

# Florida Property & Casualty Issues

**AICP Gulf States Chapter**

**Atlanta, GA**

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The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.

The logo for the Association of Insurance Compliance Professionals (aicp) is displayed in a black rectangular box. The letters 'aicp' are written in a white, lowercase, sans-serif font.

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# AGENDA

## Florida Property & Casualty Issues

- State of the State
  - Florida 2009 Political Update
    - Statewide Officials
    - Florida Senate
    - Florida House of Representatives
    - Federal Composition of Florida Representatives
  - Florida 2009 Legislative Update
    - Florida Budget Deficit
    - State Farm's Exit from Florida
    - Florida's Legislative Process

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# AGENDA

## Florida Property & Casualty Issues (continued)

- 2009 Legislative Session Passed Bills
  - CS/CS/CS/HB 1495 Omnibus Property Insurance Act
  - CS/CS/CS/HB 569 Relating to Financial Instruments
  - CS/HB 853 Surplus Lines
  - CS/SB 742 Sinkhole Mitigation
  - HB 741 Insurance Premium Financing
  - CS/HB 903 Workers' Compensation Attorneys' Fees
- 2009 Legislative Session Vetoed Bills
  - CS/CS/HB 1171 Relating to Residential Property Insurance

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# AGENDA

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## Emerging Federal Issues

- Credit Scoring
- Market Conduct
- National Catastrophe Fund

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# STATE OF THE STATE

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## FLORIDA 2009 POLITICAL UPDATE

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# 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
- Served for 6 years in the Florida Senate beginning in 1992 and was appointed by then Governor Jeb Bush as the Deputy Secretary of the Department of Business and Professional Regulation.
- Elected Commissioner of Education in 2000.
- Elected Attorney General in 2002.
- Announced in May 2009, his candidacy for the U.S. Senate in 2010.



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# STATEWIDE OFFICIALS



**Bill McCollum** (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 and returned to private practice with the firm of Baker and Hostetler, LLP, until he was elected as the Attorney General.
- In May, 2009, he announced his candidacy for Governor of Florida in 2010.

# STATEWIDE OFFICIALS



**Alex Sink** (D-Tampa): Elected Chief Financial Officer 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.
- In May 2009, she announced her candidacy for Governor of Florida in 2010.

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# 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.
- Elected to the Florida Senate in 1994 and re-elected in 1998.
- Appointed Agricultural Commissioner in 2001 and Elected in 2002.
- Reelected in 2006.

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# 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

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## Composition of the Florida Senate

- 26 **Republicans**
- 14 **Democrats**
- 21 Senate seats were up for election in 2008.
- 7 first term Senators were elected in 2008.



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# FLORIDA SENATE

## Florida Senate



**Senator Jeff Atwater** (R- North Palm Beach): President of the Florida Senate, 2008-2010. Earlier this year, announced his candidacy for Chief Financial Officer in 2010.



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



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# FLORIDA SENATE

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## Florida Senate

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



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# FLORIDA HOUSE OF REPRESENTATIVES

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## Composition of the Florida House of Representatives

- 76 **Republicans**
- 44 **Democrats**
- 32 Representatives will be term-limited out this year.
- All House seats were up for election in 2008.
- 35 first term Representatives were elected in 2009.

# FLORIDA HOUSE OF REPRESENTATIVES

## Florida House of Representatives



**Representative Larry Cretul** (R-Ocala), was elected to the House in 2002. From November 18, 2008 – March 2, 2009, he served as Speaker Pro-Tempore.

In the wake of Representative Ray Sansom's (R-Fort Walton Beach), official resignation as Speaker on January 30, 2009, State Representative Cretul was elected Speaker on March 3, 2009, and will serve Former Speaker Sansom's remaining term through 2010.



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# FLORIDA HOUSE OF REPRESENTATIVES

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## Florida House of Representatives



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

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# FLORIDA HOUSE OF REPRESENTATIVES

## Florida House of Representatives



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



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

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# FLORIDA HOUSE OF REPRESENTATIVES

## Florida House of Representatives



**Representative Ron Saunders** (D-Key West): Elected Minority Leader Designate of the Florida House of Representatives for 2010-2012.

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# U.S. HOUSE OF REPRESENTATIVES

## Federal Composition of Florida Representatives

- 15 **Republicans.**
- 10 **Democrats.**
- All 25 House seats were up for election in 2008; 3 incumbents were defeated in the 2008 election; 1 first term Representative was elected in 2008; No Florida Senators were up for re-election in the 2008 election.
- Mel Martinez's (R) term expires in 2010 and he will not seek re-election. Bill Nelson (D) is up for re-election in 2012; Governor Charlie Crist announced on May 12, 2009, that he will run for the U.S. Senate.

# FLORIDA'S 2008 PRESIDENTIAL SUPPORT

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## Florida's 2008 Presidential Support

- Barack Obama won Florida in 2008.
- This was the first time in three presidential elections that Florida supported a Democratic presidential candidate.
- Since 1960, Florida has supported the Democratic presidential candidate only four times.

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# STATE OF THE STATE

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## FLORIDA 2009 LEGISLATIVE UPDATE

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida Budget Deficit

- The budget crisis has been the single biggest issue discussed in the Legislature this year.
- During the January 2009 Special Session, the Legislature reduced the 2009-2010 Fiscal Year (FY) budget by \$2.4 billion.
- On May 8, 2009, the Legislature passed SB 2600, which set the state budget at \$66.5 billion for the 2009-2010 FY.

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# FLORIDA LEGISLATIVE UPDATE: 2009

## Florida Budget Deficit (continued)

- On February 17, 2009, President Barack Obama signed a \$787 billion stimulus bill.
- Florida is expected to receive \$12.2 billion over the next 2.5 years, primarily for roads, childcare, unemployment, job training, and Medicaid costs.
- Officials estimate Florida will receive \$3.2 billion for 2008-2009 FY, \$4.7 billion for 2009-2010 FY, and \$4.3 billion for 2010-2011 FY.

