2014 Insurance Legislation Summary & Analysis

compiled by **The Florida Association of Insurance Agents**

MAY/JUNE 2014

CONTENTS

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS

AGENT ISSUES

Division of Insurance Agents & Agency Services, CS/CS/HB 633

Insurance Agency Licensure pp. 12–21, 26, §626.112, §626.172, §626.382	1. Makes significant changes to the insurance agency licensure law to streamline the licensing process and to better align the regulation of insurance agencies in Florida with other states. Eliminates the three-year expiration of an agency license, effective January 1, 2015. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law. Repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. It also converts all agency registrations to licenses effective October 1, 2015.	*Many of the changes in this bill were drafted and advocated by FAIA in conjunction with the Department of Financial Services (DFS).* *Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. DFS asserts that the number of registered agencies is steadily declining.*
	2. Eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her/his own name and does not employ or use other insurance licensees, effective January 1, 2015.	*Under current law, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency. No other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency. Furthermore, because insurance agents are vetted by the agent license process, DFS believes also licensing the agency serves no purpose.*
	3. Provides that a branch place of business established by a licensed agency is considered a branch agency. Effective January 1, 2015, a branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with DFS a licensed agent in charge of the branch location; and (2) has submitted to DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.	*Current law requires each branch location of an insurance agency to have a separate license or registration.*
	4. Amends current law to require the following persons to sign the license application: each owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, whether through ownership of voting securities, by contract, by ownership of an agency bank account, or otherwise.	*Current law provides that only specified persons owning or managing an insurance agency may sign an agency license application.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	Allows a third-party to complete, submit, and sign an agency license application on the agency's behalf.	*However, the agency is responsible for ensuring that the information provided by the third-party is true and correct and is accountable for any misstatements or misrepresentations.*
	5. Requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf; the physical address of the branch location, including its name, e-mail address, and telephone number; the date that the branch office began transacting insurance; and the fingerprints of each individual required to be listed in the agency application.	
Agent in Charge pp. 9–12, §626.0428	6. Deletes §626.747, F.S., relating to branch agencies, and creates §626.0428(4), F.S., which defines agent in charge and specifies the scope of their responsibilities, effective January 1, 2015.	*Under current law, each person operating an insurance agency and each location of a multiple location agency must designate a licensed and appointed agent in charge for each location; however, the term agent in charge is not defined and the scope of such agent's responsibilities is not clearly delineated.*
	7. Clearly defines "agent in charge" as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location.	
	8. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the location(s) when *an* agent is not physically present and (2) unlicensed employees at the location(s) do not engage in insurance activities that require licensure as an insurance agent or customer representative.	*The new language in the bill corrects a glitch in current law which states that no insurance activities can take place at a location when the agent in charge is not present. The new language allows for any licensed agent (or licensed customer representative, per clarification from DFS) to be present and transacting insurance at a location even when the agent in charge is temporarily absent, as long as these licensed individuals are performing duties within the scope of their licenses, and unlicensed employees are not engaging in insurance activities that require a license.*
	9. Provides that each insurance agency and branch office is required to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with DFS at the DFS website. A change of the designated agent in charge must be reported to the DFS within 30 days, and becomes effective upon notification to the DFS.	*An insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by, and providing services to, the agency at all times. When the agent in charge ends her/his affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
		ended their affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended their affiliation with the agency.
	10. Provides that an agent in charge of an insurance agency is accountable for misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency.	*However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.*
Appointment of Agents by Insurers p. 34, §626.733	11. Amends §626.733, F.S., regarding appointment of agents, to provide that property and casualty insurers entering into an agency contract with an agency must appoint only those agents within the agency who solicit, negotiate, or effect insurance contracts for that insurer. In addition, the bill deletes the exception in current law for insurers with no more than $25,000 in net written premium within an agency.	*Current law provides that each property and casualty insurer entering into an agency contract with an agency is required to individually appoint each agent within the agency unless the insurer's aggregate net written premium in the agency is $25,000 or less.*
Unaffiliated Insurance Agent pp. 9, 23, §626.015, §626.311	12. Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. The bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. The bill requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.	*This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties.*
	13. Prohibits an unaffiliated insurance agent from being affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. The bill also prohibits an unaffiliated insurance agent from receiving compensation or anything of value from any of these entities or individuals.	*However, these agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent, as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.* *FAIA assisted in the drafting of this language to protect independent agents from unfair disadvantages which could arise if unaffiliated agents were able to form alliances with certain company-appointed agents or insurers.*
Temporary Suspension of License or Appointment for **Specified Felonies** pp. 29–32, §626.611(2)	14. Requires the DFS to immediately temporarily suspend a license or appointment when a licensee is charged with a first-degree felony; a capital felony; a felony involving money laundering, fraud, or embezzlement; or a felony directly related to a financial services business. Such suspension will continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, any such crime, regardless of whether a judgment or conviction is entered during a pending appeal. A person may not transact insurance business after suspension of their license or appointment.	*Under current law, persons who commit any of these felonies are permanently barred from applying for a license from DFS.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
pp. 47–56, §943.0585, §943.059	15.	Prohibits persons seeking licensure from the DFS who have sealed or expunged criminal history records from denying or failing to acknowledge the arrests covered by such records.	
Licensure Filing Fees and Members of the Military p.17, §626.171(6)	16.	Exempts members of the United States Armed Forces, their spouses, and veterans, who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee prescribed by law. The bill lists documents applicants can submit with the application to establish eligibility for the exemption.	
Information Required with the Surrender of a Life Insurance Policy or Annuity pp. 37–38, §627.4553	17.	Creates §627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender.	*The information, which must be provided on a form that satisfies the requirements of the rule adopted by DFS, includes the amount of any: surrender charge, tax consequences resulting from the transaction, or forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction.*
Licensure Examination to **Solicit or Sell Variable Products** pp. 22, 35–36, §626.241, §626.7845	18.	Deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts in general.	*Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable "annuity" contracts.*
Insurance Mediation Programs p. 39, §627.706	19.	Amends the definition of "neutral evaluator" of sinkhole claims to specify that licensed engineers who qualify to be neutral evaluators must have experience and expertise in the identification of sinkhole activity, and that neutral evaluators shall include only those individuals eligible for certification by the DFS. The bill also authorizes the DFS to adopt rules for certifying, denying certification of, suspending, and revoking certification of neutral evaluators.	*Current law provides for alternative dispute programs administered by the DFS for various types of insurance. The DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims. The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole claims.* *This change in the definition of "neutral evaluator" will allows the DFS to use only neutral evaluators with current DFS certifications, not those whose certifications have been revoked by the DFS.*
pp. 42–44, §627.745	20.	Revises the DFS mediator education, experience, and training program requirements set out in current law. The bill provides that a person with an active certification from the Florida Supreme Court as a Circuit Court Mediator is qualified to be a mediator for	*This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as Florida Circuit Court Mediators.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	the DFS. Also, a person not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014, and has conducted at least one DFS mediation between July 1, 2010–July 1, 2014.	*Current law provides that to qualify as a mediator for the property or automobile mediation programs, a person must possess a masters or doctorate degree in psychology, counseling, business, accounting, or economics; be a member of the Florida Bar; be a licensed certified public accountant; or be actively engaged as a qualified DFS mediator for four years.* *Current law also provides that to qualify as a DFS mediator, a person must successfully complete a training program approved by the DFS. According to the DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators. However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years the DFS has approved the mediator training program offered by the courts.*
	21. Requires the DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, violating a rule governing mediators certified by the Florida courts, or not being qualified. Additionally, the DFS is authorized to inquire into and investigate improper conduct of mediators, neutral evaluators, or navigators.	*The DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by the DFS, such as insurance agents and insurance adjusters.*
	The bill allows the DFS to share investigative information with any regulatory agency.	*Current law only allows the information to be shared with a law enforcement agency.*
	22. Allows the DFS to adopt rules, pertaining to the property insurance mediation program, to provide for the denial of applications, suspension, revocation, and other penalties for mediators.	
Nonresident Surplus Lines Agents p. 37, §626.9272	23. Amends licensing requirements for nonresident surplus lines agents by exempting these applicants from the experience or coursework and examination requirements that must be satisfied by applicants for a resident surplus lines agent license.	*Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. This change is consistent with how other states address the licensing of nonresident surplus lines agents and is designed to create reciprocity with other states. The change will eliminate reciprocity cases where another state requires a Florida agent to take its surplus lines examination because Florida requires nonresident agents to take the Florida examination.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
pp. 44–45, §627.592	24.	Eliminates the fidelity bond requirement for nonresident surplus lines agents and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.	*Current law provides that to place business through Florida eligible surplus lines carriers, an agent must be licensed and appointed as either a resident or nonresident surplus lines agent. In addition, nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the state of Florida.*
Miscellaneous Provisions p. 5, §20.121(2)	25.	Renames the Division of Insurance Agents and Agency Services as the Division of Insurance Agent and Agency Services.	
p. 9, §626.015(11)	26.	Provides that no new limited customer representative licenses may be issued after September 30, 2014.	
	27.	Amends criteria for issuance of a temporary license as a customer representative. Specifies in part that such temporary license may be issued only after the DFS has determined that the applicant has not committed a crime that would disqualify her or him from applying for a license under §626.207, F.S.	
pp. 5–6, §624.310	28.	Provides for additional methods of service of process for certain administrative actions initiated by the DFS (cease and desist orders, removal of affiliated parties, and administrative fines). The bill provides that if service cannot be obtained by certified mail to the last address provided to the DFS by the recipient, then the following methods are acceptable: by e-mail, delivery receipt required, to the most recent e-mail address provided to DFS by the applicant or licensee; by personal delivery, including hand delivery by a DFS investigator; or by publication in accordance with §120.60, F.S.	*Current law provides that process is to be served by certified mail, return receipt requested, delivered to the addressee.*
pp. 6–7, §624.318	29.	Prohibits the DFS and the Office of Insurance Regulation (OIR) investigators from removing *original* records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order.	
p. 46, §648.43	30.	Requires insurers that write bail bonds to submit a sample power of attorney to OIR for approval.	*Currently, these forms are submitted to and approved by the DFS.*
p. 46, §648.49	31.	Prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under Ch. 648, F.S. (bail bond agents), until the license is reinstated or a new license is issued.	
p. 22, §626.261	32.	Deletes the requirement that applicants who seek to take a licensure examination in Spanish must pay all costs related to preparing, administering, grading, and evaluating the Spanish language examination.	
p. 10, §626.0428	33.	Amends the scope of the license issued to a business entity that offers motor vehicles for rent or lease.	
		Effective date: July 1, 2014, except as otherwise provided. **Chapter No. 2014-123, LOF.**	

