

By the Committee on Banking and Insurance

311-1882-03

1                                   A bill to be entitled

2           An act relating to public records and meetings;

3           reenacting and amending s. 627.311, F.S.,

4           relating to exemptions from public-records

5           requirements and public-meetings requirements

6           for the Florida Automobile Joint Underwriting

7           Association; designating the Florida Automobile

8           Joint Underwriting Association as the joint

9           underwriting plan for apportioning automobile

10          liability among insurers; providing for a board

11          of governors; removing the public-records

12          exemption for matters encompassed in privileged

13          attorney-client communications; clarifying

14          provisions requiring the confidentiality of

15          certain claims files and records of closed

16          meetings; removing the repeal of s.

17          627.311(3)(1), F.S., scheduled under the Open

18          Government Sunset Review Act of 1995; amending

19          ss. 440.51 and 631.912, F.S., relating to the

20          administration of ch. 440, F.S., and the board

21          of directors of the Florida Workers'

22          Compensation Insurance Guaranty Association,

23          Incorporated; conforming provisions to changes

24          made by the act; providing an effective date.

25

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

27

28           Section 1. Notwithstanding the repeal of paragraph (1)

29 of subsection (3) of section 627.311, Florida Statutes,

30 scheduled on October 2, 2003, under the Open Government Sunset

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1 Review Act of 1995, section 627.311, Florida Statutes, is  
2 reenacted and amended to read:

3           627.311 Joint underwriters and joint reinsurers;  
4 public records and public meetings exemptions.--

5           (1) Every group, association, or other organization of  
6 insurers which engages in joint underwritings or joint  
7 reinsurance shall be subject to regulation with respect  
8 thereto as ~~herein~~ provided in this section, subject, however,  
9 with respect to joint underwriting, to all other provisions of  
10 this chapter and, with respect to joint reinsurance, to ss.  
11 624.15 and 624.3161.

12           (2) If the department finds that any activity or  
13 practice of any such group, association, or other organization  
14 is unfair or unreasonable or otherwise inconsistent with the  
15 provisions of this chapter, it may issue a written order  
16 specifying in what respects such activity or practice is  
17 unfair or unreasonable or otherwise inconsistent with the  
18 provisions of this chapter, and requiring the discontinuance  
19 of such activity or practice.

20           (3) The office ~~department~~ may, after consultation with  
21 insurers licensed to write automobile insurance in this state,  
22 approve a joint underwriting plan for purposes of equitable  
23 apportionment or sharing among insurers of automobile  
24 liability insurance and other motor vehicle insurance, as an  
25 alternate to the plan required in s. 627.351(1). All insurers  
26 authorized to write automobile insurance in this state shall  
27 subscribe to the plan and participate therein. The plan shall  
28 be subject to continuous review by the office, ~~department~~  
29 which may at any time disapprove the entire plan or any part  
30 thereof if it determines that conditions have changed since  
31 prior approval and that in view of the purposes of the plan

1 changes are warranted. Any disapproval by the office  
2 ~~department~~ shall be subject to the provisions of chapter 120.  
3 The Florida Automobile Joint Underwriting Association is  
4 created under the plan.~~if adopted,~~The plan and the  
5 association ~~created under the plan~~:  
6 (a) Must be subject to all provisions of s.  
7 627.351(1), except apportionment of applicants.  
8 (b) May provide for one or more designated insurers,  
9 able and willing to provide policy and claims service, to act  
10 on behalf of all other insurers to provide insurance for  
11 applicants who are in good faith entitled to, but unable to,  
12 procure insurance through the voluntary insurance market at  
13 standard rates.  
14 (c) Must provide that designated insurers will issue  
15 policies of insurance and provide policyholder and claims  
16 service on behalf of all insurers for the joint underwriting  
17 association.  
18 (d) Must provide for the equitable apportionment among  
19 insurers of losses and expenses incurred.  
20 (e) Must provide that the joint underwriting  
21 association will operate subject to the supervision and  
22 approval of a board of governors consisting of 11 individuals,  
23 including 1 who will be elected as chair. Five members of the  
24 board must be appointed by the Insurance Commissioner. Two of  
25 the commissioner's appointees must be chosen from the  
26 insurance industry. Any board member appointed by the  
27 Insurance Commissioner may be removed and replaced by her or  
28 him at any time without cause. Six members of the board must  
29 be appointed by the participating insurers, two of whom must  
30 be from the insurance agents' associations. All board  
31 members, including the chair, must be appointed to serve for

1 2-year terms beginning annually on a date designated by the  
2 plan.