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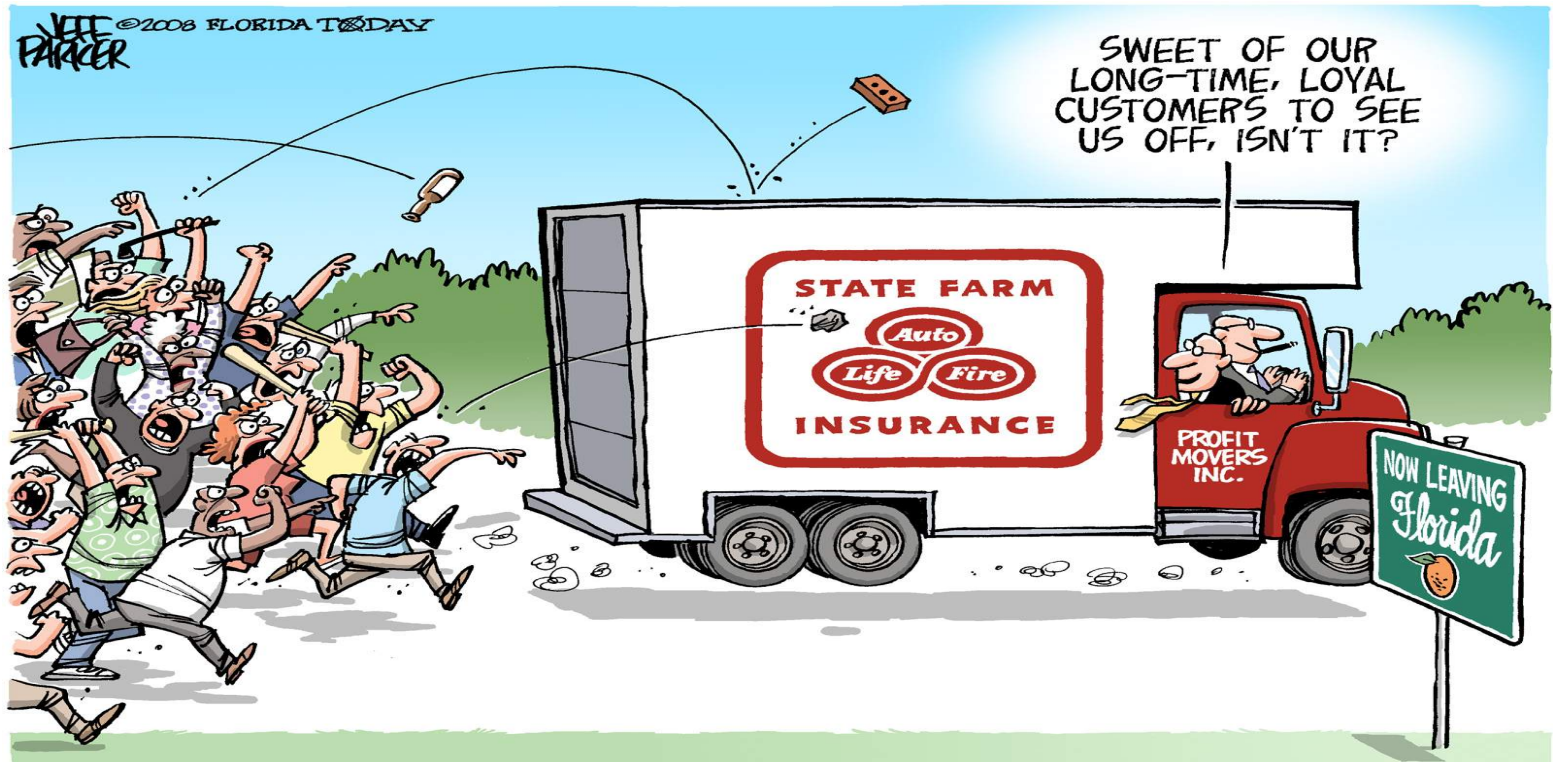
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# FLORIDA LEGISLATIVE UPDATE: 2009

## State Farm's Exit from Florida



Source: Jeff Parker 2008 Florida Today

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# FLORIDA LEGISLATIVE UPDATE: 2009

## State Farm's Exit from Florida (continued)

- State Farm Florida Insurance Company (State Farm) announced on January 27, 2009, that it is beginning the process of non-renewing policies and eliminating the sales of homeowners policies in the state.
- The withdrawal will impact approximately 1.2 million customers with State Farm policies.
- In response to the withdrawal, Governor Crist stated, "I think that Floridians will be much better off without them."
- State Farm expects to begin the non-renewal process in November 2009.

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## State Farm's Exit from Florida (continued)

- On February 13, 2009, Commissioner McCarty issued an order approving State Farm's withdrawal plan with several conditions including:
  - State Farm must surrender its Certificate of Authority within 30 days.
  - State Farm must not place any policies, directly or indirectly, in Citizens.
  - State Farm must allow its agents to write with other private insurers.

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## State Farm's Exit from Florida (continued)

- In response, State Farm filed a petition on March 6, 2009, requesting an administrative hearing to dispute the Office of Insurance Regulation (OIR's) findings of fact in its conditional approval of the withdrawal plan.

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## State Farm's Exit from Florida (continued)

- On March 24, 2009, the OIR denied State Farm's petition on the basis that the petition is legally deficient and merely reflects State Farm's displeasure with the terms of OIR's order.
- The OIR allowed State Farm to file an amended petition no later than April 14, 2009.
- State Farm filed an amended petition and the matter is currently pending before DOAH and should be set for final hearing this fall.

# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida's Legislative Process

- **“Two things you don't want to watch being made are legislation and sausages.”**  
-Attributed to Otto von Bismarck, who served as Germany's chancellor in the 19th century.
- **“No man's property is safe when the legislature is in session.”**  
-Mark Twain 1866

# FLORIDA LEGISLATIVE UPDATE: 2009

“The property of no man, woman, child, stepchild, parent, step parent, grandparent, sibling, aunt, uncle, cousin, or family pet, whether natural or adopted, natural person, animal, whether domesticated or wild, business entity, including without limitation, any corporation, unincorporated association or business, limited liability company, business trust, real estate investment trust, common law trust, or other trust, general partnership, limited liability partnership, limited partnership, joint venture, or two or more persons having a joint or common economic interest, any state, local, federal, or foreign government, governmental subdivision, agency, or instrumentality, or any other domestic or foreign entity that is formed pursuant to the provisions of applicable law is safe when the legislature is in session.”

-Fred E. Karlinsky 2008

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida's Legislative Process: Regular Session

- 60 day Regular Session held annually. Generally runs from the beginning of March until the beginning of May.
  - 2009 Regular Legislative Session from March 3 to May 1, 2009.
  - However, because the Legislature could not decide on a budget, Regular Session was extended until May 8, 2009.

