

# **Insurance Regulatory & Legislative Issues in Florida**

**Florida State University  
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# PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY



- Fred E. Karlinsky, a shareholder in Colodny, Fass, Talenfeld, Karlinsky and Abate in Fort Lauderdale and Tallahassee, focuses his practice on insurance regulatory matters, insurance legislative matters, insurance transactional matters and governmental affairs.
- An “AV” rated Martindale Hubbell attorney, Mr. Karlinsky was named to Florida Trend Magazine’s Florida Legal Elite in 2005 and 2006, named as a Top Lawyer by the South Florida Legal Guide for 2005, 2006, and 2007, and selected as a Super Lawyer and featured in the 2007 and 2008 Florida Super Lawyer Magazine.



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# PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY

- Mr. Karlinsky currently serves as Florida counsel to the Property Casualty Insurers Association of America (PCI) and general counsel and chief lobbyist for the Florida Property and Casualty Association (FPCA), among other clients.
- Mr. Karlinsky is a graduate of the University of Miami (B.S., 1989) and Florida State University College of Law (J.D., 1992).
- A member of the Florida Bar, Mr. Karlinsky is admitted to practice in all Florida state and appellate courts, the United States District Court for the Southern, Middle and Northern Districts of Florida, the United States Court of Appeals for the 11th Circuit, the United States Court of Federal Claims, the United States Tax Court and the United States Supreme Court.



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# OUTLINE OF PRESENTATION

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## Florida Political Briefing

- Statewide Officials
- Florida Senate
- Florida House of Representatives
- Legislative Sessions



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# OUTLINE OF PRESENTATION

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## Florida Property Insurance

- 2004 and 2005 Hurricane Seasons
- Citizens Property Insurance Corporation
- Florida Hurricane Catastrophe Fund
- Current Situation
- 2008 Legislative Session
- Regulatory Focus On Risk Modeling



# OUTLINE OF PRESENTATION

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## **Florida Auto Insurance**

- Sunset and Resurrection of PIP
- Special Session 2007 – C
- 2008 Legislative Session

## **Workers Compensation**

- Rate Decreases

## **Medical Malpractice**

- Effect of Legislative Reforms

## **Reinsurance Collateral Requirements**

- Waiver or Reduction of Collateral Requirements



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# OUTLINE OF PRESENTATION

## Federal Issues

- National Catastrophe Plan
- Homeowners Defense Act of 2007
- McCarran-Ferguson Act
- National Insurance Act
- Treasury Blueprint for a Modernized Financial Regulatory Structure
- National Flood Insurance Program
- Terrorism Risk Insurance Act (TRIA)



# STATEWIDE OFFICIALS



**Charlie Crist** (R-St. Petersburg): Elected Governor in 2006. Defeated Jim Davis in the General Election. Term began January 2007.

- Native Floridian: Born in St. Petersburg, Florida
- Served for 6 years in the Florida Senate beginning in 1992
- Appointed by then Governor Jeb Bush as the Deputy Secretary of the Department of Business and Profession Regulation
- Elected Commissioner of Education in 2000
- Elected Attorney General in 2002



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# STATEWIDE OFFICIALS



**Bill McCullum** (R- Winter Park): Elected Attorney General in 2006. Defeated Skip Campbell in the General Election. Term began January 2007.

- Native Floridian: Born in Brooksville
- Served on active duty and as an officer in the Judge Advocate General's Corps in the U.S. Navy
- Served in the United States Congress from 1981 until 2001
- Returned to private practice with the firm of Baker and Hostetler, LLP, until he was elected as the Attorney General



# STATEWIDE OFFICIALS



**Alex Sink** (D- Tampa): Elected Chief Financial Office in 2006. Defeated Tom Lee in the General Election. Term began January 2007.

- Former President of Bank of America, Florida's Largest Bank
- Appointed by Governor Lawton Chiles to the Commission on Government Accountability to the People
- Served as Vice Chair of Florida Tax Watch



# STATEWIDE OFFICIALS



**Charles Bronson** (R- Tallahassee): Re-elected Agricultural Commissioner in 2006. Defeated Eric Copeland in the General Election. Term began January 2007.

- Native Floridian: Born in Kissimmee
- Appointed Agricultural Commission in 2001 and Elected in 2002
- Elected to the Florida Senate in 1994 and re-elected in 1998



# STATEWIDE OFFICIALS



**Kevin McCarty:** Florida's First Appointed Insurance Commissioner, January 2003.

- Appointed by the Financial Services Commission comprised of the Governor and Cabinet
- Served with the Department of Labor and Employment Security beginning in 1998
- Served with the Florida Department of Insurance beginning in 1991



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# FLORIDA SENATE

## Current Composition of the Florida Senate

- 26 **Republicans**
- 14 **Democrats**



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# FLORIDA SENATE



Senator Ken Pruitt (R- St. Lucie):  
President of the Florida Senate, 2006-  
2008.



Senator Steve Geller (D- Hallandale  
Beach): Minority Leader of the Florida  
Senate, 2006-2008.



