primary care group practice or his or her agent, from any certification or licensure requirements in the Code for marketing, selling, or offering to sell an agreement.

Fail-First Protocol – *HB 877 by Rep. Shawn Harrison (R-Tampa)/SB 530 by Sen. Greg Steube (R-Sarasota)*
These bills would have required health insurers and HMOs to post on their website and provide in writing company procedures for submitting fail-first protocol exemptions.

The House bill would have required health insurers and HMOs to grant or deny exemption requests for non-urgent services within three business days and within 24 hours for urgent services when previously recommended medications and treatments caused adverse reactions, were found to be ineffective, or were in a similar class to an ineffective medicine or treatment already tried. The Senate bill would have not only applied the prior authorization and step therapy processes for health insurers and HMOs, but also for Medicaid managed care plans and pharmacy benefit managers (PBM).

Patient Shared Saving Incentive Program – *HB 449 by Rep. Paul Renner (R-Palm Coast) SB 262 by Sen. Greg Steube (R-Sarasota)*
These bills would have required health insurers to create a shared savings incentive program to encourage insureds to shop for health care services and to share savings with them. It would have required health insurers

to provide a method for an insured to request information on the contracted amount with a health care provider for health care services and the average price for those same services.

Upon the request by an insured, an insurer would have to provide, within two working days, a good faith estimate of the contracted amount for the service, as well as an estimate of copayments, deductibles, and other cost-sharing responsibilities.

Further, if the insured obtained a service for less than the average price for the service, the bills would have required the savings to be shared with the insured. Lastly, the bills would have established a system for determining the cash payment that would be provided to the insured for choosing a lower cost service.

Pharmacy Benefit Managers (PBMs) – *SB 580 by Sen. Rene Garcia (R-Hialeah)/HB 617 by Rep. Halsey Beshears (R-Monticello)*
The bills would have required the licensure and regulation of PBMs by the Office of Insurance Regulation (OIR) as insurance administrators or third party administrators. It also would have authorized OIR to impose administrative fines and to suspend or revoke a certificate of authority of a PBM for violations.

Prescription Drug Formularies – *SB 182 by Sen. Debbie Mayfield (R-Melbourne)/HB 95 by Rep. Ralph Massullo (R-Beverly Hills)*
The bills would have prohibited health insurers and health maintenance organizations (HMOs) from removing a covered prescription drug from its formulary except during coverage renewal. It would have also prohibited an insurer or HMO from reclassifying a drug to a more restrictive tier, increasing the out-of-pocket costs of an insured or reclassifying a drug to higher-cost sharing tier during the policy year.

Recovery Care Services – *HB 145 by Rep. Heather Fitzenhagen (R-Ft. Myers)/SB 222 by Sen. Greg Steube (R-Sarasota)*
The bills would have created a new license for a Recovery Care Center (RCC), defined as a facility with the primary purpose of providing recovery care services, to which a patient is admitted and discharged within 72 hours, and which is not part of a hospital. The bill defines recovery care services as: (1) postsurgical and post-diagnostic medical and general nursing care to patients for whom acute hospitalization is not required and an uncomplicated recovery is reasonably expected; and (2) postsurgical rehabilitation services. Recovery care services would not have included intensive care services, coronary care services, or critical care services.

All patients would have been required to be certified as medically stable and not in need of acute hospitalization by their attending or referring physician prior to being admitted to a RCC. A patient may receive recovery care services in a RCC upon: (1) discharge from an ASC after surgery; (2) discharge from a hospital after surgery or other treatment; or, (3) receiving out-patient medical treatment such as chemotherapy. Lastly, the RCC would have been required to have emergency care and transfer protocols, including transportation arrangements, and a referral or admission agreement with at least one hospital.

Retroactive Denial of Claims – *SB 102 by Sen. Greg Steube (R-Sarasota)/HB 579 by Rep. Bill Hager (R-Boca Raton)*
The bills would have prohibited health insurers and health maintenance organizations (HMOs) from retroactively denying a claim after they have verified the eligibility of a patient.

Vicarious Liability – *SB 262 by Sen. Greg Steube (R-Sarasota)/ HB 675 by Rep. Cord Byrd (R-Neptune Beach)*
The bills would have created a cause of action for HMOs violating the following: (1) the prompt payment of claims law; (2) certain unfair trade practice statutes; (3) quality assurance program provisions; and, (4) second medical opinion requirement statutes.

Further the bills would have allowed HMOs to be sued under vicarious liability for the medical negligence of their health care providers under contract with the HMO. And they would have allowed insurers, prepaid limited health service organizations (PLHSOs), HMOs, or prepaid health clinics to be sued for medical negligence of a health care provider with a contract with the entity even if the entity does not exercise control of

the provider's conduct that is negligent. The Senate bill was approved in one committee while the House proposal never received a hearing.