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida's Legislative Process: Special Session

- Special Legislative Sessions are called as needed.
  - No special sessions were called in 2008.
  - 2009 Special Session was held from January 5 to January 14, 2009.
  - During the Special Session, a \$2.6 billion reduction to the 2008-2009 budget was passed.

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida's Legislative Process (continued)

- A bill can originate in either the House of Representatives or the Senate.
- Each bill must be “read” three times.
- First reading is by publication.

## Florida House of Representatives

- The bill is sent to a Committee or directly to Council.
- After the Committee hearings are complete, the bill is reported to the Council.
- After the Council hearings are complete, the bill is reported out.

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# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida House of Representatives (continued)

- The bill can be reported out favorably, with amendments, with a Council substitute, or unfavorably.

## Florida Senate

- The bill is sent to a Committee.
- After the Committee hearings are complete, the bill is reported out.
- The bill can be reported out favorably, with amendments, with a Committee substitute, or unfavorably.

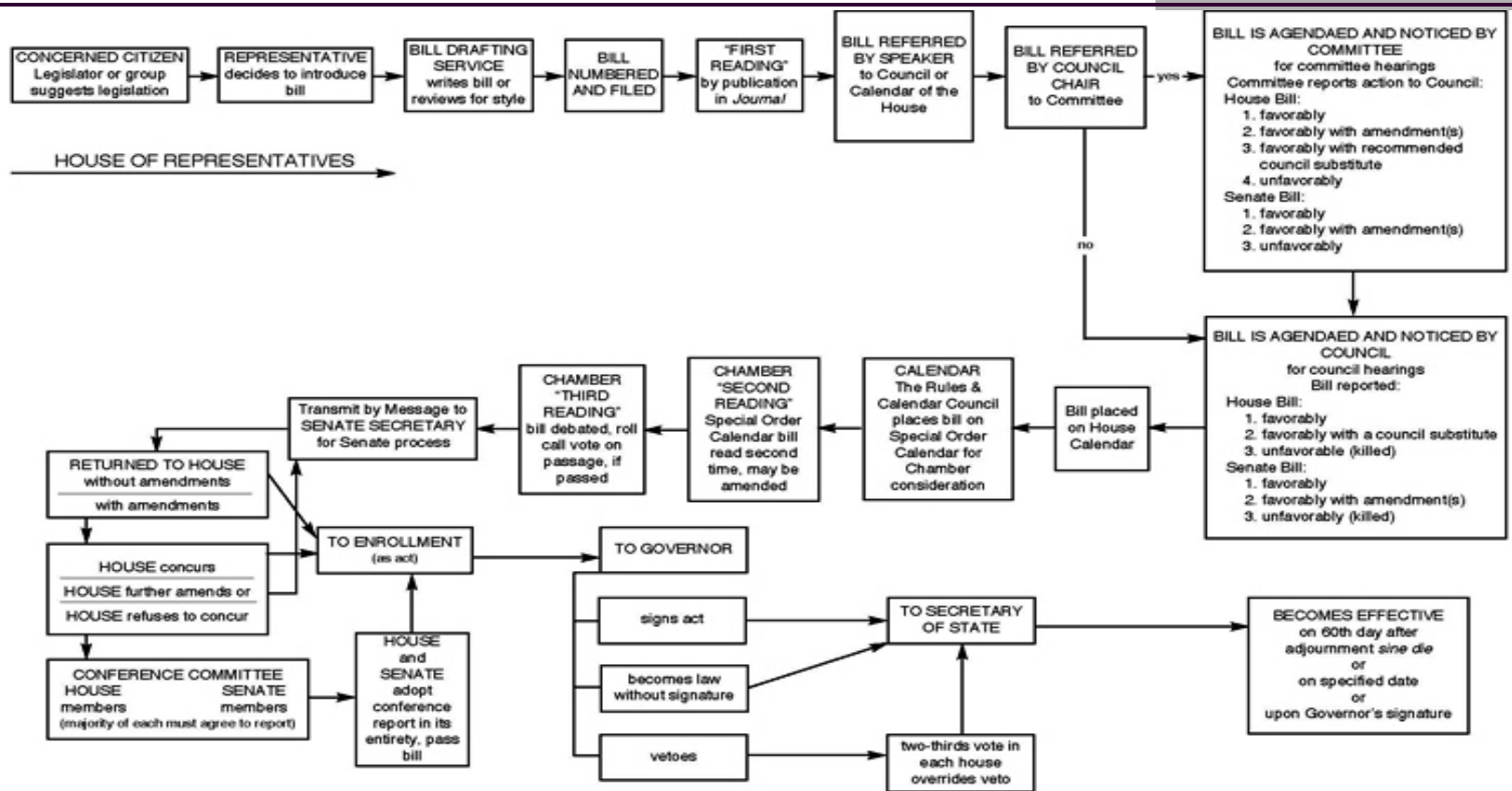
# FLORIDA LEGISLATIVE UPDATE: 2009

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## Florida Senate (continued)

- There is no further action if the bill is not reported out or if it is reported out unfavorably.
- The bill is read the second and third time in the full chamber.
- Once the chamber passes the bill, it is sent to the other body for consideration. The bill again passes through the stages detailed above in the other chamber.
- If the House and the Senate do not concur on the bill, it is sent to conference committee.
- Once the House and Senate concur, it is enrolled.

# FLORIDA'S LEGISLATIVE PROCESS



This simplified chart shows the route a bill takes through the Florida Legislature. Bills may originate in either House. This bill originated in the House of Representatives.

OFFICE OF THE CLERK  
HOUSE OF REPRESENTATIVES  
February 2007



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# 2009 LEGISLATIVE SESSION PASSED BILLS

