

Bill No. HB 1837, 2nd Eng.

Amendment No. \_\_\_\_ Barcode 952954

CHAMBER ACTION

Senate

House

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

5/AD/2R  
05/01/2003 06:40 PM

.  
. .  
. .  
. .  
. .  
. .

---

Senators Clary and Atwater moved the following amendment:

**Senate Amendment**

On lines 4864-5045, delete those lines

and insert:

(4)(a) Effective upon this act becoming a law, the department shall, after consultation with insurers, approve a joint underwriting plan of insurers which shall operate as a nonprofit entity. For the purposes of this subsection, the term "insurer" includes group self-insurance funds authorized by s. 624.4621, commercial self-insurance funds authorized by s. 624.462, assessable mutual insurers authorized under s. 628.6011, and insurers licensed to write workers' compensation and employer's liability insurance in this state. The purpose of the plan is to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and employer's liability insurance and who are in good faith entitled to but who are unable to ~~procure~~ ~~purchase~~ such insurance through the voluntary market. It is the intent of the Legislature that the

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 plan rates for workers' compensation and employer's liability  
2 insurance be actuarially sound and that such rates not be  
3 competitive with approved voluntary market rates, so that the  
4 plan functions as a residual market mechanism. ~~The joint~~  
5 underwriting plan shall issue policies beginning January 1,  
6 1994. The plan must have actuarially sound rates that assure  
7 that the plan is self-supporting.

8 (b) The operation of the plan is subject to the  
9 supervision of a 7-member ~~13-member~~ board of governors  
10 appointed by the Chief Financial Officer. The board of  
11 governors shall be comprised of:

12 1. Three representatives of workers' compensation  
13 insurers, at least one of which represents a domestic workers'  
14 compensation insurer ~~Five of the 20 domestic insurers, as~~  
15 ~~defined in s. 624.06(1), having the largest voluntary direct~~  
16 ~~premiums written in this state for workers' compensation and~~  
17 ~~employer's liability insurance, which shall be elected by~~  
18 ~~those 20 domestic insurers;~~

19 2. Three representatives of employers ~~Five of the 20~~  
20 ~~foreign insurers as defined in s. 624.06(2) having the largest~~  
21 ~~voluntary direct premiums written in this state for workers'~~  
22 ~~compensation and employer's liability insurance, which shall~~  
23 ~~be elected by those 20 foreign insurers; and~~

24 3. ~~One person, who shall serve as the chair, appointed~~  
25 ~~by the Insurance Commissioner;~~

26 4. ~~One person appointed by the largest property and~~  
27 ~~casualty insurance agents' association in this state; and~~

28 3.5. The consumer advocate appointed under s. 627.0613  
29 or the consumer advocate's designee.

30

31 Each board member shall serve at the pleasure of the Chief

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 Financial Officer, shall be appointed to a 3-year ~~4-year~~ term,  
2 and may serve consecutive terms. The Chief Financial Officer  
3 shall designate one of the appointees as chair. The Chief  
4 Financial Officer shall fill any board vacancy for the  
5 remaining portion of an unexpired term. No board member shall  
6 be an insurer which provides service to the plan or which has  
7 an affiliate which provides services to the plan or which is  
8 serviced by a service company or third-party administrator  
9 which provides services to the plan or which has an affiliate  
10 which provides services to the plan. The minutes, audits, and  
11 procedures of the board of governors are subject to chapter  
12 119, and the meetings of the board are subject to chapter 286.

13 (c) The operation of the plan shall be governed by a  
14 plan of operation that is prepared at the direction of the  
15 board of governors. The plan of operation may be changed at  
16 any time by the board of governors or upon request of the  
17 department. The plan of operation and all changes thereto are  
18 subject to the approval of the department. The plan of  
19 operation shall:

20 1. Authorize the board to engage in the activities  
21 necessary to implement this subsection, including, but not  
22 limited to, borrowing money.

