

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Homan offered the following:

Amendment (with title amendment)

Remove line(s) 785-935, and insert:

Section 22. Section 627.3575, Florida Statutes, is created to read:

627.3575 Health Care Professional Liability Insurance Facility.--

(1) FACILITY CREATED; PURPOSE; STATUS.--There is created the Health Care Professional Liability Insurance Facility. The facility is intended to meet ongoing availability and affordability problems relating to liability insurance for health care professionals by providing an affordable, self-supporting source of excess insurance coverage for those professionals who are willing and able to self-insure for smaller losses. The facility shall operate on a not-for-profit basis. The facility is self-funding and is intended to serve a

Amendment No. (for drafter's use only)

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

30 (2) GOVERNANCE; POWERS.--

31 (a) The facility shall operate under a seven-member board
32 of governors consisting of the Secretary of Health, three
33 members appointed by the Governor, and three members appointed
34 by the Chief Financial Officer. The board shall be chaired by
35 the Secretary of Health. The secretary shall serve by virtue of
36 his or her office, and the other members of the board shall
37 serve terms concurrent with the term of office of the official
38 who appointed them. Any vacancy on the board shall be filled in
39 the same manner as the original appointment. Members serve at
40 the pleasure of the official who appointed them. Members are not
41 eligible for compensation for their service on the board, but
42 the facility may reimburse them for per diem and travel expenses
43 at the same levels as are provided in s. 112.061 for state
44 employees.

45 (b) The facility shall have such powers as are necessary
46 to operate as an insurer, including the power to:

47 1. Sue and be sued.

48 2. Hire such employees and retain such consultants,
49 attorneys, actuaries, and other professionals as it deems
50 appropriate.

51 3. Contract with such service providers as it deems
52 appropriate.

53 4. Maintain offices appropriate to the conduct of its
54 business.

55 5. Take such other actions as are necessary or appropriate
56 in fulfillment of its responsibilities under this section.

Amendment No. (for drafter's use only)

57 (3) COVERAGE PROVIDED.--The facility shall provide
58 liability insurance coverage for health care professionals. The
59 facility shall allow policyholders to select from policies with
60 deductibles of \$25,000 per claim, \$50,000 per claim, and
61 \$100,000 per claim and with coverage limits of \$100,000 per
62 claim and \$300,000 annual aggregate, \$250,000 per claim and
63 \$750,000 annual aggregate, and \$1 million per claim and \$3
64 million annual aggregate. To the greatest extent possible, the
65 terms and conditions of the policies shall be consistent with
66 terms and conditions commonly used by professional liability
67 insurers.

68 (4) ELIGIBILITY; TERMINATION.--

69 (a) Any health care professional is eligible for coverage
70 provided by the facility if the professional at all times
71 maintains either:

72 1. An escrow account consisting of cash or assets eligible
73 for deposit under s. 625.52 in an amount equal to the deductible
74 amount of the policy; or

75 2. An unexpired, irrevocable letter of credit, established
76 pursuant to chapter 675, in an amount not less than the
77 deductible amount of the policy. The letter of credit shall be
78 payable to the health care professional as beneficiary upon
79 presentment of a final judgment indicating liability and
80 awarding damages to be paid by the physician or upon presentment
81 of a settlement agreement signed by all parties to such
82 agreement when such final judgment or settlement is a result of
83 a claim arising out of the rendering of, or the failure to
84 render, medical care and services. Such letter of credit shall
85 be nonassignable and nontransferable. Such letter of credit

178809

Amendment No. (for drafter's use only)

86 shall be issued by any bank or savings association organized and
87 existing under the laws of this state or any bank or savings
88 association organized under the laws of the United States that
89 has its principal place of business in this state or has a
90 branch office which is authorized under the laws of this state
91 or of the United States to receive deposits in this state.

92 (b) The eligibility of a health care professional for
93 coverage terminates upon:

94 1. The failure of the professional to comply with
95 paragraph (a);

96 2. The failure of the professional to timely pay premiums;
97 or

98 3. The commission of any act of fraud in connection with
99 the policy, as determined by the board of governors.

100 (c) The board of governors, in its discretion, may
101 reinstate the eligibility of a health care professional whose
102 eligibility has terminated pursuant to paragraph (b) upon
103 determining that the professional has come back into compliance
104 with paragraph (a) or has paid the overdue premiums. Eligibility
105 may be reinstated in the case of fraud only if the board
106 determines that its initial determination of fraud was in error.

107 (5) PREMIUMS.--

108 (a) The facility shall charge the actuarially indicated
109 premium for the coverage provided and shall retain the services
110 of consulting actuaries to prepare its rate filings. The
111 facility shall not provide dividends to policyholders, and, to
112 the extent that premiums are more than the amount required to
113 cover claims and expenses, such excess shall be retained by the
114 facility for payment of future claims. In the event of

Amendment No. (for drafter's use only)

115 dissolution of the facility, any amounts not required as a
116 reserve for outstanding claims shall be transferred to the
117 policyholders of record as of the last day of operation.

118 (b) To ensure that the facility has the funds to pay
119 claims:

120 1. From each judgment awarded and settlement agreed to
121 from which a claim will be paid in whole or in part by the
122 facility, the facility shall retain 1 percent of its portion of
123 the award or settlement for deposit into a separate account for
124 guaranteeing payment of claims.

125 2. From the funds of the Florida Birth-Related
126 Neurological Injury Compensation Association, the facility shall
127 receive the interest on the association's investments for
128 deposit into a separate account for guaranteeing payment of
129 claims.

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

131 (a) The facility shall operate pursuant to a plan of
132 operation approved by order of the Office of Insurance
133 Regulation of the Financial Services Commission. The board of
134 governors may at any time adopt amendments to the plan of
135 operation and submit the amendments to the Office of Insurance
136 Regulation for approval.

137 (b) The facility is subject to regulation by the Office of
138 Insurance Regulation of the Financial Services Commission in the
139 same manner as other insurers.

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

142 (7) STARTUP PROVISIONS.--

Amendment No. (for drafter's use only)

143 (a) It is the intent of the Legislature that the facility
144 begin providing coverage no later than January 1, 2004.

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

150 (c) Until the facility is able to hire permanent staff and
151 enter into contracts for professional services, the office of
152 the Secretary of Health shall provide support services to the
153 facility.

154 (d) In order to provide startup funds for the facility,
155 the board of governors may incur debt or enter into agreements
156 for lines of credit, provided that the sole source of funds for
157 repayment of any debt is future premium revenues of the
158 facility. The amount of such debt or lines of credit may not
159 exceed \$10 million. In addition to the debt or lines of credit
160 provided for in this paragraph, the facility shall be authorized
161 to borrow up to \$10 million from the Florida Birth-Related
162 Neurological Injury Compensation Association and repay the
163 association in equal annual installments over a period of 10
164 years.

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

168 Remove line(s) 56, and insert: premiums; providing for
169 regulation;