

By the Committee on Financial Services and Representatives
Safley, Lippman, Tamargo, Effman, Rayson, Bainter, Lawson,
Flanagan and Dennis

1 A bill to be entitled
2 An act relating to the workers' compensation
3 joint underwriting plan; amending s. 627.311,
4 F.S., relating to joint underwriters and joint
5 reinsurers; revising the composition of the
6 board of governors of the workers' compensation
7 joint underwriting plan; prohibiting insurers
8 from providing workers' compensation insurance
9 to persons under certain circumstances;
10 deleting an obsolete provision; providing an
11 effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsection (4) of section 627.311, Florida
16 Statutes, is amended to read:

17 627.311 Joint underwriters and joint reinsurers.--

18 (4)(a) Effective upon this act becoming a law, the
19 department shall, after consultation with insurers, approve a
20 joint underwriting plan of insurers which shall operate as a
21 nonprofit entity. For the purposes of this subsection, the
22 term "insurer" includes group self-insurance funds authorized
23 by s. 624.4621, commercial self-insurance funds authorized by
24 s. 624.462, assessable mutual insurers authorized under s.
25 628.6011, and insurers licensed to write workers' compensation
26 and employer's liability insurance in this state. The purpose
27 of the plan is to provide workers' compensation and employer's
28 liability insurance to applicants who are required by law to
29 maintain workers' compensation and employer's liability
30 insurance and who are in good faith entitled to but who are
31 unable to purchase such insurance through the voluntary

1 market. The joint underwriting plan shall issue policies
2 beginning January 1, 1994. The plan must have actuarially
3 sound rates that assure that the plan is self-supporting. ~~The~~
4 ~~operation of the plan is subject to the supervision of a~~
5 ~~13-member board of governors. The board of governors shall be~~
6 ~~comprised of 5 domestic insurers, 1 of whom shall be the~~
7 ~~assessable mutual insurer or other domestic insurer which has~~
8 ~~the largest voluntary written premium for workers'~~
9 ~~compensation and employer's liability insurance as of December~~
10 ~~31, 1993, 1 of whom shall be the commercial self-insurance~~
11 ~~fund which has the largest voluntary written premium for~~
12 ~~workers' compensation and employer's liability insurance, as~~
13 ~~of December 31, 1993, and 3 of whom shall be the 3 of the 5~~
14 ~~group self-insurers' funds, authorized by s. 440.57, which~~
15 ~~have the largest voluntary written premium for workers'~~
16 ~~compensation and employer's liability insurance, as of~~
17 ~~December 31, 1993; and 5 of the 20 foreign insurers which are~~
18 ~~defined in s. 624.06(2) with the largest voluntary written~~
19 ~~premium in this state for workers' compensation and employer's~~
20 ~~liability insurance, for the latest year for which data are~~
21 ~~available, as selected by those 20 foreign insurers. If the~~
22 ~~assessable mutual insurer or the commercial self-insurance~~
23 ~~fund, described in this paragraph, decline to serve on, or~~
24 ~~resign from, the board of governors, such position on the~~
25 ~~board of governors shall be filled by appointment by a~~
26 ~~committee comprised of the 10 assessable mutual insurers,~~
27 ~~commercial self-insurance funds, and group self-insurers'~~
28 ~~funds, authorized by s. 440.57, which have the largest~~
29 ~~voluntary written premium for workers' compensation and~~
30 ~~employer's liability insurance, as of December 31, 1993. No~~
31 ~~board member shall be an insurer which provides service to the~~

1 ~~plan or which has an affiliate which provides services to the~~
2 ~~plan or which is serviced by a service company or third-party~~
3 ~~administrator which provides services to the plan or which has~~
4 ~~an affiliate which provides services to the plan. The board of~~
5 ~~governors shall have a chair, who shall be named by the~~
6 ~~Insurance Commissioner. The board of governors shall include~~
7 ~~one representative appointed by the largest property and~~
8 ~~casualty insurance agents' association in this state. The~~
9 ~~consumer advocate appointed under s. 627.0613 shall be a~~
10 ~~member of the board of governors. The minutes, audits, and~~
11 ~~procedures of the board of governors are subject to chapter~~
12 ~~119.~~

13 (b) The operation of the plan is subject to the
14 supervision of a 13-member board of governors which shall
15 consist of the following:

16 1. Five of the 20 domestic insurers, as defined in s.
17 624.06, with the largest voluntary direct premiums written in
18 this state for workers' compensation and employer's liability
19 insurance, which shall be elected by those 20 domestic
20 insurers.