23 2. Develop criteria for eligibility for coverage by  
24 the plan, including, but not limited to, take-out and keep-out  
25 provisions, as established in this subsection. For purposes of  
26 determining eligibility for coverage by the plan, a valid  
27 offer of coverage pursuant to the take-out and keep-out  
28 provisions of this paragraph shall be deemed to be an offer of  
29 coverage in this voluntary market. ~~documented rejection by at~~  
30 least two insurers which reasonably assures that insureds  
31 covered under the plan are unable to acquire coverage in the

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 ~~voluntary market. Any insured may voluntarily elect to accept~~  
2 ~~coverage from an insurer for a premium equal to or greater~~  
3 ~~than the plan premium if the insurer writing the coverage~~  
4 ~~adheres to the provisions of s. 627.171.~~

5       3. Require notice from the producer agent to the  
6 insured at the time of the application for coverage that the  
7 application is for coverage with the plan and that coverage  
8 may be available through an insurer, group self-insurers'  
9 fund, commercial self-insurance fund, or assessable mutual  
10 insurer through another insurance agent at a lower cost. As  
11 used in this subsection, "producer" means a person who is  
12 licensed by the department as a general lines agent, as  
13 defined by s. 626.015(7), and who has entered into a valid  
14 producer agreement with the plan.

15       4. Establish a market-assistance plan to facilitate  
16 depopulation of the plan by assisting employers that apply for  
17 coverage, or that are insured by the plan, in obtaining  
18 coverage in the voluntary market ~~programs to encourage~~  
19 ~~insurers to provide coverage to applicants of the plan in the~~  
20 ~~voluntary market and to insureds of the plan, including, but~~  
21 ~~not limited to:~~

22       a. Providing that all employers that apply for  
23 coverage or that are insured by the plan participate in the  
24 market-assistance plan.

25       b. Establishing procedures for an insurer to use in  
26 notifying the plan of the insurer's desire to participate in  
27 the market-assistance plan ~~provide coverage to applicants to~~  
28 ~~the plan or existing insureds of the plan and in describing~~  
29 ~~the types of risks in which the insurer is interested. The~~  
30 ~~description of the desired risks must be on a form developed~~  
31 ~~by the plan.~~

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1           c.b. Developing forms and procedures for the  
2 market-assistance plan to promptly ~~that~~ provide participating  
3 insurers with account profiles, which include, but are not  
4 limited to, the employer's name and federal employer  
5 identification number; the effective date reserved for  
6 in-process applications or the effective date of the plan  
7 policy; the governing class code; business description of the  
8 employer; the total number of employees estimated to be  
9 covered under the policy; the total estimated annual payroll,  
10 including corporate officers, partners, and sole proprietors;  
11 the total estimated annual premium for the employer; the  
12 employer's experience modification factor; the employer's  
13 physical or mailing address; and the mailing address of the  
14 applicable producer of record ~~an insurer with the information~~  
15 necessary to determine whether the insurer wants to write  
16 particular applicants to the plan or insureds of the plan.

17           d.c. Establishing procedures whereby an insurer can  
18 keep out or take out an employer eligible for the Tier One  
19 Rating Plan or the Tier Two Rating Plan, not to exceed 125  
20 percent of the approved voluntary market manual rate for that  
21 insured. An insurer keeping out or taking out an eligible  
22 employer under this paragraph shall not be required to make an  
23 additional rate or form filing with the Office of Insurance  
24 Regulation, and such take out or keep out shall not invoke the  
25 provision of s. 627.171. An employer that is the subject of a  
26 take-out or keep-out under this paragraph may be charged by  
27 the insurer taking out or keeping out the employer a premium  
28 not to exceed 125 percent of the effective voluntary market  
29 manual rate for no more than 3 years, after which time the  
30 employer shall be rated on voluntary market premiums and  
31 rules. An employer who is offered coverage under a take-out or

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 ~~keep-out offer shall be ineligibile for coverage in the plan.~~  
 2 ~~Developing procedures for notice to the plan and the applicant~~  
 3 ~~to the plan or insured of the plan that an insurer will insure~~  
 4 ~~the applicant or the insured of the plan, and notice of the~~  
 5 ~~cost of the coverage offered; and developing procedures for~~  
 6 ~~the selection of an insuring entity by the applicant or~~  
 7 ~~insured of the plan.~~

8 e.d. Establishing procedures by which participating  
 9 insurers promptly notify the market assistance plan of the  
 10 identity of an employer whose insurance business it intends to  
 11 take out or keep out and the identity of any employer to whom  
 12 the insurer provides coverage, including the premium charged  
 13 for such coverage. Provide for a market-assistance plan to  
 14 assist in the placement of employers. All applications for  
 15 coverage in the plan received 45 days before the effective  
 16 date for coverage shall be processed through the  
 17 market-assistance plan. A market-assistance plan specifically  
 18 designed to serve the needs of small good policyholders as  
 19 defined by the board must be finalized by January 1, 1994.

