

By the Committee on Health, Aging, and Long-Term Care; and
Senator Peadar

317-1951-03

1 A bill to be entitled
2 An act relating to healthcare professional
3 liability insurance; providing legislative
4 findings; creating s. 627.3575, F.S.; creating
5 the Health Care Professional Liability
6 Insurance Facility; providing purpose;
7 providing for governance by a board of
8 governors; providing for the facility to
9 provide excess liability insurance for certain
10 health care professionals; providing for
11 premiums; providing for regulation by the
12 Office of Insurance Regulation of the Financial
13 Services Commission; providing applicability;
14 providing for debt and regulation thereof;
15 authorizing the Office of Insurance Regulation
16 of adopt rules; providing an effective date.

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

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20 Section 1. Section 627.3575, Florida Statutes, is
21 created to read:

22 627.3575 Health Care Professional Liability Insurance
23 Facility.--

24 (1) FACILITY CREATED; PURPOSE; STATUS.--There is
25 created the Health Care Professional Liability Insurance
26 Facility. The facility is intended to meet ongoing
27 availability and affordability problems relating to liability
28 insurance for health care professionals by providing an
29 affordable, self-supporting source of excess insurance
30 coverage. The facility shall operate on a not-for-profit
31 basis. The facility is self-funding and is intended to serve a

1 public purpose but is not a state agency or program, and no
2 activity of the facility shall create any state liability.

3 (2) GOVERNANCE; POWERS.--

4 (a) The facility shall operate under a seven-member
5 board of governors consisting of the Secretary of Health,
6 three members appointed by the Governor, and three members
7 appointed by the Chief Financial Officer. The board shall be
8 chaired by the Secretary of Health. The secretary shall serve
9 by virtue of his or her office, and the other members of the
10 board shall serve terms concurrent with the term of office of
11 the official who appointed them. Any vacancy on the board
12 shall be filled in the same manner as the original
13 appointment. Members serve at the pleasure of the official who
14 appointed them. Members are not eligible for compensation for
15 their service on the board, but the facility may reimburse
16 them for per diem and travel expenses at the same levels as
17 are provided in s. 112.061 for state employees. The board
18 shall form a claims committee consisting of individuals having
19 experience in the management and disposition of medical
20 malpractice claims.

21 (b) The facility shall have such powers as are
22 necessary to operate as an excess insurer, including the power
23 to:

24 1. Sue and be sued.

25 2. Hire such employees and retain such consultants,
26 attorneys, actuaries, and other professionals as it deems
27 appropriate.

28 3. Contract with such service providers as it deems
29 appropriate.

30 4. Maintain offices appropriate to the conduct of its
31 business.

1 5. Take such other actions as are necessary or
2 appropriate in fulfillment of its responsibilities under this
3 section.

4 (3) COVERAGE PROVIDED.--The facility shall provide
5 excess liability insurance coverage for health care
6 professionals licensed under chapter 458 and chapter 459. The
7 facility shall allow policyholders to select from policies
8 with deductibles of \$100,000, \$200,000, and \$250,000; excess
9 coverage limits of \$250,000 per claim and \$750,000 annual
10 aggregate; \$1 million per claim and \$3 million annual
11 aggregate; or \$2 million and \$4 million annual aggregate. To
12 the greatest extent possible, the terms and conditions of the
13 policies shall be consistent with terms and conditions
14 commonly used by professional liability insurers. Since it is
15 the intent that the facility operate in all respects as an
16 excess insurer, the health care provider that elects to
17 self-insure for the chosen deductible shall be responsible for
18 the costs associated with the defense of a claim, including
19 attorney's fees. If the chosen deductible is to be satisfied
20 through commercial insurance, a self-insurance trust, or other
21 authorized insurance program, that entity shall be responsible
22 for the costs and fees associated with the defense of a claim.

23 (4) COVERAGE REQUIRED.--

24 (a) All health care professionals licensed under
25 chapter 458 or chapter 459 shall purchase coverage provided by
26 the facility as a condition of licensure.

27 (b) Such professional shall at all times maintain:

28 1. An escrow account consisting of cash or assets
29 eligible for deposit under s. 625.52 in an amount equal to the
30 chosen deductible amount of the policy;

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1 2. An unexpired, irrevocable letter of credit,
2 established pursuant to chapter 675, in an amount not less
3 than the chosen deductible amount of the policy. The letter of
4 credit shall be payable to the health care professional as
5 beneficiary upon presentment of a final judgment indicating
6 liability and awarding damages to be paid by the physician if
7 no appeal has been taken or if an appeal has been finally
8 disposed of, or upon presentment of a settlement agreement
9 signed by all parties to such agreement when such final
10 judgment or settlement is a result of a claim arising out of
11 the rendering of, or the failure to render, medical care and
12 services. Such letter of credit shall be nonassignable and
13 nontransferable. Such letter of credit shall be issued by any
14 bank or savings association organized and existing under the
15 laws of this state or any bank or savings association
16 organized under the laws of the United States that has its
17 principal place of business in this state or has a branch
18 office which is authorized under the laws of this state or of
19 the United States to receive deposits in this state; or