PROPERTY & CASUALTY INSURANCE

Assignment of Benefits (AOB) – *SB 1038 by Sen. Dorothy Hukill (R-Port Orange) & Kathleen Passidomo (R-Naples)/HB 1421 by Rep. Jamie Grant (R-Tampa), Rene Plasencia (R-Titusville)/SB 1218 by Sen. Gary Farmer (D-Fort Lauderdale)*

For the fifth year in a row, attempts were unsuccessful to find common ground in the House and Senate on how to address the issue of contractors convincing homeowners to sign over policy claims benefits and submitting inflated invoices. Governor Scott worked closely with the business community and the insurance industry to push for legislation to curb this practice. In the end, the two Chambers were unable to agree on language. Outlined below are the two proposals advanced this session.

House Proposal

- Defined AOB as a written instrument which assigns post-loss benefits under a residential property insurance policy to a vendor who performs either emergency or non-emergency repairs on a property. To be valid and enforceable, an assignment agreement must:
  - Be executed in writing concurrently by a named insured and the assignee;
  - Allow the policyholder to rescind the AOB within seven business days of execution, without penalty – the policyholder would be responsible for work performed before the AOB is rescinded;
  - Require the assignee to provide the insurer with a copy of the AOB within three business days after the agreement is executed or work has begun, whichever is earlier;
  - Include a written, itemized, per-unit cost estimate of services and, if the estimate includes water restoration services, provide proof that the assignee is certified to perform services according to standards approved by the American National Standards Institute;
  - Relate only to the work to be performed by the assignee; and,
  - Contain notice to the policyholder of the right to rescind the AOB and that, by signing the AOB, they are giving up certain rights that could result in a lawsuit by the assignee being filed against the insurer.

- Prohibited an AOB from containing fees for administering or rescinding an AOB or altering any term or defense related to a managed repair arrangement in the policy.

- Transferred duties of the insurance contract to the assignee and, if the duties are not carried out, the burden would be on the assignee to prove why the failure did not limit the insurer's ability to perform under the contract. The duties transferred include:
  - Maintaining and providing requested records;
  - Cooperating in the investigation of a claim; and,
  - Delivering the AOB to the insurer within three business days of execution or when work begins.

- Transferred duties to the assignee before they can file suit. If the insurer requires, the assignee must participate in: (1) examinations under oaths (EUOs) and recorded statements based on the scope of work and complexity of the claim, limited to the services provided and the cost of the services; and, (2) appraisal or an alternative dispute resolution process.

- Required the assignee to provide the assignor with revised statements regarding work to be performed as additional repairs are required.

- Provided that, by entering into an AOB, the assignee waives any claim against the policyholder, including the right to claim a lien against the property. It would not include a claim for deductibles, work performed before the AOB was rescinded, or any enhancements requested and approved by the policyholder.

- Required an assignee to give an insurer and the assignor prior written notice 10 days before filing suit and provides that the notice cannot be served before the insurer makes a coverage determination.

- Required notice to specify the damages in dispute, the amount claimed, and any pre-suit settlement demand, and include an itemized, detailed written invoice or estimate of the work performed or to be performed. If the work includes water remediation services, the invoice must include proof the assignee possesses the required certification.

- Required the insurer to respond in writing within 10 days by making a settlement offer or requiring appraisal or other alternative dispute resolution provided in the policy.

- Allowed attorney fees to be awarded based on how much the litigation improved the amount that otherwise would have been received during settlement negotiations.

- Defined the difference between the insurer's offer and the assignor's demand as "the disputed amount" and awarding fees as follows:
    - If the difference between the judgment and the insurer's settlement offer is less than 25 percent of the disputed amount, then the insurer is entitled to attorney fees.
    - If the difference between the judgment and the insurer's settlement offer is at least 25 percent but less than 50 percent of the disputed amount, neither party is entitled to fees.
    - If the difference between the judgment and the settlement offer is at least 50 percent of the disputed amount, the vendor receives attorney fees.

- Directed OIR to require insurers to report by January 30, 2020, and each year thereafter, detailed data regarding claims. The report must include data about claims adjustment, settlement timeframes and trends, and whether or not the claim was litigated.

<u>Senate Proposal</u>
The bill did not address attorney's fees but instead would have prohibited insurers from including attorney's fees and costs paid by an insurer in their rate base to justify rate changes. It also would have:

- Required AOBs to be in writing and a copy delivered to the insurer;

- Required the AOB to have a statement of the scope of work and allowed the policyholder to rescind the assignment within five days, provided the insurer or the policyholder is responsible for payment for work already performed;

- Established time periods for the insurer to inspect the property upon receiving notice of assignment;

- Required the assignee to provide to the policyholder and insurer the final invoice for services rendered within seven business days after work is completed;

- Prohibited referral fees of more than $750;

- Required insurers to put in their policies and on their websites information about submitting copies of assignment agreements;

- Prohibited insurers from requiring the use of a particular vendor; and,

- Required insurers to annually report data on each claim paid pursuant to an AOB, including the number of days between first notice of loss and initial inspection, loss severity, allocated loss adjustment expense, and information on claims that are litigated.