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
PROPERTY INSURANCE			
Citizens Property Insurance Corporation, CS/CS/HB 1089			
p. 6, §627.351(6)(a)	1.	Delays implementation of the current law for Citizens' eligibility based on location of the property for one year. As a result, major structures for which a building permit for new construction is applied for on or after July 1, 2015, rather than July 1, 2014, or for which a building permit for a substantial improvement of the structure is applied for on or after July 1, 2015, rather than July 1, 2014, and which is located seaward of the coastal construction control line or within the CBRS will be ineligible for insurance in Citizens.	*This provision was originally advocated for by environmental groups to try to curb construction in certain environmentally sensitive areas. The delay allows time to study the impact on areas like the Florida Keys.*
p. 6, §627.351(6)(a)	2.	Prohibits residential condominium associations from obtaining commercial residential property insurance from Citizens that covers damage only from wind if 50 percent or more of the condominiums in the association are rented more than eight times a year for fewer than 30 days starting July 1, 2014. These condominium associations are still able to obtain property insurance from Citizens that covers damage from multiple perils, including wind. **Effective date: July 1, 2014.** **Chapter No. 2014-140, LOF.**	*Prior to passage of this provision, Citizens enforced a 25 percent standard using Cat Fund rules as a guide. This statutory standard provides broader eligibility. While it should be beneficial to agents and policyholders, enforcement of the rule will still remain difficult due to client record keeping and other factors.*
Property Insurance, CS/CS/SB 1672			
pp. 2–3, §626.621	1.	Allows for refusal, suspension, or revocation of an agent's, adjuster's, CSR's, service representative's, or MGA's license or appointment for directly or indirectly accepting compensation from an inspector for a client referral relating to an inspection intended for submission to an insurer in order to obtain a premium discount.	*This was brought to FAIA by Senate staff at the request of the Banking & Insurance chairman. FAIA's board discussed and approved the language because they believed it was a conflict of interest for agents to receive referral fees.*
p. 3, §626.854	2.	Prohibits a public adjuster, a public adjuster apprentice, or any person acting on behalf of an adjuster or apprentice from accepting power of attorney on an adjusted property and choosing the repair contractor.	
pp. 4–6, §627.351(6)(b)	3.	Prohibits Citizens Property Insurance Corporation (Citizens) from writing new commercial residential multi-peril policies in the Coastal Account as of July 1, 2014; however, current commercial-residential multi-peril policies will be allowed to be renewed going forward. Citizens will continue to offer new, separate commercial residential wind-only and all-other perils policies in the Coastal Account.	*This was done due to rating anomalies that created "negative arbitrage" on the commercial residential multi-peril premiums. Examples were presented to the Legislature where multi-peril premiums were actually less than the wind-only policy on the same risk.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
pp. 16–18, §627.351(6)(b)	4.	Allows procurement protests within Citizens to be resolved by the Department of Administrative Hearings at Citizens' expense.	
pp. 18–19, §627.35191	5.	Requires Citizens to annually report to the Legislature its estimated claims paying capacity.	*A duplicative legislative report from Citizens is repealed.*
pp. 19–20, §627.711(6)(a)	6.	Prohibits referral fees from being paid to an insurance agency, agent, adjuster, or agency employee related to a mitigation inspection or any property inspection used to calculate property insurance premiums.	*This provision corresponds to the provision above regarding disciplinary actions against agents for receiving referral fees from a mitigation inspector.*
	7.	Allows insurers and Citizens to use a quality assurance program related to the windstorm mitigation inspection form. The bill clarifies that an insurer is not required to independently verify a form if the inspector or inspection company has a quality assurance program approved by the insurer. Citizens may not re-inspect insured properties for five years if the initial windstorm mitigation inspection form was verified by a quality assurance program approved by Citizens prior to acceptance of the form.	*This provision allows Citizens to implement a program they had contemplated in 2012, but didn't believe they had statutory authority to implement. It could prove to be very beneficial to agents and homeowners.*
pp. 20–21, §817.234	8.	Prohibits a contractor, or a person acting on behalf of a contractor, from knowingly or willfully and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor, or a person acting on behalf of a contractor, for repairs to property covered by a property insurance policy. **Effective date: July 1, 2014.** **Chapter No. 2014-104, LOF.**	*A violation is a third-degree felony.*