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# FLORIDA SENATE



Senator Jeff Atwater (R- North Palm Beach): President Elect of the Florida Senate, 2008-2010.



Senator Al Lawson (D- Tallahassee): Minority Leader Elect of the Florida Senate, 2008-2010.



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# FLORIDA SENATE

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Senator Mike Haridopolos (R-Melbourne): President Elect of the Florida Senate, 2010-2012.



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# FLORIDA HOUSE OF REPRESENTATIVES

## Current Composition of the Florida House

- 77 **Republicans**
- 42 **Democrats**
- 1 Vacant seat
  - House District 55: Formerly held by Frank Peterman Jr. (D-St. Petersburg)



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# FLORIDA HOUSE OF REPRESENTATIVES



Representative Marco Rubio (R- Miami):  
Speaker of the Florida House of  
Representatives, 2006-2008.



Representative Dan Gelber (D-Miami  
Beach): Minority Leader of the Florida  
House of Representatives for 2006-  
2008.



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# FLORIDA HOUSE OF REPRESENTATIVES



Representative Ray Sansom (R-Fort Walton Beach): Speaker Designate of the Florida House of Representatives for 2008-2010.



Representative Franklin Sands (D-Plantation): Minority Leader Designate of the Florida House of Representatives 2008-2010.



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# FLORIDA HOUSE OF REPRESENTATIVES



Representative Dean Cannon (R-Winter Park): Speaker Designate of the Florida House of Representatives for 2010-2012.



Representative Will Weatherford (R-Zephyrhills): Speaker Designate of the Florida House of Representatives for 2012-2014.



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# FLORIDA'S REGULAR LEGISLATIVE SESSION

- 60 day Session held annually. Generally, from the beginning of March until the beginning of May.
- 2007: March 6 to May 4
- 2008: March 4 to May 2



# 2007 SPECIAL SESSIONS

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- 4 Special Sessions held, 2 relating to insurance
- Special Session 2007 A relating to Property Insurance
- Special Session 2007 C relating to Motor Vehicle No-Fault Insurance (Personal Injury Protection)



# FLORIDA PROPERTY INSURANCE

## 2004 Storms

- Charley
- Frances
- Ivan
- Jeanne

## 2005 Storms

- Dennis
- Katrina
- Rita
- Wilma



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# FLORIDA PROPERTY INSURANCE

- Storms in 2004 and 2005 resulted in a total of \$36 billion in estimated losses.
- As a result of the 8 major storms that impacted Florida in 2004 and 2005, insurance premiums increased and public outrage soared over the lack of available, affordable property insurance.



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# FLORIDA PROPERTY INSURANCE

- Citizens Property Insurance Corporation (Citizens), which was a residual market insurer at that time, incurred over \$2.5 billion in losses and faced a \$1.7 billion deficit after the 2005 storms.
- After a Legislative appropriation, remaining deficit of \$1 billion is being assessed by Citizens over 10 years.
- Citizens is now the largest personal lines property insurer in the state.
- 2006 Legislature created the Insurance Capital Incentive Build-Up Program in an effort to attract more private insurance capital to Florida.



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# FLORIDA PROPERTY INSURANCE

- In response to growing concerns, the Property and Casualty Insurance Reform Committee was created in 2006 by Executive Order of then-Governor Jeb Bush.
- The Committee recommended augmentation of the Florida Hurricane Catastrophe Fund (FHCF) and expansion of Citizens.
- Special Session 2007 A of the Florida Legislature was convened in January 2007 to exclusively address property insurance issues and the Committee's recommendations.



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# FLORIDA PROPERTY INSURANCE

- The Special Session produced CS/HB 1-A, a bill aimed at reducing hurricane-related insurance costs for Florida homeowners and businesses.
- The legislation, which passed unanimously in the Florida Senate and by a vote of 116-2 in the Florida House of Representatives, made considerable changes to both FHCF and Citizens, among other things.
- The bill was signed into law by Florida Governor Charlie Crist shortly after its passage.



# FLORIDA PROPERTY INSURANCE

## *Citizens Property Insurance Corporation*

- Extensive changes were made to Citizens pursuant to CS/HB 1-A.
- In an attempt to provide immediate rate relief to Citizens' policyholders, the new law repealed the requirement that Citizens' rates be non-competitive and no lower than the top 20 insurers.
- Instead, Citizens' rates are required to be "actuarially sound" and subject to the standards that generally apply to private property insurers.



# FLORIDA PROPERTY INSURANCE

- Under the new law, if a new applicant to Citizens is offered coverage from an insurer at its approved rate, the property is not eligible for a Citizens' policy, unless the insurer's premium is more than 15 percent greater than the premium for comparable coverage from Citizens.
- Policyholders of Citizens remain eligible for coverage regardless of any offer of coverage from a private market insurer.
- The requirement that Citizens charge rates sufficient to purchase reinsurance up to specified PMLs has been eliminated.