## **CS/CS/CS/HB 1495 Omnibus Property Insurance Act**

- CS/CS/CS/HB 1495, sponsored by Representatives Bryan Nelson (R-Apopka) and Allan Hays (R-Umatilla), and several co-sponsors, passed the House by a vote of 80 Yeas and 35 Nays on May 1, 2009.
- On the final day of the 2009 Regular Legislative Session, the bill passed the Senate by a vote of 32 Yeas and 6 Nays.
- The bill was signed into law on May 27, 2009 by Governor Charlie Crist.
- The Act is effective upon becoming law.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Optional \$10 Million Coverage Layer:**
  - Limited apportionment companies, insurers approved to participate in the Insurance Capital Build-Up Incentive Program and insurers who purchased the optional FHCF coverage in 2008 may purchase the optional \$10 million in coverage applicable through December 31, 2011.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Optional \$10 Million Coverage Layer:**
  - The premium to be charged for this additional reimbursement coverage shall be 50% of the additional reimbursement coverage provided, which shall include one prepaid reinstatement.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Optional \$10 Million Coverage Layer:**
  - The minimum retention level associated with this additional coverage layer is 30% of the insurer's surplus as of December 31, 2008; for the 2009-2010 contract year; as of December 31, 2009; for the 2010 contract year; and as of December 31, 2010; for the 2011 contract year.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Optional \$10 Million Coverage Layer:**
  - This coverage shall be in addition to all other available FHCF coverage.
  - The \$10 million coverage provided by the FHCF shall be in addition to the claims paying capacity of the FHCF, but only with respect to those insurers that select the additional coverage option and meet its requirements.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Optional \$10 Million Coverage Layer:**
  - The claims-paying capacity with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium's proportionate share of the actual claims-paying capacity of the FHCF and as otherwise provided for under the terms of the reimbursement contract.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF-Optional \$10 Million Coverage Layer:**
  - This optional coverage shall be accessed before the mandatory coverage under the reimbursement contract, but once the limit of coverage selected under this option is exhausted, the insurer's retention under the mandatory coverage will apply. This coverage will apply and be paid concurrently with mandatory coverage.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ FHCF- TICL Layer:

- The SBA is required to make TICL available from the FHCF for the 2009 through 2013 hurricane seasons.
- TICL will be reduced by \$2 billion a year for six years to decrease the FHCF's exposure.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- TICL Layer:**
  - Each insurer purchasing TICL coverage shall pay to the FHCF, in the manner and at the time provided in the reimbursement contract, a TICL reimbursement premium, except that the cash build-up factor does not apply to the TICL reimbursement premium.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ FHCF- TICL Layer:

- The TICL reimbursement premium shall be increased in contract year 2009-2010 by a factor of two;
- in the contract year beginning June 1, 2010, and ending December 31, 2010; by a factor of three,
- in the 2011 contract year by a factor of four,
- in the 2012 contract year by a factor of five;
- and in the 2013 contract year by a factor of six.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ FHCF- TICL Layer:

- Each insurer's TICL premium shall be calculated based upon the additional limit of increased coverage the insurer selects.
- Such limit is determined by multiplying the TICL multiple associated with one of the four options times the insurer's FHCF reimbursement premium.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- TICL Layer:**
  - For the 2009-2010 contract year, the SBA shall calculate and report to each insurer the TICL coverage multiples based on 10 options for increasing the insurer's FHCF coverage limit.
  - Each TICL coverage multiple shall be calculated by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7 billion, \$8 billion, \$9 billion, and \$10 billion by the total estimated aggregate FHCF reimbursement premiums for the 2009-2010 contract year.



# 2009 LEGISLATIVE SESSION PASSED BILLS

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## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- TICL Layer:**
  - Similar calculations will be made for subsequent years, but adjusted to account for the decrease in the TICL layer by \$2 billion each subsequent year.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Claims-Paying Capacity:**
  - Before the start of the upcoming contract year and in October of the contract year, the FHCF's board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Claims-Paying Capacity:**
  - After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Claims-Paying Capacity:**
  - In conjunction with the development of the premium formula, the SBA shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Claims-Paying Capacity:**
  - For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported by the FHCF board.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Claims-Paying Capacity:**
  - The SBA may reimburse insurers for amounts up to the published factors or multiples for determining each participating insurer's retention and projected payout derived as a result of the development of the premium formula in those situations in which the total reimbursement of losses to such insurers would not exceed the estimated claims-paying capacity of the fund.

# 2009 LEGISLATIVE SESSION PASSED BILLS

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## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Claims-Paying Capacity:**
  - Otherwise, such factors or multiples shall be reduced uniformly among all insurers to reflect the estimated claims-paying capacity.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ FHCF- Miscellaneous FHCF Provisions:

- For the 2009-2010 contract year, the factor is 5 %.
- For the contract year beginning June 1, 2010, and ending December 31, 2010, the factor is 10 %.
- For the 2011 contract year, the factor is 15 %.
- For the 2012 contract year, the factor is 20 %.
- For the 2013 contract year and thereafter, the factor is 25 %.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **FHCF- Miscellaneous FHCF Provisions:**
  - Maintains the repeal of the \$4 billion SBA-approved FHCF coverage option that has never been offered and if offered would be above the TICL coverage layer.
  - Changes the contract years for the reimbursement contracts: In 2010, the contract year begins June 1 and ends December 31, 2010. In 2011 and thereafter, the contract year begins January 1 and ends December 31.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Citizens:

- The amount of the rate increase for Citizens was subject to much negotiation and debate within and between the Senate and House. The Senate wanted to cap Citizens' rate increases at 5% while the House at various times proposed caps between 15 and 25%.
- The bill officially caps Citizens' rate increases at 10% per policyholder per year.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Citizens:

- Beginning January 1, 2010, and each quarter thereafter, Citizens shall transfer an amount equal to 10% of the funds projected to be collected from its rate increases to the General Revenue Fund.
- Citizens shall cease such transfers upon the implementation of actuarially sound rates or the existence of a deficit in any of the Citizens accounts.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Citizens:

- Citizens also may implement an increase to reflect the effect on Citizens of the cash buildup factor on Citizens.
- Citizens shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business it writes.
- Reduction of Citizens' high risk boundaries will begin on January 1, 2010, if needed.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Citizens:

- The bill adds a streamlined filing and OIR reporting process for insurers to more efficiently recoup and account for Citizens assessments payable by policyholders.
- The initial filing of the recoupment assessment factor is for informational purposes only and shall be subject to a final accounting.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Citizens:

- The bill allows insurers to recoup regular Citizens and other residual market assessments, in successive 12 month periods if it cannot recoup the assessment in the first 12 months after it has been levied.
- The bill permits admitted insurers to offer ex-wind policies located in high risk territories not eligible for Citizens.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

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## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **Rate Filings:**
  - The prohibition on “use and file” rate filings has been extended through December 31, 2010.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **Rate Filings**: Removes “flex rating” as a method for rate filings by insurers but includes a provision that allows insurers to make an expedited rate filing to recoup the costs of alternative financing to replace or finance TICL coverage, for the TICL price increase, and for the FHCF cash build up factor as long as the rate increase is not more than 3% per policyholder for the costs of liquidity instrument(s) and not more than 10% per policyholder for all costs contained in the filing.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Rate Filings:

- Expedited rate filings can be made once every twelve months; provided, however, that the insurer has not implemented a rate increase within the six months immediately preceding the expedited rate filing and does not make any type of non-expedited rate filing within six months after the expedited rate filing, among other requirements.