21 2. Five of the 20 foreign insurers, as defined in s.
22 624.06, with the largest voluntary direct premiums written in
23 this state for workers' compensation and employer's liability
24 insurance, which shall be elected by those 20 foreign
25 insurers.

26 3. One person, who shall serve as the chair, appointed
27 by the Insurance Commissioner.

28 4. One person appointed by the largest property and
29 casualty insurance agents' association in this state.

30 5. The consumer advocate appointed under s. 627.0613
31 or the consumer advocate's designee.

1 (c) Each member of the board of governors shall serve
2 terms of 4 years and may serve consecutive terms.

3 (d) No board member shall be an insurer which provides
4 services to the plan or which has an affiliate which provides
5 services to the plan.

6 (e) The minutes, audits, and procedures of the board
7 of governors are subject to chapter 119.

8 (f)~~(b)~~ The operation of the plan shall be governed by
9 a plan of operation that is prepared at the direction of the
10 board of governors. The plan of operation may be changed at
11 any time by the board of governors or upon request of the
12 department. The plan of operation and all changes thereto are
13 subject to the approval of the department. The plan of
14 operation shall:

15 1. Authorize the board to engage in the activities
16 necessary to implement this subsection, including, but not
17 limited to, borrowing money.

18 2. Develop criteria for eligibility for coverage by
19 the plan, including, but not limited to, documented rejection
20 by at least two insurers which reasonably assures that
21 insureds covered under the plan are unable to acquire coverage
22 in the voluntary market. Any insured may voluntarily elect to
23 accept coverage from an insurer for a premium equal to or
24 greater than the plan premium if the insurer writing the
25 coverage adheres to the provisions of s. 627.171.

26 3. Require notice from the agent to the insured at the
27 time of the application for coverage that the application is
28 for coverage with the plan and that coverage may be available
29 through an insurer, group self-insurers' fund, commercial
30 self-insurance fund, or assessable mutual insurer through
31 another agent at a lower cost.

1 4. Establish programs to encourage insurers to provide
2 coverage to applicants of the plan in the voluntary market and
3 to insureds of the plan, including, but not limited to:

4 a. Establishing procedures for an insurer to use in
5 notifying the plan of the insurer's desire to provide coverage
6 to applicants to the plan or existing insureds of the plan and
7 in describing the types of risks in which the insurer is
8 interested. The description of the desired risks must be on a
9 form developed by the plan.

10 b. Developing forms and procedures that provide an
11 insurer with the information necessary to determine whether
12 the insurer wants to write particular applicants to the plan
13 or insureds of the plan.

14 c. Developing procedures for notice to the plan and
15 the applicant to the plan or insured of the plan that an
16 insurer will insure the applicant or the insured of the plan,
17 and notice of the cost of the coverage offered; and developing
18 procedures for the selection of an insuring entity by the
19 applicant or insured of the plan.

20 d. Provide for a market-assistance plan to assist in
21 the placement of employers. All applications for coverage in
22 the plan received 45 days before the effective date for
23 coverage shall be processed through the market-assistance
24 plan. A market-assistance plan specifically designed to serve
25 the needs of small good policyholders as defined by the board
26 must be finalized by January 1, 1994.

27 5. Provide for policy and claims services to the
28 insureds of the plan of the nature and quality provided for
29 insureds in the voluntary market.

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1 6. Provide for the review of applications for coverage
2 with the plan for reasonableness and accuracy, using any
3 available historic information regarding the insured.

4 7. Provide for procedures for auditing insureds of the
5 plan which are based on reasonable business judgment and are
6 designed to maximize the likelihood that the plan will collect
7 the appropriate premiums.

8 8. Authorize the plan to terminate the coverage of and
9 refuse future coverage for any insured that submits a
10 fraudulent application to the plan or provides fraudulent or
11 grossly erroneous records to the plan or to any service
12 provider of the plan in conjunction with the activities of the
13 plan.

14 9. Establish service standards for agents who submit
15 business to the plan.

16 10. Establish criteria and procedures to prohibit any
17 agent who does not adhere to the established service standards
18 from placing business with the plan or receiving, directly or
19 indirectly, any commissions for business placed with the plan.

20 11. Provide for the establishment of reasonable safety
21 programs for all insureds in the plan. At the direction of the
22 board, the Division of Safety shall provide inspection to
23 insureds and applicants for coverage in the plan identified as
24 high-risk insureds by the board or its designee.