# FLORIDA PROPERTY INSURANCE

- The new law froze Citizens' rates at the December 31, 2006, level for the remainder of 2007, rescinded the approved rate increase that was to take effect January 1, 2007, and requires Citizens to provide refunds to persons who have paid the increased rate.
- Citizens is authorized to offer multiperil coverage for commercial nonresidential properties in all areas of Florida, subject to the qualifications applicable to Citizens' High Risk Account (HRA).
- Citizens is entering the commercial lines market through the assumption of the Property and Casualty Joint Underwriting Association.



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# FLORIDA PROPERTY INSURANCE

- In 2006, legislators changed the amount Citizens' policyholders could be assessed to as much as 30% of policy premium. Lawmakers deferred implementing this change for one year as part of the 2007 insurance reform bill.
- Homeowners could be assessed twice more, up to an additional 60% of their premiums. Non-homestead property, including businesses, rental property and vacation homes, could be assessed up to three times more or an additional 90% of their premiums.
- The Florida Senate is considering deferring the assessment change for another year, along with extending the freeze on Citizens' rates.



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# FLORIDA PROPERTY INSURANCE

## *Florida Hurricane Catastrophe Fund*

- Originally created in 1993 in the aftermath of Hurricane Andrew.
- FHCF functions as a reinsurer.
- Reduces need for private capital in the Florida market.
- FHCF creates pricing pressure in private reinsurance market.
- FHCF restricts need for new sources of capital (i.e. sidecars, Cat bonds).



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# FLORIDA PROPERTY INSURANCE

- CS/HB 1-A substantially increased the FHCF capacity.
- This law created the new Temporary Increase in Coverage Limit option (TICL option). The TICL option, available to residential property insurers for the 2007 through 2009 hurricane seasons, allows an insurer to purchase its proportional FHCF premium share of up to \$12 billion in coverage, in \$1 billion increments, above the FHCF industry limit of \$16 billion for 2007 (for a total of up to \$28 billion).



# FLORIDA PROPERTY INSURANCE

- The SBA may further increase the \$12 billion coverage limits up to an additional \$4 billion (for up to a total of \$32 billion).
- This law also created the Temporary Emergency Additional Coverage Option (TEACO), which allows residential property insurers to purchase additional coverage below each insurer's market share of the FHCF retention.
- Insurers may select their share of an industry retention level of \$3 billion, \$4 billion or \$5 billion for 2007, 2008, and 2009 to cover 90 percent, 75 percent, or 45 percent of their losses up to the normal retention for the mandatory FHCF coverage.



# FLORIDA PROPERTY INSURANCE

- Coverage based on a \$3 billion retention will be priced at an 85 percent rate-on-line; \$4 billion retention at an 80 percent rate-on-line; and \$5 billion retention at a 75 percent rate-on-line.
- The TEACO coverage applies to two hurricanes for each contract year.
- This law also allowed eligible residential property insurers to purchase up to \$10 million in additional FHCF coverage at a level significantly below the normal FHCF rate. The \$10 million coverage amount was above a retention equal to 30 percent of the insurer's surplus, as of December 21, 2006.



# FLORIDA PROPERTY INSURANCE

- The premium was set at 50 percent of the coverage amount (i.e., \$5 million for \$10 million coverage). The coverage applied to two hurricanes and was offered only for the 2007 contract year.
- This coverage, which was previously available only to the “limited apportionment companies” described in Section 627.351(6)(c), was available to insurers who participated in 2006, limited apportionment companies who began writing property insurance in 2007, and insurers approved to participate in either 2006 or 2007 in the Insurance Capital Build-Up Incentive Program. This coverage is available through May 31, 2008.



# FLORIDA PROPERTY INSURANCE

- Residential property insurers were required to make a rate filing with the Office of Insurance Regulation (OIR) reflecting the savings or reduction in loss exposure to the insurer due to the expanded FHCF coverage.
- Each rate filing had to be based upon the "presumed factor" calculated by OIR for any policy written or renewed on or after June 1, 2007, to reflect all expanded FHCF coverage options available to the insurer, whether or not the insurer purchased the coverage.



# FLORIDA PROPERTY INSURANCE

## *Current Situation*

- Enormous financial risk now rests squarely on the state's shoulders by virtue of Citizens' and FHCF's expanded exposures.
- Bond liquidity and cash reserves of Citizens and FHCF remain issues. Prior bond issuance has not been fulfilled. Citizens intends to issue \$2 Billion in pre-event bonds.



# FLORIDA PROPERTY INSURANCE

- Citizens currently has approximately \$6.5 billion in surplus funds, and approximately \$6.5 billion in borrowed funds to be reimbursed from FHCF.
- Approximately \$4.175 billion (45 percent) of Citizens' liquid funds were affected by the subprime crisis.
- FHCF currently has a cash balance of \$2.8 billion and total liquidity of \$8.37 billion that includes Pre-event Notes.
- FHCF would have to rely heavily on the ability to secure bonds in the event of a catastrophic event.



# FLORIDA PROPERTY INSURANCE

- The House Insurance Committee has undertaken an investigation of FHCF and Citizens liquidity, bonding and assessment issues.
- The results have been highlighted by House Insurance Committee Chairman Don Brown as revealing serious issues pertaining to possible assessment liabilities related to FHCF and Citizens.
- On April 2, 2008, Chairman Brown sent a letter to House Speaker Marco Rubio outlining the House Insurance Committee's recommendations as a result of its investigations.