Regarding water damage restorers, the bill would provide that, beginning January 1, 2018, a person must be licensed in order to perform water damage restoration. It also would have:

- Required applicants to submit fingerprints and have background checks;
- Required continuing education courses to be taken;
- Grandfathered a person who currently performs water damage restoration, submits his or her application to the Department of Business and Professional Regulation (DBPR) by September 1, 2017, and has at least three years of experience as a professional water damage restorer (verified by submitting at least 40 water damage restoration invoices);
- Exempted the following from licensure: engineers, architects, contractors, homeowners who fix damage on their own property, persons who repair property owned or leased by that person or their employer (or an entity affiliated with their employer);
- Required professionals to maintain $1 million in general liability and errors and omissions coverage; and,
- Established application and renewal fees, and provide for reciprocity with professionals licensed in other states.

Appraiser & Appraisal Umpires – *HB 767 by Rep. Jason Fischer (R-Jacksonville)/SB 94 by Former Sen. Frank Artiles (R-Hialeah)*
The bills would have required licensing for appraisal umpires and proposed a licensing structure to apply only to appraisers and umpires used in personal residential and commercial residential property claims. It also would have restricted appraisers for insureds to licensed adjusters without an active appointment with an insurer and attorneys. Other appraiser provisions included:

- Allowing insurers to hire anyone as their appraiser;
- Prohibiting convicted felons or anyone disqualified from holding any insurance representative license from being an appraiser for the insured or insurer;
- Allowing the public adjuster on the claim to also serve as the appraiser for the insured but limiting the total fee for adjustor and appraisal services to 20 percent of the claim payment or 10 percent of the claim payment if made in the year after a declared emergency; and,
- Requiring that insured is notified that the appraisal fee can be negotiated.

Provisions related to umpires included:

- Requiring all umpires to be licensed by DFS;
- Restricting umpires to the following professions: engineers, contractors, architects, attorneys, adjusters, and retired judges;
- Prohibiting convicted felons or anyone disqualified from holding any insurance representative license from being an umpire for the insured or insurer;

- Requiring 24 hours of pre-licensing educational courses for engineers, contractors, architects, attorneys, and adjusters to obtain an umpire license and requiring continuing education after licensure;

- Providing that retired judges in good standing with the Bar are not required to have hours of pre-licensing or continuing education courses to obtain an umpire license;

- Limiting umpire fees to $500 if the dispute to be decided by the umpire is $2,500 or less;

- Restricting gifts and solicitations by umpires;

- Allowing direct payment from the insurer and the insured to the umpire;

- Requiring umpires to disclose expert fees before they retain an expert; and

- Prohibiting *ex parte* communications between the umpire and appraisers.

Citizens Emergency Assessments – *HB 639 by Rep. Sean Shaw (D-Tampa)/SB 728 by Sen. Darryl Rouson (D-St. Petersburg)*
These bills, which were never heard in committee, would have increased the Florida Insurance Guaranty Association (FIGA) coverage for condominium or homeowner associations from $100,000 per unit to $300,000 per unit, implemented incrementally from July 1, 2017, to July 1, 2020. They would have also:

- Created a new FIGA assessment of one percent of the direct written premium subject to the Citizens commercial lines account assessment, starting the earlier of July 1, 2022, or 30 days after certain bonds issued by Citizens are defeased;

- Allowed FIGA to only use the monthly instalment method to levy the new FIGA assessment;

- Reduced the Citizens emergency assessment for deficits in the commercial lines account by one percent from a maximum of 10 percent of premium or 10 percent of the deficit to one percent; and,

- Maintained the 10 percent emergency assessment for deficits in the personal lines and coastal accounts.

Construction Defect Claims – *HB 1271 by Rep. Jay Trumbull (R-Panama City)/SB 1164 by Sen. Kathleen Passidomo (R-Naples)*
The bills would have made changes to the claims process for construction defect claims, including:

- Requiring the property owner to personally sign any notice of claim to be served on a party and any notice of acceptance or rejection of a settlement offer;

- Requiring a contractor or design professional recipient of a notice of claim to serve notice on any contractor, subcontractor, or other party that he or she reasonably believes is responsible for each defect specified in the notice of claim;

- Requiring any experts retained by the property owner for a construction defect claim to be physically present during any inspection to identify the location of the construction defect;
- Requiring a property owner to serve a written request for mediation prior to rejecting any settlement offer; and,

- Providing that the statute of limitations for construction defect claims may be tolled in some instances for up to 30 days after mediation is concluded, terminated, or an impasse is declared.