20 f. Establishing procedures by which the  
 21 market-assistance plan will make available to participating  
 22 insurers monthly depopulation reports, which include the  
 23 account profiles of employers for whom the plan bound coverage  
 24 in the preceding month and employers covered by the plan whose  
 25 coverage is due to expire within the following 3 months.

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

29 6. Provide for the review of applications for coverage  
 30 with the plan for reasonableness and accuracy, using any  
 31 available historic information regarding the applicant

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 insured.

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

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

12           9. Establish service standards for producers ~~agents~~  
13 who submit business to the plan.

14           10. Establish criteria and procedures to prohibit any  
15 producer ~~agent~~ who does not adhere to the established service  
16 standards from placing business with the plan or receiving,  
17 directly or indirectly, any commissions for business placed  
18 with the plan. All insureds of the plan must participate in  
19 the safety program.

20           11. Provide for the establishment of reasonable safety  
21 programs for all insureds in the plan.

22           12. Authorize the plan to terminate the coverage of  
23 and refuse future coverage to any insured who fails to pay  
24 premiums or surcharges when due; who, at the time of  
25 application, is delinquent in payments of workers'  
26 compensation or employer's liability insurance premiums or  
27 surcharges owed to an insurer, group self-insurers' fund,  
28 commercial self-insurance fund, or assessable mutual insurer  
29 licensed to write such coverage in this state; or who refuses  
30 to substantially comply with any safety programs recommended  
31 by the plan.

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

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

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

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

17           16. Provide for reasonable accounting and  
18 data-reporting practices.

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

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

24           19. Provide for an annual report to the department on  
25 a date specified by the department and containing such  
26 information as the department reasonably requires.

27           ~~20. Establish multiple rating plans for various~~  
28 ~~classifications of risk which reflect risk of loss, hazard~~  
29 ~~grade, actual losses, size of premium, and compliance with~~  
30 ~~loss control. At least one of such plans must be a~~  
31 ~~preferred rating plan to accommodate small premium~~



Bill No. HB 1837, 2nd Enq.

Amendment No.      Barcode 952954

1 ~~policyholders with good experience as defined in~~  
 2 ~~sub-subparagraph 22.a.~~  
 3       20.21. Establish producer agent commission schedules.  
 4       21.22. Establish a three-tier rating plan effective  
 5 July 1, 2003, three subplans as follows:  
 6       a. Tier One must include those employers whose premium  
 7 does not exceed \$20,000 at the time of application who have  
 8 neither incurred any lost-time claims nor incurred  
 9 medical-only claims exceeding 50 percent of the premium in the  
 10 immediately preceding 2 years prior to the expiration or  
 11 cancellation date of the current plan policy. Subplan "A" must  
 12 include those insureds whose annual premium does not exceed  
 13 \$2,500 and who have neither incurred any lost-time claims nor  
 14 incurred medical-only claims exceeding 50 percent of their  
 15 premium for the immediate 2 years.  
 16       b. Tier Two must include those employers in the plan  
 17 who are unable to procure in the voluntary market, but have an  
 18 experience modification factor of 1.05 or less, and employers  
 19 that are charitable and nonprofit organizations. For purposes  
 20 of this sub-subparagraph the term "charitable and nonprofit  
 21 organization" means an organization that is exempt from  
 22 federal income tax pursuant to section 501(c)(3) of the  
 23 Internal Revenue Code and receives 50 percent or more of its  
 24 funding from gifts, grants, endowments, or federal or state  
 25 contracts. Subplan "B" must include insureds that are  
 26 employers identified by the board of governors as high-risk  
 27 employers due solely to the nature of the operations being  
 28 performed by those insureds and for whom no market exists in  
 29 the voluntary market, and whose experience modifications are  
 30 less than 1.00.  
 31       c. Tier Three must include all other employers of the

Bill No. HB 1837, 2nd Enq.