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# FLORIDA PROPERTY INSURANCE

- The House Insurance Committee's recommendations include lifting the rate freeze on Citizens' rates to ensure the rates are actuarially sound and revisiting Citizens' charter as a true residual market entity.
- The House Insurance Committee also recommends increasing the transparency of OIR's regulatory activities and allowing the moratorium on "use and file" to sunset.



# FLORIDA PROPERTY INSURANCE

## *OIR Investigations*

- Insurance Commissioner McCarty has subpoenaed records from certain insurance companies filing for rate increases and non-renewal plans.
- To date, Auto Owners Insurance Group, State Farm Insurance Companies, Cincinnati Insurance and Cincinnati Indemnity, and Allstate, among others, have been issued subpoenas.
- OIR continues to investigate State Farm, despite a settlement to lower homeowners rates by 9%.
- On February 24, 2008, State Farm announced it will no longer accept new homeowners business in Florida.



# FLORIDA PROPERTY INSURANCE

- Allstate is under fire for dropping homeowners policies, filing for rate increases, and failing to comply with subpoenas.
- The Allstate subpoenas specifically require the production of “any and all Documents and Communications either from or to Risk Modeling Companies.”
- On January 16, 2008, Insurance Commissioner McCarty suspended the certificate of authority of Allstate Companies to write new insurance in Florida until they fully comply with the subpoenas.



# FLORIDA PROPERTY INSURANCE

- Two days later, a state appellate court issued an order staying the suspensions pending disposition of Allstate's appeal.
- On February 19, 2008, Insurance Commissioner McCarty filed an administrative complaint on a non-emergency basis seeking to suspend the certificates of authority of the Allstate Companies to write new insurance policies in Florida.
- On Friday, April 4, 2008, the First District Court of Appeals ruled that OIR was within its authority to suspend Allstate's COA until documents are produced.



# FLORIDA PROPERTY INSURANCE

- Additionally, Governor Crist has enlisted the help of three trial lawyers in what could become a class-action suit against Florida's insurers.
- These trial attorneys will look at every company that has applied for a rate increase for possible violations of anti-trust laws and conspiring to artificially inflate rates for homeowners insurance.



# FLORIDA PROPERTY INSURANCE

## *2008 Legislative Session*

- The new Select Committee on Property Insurance Accountability was formed by the Florida Senate to further investigate these issues within the property insurance industry in Florida.
- Senior insurance executives from Hartford, American Strategic Insurance Company, Nationwide, Florida Farm Bureau and Allstate Floridian have testified before the Committee regarding various market issues.



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# FLORIDA PROPERTY INSURANCE

- As a result of the Select Committee's hearings, it has proposed sweeping revisions to insurance laws, including:
  - Repealing the “use” and “file” rate filing option for property insurance.
  - Permitting insurers to use only approved hurricane loss models.
  - Authorize OIR to adopt rules on allowable profit and contingency factors and strengthen excess profit laws.



# FLORIDA PROPERTY INSURANCE

- Establish standards for allowable reinsurance expenses included in rate filings.
- Require certifications and filings pertaining to certain non-renewal plans.
- Repeal arbitration as a remedy for OIR disapproval of rate filings.
- Imposing more stringent fines and penalties.
- Removing state antitrust exemptions for insurers and insurance rating and advisory bodies.



# FLORIDA PROPERTY INSURANCE

## *Senate Bill 2860*

- The Senate Banking and Insurance Committee approved SB 2860 which contains many of the recommendations published by the Senate Select Committee on Property Insurance Accountability. The following provisions are included in the bill.
  - Section 1 – makes the Insurance Capital Incentive Program permanent.



# FLORIDA PROPERTY INSURANCE

- Section 2 – applies the state antitrust laws to “the business of insurance.”
- Section 3 – allows OIR to require insurers to file claims handling practices and procedures based on the findings of a market conduct examination. Claims handling procedures are public records and not trade secrets.



# FLORIDA PROPERTY INSURANCE

- Section 4 – deems the failure of an insurer to provide documents and information subpoenaed by OIR an “immediate and serious danger to public health, safety and welfare,” and grants OIR the authority to immediately suspend the COA of such an insurer.
- Section 5 – increases the maximum fine in lieu of suspension to \$25K per violation or per day an insurer is not in compliance with the Florida Insurance Code. The maximum fine for willful violations would now be \$100K.



# FLORIDA PROPERTY INSURANCE

- Section 6 – requires a notice of trade secret to be filed with documents or information submitted to OIR or the trade secret protection is waived.
- Section 7 – insurers must give 90 days notice to OIR when planning to nonrenew more than 10K residential policies, including the reasons for nonrenewal, effective dates and arrangements to offer other coverage. OIR may not approve the plan unless such nonrenewals are staggered over a reasonable period of time.