The Senate measure would have prohibited a construction defect cause of action from passing to subsequent purchasers of the property if it was purchased as-is. It also would have:

- Specified when the prohibition takes effect and how it applies to suits;
- Required claimants bringing a construction defect claim to pay their own attorney fees unless the contract for work states otherwise;
- Invalidated a notice of claim if it is not timely filed or does not describe the alleged defects and the location of them; and,
- Specified the statute of repose is not tolled if a notice of claim is filed.

Diligent Effort Surplus Lines – *HB 191 by Rep. Halsey Beshears (R-Monticello)/SB 208 by Sen. Kathleen Passidomo (R-Naples)*
These bills would have removed the diligent effort requirement from current law for commercial residential insurance policies. The agent would no longer be required to show that at least three admitted insurers rejected coverage of the property before placing the property with a surplus lines insurer. Neither bill was given a hearing this session.

Flood Hazard Mitigation – *HB 613 by Rep. Larry Ahern (R-Seminole)/SB 112 by Sen. Jeff Brandes (R-St. Petersburg)*
The bills would have authorized the Division of Emergency Management (DEM) to administer a matching grant program to provide up to $50 million annually in technical and financial assistance to local governments. The assistance would be for implementing flood hazard risk reduction policies and projects and would be subject to the Legislature appropriating funds. Local governments would have submitted applications for receiving the funds. Neither bill received a hearing this session.

Florida Hurricane Catastrophe Fund (FHCF) – *HB 597 by Rep. David Santiago (R-Deltona)/SB 1772 by Sen. Tom Lee (R-Brandon)*
These bills would have restructured the FHCF and lowered the FHCF's capacity from $17 to $14 billion, adding optional coverage of $1 billion, $2 billion, or $3 billion above the $14 billion.

The House proposal would have added optional coverage of $1 or $2 billion below the $4.5 billion retention and would have added coverages of 65, 55, and 25 percent. It also would have repealed the current 25-percent rapid cash build-up factor but added a 15-percent premium surcharge if the FHCF cash surplus was less than $2 billion. The premium surcharge would have been required to be collected until it exceeded $10 billion.

Further, the bill would have added a 10 percent premium surcharge to fund a $10 million fraud prevention and mitigation program and would have required Citizens to pay a 15-percent cash build-up factor. It also would have changed the timing of bonding capacity estimates and changed what kinds of losses are reimbursable. Lastly, the bill would have added an insurance trade group representative and a representative from the Florida Association for Insurance Reform (FAIR) to the FHCF Advisory Board.

The Senate bill would have maintained the retention and added coverage of 60 and 25 percent. It also would have reduced the 25 percent rapid cash build-up factor to 10 percent until the Fund balance was $14 billion or greater. And, it would have created a five-percent rapid cash build-up factor if the fund balance fell below $14 billion and would have increased the factor by five percent annually until it reached 25 percent. It also would have held the factor at 25 percent until the Fund balance reached $14 billion. Lastly, it would have repealed the provision requiring Citizens to increase rates to account for the fund's rapid cash build-up.

Insurance Regulation – *SB 1746 by Sen. Anitere Flores (R-Miami)*
Senator Flores, Chair of the Banking and Insurance Committee, put forth this bill which contained several troubling provisions for the insurance industry, including:

- Removing the FHCF rapid cash build-up factor;
- Requiring a managing general agent (MGA) be examined as an insurer;
- Requiring that civil actions regarding surplus lines property policy must take place in the circuit court of the county where the property is located;
- Authorizing the Insurance Consumer Advocate to initiate and intervene in regulatory actions, including rate filings;
- Prohibiting attorney fees and costs to be included in the rate base, if they resulted from a settlement or a claim using the one-way attorney fee;
- Providing an offer of personal lines residential coverage from an insurer does not eliminate eligibility for coverage from Citizens;
- Providing that Citizens eligibility remains if an offer is not accepted, is expressly declined, or if there is no response to an offer;
- Providing that, in a rating territory that OIR determines does not have competition, OIR must approve a rate change of zero for the windstorm portion of the policy;
- Providing that for residential property policies, after a policy is in force for 120 days, any misrepresentation on an application does not preclude recovery on a claim;
- Requiring insurers to pay replacement costs without holdbacks, if the policy provides for replacement costs and there is a declared state of emergency; and,
- Extending the statute of limitations for filing windstorm claims from three to five years.

OTHER MAJOR ISSUES

Gaming – *SB 8 by Sen. Bill Galvano (R-Bradenton)* – ***FAILED***
For the second session in a row, the proposed gaming package failed to garner final approval due mainly to diametrically opposed positions between the House and Senate.

