

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representatives Berfield, Harrell and Homan offered the following:

**Amendment (with directory and title amendments)**

Between lines 772 and 773, insert:

Section 21. Section 627.0662, Florida Statutes, is created to read:

627.0662 Excessive profits for medical liability insurance prohibited.--

(1) As used in this section:

(a) "Medical liability insurance" means insurance that is written on a professional liability insurance policy issued to a health care practitioner or on a liability insurance policy covering medical malpractice claims issued to a health care facility.

(b) "Medical liability insurer" means any insurance company or group of insurance companies writing medical

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28 liability insurance in this state and does not include any self-  
29 insurance fund or other nonprofit entity writing such insurance.

30 (2) Each medical liability insurer shall file with the  
31 Office of Insurance Regulation, prior to July 1 of each year on  
32 forms prescribed by the office, the following data for medical  
33 liability insurance business in this state. The data shall  
34 include both voluntary and joint underwriting association  
35 business, as follows:

36 (a) Calendar-year earned premium.

37 (b) Accident-year incurred losses and loss adjustment  
38 expenses.

39 (c) The administrative and selling expenses incurred in  
40 this state or allocated to this state for the calendar year.

41 (d) Policyholder dividends incurred during the applicable  
42 calendar year.

43 (3)(a) Excessive profit has been realized if there has  
44 been an underwriting gain for the 3 most recent calendar-  
45 accident years combined which is greater than the anticipated  
46 underwriting profit plus 5 percent of earned premiums for those  
47 calendar-accident years.

48 (b) As used in this subsection with respect to any 3-year  
49 period, "anticipated underwriting profit" means the sum of the  
50 dollar amounts obtained by multiplying, for each rate filing of  
51 the insurer group in effect during such period, the earned  
52 premiums applicable to such rate filing during such period by  
53 the percentage factor included in such rate filing for profit  
54 and contingencies, such percentage factor having been determined  
55 with due recognition to investment income from funds generated  
56 by business in this state. Separate calculations need not be

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57 made for consecutive rate filings containing the same percentage  
58 factor for profits and contingencies.

59 (4) Each medical liability insurer shall also file a  
60 schedule of medical liability insurance loss in this state and  
61 loss adjustment experience for each of the 3 most recent  
62 accident years. The incurred losses and loss adjustment expenses  
63 shall be valued as of March 31 of the year following the close  
64 of the accident year, developed to an ultimate basis, and at two  
65 12-month intervals thereafter, each developed to an ultimate  
66 basis, to the extent that a total of three evaluations is  
67 provided for each accident year. The first year to be so  
68 reported shall be accident year 2004, such that the reporting of  
69 3 accident years will not take place until accident years 2005  
70 and 2006 have become available.

71 (5) Each insurer group's underwriting gain or loss for  
72 each calendar-accident year shall be computed as follows: the  
73 sum of the accident-year incurred losses and loss adjustment  
74 expenses as of March 31 of the following year, developed to an  
75 ultimate basis, plus the administrative and selling expenses  
76 incurred in the calendar year, plus policyholder dividends  
77 applicable to the calendar year, shall be subtracted from the  
78 calendar-year earned premium to determine the underwriting gain  
79 or loss.

80 (6) For the 3 most recent calendar-accident years, the  
81 underwriting gain or loss shall be compared to the anticipated  
82 underwriting profit.

83 (7) If the medical liability insurer has realized an  
84 excessive profit, the office shall order a return of the  
85 excessive amounts to policyholders after affording the insurer

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86 an opportunity for hearing and otherwise complying with the  
87 requirements of chapter 120. Such excessive amounts shall be  
88 refunded to policyholders in all instances unless the insurer  
89 affirmatively demonstrates to the office that the refund of the  
90 excessive amounts will render the insurer or a member of the  
91 insurer group financially impaired or will render it insolvent.

92 (8) The excessive amount shall be refunded to  
93 policyholders on a pro rata basis in relation to the final  
94 compilation year earned premiums to the voluntary medical  
95 liability insurance policyholders of record of the insurer group  
96 on December 31 of the final compilation year.

97 (9) Any return of excessive profits to policyholders under  
98 this section shall be provided in the form of a cash refund or a  
99 credit towards the future purchase of insurance.

100 (10)(a) Cash refunds to policyholders may be rounded to  
101 the nearest dollar.

102 (b) Data in required reports to the office may be rounded  
103 to the nearest dollar.

104 (c) Rounding, if elected by the insurer group, shall be  
105 applied consistently.

106 (11)(a) Refunds to policyholders shall be completed as  
107 follows:

108 1. If the insurer elects to make a cash refund, the refund  
109 shall be completed within 60 days after entry of a final order  
110 determining that excessive profits have been realized; or

111 2. If the insurer elects to make refunds in the form of a  
112 credit to renewal policies, such credits shall be applied to  
113 policy renewal premium notices which are forwarded to insureds  
114 more than 60 calendar days after entry of a final order

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115 determining that excessive profits have been realized. If an  
116 insurer has made this election but an insured thereafter cancels  
117 his or her policy or otherwise allows the policy to terminate,  
118 the insurer group shall make a cash refund not later than 60  
119 days after termination of such coverage.

120 (b) Upon completion of the renewal credits or refund  
121 payments, the insurer shall immediately certify to the office  
122 that the refunds have been made.

123 (12) Any refund or renewal credit made pursuant to this  
124 section shall be treated as a policyholder dividend applicable  
125 to the year in which it is incurred, for purposes of reporting  
126 under this section for subsequent years.

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===== T I T L E A M E N D M E N T =====

Remove line(s) 48, and insert:  
filings; creating s. 627.0662, F.S.; providing definitions;  
requiring each medical liability insurer to report certain  
information to the Office of Insurance Regulation; providing for  
determination of whether excessive profit has been realized;  
requiring return of excessive amounts; amending s. 627.357,  
F.S.; deleting the