# FLORIDA PROPERTY INSURANCE

- Section 8 - Unfair insurance trade practices; fines
  - Nonwillful violations: increases the maximum fine to \$25,000 per violation (instead of \$2,500), and removes the \$10,000 aggregate cap on all fines for all nonwillful violations arising out of the same action.
  - Willful violations: increases the maximum fine to \$100,000 per violation (instead of \$20,000), and removes the \$100,000 aggregate cap on all fines for all nonwillful violations arising out of the same action.



# FLORIDA PROPERTY INSURANCE

- Section 9 – deems insurers’ failure to provide prompt estimates of damage, consideration of discriminatory factors in evaluating or settling claims, and failure to pay undisputed amounts within 30 days as unfair insurance trade practices.
- Section 10 – permanently repeals use and file rate filings for property insurance, except to decrease rates. The extent to which reinsurance may be considered in ratemaking would be restricted. Projected hurricane losses must be estimated using a commission approved model. An immediate review of an *approved* rate based upon an insurer’s nonrenewal activity would be allowed.



# FLORIDA PROPERTY INSURANCE

- Section 11 – repeals the statute allowing an insurer to require arbitration of the rate filing in lieu of demanding a hearing.
- Section 12 – conforming change regarding the consumer advocate consistent with section 11.
- Section 13 – requires insurers to use, without modification, commission approved models in determining hurricane loss factors and probable maximum loss levels.
- Section 14 – requires OIR to develop a methodology for mitigation discounts and credits by February 2009. Insurers must apply this methodology by that October.



# FLORIDA PROPERTY INSURANCE

- Section 15 – provides massive changes for Citizens including the following:
  - Eliminates the distinctions between homestead and non-homestead property.
  - Removes the restrictions on Citizens eligibility for properties valued at \$1 million or more.
  - Requires Citizens to offer multiperil policies and prohibits Citizens from writing new wind-only policies as of July 1, 2008 (but allows Citizens to renew wind-only policies that were in force on that date).



# FLORIDA PROPERTY INSURANCE

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- Lowers the maximum percentage for regular assessments from 10 to 8 percent and leaves the aggregate amount of emergency assessments in any given year to the discretion of Citizens' Board of Governors.
- Removes the immediate Citizens policyholder surcharge, but allows for surcharges upon renewal or issuance of policies to reduce the amount of any Citizens regular assessment.



# FLORIDA PROPERTY INSURANCE

- Freezes Citizens rates through December 31, 2009. In addition, Citizens' annual rate filings for 2010, 2011, and 2012 may have rate increases no higher than 10 percent overall for all multiperil policies, and 10 percent for any given policyholder.
- Citizens' annual rate filings for 2010, 2011, and 2012 may have rate increases no higher than 15 percent overall, and a 15 percent increase for any given policyholder, for the wind-only account.
- Repeals forced-purchase of Citizens bonds by assessable insurers.



# FLORIDA PROPERTY INSURANCE

- Citizens shall make its database of policies available to prospective takeout insurers upon their execution of a confidentiality agreement without categorically removing policies from eligibility for removal.
- Citizens may not instruct prospective take-out insurers to avoid the selection of policies for which the agent has disapproved policy renewals.
- Citizens must require agents to accept or decline appointment for any policy selected and, if declination, must notify the policyholder that an insurer, identified by name, selected the policy for a take-out offer, but that the policyholder's agent refused to be appointed by the insurer.



# FLORIDA PROPERTY INSURANCE

- The notice must also provide the policyholder with the take-out insurer's contact information so that the policyholder can contact the company directly and make his or her own determination of whether to seek coverage from the take-out insurer.
- Section 16 – guarantees renewability for at least three years on a dwelling that meets the wind-borne debris protection requirements of the Florida Build Code.



# FLORIDA PROPERTY INSURANCE

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- Section 17 – requires the seller of a property to disclose the property’s windstorm mitigation rating.
- Section 18 – provides felony penalties for a person who willfully signs or files with OIR a materially false or misleading rate filing. Provides felony penalties for any person attempting to influence, obstruct or impede the lawful regulation of the business of insurance.



# FLORIDA PROPERTY INSURANCE

## *House Bill 7021/Senate Bill 2156*

- Florida's Chief Financial Officer Alex Sink proposed reform to FHCF to reduce the potential for future FHCF assessments on Florida's insurance consumers.
- HB 7021/ SB 2156 reorganizes FHCF by creating a "Division" of the FHCF to report directly to a "Board" consisting of the Governor and the Cabinet.
- The Division would evaluate the reinsurance markets and the feasibility/risk associated with bond transactions relative to current financial markets.



# FLORIDA PROPERTY INSURANCE

- The Division would make recommendations to the Board regarding which FHCF optional coverages to offer, limits, and pricing for such coverages for the upcoming reimbursement contract year based on its evaluation of the financial markets and the private reinsurance markets.
- The Board would be authorized to determine which FHCF coverages to offer, their limits, and their pricing by February 15 of each year. FHCF's mandatory coverage would not be impacted.