Flood Insurance, CS/CS/CS/SB 542

pp. 6–10, §627.715	1.	Creates §627.715, F.S., governing the sale of personal lines, residential flood insurance and does not apply to commercial residential or commercial lines policies. Authorized insurers may sell four different types of flood insurance products: • **Standard coverage**, which covers only losses from the peril of flood as defined in the bill, which is the definition used by the National Flood Insurance Program (NFIP). The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment. • **Preferred coverage**, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood in the bill.	*The bill is a result of the impacts of the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12). Many legislators who represent areas of Florida that saw significant rate increases wanted to increase private market competition for flood insurance and hopefully lessen reliance on the NFIP.* *Prior to the passage of SB 542, carriers were authorized to write flood in Florida and there is a competitive market for excess and commercial policies. The bill sponsors struck a balance between trying to incentivize new capital to Florida and not having a negative impact on healthy markets.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	• **Customized coverage**, which is coverage that is broader than standard flood coverage. • **Supplemental coverage**, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses. It does not include excess flood coverage over other flood policies.	*FAIA advocated for numerous disclosures and acknowledgements to ensure consumers fully understand the differences between a NFIP policy and one purchased from a private carrier.* *The biggest disagreement between the House and Senate was whether to allow consumers to buy coverage with limits less than replacement cost. FAIA opposed the Senate provision that allowed coverage to be purchased in amounts less than replacement cost and ultimately that provision was not included in the bill.* *The impact of this bill is largely unknown, as it remains to be seen whether lenders will find these private flood policies acceptable.*
	2. Requires prominent notice on the policy declarations or face page of deductibles and any other limitations on flood coverage or policy limits.	
	3. Flood rates filed before October 1, 2019, to be established through a rate filing with the Office of Insurance Regulation (OIR) that is not required to be reviewed by the OIR before implementation of the rate ("file and use" review) or shortly after implementation of the rate ("use and file" review).	*Specifically, the flood rate is exempt from the "file and use" and "use and file" requirements of §627.062(2)(a), F.S., and the OIR's authority to require the insurer to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR is able to, however, examine a rate filing at its discretion. To assist the office in conducting such examinations, insurers must maintain actuarial data related to flood coverage for two years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate, or unfairly discriminatory.*
	4. Allows surplus lines agents to export flood insurance without making a diligent effort to seek coverage from three or more authorized insurers. Expires July 1, 2017.	
	5. Requires insurers that write flood coverage to notify the OIR at least 30 days before doing so in this state and file a plan of operation, financial projections, and any such revisions with the OIR.	
	6. Prohibits Citizens Property Insurance Corporation from providing flood insurance.	
	7. Prohibits the Florida Hurricane Catastrophe Fund from reimbursing flood losses.	
	8. Requires insurance agents that receive a private flood insurance application to obtain a signed acknowledgement from the applicant stating that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the NFIP.	*FAIA drafted language intended to make agents and their customers aware of the potential loss of their subsidized rate if the policyholder leaves the NFIP for a private market flood policy.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	9. Specifies that the OIR Commissioner may provide a certification required by federal law or rule as a condition of qualifying for private flood insurance or disaster assistance. The certification is not subject to review under Ch. 120, F.S.	
p. 3–5, §627.062, §627.0628	10. Allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.	
	Effective date: July 1, 2014. **Chapter No. 2014-80, LOF.**	

Insurance Claims, CS/CS/SB 708

pp. 11–14, §627.7142	1. Creates a "Homeowner Claims Bill of Rights" and requires a residential property insurer to provide a Homeowner Claims Bill of Rights to policyholders within 14 days of receiving a communication relating to a claim. The Bill of Rights informs consumers of their right to an acknowledgment within 14 days, their right to receive confirmation that a claim is covered in full or in part, that a claim is denied, or a claim is being investigated within 30 days after submitting a proof of loss form. The Bill of Rights also informs consumers of services offered by the Department of Financial Services (DFS) and provides advice for dealing with property insurance issues. The Bill of Rights does not create a civil cause of action against insurers, but insurers can be disciplined by the state regulator for failing to provide it.	*This was one of the CFO's biggest legislative priorities. The CFO wanted to ensure that consumers were given notification of all of their rights contained in Florida Statutes when claims were reported.*
pp. 7–11, §627.70151, §627.706, §627.7074	2. Amends provisions relating to mediators and neutral evaluators.	*It gives the DFS increased power to take disciplinary action against neutral evaluators. This is similar to how the DFS may take disciplinary action against insurance agents.*
p. 2, §627.409	3. Prohibits insurers from denying claims or canceling an insurance policy or contract based on credit information available in the public record if the insurance policy or contract has been in effect for more than 90 days.	*This codifies the prohibition against "post claim underwriting," which was the subject of a large administrative fine levied against a homeowners carrier in 2012.*
pp. 3–6, §627.4133	4. Allows parties to disqualify an umpire for specified conflicts of interest such as where the umpire is related to one of the parties or has been employed by one of the parties.	*Insurance contracts often contain an appraisal provision allowing parties who agree that there is a covered loss to use an umpire to determine the amount of the loss.*
p.1, §627.3518	5. Corrects an incorrect cross reference. **Effective date: July 1, 2014, except otherwise provided in the bill.** **Chapter No. 2014-86, LOF.**	