20 3. Professional liability coverage in an amount not
21 less than the chosen deductible amount of the policy offered
22 pursuant to this act from an authorized insurer as defined
23 under s. 624.09, from a surplus lines insurer as defined under
24 s. 626.914(2), from a risk retention group as defined under s.
25 627.942, from the Joint Underwriting Association established
26 under s. 627.351(4), or through a plan of self-insurance as
27 provided in s. 627.357.

28 (5) PREMIUMS.--The facility shall charge the
29 actuarially indicated premium for the coverage provided and
30 shall retain the services of consulting actuaries to prepare
31 its rate filings. The rate filings shall have no more than

1 three rating categories by specialty and shall apply a
2 discount or surcharge based on the provider's loss experience.
3 The facility shall not provide dividends to policyholders,
4 and, to the extent that premiums are more than the amount
5 required to cover claims and expenses, such excess, as
6 determined by the consulting actuaries, shall be retained by
7 the facility for payment of future claims. If it is determined
8 by the consulting actuaries that the premiums collected are
9 more than sufficient for the payment of future claims, such
10 excess funds may be distributed to the participants. In the
11 event of dissolution of the facility, any amounts not required
12 as a reserve for outstanding claims shall be transferred to
13 the policyholders of record as of the last day of operation.

14 (6) REGULATION; APPLICABILITY OF OTHER STATUTES.--

15 (a) The facility shall operate pursuant to a plan of
16 operation approved by order of the Office of Insurance
17 Regulation of the Financial Services Commission. The board of
18 governors may at any time adopt amendments to the plan of
19 operation and submit the amendments to the Office of Insurance
20 Regulation for approval.

21 (b) The facility is subject to regulation by the
22 Office of Insurance Regulation of the Financial Services
23 Commission in the same manner as other insurers and is exempt
24 from laws relating to a required surplus. Any required surplus
25 shall be determined by the Office of Insurance Regulation.

26 (c) The facility is not subject to part II of chapter
27 631, relating to the Florida Insurance Guaranty Association.

28 (7) STARTUP PROVISIONS.--

29 (a) It is the intent of the Legislature that the
30 facility begin providing excess coverage no later than January
31 1, 2004.

1 (b) The Governor and the Chief Financial Officer shall
2 make their appointments to the board of governors of the
3 facility no later than July 1, 2003. Until the board is
4 appointed, the Secretary of Health may perform ministerial
5 acts on behalf of the facility as chair of the board of
6 governors.

7 (c) Until the facility is able to hire permanent staff
8 and enter into contracts for professional services, the Office
9 of Insurance Regulation shall provide support services to the
10 facility.

11 (d) In order to provide startup funds for the
12 facility, the board of governors may incur debt or enter into
13 agreements for lines of credit, provided that the sole source
14 of funds for repayment of any debt is future premium revenues
15 of the facility. The amount of such debt or lines of credit
16 may not exceed \$10 million.

17 (e) The Office of Insurance Regulation is authorized
18 to adopt rules to implement the provisions of this act.

19 Section 2. Any policy issued under this act shall take
20 effect January 1, 2004, except that if a health care provider
21 holds a liability insurance policy that commenced in 2003 and
22 does not terminate until after January 1, 2004, such provider
23 must purchase coverage under this act upon the termination
24 date of that policy.

25 Section 3. This act shall take effect upon becoming a
26 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1154

This proposed committee substitute creates the Health Care Professional Liability Insurance Facility, a not-for-profit facility intended to provide medical physicians, osteopathic physicians, and physician assistants who have coverage for smaller claims with an affordable source of insurance (excess liability insurance coverage) for larger claims. The facility must begin providing excess coverage no later than January 1, 2004.

All health care professionals licensed under ch. 458 or ch. 459, F.S., must purchase coverage provided by the facility as a condition of licensure. In order to qualify for coverage, the insured will be required to maintain at all times an escrow account, under the provisions of s. 625.52, F.S., a letter of credit, established under the provisions of ch. 675, F.S., or professional liability insurance coverage equal to the selected deductible amount.

The facility must charge actuarially indicated premiums and is subject to regulation by the Office of Insurance Regulation in the same manner as other insurers. The facility must operate under a plan of operation approved by the Office of Insurance Regulation.

The facility will operate under a board of governors consisting of the Secretary of Health, who will serve as board chair; three members appointed by the Governor; and three members appointed by the Chief Financial Officer.