# FLORIDA PROPERTY INSURANCE

- Residential property insurers would have an incentive to purchase their reinsurance coverage from the FHCF unless they can obtain reinsurance coverage for less in the private reinsurance or capital markets.
- The proposal eliminates the TICL coverage options of \$10 billion, \$11 billion, and \$12 billion, so that a maximum of \$9 billion will be offered.
- The proposal would only offer reimbursement of 70% of the insurer's losses within the TICL layer purchased, as opposed to the current maximum of 90% that the vast majority of insurers have selected.



# FLORIDA PROPERTY INSURANCE

- A handwritten amendment to SB 2156 on April 3, 2008, was adopted by the Senate Governmental Operations Committee extending the availability of an additional \$10 million of coverage from FHCF to those companies with limited apportionment status.
- The additional layer would be at a level significantly below the normal FHCF rate.
- This \$10 million represents an additional layer of reinsurance from the FHCF.



# FLORIDA PROPERTY INSURANCE

- HB 269/SB 754 Hurricane Preparedness and Insurance. Creates the Citizens Property Insurance Corporation Mission Review Task Force to analyze and compile data and to develop a report setting forth the statutory and operational changes relating to Citizens.
- HB 563/SB 1018 Property Insurance Appraisal Umpires. Provides license application, issuance, biennial renewal, or continuation fees for property appraisal umpires.



# FLORIDA PROPERTY INSURANCE

- HB 565/SB 2528 Insurance Agents. Expands the list of applicants eligible for exemption from certain examination requirements. Authorizes agents qualifying as unaffiliated insurance consultants to transact insurance business within the scope of the agent's license.
- HB 661/SB 1098 Insurance Adjusters. Prohibits a public adjuster from soliciting or entering into a contract with any insured or claimant under an insurance policy for a specified period after the occurrence of an event that may be the subject of a claim.



# FLORIDA PROPERTY INSURANCE

- HB 679,1249,1349/SB 2086,2470 Condominium Associations. Requires hazard insurance be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. Provides policies may include deductibles as determined by the association's board of directors.
- HB 993/SB 2784 Windstorm Insurance Coverage. Provides for application of FHCF to costs of the Florida Windstorm Insurance Program. Revises certain reimbursement contract board obligation limitations. Revises emergency assessment requirement provisions to include application to these policies.



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# FLORIDA PROPERTY INSURANCE

- HB 1001/SB 1422 Commercial Property Insurance. Provides rate standards for nonassessable commercial property insurance. Provides nonassessable commercial property insurance is not subject to a determination that the rate is excessive or unfairly discriminatory. Excludes nonassessable commercial property insurance, as it relates to assessment by Citizens, from the definition of "subject lines of business."



# FLORIDA PROPERTY INSURANCE

- HB 1219/SB 2076 Arbitration. Provides the Florida Arbitration Code does not apply to certain insurance policies. Provides mandatory binding arbitration is void and unenforceable except as provided by federal law. Provides a financial or personal interest in the outcome of a proceeding or an existing or past relationship with a party constitutes grounds for removal of the arbitrator.



# FLORIDA PROPERTY INSURANCE

- HB 5057 - Insurance Capital Build-Up Incentive Program.
  - Provides for appropriation of state funds in exchange for surplus notes issued by residential property insurers
  - Revises conditions & requirements for providing funds to insurers
  - Requires commitment by insurers to meet minimum premium-to-surplus writing ratios for residential property insurance & for taking policies out of Citizens Property Insurance Corporation
  - Authorizes SBA to charge fees for late payments



# FLORIDA PROPERTY INSURANCE

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- Provides that amendments made by act do not affect terms of surplus notes approved prior to specified date
- Authorizes SBA & insurers to renegotiate such terms consistent with such amendments
- Requires Citizens Property Insurance Corporation to transfer funds to General Revenue Fund for appropriation by Legislature for program purposes



# REGULATORY FOCUS ON RISK MODELING

## *Florida Commission on Hurricane Loss Projection Methodology*

- In 2007, the Florida House of Representatives undertook an investigation of hurricane loss projection models used in Florida. House Speaker Marco Rubio asked the Florida Commission on Hurricane Loss Projection Methodology to review and complete various comparisons of the Public Model and the four private models previously accepted by the Commission.
- The Commission's report, dated November 5, 2007, found that aside from some abnormalities, the output ranges of models submitted to the Commission under the 2006 Standards fall within the range one would expect given the universe of possible scientifically valid approaches.



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# REGULATORY FOCUS ON RISK MODELING

- Of the five models, the Commission found the Public Model has more observations below the minimum and above the maximum levels generated by the 972 models used as a benchmark for the study.
- The Commission found the variability between the final version of the Public Model is generally greater than three of the long-standing private models (RMS, AIR, and EQE) and less than that of ARA.
- According to the Report, the work of the Commission has led to a greater understanding of the underlying reasons why carefully crafted models can have different but equally valid results. Methods to reduce variation will be an ongoing concern.



# FLORIDA AUTO INSURANCE

- PIP and the No-Fault System has become a vehicle for fraud.
- Many auto insurers did not support the extension of PIP.
- Many health care providers lobbied for the extension of PIP.
- PIP sunset on October 1, 2007.