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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **Rate Filings:**
  - These expedited rate filings must be submitted 45 days prior to their effective date and the OIR has 45 days to review such filings; this 45 day period is in contrast to the standard 90 day requirement per section 627.062, F.S.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Rate Filings:

- Insurers also can recoup in a regular rate filing their private market reinsurance costs that correspond to TICL coverage, or replace the reduced amount of TICL coverage, up to 10% of such costs.
- The bill repeals the former provisions relating to the OIR's assertion of attorney-client privilege on rate filing documents and adds a provision requiring the OIR to publish certain information about rate filings on its website.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **Reinsurance from Affiliate:**
  - Insurers may purchase reinsurance or financing products from an affiliated company but only if the costs for such reinsurance or financing products are charged at or below charges made for comparable coverage by non-affiliated reinsurers or financial entities making such coverage or financing products available in this state.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **Public Adjusters:** The bill adds the following new provisions requirements regarding public adjusters:
  - Public adjusters are prohibited from paying fees to runners.
  - Public adjuster apprentices must have the designation of Accredited Claims Adjuster before they can be licensed as a public adjuster.
  - Public adjusters may not employ more than 12 public adjuster apprentices and cannot supervise more than 3 apprentices at a time.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **Public Adjusters:**
  - Requires a study from the Office of Program Policy Analysis and Government Accountability (“OPPAGA”) on public adjuster activity and involvement in claims (report due to the Legislature, Governor, CFO, and Insurance Commissioner by February 1, 2010).

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Rating Agencies:

- Rating agencies are not required to disclose on their public reports and ratings whether FHCF reinsurance was counted as an asset in the financial rating of the insurer.

### ■ Policy Disclosure:

- The bill eliminates the required disclosure of a home's windstorm mitigation rating upon sale.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act

### ■ My Safe Florida Home Program:

- Provides for home inspections as funding allows.
- For a homeowner to be eligible for a grant, he or she must have obtained an inspection on the residential property in question after May 1, 2007, and meet certain criteria.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

- **My Safe Florida Home Program:**
  - Expands the types of mitigation improvements a homeowner can install using Program funds, including many roof-related mitigation improvements.
  - Gives the Department rulemaking authority for the maximum grant allowances for any allowed improvements.
  - Repeals the no-interest loan program.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Mitigation:

- Maintains that mitigation discounts given in accordance with the uniform home grading schedule supersede current mitigation discounts.
- Falsification of a mitigation form continues to be a misdemeanor.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 1495 Omnibus Property Insurance Act (continued)

### ■ Mitigation:

- Requires the Commission on Hurricane Loss Projection Methodology to hold public hearings regarding mitigation, and provide a report to the Governor, Cabinet, President of the Senate, and Speaker of the House of Representatives by February 1, 2010.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## **CS/CS/CS/HB 569, Relating to Financial Instruments**

- On April 27, 2009, an amendment was added to CS/CS/CS/HB 569 as a “back-up” in the event that the omnibus property insurance package, HB 1495, was not passed or was vetoed.
- The amendment included the reauthorization of the FHCF \$10 Million drop-down layer for certain companies and was adopted during the third reading on April 27, 2009.
- The bill was signed into law by Governor Charlie Crist on June 10, 2009.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 569, Relating to Financial Instruments (continued)

- Extends until December 31, 2011, the availability of an additional amount of FHCF reimbursement coverage up to \$10 million for limited apportionment companies, for insurers that purchased such coverage in 2008, and for insurers that qualified for the insurance capital build-up incentive program.
- Without this extension, the availability of this coverage would cease on May 31, 2009.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 569, Relating to Financial Instruments (continued)

- Specifies that the optional coverage retention as provided for the limited apportionment companies and other insurers shall be triggered prior to the mandatory coverage under the reimbursement contract;
- Once the limit of the optional coverage is exhausted, the insurer's retention under the mandatory coverage will apply and be paid concurrently with the mandatory coverage.

# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/CS/CS/HB 569, Relating to Financial Instruments (continued)

- Similar coverage was offered in 2006, 2007, and 2008. This coverage reimburses the insurer for up to \$10 million in losses, for each of two hurricanes. As in past years, the coverage will be priced at a 50% rate on line (e.g., \$5 million premium for \$10 million in coverage) with a free reinstatement for a second event.
- The insurer's retention for such coverage remains at 30% of the company's surplus.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 853 Surplus Lines

- Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market.
- When insurance coverage is not available from licensed admitted insurers, persons seeking coverage may obtain coverage in the surplus lines market. Surplus lines insurers are regulated by the state, but to a lesser degree than admitted insurers.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 853 Surplus Lines (continued)

- CS/HB 853 provides that Chapter 627, F.S. does not apply to surplus lines insurers unless specifically stated, and responds to the holdings in *Zota* and *CNL Hotels*, two recent U.S. cases which altered the landscape of Florida surplus lines regulation by requiring the filing of surplus lines policy forms with the OIR for review and approval.
- CS/HB 853 was signed by the Governor on June 11, 2009.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 853 Surplus Lines (continued)

- Historically, surplus lines insurance companies have not abided by the same insurance regulatory requirements in chapter 627, F.S., as admitted market insurance companies due to s. 627.021(2), F.S., which states:
  - “This chapter does not apply to: . . . (e) surplus lines insurance placed under the provisions of ss. 626.913-626.937.”