25 12. Authorize the plan to terminate the coverage of
26 and refuse future coverage to any insured who fails to pay
27 premiums or surcharges when due; who, at the time of
28 application, is delinquent in payments of workers'
29 compensation or employer's liability insurance premiums or
30 surcharges owed to an insurer, group self-insurers' fund,
31 commercial self-insurance fund, or assessable mutual insurer

1 licensed to write such coverage in this state; or who refuses
2 to substantially comply with any safety programs recommended
3 by the plan.

4 13. Authorize the board of governors to provide the
5 services required by the plan through staff employed by the
6 plan, through reasonably compensated service providers who
7 contract with the plan to provide services as specified by the
8 board of governors, or through a combination of employees and
9 service providers.

10 14. Provide for service standards for service
11 providers, methods of determining adherence to those service
12 standards, incentives and disincentives for service, and
13 procedures for terminating contracts for service providers
14 that fail to adhere to service standards.

15 15. Provide procedures for selecting service providers
16 and standards for qualification as a service provider that
17 reasonably assure that any service provider selected will
18 continue to operate as an ongoing concern and is capable of
19 providing the specified services in the manner required.

20 16. Provide for reasonable accounting and
21 data-reporting practices.

22 17. Provide for annual review of costs associated with
23 the administration and servicing of the policies issued by the
24 plan to determine alternatives by which costs can be reduced.

25 18. Authorize the acquisition of such excess insurance
26 or reinsurance as is consistent with the purposes of the plan.

27 19. Provide for an annual report to the department on
28 a date specified by the department and containing such
29 information as the department reasonably requires.

30 20. Establish multiple rating plans for various
31 classifications of risk which reflect risk of loss, hazard

1 grade, actual losses, size of premium, and compliance with
2 loss control. At least one of such plans must be a
3 preferred-rating plan to accommodate small-premium
4 policyholders with good experience as defined in
5 sub-subparagraph 22.a.

6 21. Establish agent commission schedules.

7 22. Establish three subplans as follows:

8 a. Subplan "A" must include those insureds whose
9 annual premium does not exceed \$2,500 and who have neither
10 incurred any lost-time claims nor incurred medical-only claims
11 exceeding 50 percent of their premium for the immediate 2
12 years.

13 b. Subplan "B" must include insureds that are
14 employers identified by the board of governors as high-risk
15 employers due solely to the nature of the operations being
16 performed by those insureds and for whom no market exists in
17 the voluntary market, and whose experience modifications are
18 less than 1.00.

19 c. Subplan "C" must include all other insureds within
20 the plan.

21 (g)~~(c)~~ The plan must be funded through actuarially
22 sound premiums charged to insureds of the plan. The plan may
23 issue assessable policies only to those insureds in subplan
24 "C." Those assessable policies must be clearly identified as
25 assessable by containing, in contrasting color and in not less
26 than 10-point type, the following statements: "This is an
27 assessable policy. If the plan is unable to pay its
28 obligations, policyholders will be required to contribute on a
29 pro rata earned premium basis the money necessary to meet any
30 assessment levied." The plan may issue assessable policies
31 with differing terms and conditions to different groups within

1 the plan when a reasonable basis exists for the
2 differentiation. The plan may offer rating, dividend plans,
3 and other plans to encourage loss prevention programs.

4 (h)~~(d)~~ The plan shall establish and use its rates and
5 rating plans, and the plan may establish and use changes in
6 rating plans at any time, but no more frequently than two
7 times per any rating class for any calendar year. By December
8 1, 1993, and December 1 of each year thereafter, the board
9 shall establish and use actuarially sound rates for use by the
10 plan to assure that the plan is self-funding while those rates
11 are in effect. Such rates and rating plans must be filed with
12 the department within 30 calendar days after their effective
13 dates, and shall be considered a "use and file" filing. Any
14 disapproval by the department must have an effective date that
15 is at least 60 days from the date of disapproval of the rates
16 and rating plan and must have prospective effect only. The
17 plan may not be subject to any order by the department to
18 return to policyholders any portion of the rates disapproved
19 by the department. The department may not disapprove any rates
20 or rating plans unless it demonstrates that such rates and
21 rating plans are excessive, inadequate, or unfairly
22 discriminatory.

23 (i)~~(e)~~ No later than June 1 of each year, the plan
24 shall obtain an independent actuarial certification of the
25 results of the operations of the plan for prior years, and
26 shall furnish a copy of the certification to the department.
27 If, after the effective date of the plan, the projected
28 ultimate incurred losses and expenses and dividends for prior
29 years exceed collected premiums, accrued net investment
30 income, and prior assessments for prior years, the

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1 certification is subject to review and approval by the
2 department before it becomes final.