# FLORIDA AUTO INSURANCE

- Special Session 2007 – C re-enacted the No-Fault Law effective on January 1, 2008, and required all vehicle owners to have PIP on that date.
- Provides a fee schedule for PIP benefits.
- Limits the health care providers who must be reimbursed under PIP.
- Provides additional time for PIP insurers to respond to a demand letter for payment before a suit may be filed.



# FLORIDA AUTO INSURANCE

- Requires insurers to reserve \$5,000 of benefits for 30 days for physicians providing emergency services or care or inpatient hospital care.
- Requires that all PIP claims related to a single provider for the same injured person be joined in a single lawsuit.
- Makes it an unfair trade practice for an insurer to refuse to pay valid claims as a general business practice, and allows the Attorney General to investigate and initiate actions, in addition to the Office of Insurance Regulation.



# FLORIDA AUTO INSURANCE

## *2008 Legislative Session*

- HB 257/SB 752 False Claims/Personal Injury Protection Insurance. Requires certain professional licensing boards to suspend the licenses of certain health care practitioners if convicted of insurance fraud involving personal injury protection insurance.
- HB 1493/SB 2338 Motor Vehicle and Casualty Insurance Contracts. Prohibits an insurer from conditioning renewal of a policy upon a change of limits, elimination of any coverages, or increase in premium unless the insurer provides advance written notice to the insured or the insured's agent.



# FLORIDA AUTO INSURANCE

- HB 1219/SB 2076 Arbitration. Provides that the Florida Arbitration Code does not apply to certain insurance policies. Provides that mandatory binding arbitration is void and unenforceable except as provided by federal law. Provides that a financial or personal interest in the outcome of a proceeding or an existing or past relationship with a party constitutes grounds for removal of the arbitrator.



# WORKERS' COMPENSATION

- Florida is the largest market dominated by private market insurers (compared to state sponsored residual market entities in New York and California).
- A recent rate decrease of 18.4 percent that took effect January 1, 2008 marks the 5<sup>th</sup> consecutive year of workers' compensation rate decreases for a total cumulative decrease in rates of 51.4 percent since 2003.
- Insurance Commissioner McCarty ordered six workers' compensation insurance companies to return \$4.2M in excess profits on February 20, 2008.



# WORKERS' COMPENSATION

- Other favorable trends include overall decline in workers' compensation claim frequency.
- In 2006, a state appellate court rejected a constitutional challenge to Florida's statute which restricts the amount of attorney's fees that may be awarded in a workers' compensation case.
- On October 10, 2007, the Florida Supreme Court accepted jurisdiction to review that decision.



# MEDICAL MALPRACTICE

- Prior to 2003, Florida experienced double-digit rate increases and a lack of availability of medical malpractice insurance.
- Many health care providers stopped carrying coverage.
- Legislative reforms enacted in 2003 appear to be effective. A recent report from the OIR shows a net decline in medical malpractice rates for physicians and surgeons.
- The report also shows that 7 new medical malpractice carriers entered the market in 2006.



# REINSURANCE COLLATERAL REQUIREMENTS

- The Florida Legislature enacted legislation amending Florida law regarding credit for reinsurance in 2007.
- The new legislation authorizes OIR to waive or lower the deposit requirement for all reinsurers, domestic, foreign and alien, based on criteria related to the financial strength of the reinsurer and the quality of the reinsurer's regulatory jurisdiction.



# REINSURANCE COLLATERAL REQUIREMENTS

- In addition, the assuming reinsurer must have at least \$100 million in surplus in order to qualify for this waiver or reduction in required deposit.
- OIR held a hearing in November 2007 on a proposed rule to implement this new legislation.
- The proposed Rule establishes a procedure by which a reinsurer can become an “eligible reinsurer.”



# REINSURANCE COLLATERAL REQUIREMENTS

- This status would allow a ceding insurer to receive credit for reinsurance without the need for the eligible reinsurer to post 100% collateral.
- The proposed Rule sets forth a list of criteria which must be satisfied to enter an order approving a reinsurer as an “eligible” reinsurer.
- Once eligibility is determined, the proposed Rule sets forth a schedule as to the amount of credit for reinsurance which would be allowed without the posting of collateral.



# REINSURANCE COLLATERAL REQUIREMENTS

- The most significant factor would be the financial strength ratings of the reinsurer.
- The proposed Rule requires certain provisions in any applicable reinsurance contract, annual filings with OIR for the eligible reinsurer to maintain that status, and immediate notice to OIR upon any changes in ratings, license status or the identity of the reinsurer's directors or officers.



# REINSURANCE COLLATERAL REQUIREMENTS

- The Insurance Commissioner has discretion to withdraw any prior determination of eligibility of a reinsurer if that would be in the best interests of the market and solvency of the ceding insurer.
- The proposed Rule further requires the assuming reinsurer to post 100% collateral for any credit taken by the ceding reinsurer if the ceding reinsurer goes into rehabilitation, conservation or liquidation.