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# 2009 LEGISLATIVE SESSION PASSED BILLS

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## CS/HB 853 Surplus Lines (continued)

- Additionally, the OIR has not regulated surplus lines insurers to the same extent as admitted market insurers due to this exemption.
- CS/HB 853 is considered the “legislative fix” to the Zota and Essex judicial decisions.
- The bill provides that Chapter 627 does not apply to surplus lines insurers unless specifically stated, and provides for retroactive application.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 853 Surplus Lines (continued)

- The bill imposes certain requirements on surplus lines insurers, beginning October 1, 2009, which are similar to some of the provisions governing admitted insurers in ch. 627, F.S.
- Provides that such amendments are remedial in nature and operate retroactively to the regulation of surplus lines insurers from October 1, 1988, except with respect to lawsuits filed on or before May 15, 2009.
- Thus, pending lawsuits filed by May 15, 2009, against surplus lines insurers are unaffected by the new law.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/SB 742 Sinkhole Mitigation

- This bill creates s. 627.7063, F.S., mandating the creation of a building code grading schedule that evaluates the effectiveness of sinkhole loss prevention ordinances in reducing the number of sinkholes and the severity of sinkhole losses.
- The bill was signed into law by Governor Charlie Crist on June 16, 2009, and becomes effective January 1, 2010.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## HB 741 Insurance Premium Financing

- This bill specifies that a discount provided to a policyholder when premium payment is made in full at the beginning of the policy term is not prohibited by Florida's premium financing statutes.
- The bill further states that such discount is not considered a component of premium financing, as long as the discount is approved and found to be actuarially justified by the OIR. The act provides for an effective date of July 1, 2009.
- The bill was signed into law on May 27, 2009, by Governor Charlie Crist.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## **CS/HB 903 Workers' Compensation Attorneys Fees**

- Prior to reforms in 2003, Florida was ranked as having the highest or second highest workers' compensation insurance premiums nationwide.
- The Legislature enacted significant changes to the workers' compensation laws in 2003 which were designed to increase the affordability and availability of coverage, expedite the dispute resolution process, provide greater compliance and enforcement authority to combat fraud, and revise certain indemnity benefits for injured workers. This legislation continued the contingency fee schedule for attorneys' fees, but eliminated hourly fees.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 903 Workers' Compensation Attorneys Fees (continued)

- In October 2008, the Florida Supreme Court, in *Murray v. Mariner Health*, determined that the attorneys' fee schedule, when read with a provision that entitles certain prevailing claimants to a "reasonable" attorneys' fee, creates an ambiguity as to whether the fee schedule is the sole basis for determining a reasonable attorneys' fee.
- This decision eliminated workers' compensation attorneys' fee caps and allowed hourly fees in Florida for claimants' attorneys.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 903 Workers' Compensation Attorneys Fees (continued)

- CS/HB 903 removes all statutory language providing for a “reasonable” attorneys’ fee in workers’ compensation cases and specifies that fee awards for claimants’ counsel cannot exceed the amount authorized by a statutory attorneys’ fee schedule.

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# 2009 LEGISLATIVE SESSION PASSED BILLS

## CS/HB 903 Workers' Compensation Attorneys Fees (continued)

- Clarifies that a judge of compensation claims may not enter an order approving the contents of a retainer agreement that permits placing any portion of the employee's compensation into an escrow account until benefits have been secured.
- On May 29, 2009, Governor Charlie Crist signed CS/HB 903 into law.

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# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Relating to Residential Property Insurance (Residential Property Insurance)

- The controversial residential property insurance bill, CS/CS/HB 1171, sponsored by Representative Bill Proctor (R-St. Augustine), with several co-sponsors, passed both legislative chambers during regular session.
- The bill would have allowed large insurance companies to use a rate in excess of its filed rate and that policies using such rate do not count towards the excess rate calculation, which would have allowed an insurer to use excess rates for up to 5% of its personal lines insurance policies.

# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Residential Property Insurance (continued)

- The House approved the bill by a vote of 105 Yeas and 13 Nays on April 22, 2009.
- The Senate substituted CS/SB 2036 for CS/CS/HB 1171 and CS/CS/HB 1171 passed the Senate by a vote of 27 Yeas and 9 Nays on May 1, 2009.
- In response, members of the Florida Property & Casualty Association (FPCA), submitted letters to the Governor asking him to veto CS/CS/HB 1171 due to the negative impact on the insurance industry and individual policyholders.
- On June 24, 2009, Governor Crist vetoed CS/CS/HB 1171.

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# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Residential Property Insurance (continued)

- The bill would have required such rates to be filed with the OIR; the OIR would have retained the authority to disapprove a rate as inadequate or to disapprove a rate filing for using a rating factor that is an unfair method of competition or unfair or deceptive act.
- The bill would have created s. 627.7031, F.S., permitting property insurers to offer residential property insurance policies covering the perils of windstorm or hurricane that use a rate in excess of the insurer's filed rate if all certain requirements are met.

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# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Residential Property Insurance (continued)

- The bill would have created s. 627.7031, F.S., permitting property insurers to offer residential property insurance policies covering the perils of windstorm or hurricane that use a rate in excess of the insurer's filed rate if all certain requirements are met.

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# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Residential Property Insurance (continued)

- The bill would not have been applicable to residential property insurance policies that exclude coverage for the perils of windstorm or hurricane.
- The bill would have provided that an insurer issuing a policy under this section must provide the named insured written notice of nonrenewal, cancellation, or termination at least 180 days before the effective date of the nonrenewal, cancellation, or termination.

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# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Residential Property Insurance (continued)

- In his Letter to the Secretary of State, Kurt Browning, Governor Crist cited several reasons for withholding approval, including :
  - Since the passing of HB-1A in January 2007, which yielded an average rate decrease of 15.9%, homeowner's rates have "remained relatively stable." "This bill would reverse that trend by exempting certain insurers from the determination that their rates are excessive" by the OIR, which would result in "unpredictable rate increases...during difficult economic times...."



# 2009 LEGISLATIVE SESSION

## VETOED BILLS

### CS/CS/HB 1171 Residential Property Insurance (continued)

- Governor Crist also noted that although it was coined the Consumer Choice Bill, there was no provision in HB 1171 “that allows consumers to review options and make a choice that best fits their needs.”
- In addition, HB 1171 “will disrupt the effort to build and increasingly competitive insurance marketplace and treat certain insurers differently than emerging Florida domestic companies.

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# EMERGING FEDERAL INSURANCE ISSUES

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- Credit Scoring
- Market Conduct
- National Catastrophe Fund

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# EMERGING FEDERAL INSURANCE ISSUES

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## CREDIT SCORING

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# EMERGING FEDERAL INSURANCE ISSUES

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## Credit Scoring

- In the mid 1990s, insurers began considering a consumer's credit history as a factor in their risk analysis.
- Insurers combine credit scores with other data to derive a new measure of risk: credit-based insurance scores.
- These scores then help determine whether to offer coverage and how much premium to charge.

# EMERGING FEDERAL INSURANCE ISSUES

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## Credit Scoring (continued)

- Critics argue that since African-Americans and Hispanics are over-represented in the lowest credit score tiers, they pay higher premiums.
- In 2007, the Federal Trade Commission produced a report that concluded that although credit-based insurance scores are an accurate predictor of claims activity, they do disparately impact certain classes of people.
- Most states have enacted laws that regulate the use of credit scores in insurance.