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
Governmental Ethics for Citizens Board Members and Executives, CS/CS/CS/SB 846		
Citizens' Board Members and Executives **pp. 21–24, §627.351(6)(d)**	1. Expressly provides that the executive director of Citizens Property Insurance Corporation (Citizens) is also subject to the entire Code of Ethics in Part III of Ch. 112, F.S., for public officers and employees, including financial disclosure requirements and gift bans.	*Current law provides that Citizens' senior managers and members of the Citizens board of directors are subject to the Code of Ethics for public officers and employees, including financial disclosure requirements and gift bans, but does not expressly impose these requirements on the Citizens executive director.*
	2. Prohibits the executive director of Citizens and members of the Citizens board of directors from having any employment or contractual relationship with an insurer that has entered into a take-out bonus agreement with Citizens for two years after retirement from or termination of service to Citizens.	*Current law applies this prohibition to Citizens' senior managers only.*
	3. Provides that for purposes of application of the Code of Ethics in Part III of Ch. 112, F.S., the Citizens executive director, senior managers, and members of the board of governors are considered public officers or employees and that Citizens is their agency. **Effective date: July 1, 2014.** **Chapter No. 2014-183, LOF.**	

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS

AUTOMOBILE INSURANCE

Motor Vehicle Liability Policy Requirements, SB 490

pp. 1–3, §627.7275(2)

1. Extends the underwriting period from 30 days to 60 days for non-cancellable motor vehicle liability coverage that is required to reinstate driving privileges that have been revoked or suspended for failure to maintain required security or for committing a DUI offense.
2. Extends the period of time from 30 to 60 days for an insurer to notify the Department of Highway Safety and Motor Vehicles (DHSMV) that non-cancellable motor vehicle liability coverage is in full force and effect and cannot be cancelled.
3. Amends current law to allow the insured to change the coverage amounts under a non-cancellable motor vehicle liability policy without requiring the policy to be cancelled, so long as at least the minimum required coverage amounts are maintained.

Effective date: July 1, 2014.
Chapter No. 2014-76, LOF.

This change allows auto insurers additional time to properly complete the underwriting process for this coverage, during which time the insurer may cancel the policy.

Motor Vehicle Crash Reports, CS/HB 863

1. Revises motor vehicle crash report access requirements.

In a 2000 Statewide Grand Jury Report on Personal Injury Protection (PIP) insurance fraud, it was found that "runners" would pick up copies of crash reports filed with law enforcement agencies and sell them to attorneys, body shops, or health care professionals who would sometimes use the information to make fraudulent claims. Reforms following the Grand Jury Report included limiting such information from being released by law enforcement for 60 days following the accident, with some exceptions. Section 3126.066(2)(b), F.S., sets forth a list of over a dozen specific exemptions that allow immediate access to the information. One of those exemptions is "free" newspapers and journals of general circulation, a loophole soon exploited by the runners to obtain the information for resale.

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
pp. 1–2, §316.066(2)(d)	2.	Requires that, as a condition precedent to accessing a crash report within 60 days after the date the report is filed, the currently required written sworn statement must be completed and sworn to by the requesting party for *each individual* crash report that is being requested. **Effective date: July 1, 2014.** **Chapter No. 2014-212, LOF.**	*Current law already requires a similar sworn written statement, but it often requests bulk information. By requiring a sworn statement for each individual report requested, it should hamper the ability of "runners" to produce bulk lists for resale. There is an exception for certain third-party vendors under contract with one or more insurers; they may receive the information by electronic means.*

Premium Discounts for Electronic Vehicle Collision Avoidance Technology and Autonomous Driving Technology, CS/CS/HB 7005

	1.	Amended the Insurance Code to provide rating flexibility for motor vehicle policies with certain new technology aimed at reducing accidents as part of the 79-page omnibus Department of Highway Safety and Motor Vehicles (DHSMV) legislative package.	*Many new, primarily upscale, motor vehicles are being offered with an option that detects when another vehicle is too close and alerts the driver in time to avoid an accident; in some instances, these vehicles take automatic avoidance measures, such as braking. Additionally, many states, including Florida, are looking seriously at motor vehicles that do not require a driver. These vehicles rely on the use of technology to determine routes to take and radar-driven avoidance systems.*
pp. 70–71, §627.0653(6)	2.	Creates a new §627.0653 (6), F.S., providing that the Office of Insurance Regulation (OIR) *may* approve a premium discount to any rates, rating schedules, or rating manuals for the liability, personal injury protection, and collision coverages of a motor vehicle insurance policy filed with the OIR if the insured vehicle is equipped with autonomous driving technology or electronic vehicle collision avoidance that is factory installed or a retrofitted system and that complies with National Highway Traffic Safety Administration standards. **Effective date: July 1, 2014.** **Chapter No. 2014-216, LOF.**	*It appears that the OIR may only approve a rate that is filed asking for the discount. Some contend that the OIR could make it mandatory on all policies filed, even if the insurer does not ask for the right to apply a discount.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS

WORKERS' COMPENSATION INSURANCE

Division's Workers' Compensation Legislative Package, CS/CS/HB 271

	1. Makes numerous changes to the way in which the state enforces workers' compensation (WC) insurance coverage requirements through the use of stop work orders (SWO). It seeks to achieve the delicate balance between enforcing coverage requirements and allowing employees to get back to work. It also makes technical changes deemed necessary for the smooth operation of the WC system.	*Under current law, if an employer fails to comply with WC coverage requirements, the Department of Financial Services (DFS) must issue a SWO within 72 hours. SWOs require the employer to cease all business operations. Additionally, employers are assessed a penalty equal to 1.5 times what the employer should have paid in WC premiums for all periods of non-compliance during the preceding three-year period or $1,000, whichever is greater. The SWO remains in effect until the employer secures proper coverage and the DFS issues:* • *An order releasing the SWO, if the employer has paid all of the assessed penalty; or,* • *An order of conditional release under which the employer agrees to pay the penalty in installments.*
p. 2, §440.107(7)(a)	2. Provides that business records relative to an employer's WC coverage, or lack thereof, must be made available to the Division of Workers' Compensation (Division) within 10 business days of receipt of written request.	*Currently, when the regulator has reason to believe that there is a lack of WC coverage, they can require the employer to produce all necessary WC records within five business days. Failure to do so would result in a SWO being issued. Many small employers found it difficult to produce records in that short of a time.*
p. 2, §440.107(7)(a)	3. Stop work orders shall be made available on the Division's website, be updated daily, and remain on the website for at least five years.	*In order to alert general contractors and others of violations by potential subcontractors, the Division's website can be used to check on violations.*
p. 3, §440.107(7)(a)	4. In order for there to be a conditional release, the employer must first obtain proper coverage. Additionally, they must pay the penalty in full; or, within 28 days of the service of the SWO upon the employer, pay $1,000 as a down payment and enter into a payment agreement. Violation of the payment agreement will result in an immediate reinstatement of the SWO.	*Under current law, an employer may obtain a conditional release by obtaining proper coverage and agreeing to make periodic payments of the penalties, but are not required to make the $1,000 down payment.*
p. 4, §440.107(7)(a)	5. Revises the penalty from the current *1.5 times* what the employer should have paid in premium over the last *three* years, to *two times* what they should have paid over the last *two* years.	*This penalty is still significant enough to discourage bad behavior, but will be easier to document because the employer will only have to go back two years instead of three.*
p. 4, §440.107(7)(a)	6. Allows employers who have had no previous SWOs to receive a credit against the $1,000 required above for the initial payment of the estimated annual WC policy premium. It sets forth proof requirements. Provides that the $1,000 penalty is a minimum	*For employers who have not previously been issued a SWO, the bill credits the dollar or percentage amount attributable to the employer's initial WC expense in securing coverage through a licensed employ-*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	and that any credit that the first-time offender gets for making an initial payment cannot reduce the penalty below the $1,000 level.	*ee leasing company, with the same $1,000 minimum. It provides for written documentation.*
p. 5, §440.15(1)(a)	7. Provides that when calculating the compensation rates for an employee with a *permanent total* disability, the employee's average weekly wage may be multiplied by either 66 2/3rds or 66.67.	*The current law provides that the percentage calculation factor is 66 2/3rds. Some insurers believed that the decimal equivalent was 66.6666; others believed that it should be 66.667. This allows the use of either 66 2/3rd or 66.67.*
p. 6, §440.15(4)(a)	8. Makes the same change when calculating the maximum rate to be applied in cases of temporary partial disability.	
p. 7, §440.16(1)(b)	9. The 66 2/3rds or 66.67 percent calculation shall also be used in paying benefits to dependents in a death case.	
pp. 9–12, §440.49(9)(b)	10. Amends the provisions of the Workers' Compensation Special Disability Trust Fund (SDTF) as follows: • Provides that the assessment rate calculation will be based upon net premiums written by carriers, the amount of premiums calculated by the DFS for-self-insured employers, and the anticipated fund balance and expenses of the SDTF. • Reduces the statutory rate cap on the SDTF from 4.52 percent to 2.5 percent. **Effective date: July 1, 2014.** **Chapter No. 2014-109, LOF.**	*The STDF was originally established to encourage employers to hire workers with pre-existing permanent physical impairments. Under its provisions, the SDTF will reimburse employers for excess WC benefits they have to provide to an employee with a pre-existing condition impairment that is subsequently injured on the job. An example would be if an employee loses an arm in an accident, they may be only partially disabled. If an employer hires a person who has already lost an arm, a subsequent loss of the other arm would result in a permanent total disability. The SDTF would pick up the difference in costs. Due to eligibility factors, the SDTF is in "run-off," with fewer claims to pay, resulting in a lower assessment rate.*

Workers' Compensation, CS/HB 785

	1. Makes changes to what is allowable in medical reimbursements under Ch. 440, F.S., and makes changes to the process of using retrospective rating plans in Ch. 627, F.S.	*Under Florida Workers' Compensation (WC) law, an employer/carrier is required to provide all medically-necessary treatment for an injured worker, which sometimes leads to abuse by some in the medical community. Additionally, large, sophisticated employers often use retrospective rating plans to decrease WC premiums. Under these plans the final premium to be paid by the employer is based on the employer's actual loss experience under the policy, plus the insurer's*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
			expenses and an insurance charge. The fewer accidents that an employer has, the lower the final premium. The negotiations between the insurer and employer also set forth minimum and maximum premium levels.
Medical Reimbursements pp. 1–2, §440.13(3)(k)	2.	Provides no reimbursement will be made under WC for oral vitamins, nutrient preparations, or dietary supplements. Additionally, there will be no reimbursement made for "medical foods" unless the self-insured employer or the carrier in its sole discretion authorizes the provision of such food. The authorization may be limited by frequency, type, dosage, and reimbursement amount of such food as part of a proposed written course of medical treatment.	*There appears to be a growing number of doctors that are willing to prescribe things such as vitamins and expensive diet "food plans" as part of a plan of treatment. This will put limits on their ability to do so.*
Retrospective Rating pp. 2–3, §627.072(2)	3.	Permits a retrospective rating plan to contain a provision for negotiation of a WC premium between an employer and an insurer if the insurer has at least $500 million in surplus as to policyholders, and the employer has: • Exposure in more than one state; • An estimated annual standard WC premium in Florida of $175,000 or more; and, • An estimated annual countrywide standard WC premium if $1 million or more. Such plans and forms still must be filed by the National Council on Compensation Insurance (NCCI) and approved by the Office of Insurance Regulation (OIR). **Effective date: July 1, 2014.** **Chapter No. 2014-131, LOF.**	*If a large, sophisticated employer meets these criteria, their policy is exempt from §627.072(1), F.S., which specifies the factors to be used in determining WC rates. Therefore, the individual employer's premium negotiated under an approved rating plan does not have to be filed with the OIR.*