Amendment No.      Barcode 952954

1 plan, and may include multiple subrating plans for various  
2 classifications of insureds which reflect the risk of loss,  
3 hazard grade, actual losses, size of premium, compliance with  
4 loss control, and other reasonable actuarial factors. Subplan  
5 ~~"C" must include all other insureds within the plan.~~

6 d. For purposes of this subparagraph, the term  
7 "employer" includes all affiliated entities of the employer.  
8 The term "affiliated" means and includes one or more  
9 corporations or entities under the same or substantially the  
10 same control of a group of business entities that are  
11 connected or associated so that one entity controls or has the  
12 power to control each of the other business entities.

13 (d) The premiums for Tier One and Tier Two insureds  
14 shall be 125 percent of the premium for that insured using the  
15 approved voluntary market manual rates. The premium for Tier  
16 Three shall be actuarially sound to assure that Tier Three is  
17 self-supporting. The plan must be funded through actuarially  
18 sound premiums charged to insureds of the plan. The plan may  
19 issue assessable policies only to those insureds in Tier Three  
20 ~~subplan "C."~~ If the plan issues assessable policies to  
21 insureds in Tier Three, such insureds shall be liable on a pro  
22 rata earned premium basis for any deficits incurred in Tier  
23 Three. Those assessable policies must be clearly identified  
24 as assessable by containing, in contrasting color and in not  
25 less than 10-point type, the following statements: "This is an  
26 assessable policy. If the plan is unable to pay its  
27 obligations, policyholders will be required to contribute on a  
28 pro rata earned premium basis the money necessary to meet any  
29 assessment levied." The plan may issue assessable policies  
30 with differing terms and conditions to different groups within  
31 the plan when a reasonable basis exists for the

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 differentiation. The plan may offer rating, dividend plans,  
2 and other plans to encourage loss prevention programs.

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

22 (f) No later than June 1 of each year, the plan shall  
23 obtain an independent actuarial certification of the results  
24 of the operations of the plan for prior years, and shall  
25 furnish a copy of the certification to the department. If,  
26 after the effective date of the plan, the projected ultimate  
27 incurred losses and expenses and dividends for prior years  
28 exceed collected premiums, accrued net investment income, and  
29 prior assessments for prior years, the certification is  
30 subject to review and approval by the department before it  
31 becomes final.

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1           (g) Before July 1 of each year, the plan shall notify  
2 the department when a deficit occurs in Tier One or Tier Two  
3 in the prior fiscal year. After verification by the  
4 department, the department shall transfer to the plan, subject  
5 to appropriation by the Legislature, a one time allocation of  
6 an amount not to exceed \$5 million. The plan shall levy an  
7 assessment for any deficit remaining after the transfer.  
8 Subject to verification by the department, the plan shall levy  
9 an assessment on Florida Workers' Compensation policyholders,  
10 which assessment shall not exceed 2 percent of each  
11 policyholder's annual premium in any calendar year. Such  
12 assessments shall be collected from Florida policyholders by  
13 insurers writing workers' compensation insurance as a separate  
14 line item, in addition to the premiums charged by the  
15 insurers, and remitted by the insurers to the plan. Whenever a  
16 deficit exists in Tier Three, the plan shall, within 90 days,  
17 provide the department with a program to eliminate the deficit  
18 within a reasonable time. The Tier-Three deficit may be funded  
19 through increased premiums charged to insureds of the plan for  
20 subsequent years, through the use of policyholder surplus  
21 attributable to any year, and through assessments on insureds  
22 in the plan if the plan uses assessable policies. The  
23 department shall adopt by rule insurer reporting requirements  
24 for the collection and remittance of collection and remittance  
25 of assessments under this paragraph. For purposes of plan  
26 record-keeping, reporting, and accounting, including  
27 determining whether any deficit has incurred in Tier One, Tier  
28 Two, or Tier Three, all policyholder surplus of the plan which  
29 exists as of the effective date of this law shall be  
30 attributed to Tier Three.