# EMERGING FEDERAL INSURANCE ISSUES

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## Credit Scoring (continued)

- Florida's current law requires that insurers demonstrate their underwriting and pricing practices do not discriminate against protected classes, including racial and ethnic minorities.
- Florida's Insurance Commissioner Kevin M. McCarty is opposed to the use of credit scoring. In May 2008, he provided testimony in Washington D.C. before the Subcommittee on Oversight and Investigations of the House Committee on Financial Services.

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# EMERGING FEDERAL INSURANCE ISSUES

## Credit Scoring (continued)

- McCarty believes there are several problems with the use of credit scoring, including:
  - Inaccuracies in underlying data;
  - Credit reports negatively affect recent divorcees, recently naturalized citizens, the elderly, the disabled, those with certain religious convictions, and younger individuals who have not established credit histories; and
  - Rising unemployment rates, rising home foreclosures and identity theft have negatively affected credit reports.



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# EMERGING FEDERAL INSURANCE ISSUES

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## Credit Scoring (continued)

- On April 30, 2009, the NAIC held a public hearing with testimony from representatives of the insurance industry, consumer advocacy groups, credit agencies and others, to examine how insurance credit scoring is affecting consumers in today's economic climate.

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# EMERGING FEDERAL INSURANCE ISSUES

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## Credit Scoring (continued)

- “Credit scoring is one of the most significant developments in the pricing of auto and homeowners insurance in the past 20 years,” said NAIC President and New Hampshire Insurance Commissioner Roger Sevigny. “Our goal is to protect consumers by ensuring that any use of credit scoring does not have unfair or unintended consequences.”

# EMERGING FEDERAL INSURANCE ISSUES

## Credit Scoring (continued)

- In 2008, two bills, H.R. 5633 and H.R. 6062, were introduced into the House relating to the use of credit scoring by insurers as a factor in underwriting insurance.
- A purpose of both bills was to amend the Fair Credit Reporting Act (FCRA) to prohibit certain discriminatory uses of consumer reports and consumer information in connection with certain personal lines of insurance. The practice would have been banned where there is a government finding of discrimination or when credit information could be used as a proxy for race or ethnicity.

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# EMERGING FEDERAL INSURANCE ISSUES

## Credit Scoring (continued)

- Neither bill in 2008 passed, and so far, no new legislation on credit scoring relating to personal lines of insurance has been proposed this year.
- PCI has stated that the use of credit-based insurance scores allows insurers to more accurately predict losses, resulting in lower rates. PCI adds several studies support this position, including the one above by FTC.
- PCI also notes most states prohibit the use of insurance scoring as a sole reason for denying, cancelling, or non-renewing a policy.

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# EMERGING FEDERAL INSURANCE ISSUES

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## NATIONAL MARKET CONDUCT REPORTS

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# EMERGING FEDERAL INSURANCE ISSUES

## National Market Conduct Reports & Insured Data Collection

- In 2002 the NAIC began the Market Conduct Annual Statement (“MCAS”) with the goal of collecting uniform market conduct related data.
- The MCAS promotes uniform analysis of insurers by applying consistent measurements and comparisons between companies.
- To limit the impact to insurers, the NAIC decided to gradually add new states. Five new states (Alabama, California, Montana, Rhode Island and Washington) will be collecting 2008 information in 2009.

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# EMERGING FEDERAL INSURANCE ISSUES

## National Market Conduct Reports & Insured Data Collection (continued)

- At the 2008 Fall National Meeting, the NAIC Executive Committee adopted a proposal to find the best possible way to collect MCAS data according to a two-part plan:
  - Short-Term: To provide for the transfer of MCAS data collected in 2009 by the 29 participating states to the NAIC for storage, appreciation and analysis in the existing access.
  - Long-Term: To centralize collection of market conduct data.

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# EMERGING FEDERAL INSURANCE ISSUES

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## National Market Conduct Reports & Insured Data Collection (continued)

- The decisions of whether the collected information should be treated as confidential as well as the method to collect the information have not been decided.
- NAIC members will consider the project's Business and Fiscal Impact Statement, which formally provides for the allocation of resources to implement the short-term transition proposal in 2009, as part of the formal 2009 budget package to be voted on in December.

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# EMERGING FEDERAL INSURANCE ISSUES

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## NATIONAL CATASTROPHE FUND

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# EMERGING FEDERAL INSURANCE ISSUES

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## Creation of a Federal Catastrophe Fund

- The creation of a Federal Catastrophe Fund is once again an active topic of debate and discussion across the United States.

## Homeowners' Defense Act of 2009

- Senator Bill Nelson (D-FL), along with Senator Mel Martinez (R-FL ) and Senator Landrieu (D-LA), introduced the “Homeowners’ Defense Act of 2009,” S. 505, on February 27, 2009.

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# EMERGING FEDERAL INSURANCE ISSUES

## Homeowners' Defense Act of 2009 (continued)

- S. 505 would create a National Catastrophe Risks Consortium, which would give the Treasury Department authority to provide aid to any state that suffers a catastrophe. The bill also would create a National Homeowners' Insurance Stabilization Program.
- Similar legislation was sponsored in the House in 2008 by U.S. Representative Ron Klein (D-Boca Raton), but was blocked in the U.S. Senate by Republican lawmakers.
- Senator Nelson's legislation would allow multiple states to join together to help pay for each other's disaster costs.



# EMERGING FEDERAL INSURANCE ISSUES

## Homeowners' Defense Act of 2009 (continued)

- The stated purposes of the Act are to establish a program to provide a Federal backstop for State-sponsored insurance programs to help homeowners prepare for and recover from the damages caused by natural catastrophes, to encourage mitigation and prevention for such catastrophes, to promote the use of private market capital as a means to insure against such catastrophes, to expedite the payment of claims and better assist in the financial recovery from such catastrophes.

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# EMERGING FEDERAL INSURANCE ISSUES

## Homeowners' Defense Act of 2009 (continued)

- In addition, the establishment of a national homeowners' insurance program would be effectuated by the Secretary, who would carry out a program to make liquidity loans and catastrophic loans to qualified reinsurance programs to ensure the solvency of such programs, to improve the availability and affordability of homeowners' insurance, to provide incentive for risk transfer to the private capital and reinsurance markets, and to spread the risk of catastrophic financial loss resulting from natural disasters and catastrophic events.