Money Services Businesses, CS/CS/SB 590

	1.	Makes numerous changes to the operation of money services businesses (MSB), one of which pertains to workers' compensation (WC) fraud.	*Money services businesses offer financial services such as check cashing, money transmittals, pay day loans, and other related services. In 2011, CFO Atwater convened the Money Service Business Facilitated Workers' Compensation Fraud Work Group, of which FAIA was a participating member. A direct result of the work group's recommendations was the passage in 2013 of CS/CS/HB 217 (Ch. No. 2013-139, LOF). It prohibited fraud-enabling activities and provided for the establishment of a check-cashing database within the Office of Insurance Regulation (OIR). Regulators and law enforcement agencies will use the database to target and indemnify persons involved in WC insurance premium fraud.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
p. 1, §560.111(6)	2.	Provides that a person who knowingly and willfully violates §560.310(2)(d), F.S., commits a felony of the third degree. **Effective date: July 1, 2014.** **Chapter No. 2014-81, LOF.**	*Section 560.310(2)(d), F.S., contains the Office of Financial Regulation database reporting requirements. An accurate, timely and complete database is essential in identifying and stopping WC premium fraud.*

HEALTH INSURANCE

Dentists/Health Insurers, CS/SB 86

pp. 1–4, §627.6474, §636.035, §641.315	1.	Prohibits an insurer, health maintenance organization (HMO), or prepaid limited health service organization from contracting with a licensed dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. **Effective date: July 1, 2014.** **Chapter No. 2014-64, LOF.**	*This bill allows dentists to charge fees outside of the contracted rates if those fees are for services other than "covered services" as defined in their contract. This bill could result in higher dental insurance premiums as it removes a cost control method employed by insurers.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS

MISCELLANEOUS INSURANCE

Discriminatory Insurance Practices, CS/CS/SB 424

1. Defines and prohibits unfair methods of competition and unfair or deceptive acts or practices in Part IX of Ch. 626, F.S., entitled Unfair Insurance Trade Practices.

Penalties for violation may include a fine in an amount not greater than $5,000 for each non-willful violation and not greater than $40,000 for each willful violation. Fines imposed against an insurer may not exceed $20,000 for all non-willful violations arising out of the same action or an aggregate amount of $200,000 for all willful violations arising out of the same action.

pp. 3–4, §626.9541(1)(g)4

2. Provides that it is an unfair discriminatory practice for a personal lines property or automobile insurer to:

- Refuse to issue, reissue, or renew; cancel or terminate a policy; or charge an unfairly discriminatory rate based on the lawful use, possession, or ownership of a firearm or ammunition by the insured applicant, insured, or a household member of the applicant or insured.

This does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

- Disclose the lawful ownership or possession of firearms of an applicant, insured, or household member of the applicant or insured to a third-party or an affiliated entity of the insured unless the insured discloses to the applicant the need for the disclosure, and the applicant or insured expressly consents to the disclosure.

Express consent is not required if the disclosure is necessary to quote or bind the coverage, continue coverage, or adjust a claim.

The above prohibition does not prevent the sharing of information between an insurance company and its licensed insurance agent if a separate rider has been voluntarily requested by the policyholder to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

Effective date: July 1, 2014.
Chapter No. 2014-180, LOF.

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
Insurance, CS/CS/SB 1344			
Insurance Administrators pp. 2–3, §626.8805	1.	Changes the information that must be filed with the Office of Insurance Regulation (OIR) or made available for OIR inspection as part of an application for a Certificate of Authority to act as an insurance administrator for a life or health insurer. The bill requires the applicant to provide the names, addresses, official positions, and professional qualifications of individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator.	*Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.*
p. 3, §626.8817	2.	Allows an insurer who uses the services of an administrator to contract with a qualified third-party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificate holders on behalf of the insurer.	
pp. 3–5, §626.882, §626.883, §626.884	3.	Provides that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator must clearly specify the rights, duties, and obligations of the administrator and insurer as required under §626.8817, F.S. Additionally, any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator shall be governed by the written agreement between the parties required under §626.8817, F.S.	
pp. 5–7, §626.889	4.	Changes the filing date for annual reports with the OIR from March 1 to within three months after the end of the administrator's fiscal year. The bill also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis.	
Electronic Transfer of Funds pp. 7–12, §626.9541, §627.7283	5.	Amends §626.9541 and §627.7283, F.S., to allow the refund of unearned motor vehicle insurance premium by electronic transfer.	
Appointments to Boards pp. 10–11, §627.351(4)(c)	6.	Provides that the Property Casualty Insurers Association of America (PCIAA), instead of the Alliance of American Insurers, and the Florida Insurance Council (FIC), instead of the National Association of Independent Insurers, will make recommendations to the chief financial officer (CFO) for appointments to the board of governors of the Florida Medical Malpractice Joint Underwriting Association.	
p. 12, §631.912	7.	Changes the appointments made to the Florida Workers' Compensation Insurance Guaranty Association board of directors by providing that the governor must make one appointment and such appointee must have commercial insurance experience. This bill also provides that the Department of Financial Services (DFS) shall appoint two persons selected by the self-insurance funds instead of the current three.	

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
pp. 12–13, §766.315	8.	Changes the appointments made to the Florida Birth-Related Neurological Injury Compensation Association (NICA) board of directors by providing that the CFO may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII, instead of the Florida Obstetric and Gynecologic Society. Also provides that the CFO may select the representative of casualty insurers on the NICA board of directors from a list of at least three names, one recommended by the FIC, instead of the Alliance of American Insurers; one recommended by the PCIAA, instead of the National Association of Independent Insurers; and one recommended by the American Insurance Association (current law). **Effective date: July 1, 2014.** **Chapter No. 2014-103, LOF.**	*Current law provides, however, that the CFO is not required to make a selection from the trade association nominees.*