The original proposal from the Senate would have legalized fantasy sports, provided broad decoupling language, and allowed for more slot machines at pari-mutuel casinos, specifically in counties with voter approved referendums. From the start, the House indicated it would not expand gambling and opposed eliminating the mandate for pari-mutuels to have live racing or offer card games and slots.

As session progressed and compromise talks slowed, a conference committee on gaming was appointed to work out a deal. During week seven of the Legislative Session, however, the Florida Supreme Court issued an advisory opinion regarding ballot language for a proposed constitutional amendment in 2018. Attorney General Pam Bondi had requested the opinion to determine whether an anti-gambling organization, Voters in Charge, could start collecting signatures for the 2018 ballot that would require voters to approve any gambling

expansions. The language was approved by the Supreme Court opinion. Conference committees scheduled for later that day were subsequently canceled.

The conference committee continued to hold sporadic meetings and rumors circulated of a potential compromise even with the House still vehemently opposing any form of expansion. However, eventually, it became clear that a compromise would not be reached during session and the negotiations ended.

Everglades Reservoir Project – *SB 10 by Sen. Rob Bradley (R-Orange Park) –* ***PASSED***
A scaled back version of one of Senate President Joe Negron's priorities gained final approval four days before the scheduled end of the 2017 Legislative Session. As originally filed, SB 10 would have purchased privately-owned land to develop a reservoir for cleaning and diverting discharges from Lake Okeechobee threatening coastal regions. To pay for the state's portion of the purchase, the bill initially called for bonding $100 million from the documentary stamp tax revenue annually.

Ultimately, the trimmed down version of SB 10 reduces the bonding authority from $1.2 billion to $800 million and lowers from $100 million to $64 million the annual appropriation from the Land Acquisition Trust Fund to fund the Everglades Restoration. The bill also prohibits the use of eminent domain and instead leverages land owned by the state and the South Florida Water Management District (SFWMD) to obtain between 240,000 and 360,000 acre feet of storage. Further, it ensures that funding priority is to the Everglades Agricultural Area (EAA) reservoir project and any remaining funds may be used for Phase II of the C-51 reservoir project. The bill also:

- Provides grants to establish training programs for agricultural workers;
- Revises the EAA reservoir project to require the SFWMD to develop a plan to provide a minimum of 240,000 acre-feet of storage through a deep storage reservoir and water quality treatment features;
- Moves up the start date for the EAA reservoir project planning study if Congressional approval of the post-authorization change report has not occurred;
- Clarifies that ongoing Comprehensive Everglades Restoration Plan (CERP) projects will continue to receive funding;
- Authorizes the SFWMD to begin planning efforts and discussion with the owners of the C-51 reservoir project to determine if the state should acquire or enter into a public-private partnership for this water storage facility, which will add approximately 60,000 acre-feet of storage south of Lake Okeechobee;
- Establishes the Everglades Restoration Agricultural Community Training Program in the Department of Economic Opportunity (DEO) to stimulate and support training and employment programs to match state and local training programs; and,
- Establishes a revolving loan fund to provide assistance to local governments and water supply entities to construct water storage facilities.

The Governor signed the bill May 9 and it will take effect immediately.

Gun Rights Legislation – *SB 616, 140, 646 by Sen. Greg Steube (R-Sarasota)/HB 779 and HB 849 by Rep. Neil Combee (R-Auburndale)/HB 245 by Rep. Bobby Payne (R-Palatka)/SB 1330 by Sen. Kelli Stargel (R-Lakeland)* ***- FAILED***
Several gun rights bills were filed this year but none received enough support for final passage. Senator Greg Steube (R-Sarasota) originally filed 11 gun-related measures with only one being approved by the Senate. That bill, SB 616, would have allowed concealed weapon permit holders to carry their weapons into a courthouse and turn them over at the security checkpoint. The bill was never heard in the House and attempts to bring it to the

House Floor late in session were met with fierce opposition. Other Steube gun legislation would have permitted concealed weapons on college campuses and in public areas of airports. He also sponsored a bill that would have authorized permit holders to openly carry handguns.

In the House, there were a few gun measures advanced. HB 779 would have provided that concealed weapons permit holders who inadvertently display their gun in public would not be charged with a crime until the third time. It passed the House on a vote of 80-34 but was not taken up in the Senate. HB 849 would have allowed concealed weapons at churches with schools on the property and was approved by the Chamber on a vote of 76 to 35. The Senate amended the bill to prohibit firearms during school hours or school activities and passed it 22 to 13. Ultimately, the Chambers could not agree on language and the bill died.