# FEDERAL ISSUES

## *National Catastrophe Insurance Plan*

- Congress is considering bills to establish a national catastrophe fund.
- The National Association of Insurance Commissioners (NAIC) supports a national cat fund.
- The Bush administration and insurance trade groups voiced strong opposition to the proposed legislation.
- Under the proposed legislation that passed the House, state would have the option of joining a consortium of state-based insurance funds.



# FEDERAL ISSUES

## *Homeowners Defense Act of 2007*

- Reps. Tim Mahoney and Ron Klein of Florida introduced H.R. 3355, the Homeowners Defense Act of 2007, to create a national catastrophe insurance fund to cover massive losses from natural disaster. H.R. 3355 was passed in the House on November 8, 2007.
- The NAIC congratulated the House for passing H.R. 3355. NAIC President and Alabama Insurance Commissioner Walter Bell stated: “This bill is a shining example of where the states can work with the federal government to address a national threat.”



# FEDERAL ISSUES

- On November 6, 2007, Senators Bill Nelson and Hillary Rodham Clinton introduced a Senate version of the Homeowners Defense Act.
- Under both bills, states would have the option of joining a consortium of state-based insurance funds. The group would then raise money for the program by selling catastrophe bonds and reinsurance contracts to the private market. The program would also provide federal loans to states hit particularly hard by natural disasters once claims hit a certain cap.



# FEDERAL ISSUES

- The wildfires in Southern California and Texas, flooding and tornadoes in the Midwest and South, and severe winter storms in the Midwest have raised the profile of the legislation, helping to illustrate that the legislation has appeal beyond Florida.
- The Bush administration and insurance trade groups are voicing strong opposition to provisions in the legislation, and the administration is threatening to veto.



# FEDERAL ISSUES

## *McCarran-Ferguson Act*

- Congress passed the Act in 1945 to provide that state laws and regulations that regulate the business of insurance may not be preempted by federal law.
- Under the current Act, insurance is exempt from some federal antitrust statutes.
- The Act is under attack in part due to the perceived reactions by insurers to the 2004-2005 hurricane seasons.
- The insurance industry contends that the move to repeal the Act would reduce competition, create more litigation, increase the cost of doing business and drive up the cost of insurance to the public.



# FEDERAL ISSUES

## *National Insurance Act*

- Similar to the legislation introduced in 2006, the 2007 bill proposes a new federal role in insurance regulation which is based on the dual banking regulatory system.
- Under the bill, insurers operating under multiple state jurisdictions could choose to be regulated at the national level under a new "Optional Federal Charter".



# FEDERAL ISSUES

## *Treasury Department Blueprint*

- Treasury's proposed *Blueprint for a Modernized Financial Regulatory Structure* announced by Treasury Secretary Henry M. Paulson calls for insurance companies to be given the option of federal instead of state regulation, along with the creation of a powerful national insurance regulator and a system of national licensing of producers.
- The plan would introduce a system of optional federal chartering (OFC), licensing, regulation, and supervision for insurers, reinsurers, and insurance agents and brokers.



# FEDERAL ISSUES

- An OFC would specify the lines of insurance that each national insurer would be permitted to sell, solicit, negotiate, and underwrite. For example, an OFC for life insurance could also include annuities, disability income insurance, long-term care insurance, and funding agreements. On the other hand, an OFC for property and casualty insurance could include liability insurance, surety bonds, automobile insurance, homeowners, and other specified lines of business.
- An Office of National Insurance within Treasury would have oversight of this federal regulatory scheme.



# FEDERAL ISSUES

- The Blueprint also provides the current state-based regulation of insurance (authorized by the McCarran-Ferguson Act) would continue over insurers and producers not electing to be regulated at the national level.
- States would not have jurisdiction over those electing to be federally regulated. However, insurers holding a federal charter could still be subject to some continued compliance with other state laws, such as state tax laws, compulsory coverage for workers' compensation and individual auto insurance, as well as requirements to participate in state mandatory residual risk mechanisms and guarantee funds.



# FEDERAL ISSUES

- Treasury also recommends that, as an intermediate step to a federal system, Congress should establish a federal Office of Insurance Oversight within Treasury to establish a federal presence in insurance for international and regulatory issues.
- Reaction to the Blueprint has been mixed with state regulators opposing the optional federal charter. While some insurance industry groups support the plan, other industry groups contend there are better ways to improve insurance regulation.



# FEDERAL ISSUES

## *Debate Regarding Federal or State Regulatory Authority*

- Unified federal system would promote uniformity; reduce costs; more highly paid staff; reduce influence of powerful insurance industry.
- State regulatory authority: decentralizes power; relies upon long history of regulatory control; is a known commodity; smaller and more flexible to respond to changing needs.
- Significant problem with state control involves limited funding and insufficient personnel. Creates fragmented regulatory environment for multi-state businesses.



# FEDERAL ISSUES

## *Other Federal Issues*

- National Flood Insurance Program – proposals have been made to amend the program.
- Terrorism Risk Insurance Act (TRIA), adopted in 2002, created a 3 year federal program to provide partial compensation for losses resulting from certain terrorist-related events.
- TRIA was extended in 2005 for 2 years. TRIA was again extended in December for another 7 years to 2014.



# FOR MORE INFORMATION

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