Insurer Insolvency, CS/CS/SB 1308

pp. 1–57	1.	Revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR). The bill incorporates provisions of model acts of the National Association of Insurance Commissioners (NAIC) and additional recommendations of the OIR.	*Some of the NAIC provisions in the bill are in response to the 2008 financial crisis and the globalization of the insurance market and are intended to enhance the regulation of insurers as well as their affiliated entities and provide more solvency tools for evaluating risks within insurance groups.*
Property and Casualty Actuarial Opinion Model Law pp. 9–13, §624.424	2.	Requires property and casualty insurers to file actuarial opinion summaries and supporting work papers annually and creates an evidentiary privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries, and related information.	*See the bill for more details.*
Standard Valuation Law for Life Insurers pp. 13–43, §625.121, §625.1212, §625.1214, §627.476	3.	Authorizes the OIR to implement principle-based reserving for life insurers, which allows life insurers to calculate reserves that reflect current mortality rates, the life insurer's business model, and its particular risk profile.	*See the bill for more details.*
Model Insurance Holding Company Act and Regulation pp. 1–7, 43–54, §624.10, §624.402, §628,461, §628.801	4.	Requires persons that acquire controlling interests in an insurance holding company to disclose enterprise risk, and requires that ultimate controlling persons must file an annual enterprise risk report with the OIR that identifies material risk within the insurance company holding company system that could pose a risk or have a material adverse effect upon the insurer.	*These provisions take effect on January 1, 2015, with the disclosures and reports to be filed on or before April 1, 2015. See the bill for details.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
	5.	Provides that a presumption of control may be rebutted by filing a disclaimer of control on a form prescribed by the OIR or by providing a copy of a Schedule 13G on file with the Securities and Exchange Commission (SEC). After a disclaimer is filed, the insurer is relieved of any further duty to register or report under §628.461, F.S., unless the OIR disallows the disclaimer.	
p. 54, §628.803	6.	Authorizes the OIR to impose sanctions for noncompliance with the insurance holding company reporting requirements of §628.461, F.S., and §628.801, F.S.	*Effective January 1, 2015.*
pp. 54–57, §628.804, §628.805	7.	Allows the OIR to participate in supervisory colleges with other regulators for the regulation of any domestic insurer that is part of an insurance holding company system having international operations.	*Effective January 1, 2015.*
Risk-Based Capital for Insurers and Health Organizations	8.	Incorporates a risk-based capital trend test for life and health insurers as well as property and casualty insurers, and requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital reports as well. **Effective date: October 1, 2014, unless otherwise expressly provided. Chapter No. 2014-101, LOF.**	*Effective January 1, 2015; see the bill for more details.*

Security of Confidential Personal Information, CS/CS/SB 1524

pp. 1–11, §501.171	1.	Repeals §817.5681, F.S., which contains the current statutory requirements for breach notification and creates the "Florida Information Protection Act of 2014." The bill requires a covered entity, governmental entity, or any third-party agent of such entities to give notice to affected customers and the Department of Legal Affairs (DLA) when a breach of security of personal information occurs. Such notice must be given within 30 days of the discovery of the breach or belief that a breach occurred, unless delayed at the request of law enforcement for investigative purposes. The notice may also be delayed an additional 15 days for good cause shown, if such delay is requested, in writing, within 30 days of the determination of the breach or reason to believe a breach occurred.	*A "covered entity" is defined as a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For the provisions of this bill, detailing the requirements for notification when there is a breach of security, disposal of customer records, and enforcement, this term also includes governmental entities.*
	2.	Expands the current definition of "personal information."	*"Personal information" means an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
		the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; or an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer. A user name or e-mail address, in combination with a password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information."
	3. Notice to the DLA is required when any breach of security affects 500 or more Floridians. The notice must include: • A synopsis of the events surrounding the breach at the time the notice is provided; • The number of individuals in this state who were or potentially have been affected by the breach; • Any services related to the breach being offered or scheduled to be offered by the covered entity to individuals, without charge, and instructions as to how to use such services; • A copy of the notice sent to individuals affected or potentially affected by the breach or an explanation of other actions being taken, such as a delay in notification at the request of law enforcement, a determination that the breach was unlikely to cause harm, or notice provided in compliance with federal law; and, • The name, address, telephone number, and e-mail address of the employee of the covered entity from whom additional information may be obtained about the breach. Upon request of the DLA, a covered entity must also provide: • A police report, incident report, or computer forensics report; • A copy of the polices in place regarding breaches; and, • Any steps taken by the covered entity to rectify the breach. A covered entity may provide any other information regarding the breach to the DLA at any time to supplement the information required under this bill. For breaches of security occurring within the judicial branch, the executive office of the governor, the Department of Financial Services (DFS), and the Department of Agriculture and Consumer Services, the notice of the breach of security may be posted to an agency-managed website in lieu of the written notice to the DLA.	*Notice to the DLA is not required under current law.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	4. A covered entity must also provide notice to each individual in Florida whose personal information was, or is reasonably believed to have been, accessed as a result of a breach. Notice must be provided as quickly as possible, taking into account the time needed to determine the scope of the breach of security, to identify affected individuals, and to restore reasonable integrity of the data system that was breached. However, notice must be provided within 30 days of determination of the breach or reason to believe a breach occurred unless: • Notice is delayed upon the written request of a federal, state, or local law enforcement agency for a specified period, if the agency determines that notice to individuals would interfere with a criminal investigation; or, • Notice is waived after an appropriate investigation and consultation with relevant federal, state, or local law enforcement agencies if the covered entity reasonably determines that the breach has not and will not likely result in identity theft or any other financial harm. Such a determination must be documented in writing and maintained for at least five years and must be provided to the DLA within 30 days of such a determination.	*Current law provides that notice of the breach must be given to affected individuals within 45 days of the determination of the breach.*
	The notice must include: • The date, estimated date, or estimated date range of the breach of security; • A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and, • Information that the individual can use to contact the covered entity about the breach of security and the individual's personal information maintained by the covered entity.	*The notice to affected individuals must be made by either written notice sent to the individual's mailing address or by e-mail sent to the individual's e-mail address.*
	5. Direct notice to the individual may be substituted with a published notice if the cost of providing notice will exceed $250,000, the number of affected individuals exceeds 500,000, or the covered entity does not have an e-mail address or mailing address for the affected individuals. Such substitute notice must include a conspicuous notice on the Internet website of the covered entity, if the entity maintains a website, and notice in print and broadcast media, including major media in urban and rural areas where the affected individuals reside.	*This requirement is similar to current law.*
	6. Provides that in the event more than 1,000 individuals require notification at a single time, the covered entity must also notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices.	*This requirement is similar to current law.*