Homestead Property Tax Exemption –- *HB 7105 by Rep. Mike La Rosa (R-St. Cloud) – **PASSED***

A proposed constitutional amendment increasing the non-school homestead exemption by $25,000 for properties worth between $100,000 and $125,000 was approved in the final week of session. The bill was approved by the House along party lines by 83 to 25; the Senate vote was 28 to 10.

If approved by 60 percent of the voters in the 2018 General Election, the combined tax exemption on these properties would be $75,000 beginning in 2019. The measure was a priority of Speaker Corcoran and represented a major component of the budget agreement struck between the Chambers. Corcoran has indicated his interest in running for governor in 2018.

When the bill is delivered to the governor, he will have 15 days to act on it. If approved, the bill would take effect January 1, 2019.

Medical Marijuana Implementation – *HB 1397 by Rep. Ray Rodrigues (R-Fort Myers)/SB 406 by Sen. Rob Bradley (R-Orange Park) – **FAILED***

One of the most hotly debated issues this session was on was on the implementation of Constitutional Amendment 2 which passed by an overwhelming majority of 71 percent during the 2016 General Election. From the beginning, the House bill and the Senate bill were vastly different; however, the two chambers grew closer as the end of session neared. In the end, the Senate was unwilling to accept some of the language offered by the House. The key points agreed upon included:

- Grandfathering the current seven dispensing organizations (DOs) and changing DOs to medical marijuana treatment centers (MMTCs);
- Licensing 10 new MMTCs and adding four new MMTCs for every 100,000 qualified patients added to the Compassionate Use Registry;
- Decreasing from four to two hours the required course hours for issuing physicians;
- Establishing a means for qualifying “snow birds” to obtain medical marijuana;
- Creating a caregiver training course with a cap on fees for the course; and,
- Pre-empting regulation to the state for growing, processing, distributing, and transportation thereby allowing local governments to establish ordinances similar to those of pharmacies.

The issue ultimately causing the negotiations to breakdown was the number of retail facilities MMTCs could establish. The Senate version limited MMTCs retails facilities to three to avoid monopolies from being created by the current seven MMTCs. On the final day of session, the Senate increased the limit to five retail facilities and established taxing requirements for medical marijuana and marijuana delivery devices.

The House would not accept the taxing provision due to the belief that medical marijuana is a medicine and should be treated as such. In an attempt to gain Senate approval, the House offered to sunset the tax-free provision and increase the number of retail facilities per MMTC to 100 but the Senate did not take up the bill before the session ended.

SPECIAL SESSION - Medical Marijuana Implementation – SB 8A by Sen. Rob Bradley (R-Orange Park) and Dana Young (R-Tampa) - ***PASSED***
The bill adds to the existing compassionate use of low-THC and medical cannabis program and statutes in order to implement the Constitutional Amendment passed by Florida voters in the 2016 General Election.

Provisions Relating to Patients

- Exempts marijuana and marijuana delivery devices from sales and use tax that would otherwise be imposed under chapter 212, F.S.

- Establishes procedures for physicians to issue certifications to patients who have qualifying medical conditions which includes: cancer, epilepsy, glaucoma, HIV, AIDS, PTSD, ALS, Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical condition of the same kind or class as or comparable to those enumerated. Also included is chronic nonmalignant pain (defined as pain that is caused by or that originates from a qualifying medical condition and persists beyond the usual course of the qualifying medical condition) and a terminal condition.

- Eliminates the 90-day waiting period before the qualified physician may register a patient as qualified to receive low-THC cannabis or medical marijuana.

- Ensures that qualified patients can receive low-THC cannabis as well as full-THC marijuana.

- Allows marijuana edibles and vaping, but prohibits the smoking of marijuana.

- Establishes residency requirements for patients to be issued an ID card including documentation required for a seasonal resident.

- Grandfathers in existing patients from the low-THC and "right to try" programs registered in the compassionate use registry so that they may continue receiving their medication ordered through those programs.

Provisions Relating to Caregivers

- Establishes qualifications to become a caregiver including: (1) be at least 21 years of age and a Florida resident; (2) agree in writing to assist the qualified patient and serve as the patient's caregiver; (3) pass a 2-hour caregiver course that is administered by the DOH; (4) pass a background screening unless the patient is a close relative of the caregiver.

- Limits the number of caregivers each patient may have and the number of patients each caregiver may assist.

- Requires a caregiver to be registered on the registry and possess a caregiver ID card. The caregiver must be in immediate possession of his or her ID card when in possession of marijuana or a marijuana delivery device and present the ID card upon the request of a law enforcement officer.

- Requires a caregiver to purchase or administer marijuana for medical use by a qualified patient who is younger than 18 years of age.

- Prohibits a caregiver from receiving compensation, other than the actual expenses incurred, for any services provided to the qualified patient.