3 (j)~~(f)~~ Whenever a deficit exists, the plan shall,
4 within 90 days, provide the department with a program to
5 eliminate the deficit within a reasonable time. The deficit
6 may be funded both through increased premiums charged to
7 insureds of the plan for subsequent years and through
8 assessments on insureds in the plan if the plan uses
9 assessable policies.

10 (k)~~(g)~~ Any premium or assessments collected by the
11 plan in excess of the amount necessary to fund projected
12 ultimate incurred losses and expenses of the plan and not paid
13 to insureds of the plan in conjunction with loss prevention or
14 dividend programs shall be retained by the plan for future
15 use.

16 (l)~~(h)~~ The decisions of the board of governors do not
17 constitute final agency action and are not subject to chapter
18 120.

19 (m)~~(i)~~ Policies for insureds shall be issued by the
20 plan.

21 (n)~~(j)~~ The plan created under this subsection is
22 liable only for payment for losses arising under policies
23 issued by the plan with dates of accidents occurring on or
24 after January 1, 1994.

25 (o)~~(k)~~ Plan losses are the sole and exclusive
26 responsibility of the plan, and payment for such losses must
27 be funded in accordance with this subsection and must not
28 come, directly or indirectly, from insurers or any guaranty
29 association for such insurers.

30 (p)~~(l)~~ Each joint underwriting plan or association
31 created under this section is not a state agency, board, or

1 commission. However, for the purposes of s. 199.183(1) only,
2 the joint underwriting plan is a political subdivision of the
3 state and is exempt from the corporate income tax.

4 (q)~~(m)~~ Each joint underwriting plan or association may
5 elect to pay premium taxes on the premiums received on its
6 behalf or may elect to have the member insurers to whom the
7 premiums are allocated pay the premium taxes if the member
8 insurer had written the policy. The joint underwriting plan or
9 association shall notify the member insurers and the
10 Department of Revenue by January 15 of each year of its
11 election for the same year. As used in this paragraph, the
12 term "premiums received" means the consideration for
13 insurance, by whatever name called, but does not include any
14 policy assessment or surcharge received by the joint
15 underwriting association as a result of apportioning losses or
16 deficits of the association pursuant to this section.

17 (r)~~(n)~~ Effective midnight, December 31, 1993, the
18 Florida Workers' Compensation Insurance Plan, administered by
19 the National Council on Compensation Insurance, shall
20 terminate, except with respect to workers' compensation
21 policies issued pursuant to such Florida Workers' Compensation
22 Insurance Plan with inception dates on or before December 31,
23 1993.

24 (s)~~(o)~~ Neither the plan nor any member of the board of
25 governors is liable for monetary damages to any person for any
26 statement, vote, decision, or failure to act, regarding the
27 management or policies of the plan, unless:

- 28 1. The member breached or failed to perform her or his
29 duties as a member; and
- 30 2. The member's breach of, or failure to perform,
31 duties constitutes:

1 a. A violation of the criminal law, unless the member
2 had reasonable cause to believe her or his conduct was
3 unlawful. A judgment or other final adjudication against a
4 member in any criminal proceeding for violation of the
5 criminal law estops that member from contesting the fact that
6 her or his breach, or failure to perform, constitutes a
7 violation of the criminal law; but does not estop the member
8 from establishing that she or he had reasonable cause to
9 believe that her or his conduct was lawful or had no
10 reasonable cause to believe that her or his conduct was
11 unlawful;

12 b. A transaction from which the member derived an
13 improper personal benefit, either directly or indirectly; or

14 c. Recklessness or any act or omission that was
15 committed in bad faith or with malicious purpose or in a
16 manner exhibiting wanton and willful disregard of human
17 rights, safety, or property. For purposes of this
18 sub-subparagraph, the term "recklessness" means the acting, or
19 omission to act, in conscious disregard of a risk:

20 (I) Known, or so obvious that it should have been
21 known, to the member; and

22 (II) Known to the member, or so obvious that it should
23 have been known, to be so great as to make it highly probable
24 that harm would follow from such act or omission.

25 (t) No insurer shall provide workers' compensation and
26 employer's liability insurance to any person who is delinquent
27 in the payment of premiums, assessments, penalties, or
28 surcharges owed to the plan.

29 ~~(p) The provisions of this subsection shall be~~
30 ~~reviewed by the Legislature before July 1, 1996.~~

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