31           (h) Any premium or assessments collected by the plan

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 in excess of the amount necessary to fund projected ultimate  
2 incurred losses and expenses of the plan and not paid to  
3 insureds of the plan in conjunction with loss prevention or  
4 dividend programs shall be retained by the plan for future  
5 use.

6 (i) The decisions of the board of governors do not  
7 constitute final agency action and are not subject to chapter  
8 120.

9 (j) Policies for insureds shall be issued by the plan.

10 (k) The plan created under this subsection is liable  
11 only for payment for losses arising under policies issued by  
12 the plan with dates of accidents occurring on or after January  
13 1, 1994.

14 ~~(l) Plan losses are the sole and exclusive~~  
15 ~~responsibility of the plan, and payment for such losses must~~  
16 ~~be funded in accordance with this subsection and must not~~  
17 ~~come, directly or indirectly, from insurers or any guaranty~~  
18 ~~association for such insurers.~~

19 ~~(l)(m)~~ Each joint underwriting plan or association  
20 created under this section is not a state agency, board, or  
21 commission. However, for the purposes of s. 199.183(1) only,  
22 the joint underwriting plan is a political subdivision of the  
23 state and is exempt from the corporate income tax.

24 ~~(n) Each joint underwriting plan or association may~~  
25 ~~elect to pay premium taxes on the premiums received on its~~  
26 ~~behalf or may elect to have the member insurers to whom the~~  
27 ~~premiums are allocated pay the premium taxes if the member~~  
28 ~~insurer had written the policy. The joint underwriting plan or~~  
29 ~~association shall notify the member insurers and the~~  
30 ~~Department of Revenue by January 15 of each year of its~~  
31 ~~election for the same year. As used in this paragraph, the~~

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 ~~term "premiums received" means the consideration for~~  
 2 ~~insurance, by whatever name called, but does not include any~~  
 3 ~~policy assessment or surcharge received by the joint~~  
 4 ~~underwriting association as a result of apportioning losses or~~  
 5 ~~deficits of the association pursuant to this section.~~

6 ~~(m)(o)~~ Neither the plan nor any member of the board of  
 7 governors is liable for monetary damages to any person for any  
 8 statement, vote, decision, or failure to act, regarding the  
 9 management or policies of the plan, unless:

10 1. The member breached or failed to perform her or his  
 11 duties as a member; and

12 2. The member's breach of, or failure to perform,  
 13 duties constitutes:

14 a. A violation of the criminal law, unless the member  
 15 had reasonable cause to believe her or his conduct was not  
 16 unlawful. A judgment or other final adjudication against a  
 17 member in any criminal proceeding for violation of the  
 18 criminal law estops that member from contesting the fact that  
 19 her or his breach, or failure to perform, constitutes a  
 20 violation of the criminal law; but does not estop the member  
 21 from establishing that she or he had reasonable cause to  
 22 believe that her or his conduct was lawful or had no  
 23 reasonable cause to believe that her or his conduct was  
 24 unlawful;

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

27 c. Recklessness or any act or omission that was  
 28 committed in bad faith or with malicious purpose or in a  
 29 manner exhibiting wanton and willful disregard of human  
 30 rights, safety, or property. For purposes of this  
 31 sub-subparagraph, the term "recklessness" means the acting, or

Bill No. HB 1837, 2nd Enq.

Amendment No. \_\_\_\_ Barcode 952954

1 omission to act, in conscious disregard of a risk:

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

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

7 ~~(n)(p)~~ No insurer shall provide workers' compensation  
8 and employer's liability insurance to any person who is  
9 delinquent in the payment of premiums, assessments, penalties,  
10 or surcharges owed to the plan.

11 (o) The plan and any premiums, assessments, penalties,  
12 fees, and surcharges of the plan are exempt from premium  
13 taxation, and are exempt from any assessments under ss. 440.49  
14 and 440.51.

15 (p) The operational activities of the plan shall be  
16 maintained in the same city in which the plan was located as  
17 of January 1, 2003.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31