Provisions Relating to Qualified Physicians and Physician Certifications

- Requires a physician to complete a 2-hour course and examination on the requirements of this law to be approved as a qualified physician. He or she must also comply with a 2-hour continuing education requirement for licensure renewal.

- Prohibits a qualified physician from being employed by, or having a direct or indirect economic interest in, a medical marijuana treatment center or marijuana testing laboratory.

- Establishes standards for a qualified physician to issue a physician certification to including:

    - Conducting a physical examination while physically present in the same room as the patient and a full assessment of the patient's medical history.
    - Diagnosing the patient with at least one qualifying medical condition.
    - Determining, and documenting in the patient's medical record, that the use would likely outweigh the potential health risks. If a patient is younger than 18, a second physician must concur with the determination and document it.
    - Determining and documenting in the medical record whether the patient is pregnant. A physician may issue a physician certification for low-THC cannabis only to a patient who is pregnant.
    - Reviewing the patient's controlled drug prescription history in the prescription drug monitoring program database.
    - Reviewing the registry to confirm that the patient does not have an active physician certification from another qualified physician.
    - Registering as the issuer of the physician certification for the named patient on the registry.
    - Updating the registry with specified information concerning the physician's certification for the patient's medical use of marijuana.

- Limits certifications to no more than three 70-day supply limits of marijuana.

- Requires a qualified physician to evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification for that patient.

Provisions Relating to MMTCs

- Requires the DOH to license the seven existing dispensing organizations as MMTCs which may begin dispensing marijuana pursuant to this law on July 3, 2017.

- Requires the DOH to license as MMTCs 10 applicants by October 3, 2017.

- Requires the DOH to license four additional MMTCs within 6 months after the registry contains 100,000 active qualified patients, and upon each additional 100,000 active qualified patient registrations.

- Limits MMTCs to 25 dispensing facilities statewide until the medical marijuana use registry contains 100,000 active qualified patients. When that occurs, an additional five dispensing facilities are authorized for each licensed MMTC.
    - Allows, upon each additional 100,000 active qualified patient registrations, an additional five dispensing facilities are authorized for each licensed MMTC.

- Requires each MMTC to locate its authorized dispensing facilities within five regions statewide according to county population estimates for the counties within each region.
- Allows an MMTC that chooses not to establish a dispensing facility within a region as authorized to sell that regional slot to another MMTC.
- Provides the limitations on dispensing facilities which expires on April 1, 2020.

- Details requirements for MMTC applicants and standards that each MMTC must meet to obtain and maintain licensure; including a diversity plan that promotes and ensures the involvement of minority persons, minority business enterprises, or veteran business enterprises.

- Authorizes alternate forms of assets to satisfy the performance bond requirements.

- Requires an MMTC to perform all functions of cultivating, processing, transporting, and dispensing marijuana for medical use; including ensuring that low-THC is available for the medical use of qualified patients.

- Requires MMTC processing facilities to pass a Food Safety Good Manufacturing Practices inspection by a nationally recognized certifying body.

- Requires laboratory testing of MMTC products and creates a certification program for medical marijuana testing laboratories.

- Establishes standards for advertising and requirements for a professional appearance and operation of dispensing facilities.

- Requires background screening of MMTC owners, officers, board members, managers, and employees, and of medical marijuana testing laboratory owners and managers.

- Authorizes a change of ownership for an MMTC under specified parameters and prohibit ownership in multiple MMTCs or certain profit-sharing arrangements.

- Preempts the regulation of cultivation and processing of marijuana to the state.

- Authorizes local governments to ban MMTC dispensing facilities within their borders. However, if a local government does not ban dispensing facilities, it may not place restrictions on the number of dispensing facilities allowed within its jurisdiction. Also, it may not adopt any regulations or fees for dispensing facilities that are more restrictive than its ordinances regulating pharmacies.

Additional Provisions:

- Establishes administrative, disciplinary, or criminal penalties for prohibited acts by physicians, patients, caregivers, MMTCs, medical marijuana testing laboratories, and other persons. These prohibited acts include, but are not limited to:
  - A qualified patient or caregiver cultivating marijuana or acquiring marijuana from anyone other than an MMTC.
  - A qualified patient or caregiver in possession of marijuana or a marijuana delivery device who fails or refuses to present his or her ID card upon the request of a law enforcement officer. The bill includes mitigating actions that may enable a patient or caregiver to avoid prosecution.
  - An MMTC providing kickbacks to a qualified physician.
  - Unlicensed activity.
  - Counterfeiting marijuana or a marijuana delivery device purporting it to be from a licensed MMTC.
  - Possessing or making a counterfeit or otherwise unlawfully issued medical marijuana use registry identification card.