SUBJECT, BILL PAGES AND/OR STATUTE #	FINAL PROVISION	COMMENTS
	7. If a covered entity is in compliance with the rules, regulations, procedures, or guidelines of its primary or functional federal regulator that require the entity to provide notification to individuals following a breach of security, the covered entity is deemed to have complied with the notice requirements of the bill.	*Timely notification of the breach must still be provided to the DLA.*
	8. If the data system is maintained by a third-party agent, the third-party agent must notify the covered entity within 10 days in the event of a breach of security or upon reasonable belief that a breach occurred. The covered entity is responsible for providing notice to affected individuals in the same manner as required if the breach had been to its own system. The third-party agent must provide the covered entity with all information needed to comply with the bill's provisions.	*A third-party agent may provide the notice required by the bill to individuals and the DLA on behalf of the covered entity. However, if the agent fails to provide proper notice, the covered entity will be deemed to have violated the provisions of this bill.*
	9. Provides enforcement authority to the DLA under the Florida Deceptive and Unfair Trade Practices Act to civilly prosecute violations. A violator of the bill's provisions may be subject to civil penalties per breach (not per affected individual), similar to current law, if breach notification is not provided in a timely manner. Penalties are calculated as follows: • $1,000 per day, each day the breach goes undisclosed for up 30 days, and thereafter $50,000 for each 30-day period or portion thereof for up to 180 days. • If notification is not made within 180 days, a covered entity who failed to make a required disclosure of a breach is subject to civil penalties not to exceed $500,000. Additionally, the bill specifies that no private cause of action is created by the enforcement language in the bill.	*State governmental entities are required to provide notification of security breaches to the DLA, but are not liable for civil penalties for failure to timely report the security breaches.*
	10. Requires the DLA to submit an annual report to the Legislature by February 1 of each year, detailing any reported breaches of security by governmental entities or their third-party agents for the preceding year, along with any recommendations for security improvement. The report must also identify any governmental entity that has violated the breach notification provisions.	
	11. Requires covered entities and third-party agents to dispose of customer records, both physical and electronic, in a manner that protects personal information from being disclosed when such records are no longer required to be retained. **Effective date: July 1, 2014.** **Chapter No. 2014-189, LOF.**	*This provision does not apply to governmental entities.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
Nursing Home Litigation, CS/CS/SB 670			
	1.	Amends statutory provisions relating to civil causes of action against nursing homes.	
pp. 2–3, §400.023(1)	2.	Provides that this section is the exclusive cause of action for negligence or a violation of nursing home residents' rights which alleges direct or vicarious liability for the personal injury or death of a nursing home resident.	*Similar language was contained in this section, but did not include vicarious liability. This section of the bill contains an "internal" effective date providing that it applies to causes of action accruing on or after the effective date of the main bill becoming law.*
p. 3, §400.023(1)	3.	Provides that a "passive investor" is not liable under this section. An action against any other individual or entity may be brought only pursuant to subsection (3).	*"Passive investor" is defined as an individual or entity that has an interest in a facility, but does not participate in the decision-making or operations of the facility.*
p. 3, §400.023(1)(a)	4.	If the cause of action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall, after the verdict, but before judgment is entered, elect survival damages pursuant to §46.021, F.S., or wrongful death damages pursuant to §768.21, F.S.	*Current law requires that an election be made, but does not specify that it must be after the verdict, but before the judgment.*
pp. 4–5, §400.023(2)	5.	Provides definitions of "licensee," "management or consulting company," and "passive interest."	*"Licensee" means the individual or other entity that is issued a license by the Agency for Health Care Administration (AHCA) and is legally responsible for all aspects of the operation of the nursing home facility.*
p. 5, §400.023(3)	6.	Provides that a cause of action may not be asserted against an individual or entity other than the licensee, the licensee's management or consulting company, and any direct caregivers, whether employees or contractors, unless, the court or arbitration panel determines that there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that: • The individual or entity owed a duty of reasonable care to the resident and the individual or entity breached that duty; and, • The breach of that duty is the legal cause of loss, injury, death, or damage to the resident.	
pp. 7–8, §400.0237(1)	7.	A claim for punitive damages may not be brought under this part unless there is a showing by admissible evidence that has been submitted by the parties that provides a reasonable basis for the recovery of such damages when the criteria in this section are applied.	*This section of the bill also contains an "internal" effective date providing that it applies to causes of action accruing on or after the effective date of the main bill becoming law.*

SUBJECT, BILL PAGES AND/OR STATUTE #		FINAL PROVISION	COMMENTS
pp. 8–9, §400.0237(1)(b)	8.	The court shall conduct a hearing to determine whether there is sufficient admissible evidence submitted by the parties to ensure that there is a reasonable basis to believe that the claimant, at trial, will be able to demonstrate by clear and convincing evidence that the recovery of punitive damages is warranted under a claim for direct liability or vicarious liability.	*In order to be held liable for punitive damages, the trier of fact (judge or jury) must find by clear and convincing evidence that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant.*
p. 9, §400.0237(3)	9.	Provides vicarious liability of an individual, employer, director, or manager of the actual employer may not be imposed for the conduct of an employee or agent unless the conduct of the employee or agent constituted intentional misconduct or gross negligence, and an officer, director, or manager of the actual employer, corporation, or other legal entity condoned, ratified, or consented to the specific conduct.	
pp. 10–12, §400.024	10.	Provides penalties for failure to satisfy a judgment or settlement agreement within specified time frames.	*See the bill for details.*
pp. 12–15, §440.145	11.	Sets forth the procedures and limitations for obtaining copies of records of care and treatment of a resident. It sets forth limits on what may be charged for copies and provides for patient record confidentiality. **Effective date: Upon becoming law.** **Chapter No. 2014-83, LOF.**	*See the bill for details.*

Access to Health Care for Underserved/Sovereign Immunity, HB 97

pp. 1–4, §766.1115	1.	Allows a dentist or dental hygienist to accept reimbursement for some or all of a patient's dental laboratory costs without being considered to have accepted compensation, thus retaining sovereign immunity protection. The payment of this "contribution" is voluntary on the part of the patient, and the "contribution" may not exceed the actual cost of the dental laboratory charges. **Effective date: July 1, 2014.** **Chapter No. 2014-108, LOF.**	*Current law provides sovereign immunity to health care professionals, including dentists and dental hygienists, who contract with the state to provide medical care for indigent persons. The contract must be for "volunteer, uncompensated services" for the benefit of low-income recipients. However, if there is a separate fee paid for by the patient for dental laboratory work such as providing implants or crowns, a literal reading of the law makes this "compensated" care, and could have the effect of taking away sovereign immunity.*

This summary & analysis was prepared by the

FLORIDA ASSOCIATION OF INSURANCE AGENTS

Laura B. Pearce, Esq., AAI
Kyle Ulrich, CAE
Lee Martin, RHU, REBC
S. James Brainerd, AAI, CAE, Esq.

P.O. Box 12129
Tallahassee, FL 32317-2129

Telephone: 850-893-4155
Fax: 850-668-2852
Website: www.faia.com