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# EMERGING FEDERAL INSURANCE ISSUES

## Homeowners Insurance Protection Act of 2009

- Representative Ginny Brown-Waite (R-FL) introduced the “Homeowners Insurance Protection Act of 2009,” H.R. 83, on January 6, 2009. This bill would establish a program to provide reinsurance for state natural catastrophe insurance programs.
- Representative Brown-Waite introduced a similar bill in 2008, known as H.R. 91, the Homeowner’s Insurance Protection Act.

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# EMERGING FEDERAL INSURANCE ISSUES

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## Homeowners Insurance Protection Act of 2009 (continued)

- The stated purpose of the 2009 Act is to establish a program to provide reinsurance for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, and to better assist in the financial recovery from such catastrophes.

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# EMERGING FEDERAL INSURANCE ISSUES

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## Catastrophe Obligation Guarantee Act

- Similarly, the Senate introduced S. 886, entitled, the “Catastrophe Obligation Guarantee Act,” sponsored by Senator Bill Nelson (D-FL), on April 23, 2009.
- S. 886 establishes a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in the financial recovery from natural catastrophes.

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# EMERGING FEDERAL INSURANCE ISSUES

## Catastrophe Obligation Guarantee Act (continued)

- The stated purposes of the Act is to:
  - promote the availability of private capital to provide liquidity and capacity to State catastrophe insurance programs; and,
  - to expedite the payment of claims under State catastrophe insurance programs and better assist the financial recovery from significant natural catastrophes by authorizing the Secretary of the Treasury to guarantee debt for such purposes.

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# EMERGING FEDERAL INSURANCE ISSUES

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## **Policyholder Disaster Protection Act of 2009**

- Representative Tom Rooney (R-FL) introduced the “Policyholder Disaster Protection Act of 2009,” H.R. 998, on February 11, 2009.
- This bill would amend the Internal Revenue Code to provide for the creation of disaster protection funds by property and casualty insurance companies for the payment of policyholders’ claims arising from future catastrophic events.

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# EMERGING FEDERAL INSURANCE ISSUES

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## Policyholder Disaster Protection Act of 2009 (continued)

- The foundation of H.R. 998, is precipitated upon, in part, the rising costs resulting from natural disasters that are placing an increasing strain on the ability of property and casualty insurance companies to assure payment of homeowners' claims and other insurance claims arising from major natural disasters now and in the future.



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# EMERGING FEDERAL INSURANCE ISSUES

## Policyholder Disaster Protection Act of 2009 (continued)

- Present tax laws do not provide adequate incentives to assure that natural disaster insurance is provided or, where such insurance is provided, that funds are available for payment of insurance claims in the event of future catastrophic losses from major natural disasters, as present law requires an insurer wishing to accumulate surplus assets for this purpose to do so entirely from its after-tax retained earnings.

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# EMERGING FEDERAL INSURANCE ISSUES

## Policyholder Disaster Protection Act of 2009 (continued)

- The goal of H.R. 998 is that by revising the property & casualty insurance industry tax laws to permit controlled accumulation of pretax dollars in separate reserve funds devoted to the payment of claims arising from future major natural disasters, will provide incentives for property & casualty insurers to make natural disaster insurance available, will give greater protection to U.S. homeowners, small businesses, and other insurance consumers, and will help assure the future financial health of the U.S. insurance system as a whole.

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# EMERGING FEDERAL INSURANCE ISSUES

## Policyholder Disaster Protection Act of 2009 (continued)

- Implementing H.R. 998 will reduce the possibility that a significant portion of the private insurance system would fail in the wake of a major natural disaster and that governmental entities would be required to step in to provide relief at taxpayer expense.
- During his campaign, President Obama spoke in favor of creating a national disaster fund and stated his support for the Homeowners' Defense Act of 2007, which did not pass.

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# EMERGING FEDERAL INSURANCE ISSUES

## Regional Catastrophe Fund

- There is ongoing discussion with respect to having the federal government create incentives for regional catastrophe funds. For instance, it has been proposed that if the Gulf Coast states decided to work together, the federal government could offer those states tax-free accounts for insurance companies to draw from following a catastrophe.
- Another incentive for state cooperation is a proposal to provide tax credits to property owners of regional catastrophe fund member states, who take steps to protect their properties from storm damage.

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# EMERGING FEDERAL INSURANCE ISSUES

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## Regional Catastrophe Fund (continued)

- Recognizing that some states will not want to share the risk created by a federal catastrophe fund, certain states such as Florida, Connecticut and Louisiana, are working to craft legislation that would exclude those states that do not wish to participate. In Louisiana, for instance, there have been discussions and resolutions filed, but nothing formal has been proposed.

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# EMERGING FEDERAL INSURANCE ISSUES

## State Catastrophe Funds

- Only two states currently have state catastrophe funds:
  - Florida – “Florida Hurricane Catastrophe Fund” (FHCF).
  - California – “California Earthquake Authority” (CEA).
- FHCF was created in November 1993 during a special legislative session after Hurricane Andrew.
- The purpose of the FHCF is to protect and advance the state’s interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

# EMERGING FEDERAL INSURANCE ISSUES

## State Catastrophe Fund (continued)

- CEA was created in 1996 following the destructive Northridge earthquake in 1994. In January 1995, fearing potential insolvency from another huge earthquake, insurers representing about 93% of the homeowners insurance market in California severely restricted – or refused to write altogether – new homeowners policies because of the law that they also offer earthquake insurance.
- This triggered a crisis that by mid-1996 seriously threatened the vitality of the state's housing market.

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# EMERGING FEDERAL INSURANCE ISSUES

## State Catastrophe Fund (continued)

- The CEA is a publicly managed, largely privately funded entity. Companies that sell residential property insurance in California can choose to offer their own privately funded earthquake insurance product or they can become a participating insurance company of the CEA.
- Companies that sell over two-thirds of the residential property insurance in California have chosen to become CEA participating companies, making it one of the largest providers of residential earthquake insurance in the world.

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# FOR MORE INFORMATION

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- Please contact:  
Fred E. Karlinsky, Esq.  
Colodny, Fass, Talenfeld, Karlinsky & Abate, P.A.  
Main: (954) 492-4010  
Direct: (954) 332-1749  
Fax: (954) 492-1144  
[fkarlinsky@cftlaw.com](mailto:fkarlinsky@cftlaw.com)

South Florida Office  
One Financial Plaza  
23rd Floor  
100 Southeast 3rd Avenue  
Fort Lauderdale, FL 33394

Tallahassee Office  
215 South Monroe Street  
Suite 701  
Tallahassee, FL 32301



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