- Specifies that this act does not limit an employer's ability regarding a drug-free workplace program or policy, does not require an employer to accommodate the medical use of marijuana in the workplace or an employee working while under the influence of marijuana, does not create a cause of action against an employer for wrongful discharge or discrimination, and that marijuana is not reimbursable under chapter 440 relating to workers' compensation.

- Requires the DOH and the Department of Highway Safety and Motor Vehicles (DHSMV) to establish public educational campaigns related to the medical use of marijuana.

- Requires the Department of Law Enforcement to develop initial training and continuing education for law enforcement agencies relating to activities governed by this law and criminal laws governing marijuana.

- Creates the Coalition for Medicinal Cannabis Research and Education (Coalition) to conduct rigorous scientific research, provide education, disseminate research, and to guide policy development for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of cannabis.

- Requires each district school board to adopt a policy and procedure for allowing a student who is a qualified patient to use marijuana obtained pursuant to this law.

- Renames the Office of Compassionate Use, the Office of Medical Marijuana Use.

- Provides a severability clause so that if any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications which can still be given effect.

The Governor signed the bill on June 23, 2017 and it took effect immediately.

Stand Your Ground – *SB 128 by Sen. Rob Bradley (R-Orange Park) –* ***PASSED***
Legislation that changed Florida's "Stand Your Ground" law was approved the last day of session when an agreement was struck between the House and Senate. In "Stand Your Ground" cases, pre-trial evidentiary hearings are held to determine whether defendants should be immune from prosecution. Both chambers supported the concept of shifting the burden of proof from defendants to prosecutors in the pre-trial hearings; however, they disagreed on the legal standard.

The House language required prosecutors in pre-trial hearings to overcome the asserted immunity sought by defendants through "clear and convincing evidence." The House approved their language on a vote of 74 to 39. The Senate measure contained a higher standard of proof, "beyond a reasonable doubt." In the end, the Senate accepted the House's language. The Senate approved the language on a vote of 22 to 14.

The bill was signed by the Governor on June 9 and it took effect immediately.

Tax Cut Package – *HB 7109 by Rep. Jim Boyd (R-Bradenton) –* ***PASSED***
The 2017 Tax Relief package which amounts to approximately $75 million in savings for Floridians was approved in the final week of session. A major component of the measure was a reduction of the sales tax on commercial rental property which has long been sought by the business community. Florida is the only state in the nation with this tax in place. The bill permanently lowers the tax on commercial leases from six to 5.8 percent, effective January 1, 2018. Other provisions include:

- Establishing two sales tax holidays:
    - Three days from August 4-6, 2017, for clothing and footwear costing $60 or less, school supplies costing less than $15, and for the first $750 of the cost of a personal computer; and

- Three days from June 2-4, 2017, for disaster preparedness supplies including flashlights and lanterns costing $20 and less; radios and tarps costing $50 and under; coolers and first-aid kits for $30 and under and generators priced at $750 and less.

- Creating a sales tax exemption for:
  - A single parcel, limited to $10,000, for building materials, pest control services, and tangible personal property rentals used in new construction for Rural Areas of Opportunity (RAO);
  - Data center property purchased, rented or leased by the center's owners and tenants;
  - Fingerprint services associated with a concealed weapons and firearms application;
  - Livestock, poultry, and aquaculture health products;
  - Certain purchases by municipally-owned golf course operators; and
  - Feminine hygiene products, effective January 1, 2018.

- Expanding authority for counties to use revenue derived from local option tourist development taxes for publicly-owned auditoriums operated by 501(c)(3) organizations;

- Making permanent the Community Contribution Tax Credit with a limit of $14 million in credits per fiscal year;

- Expanding the annual tax credit limit from $5 to $10 million for the Contaminated Site Rehabilitation Tax Credit program;

- Increasing the Research and Development Corporate Tax Credit limit from $9 to $18 million for calendar year 2018;

- Providing a property tax exemption for 501(c)(3) assisted living facilities (ALFs) beginning in 2017, effective upon the act becoming law;

- Extending the time for a charter school to apply for a property tax exemption to August 1, 2017, if it was leased in 2015 and owned in 2016;

- Clarifying that certain heavy construction and agricultural equipment returned under a rent-to-purchase option is considered inventory and exempt from property tax;

- Outlining procedures for specified resellers of admissions to receive refunds or credits of paid taxes when sales are made to tax-exempt persons;

- Including 50 percent property tax discount for certain multifamily projects providing affordable housing to low-income persons or families;

- Expanding the Corporate Income Tax filing extension period from 5 to 6 months for certain corporate taxpayers – conforming to federal law;

- Providing a license fee exemption for the registration of certain marine boat trailers; and

- Requiring local motor fuel taxes to be renewed before July 1 in order to be effective on Sept. 1 of the year they expire.

On May 25, 2017, the bill was signed by the Governor. Unless otherwise specified, the law will take effect on July 1, 2017.

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