3 (f) Must provide that an agent appointed to a  
4 servicing carrier must be a licensed general lines agent of an  
5 insurer that ~~which~~ is authorized to write automobile liability  
6 and physical damage insurance in the state and that ~~which~~ is  
7 actively writing such coverage in the county in which the  
8 agent is located, or the immediately adjoining counties, or an  
9 agent who places a volume of other property and casualty  
10 insurance in an amount equal to the premium volume placed with  
11 the Florida Joint Underwriting Association. The office  
12 ~~department~~ may, however, determine that an agent may be  
13 appointed to a servicing carrier if, after public hearing, the  
14 office ~~department~~ finds that consumers in the agent's  
15 operating area would not have adequate and reasonable access  
16 to the purchase of automobile insurance if the agent were not  
17 appointed to a servicing carrier.

18 (g) Must make available noncancelable coverage as  
19 provided in s. 627.7275(2).

20 (h) Must provide for the furnishing of a list of  
21 insureds and their mailing addresses upon the request of a  
22 member of the association or an insurance agent licensed to  
23 place business with an association member. The list must  
24 indicate whether the insured is currently receiving a good  
25 driver discount from the association. The plan may charge a  
26 reasonable fee to cover the cost incurred in providing the  
27 list.

28 (i) Must not provide a renewal credit or discount or  
29 any other inducement designed to retain a risk.

30 (j) Must not provide any other good driver credit or  
31 discount that is not actuarially sound. In addition to other

1 criteria that the plan may specify, to be eligible for a good  
2 driver credit, an insured must not have any criminal traffic  
3 violations within the most recent 36-month period preceding  
4 the date the discount is received.

5 (k) Shall have no liability, and no cause of action of  
6 any nature shall arise against, any member insurer or its  
7 agents or employees, agents or employees of the association,  
8 members of the board of governors of the association, or the  
9 office department or its representatives, for any action taken  
10 by them in the performance of their duties or responsibilities  
11 under this subsection. Such immunity does not apply to  
12 actions for or arising out of breach of any contract or  
13 agreement pertaining to insurance, or any willful tort.

14 (4) The Florida Automobile Joint Underwriting  
15 Association shall keep:

16 (a)(1)1. ~~Shall be subject to the public records~~  
17 ~~requirements of chapter 119 and the public meeting~~  
18 ~~requirements of s. 286.011. However,~~The following records of  
19 ~~the Florida Automobile Joint Underwriting Association are~~  
20 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
21 of the State Constitution:

22 1.a. Underwriting files, except that a policyholder or  
23 an applicant shall have access to his or her own underwriting  
24 files.

25 2.b. Claims files, until termination of all litigation  
26 and settlement of all claims arising out of the same incident,  
27 ~~although portions of the claims files may remain exempt, as~~  
28 ~~otherwise provided by law.~~ Confidential and exempt claims  
29 files file records may be released to other governmental  
30 agencies in the furtherance of their duties and  
31 responsibilities. The receiving agency must maintain the

1 confidential and exempt status of the claim file ~~upon written~~  
2 ~~request and demonstration of need; such records held by the~~  
3 ~~receiving agency remain confidential and exempt as provided by~~  
4 ~~this paragraph.~~

5 ~~3.c.~~ Records obtained or generated by an internal  
6 auditor pursuant to a routine audit, until the audit is  
7 completed or, if the audit is conducted as part of an  
8 investigation, until the investigation is closed or ceases to  
9 be active. An investigation is considered "active" while the  
10 investigation is being conducted with a reasonable, good faith  
11 belief that it could lead to the filing of administrative,  
12 civil, or criminal proceedings.

13 ~~d. Matters reasonably encompassed in privileged~~  
14 ~~attorney-client communications.~~

15 ~~4.e.~~ Proprietary information licensed to the  
16 association under contract when the contract provides for the  
17 confidentiality of such ~~proprietary~~ information.

18 ~~5.f.~~ All information relating to the medical condition  
19 or medical status of an association employee which is not  
20 relevant to that ~~the~~ employee's capacity to perform his or her  
21 duties, except as otherwise provided in this paragraph.  
22 Information that ~~which~~ is confidential and exempt includes  
23 ~~shall include~~, but is not limited to, information relating to  
24 workers' compensation, insurance benefits, and retirement or  
25 disability benefits.

26 ~~6.g.~~ All records relative to an employee's  
27 participation in an employee assistance program designed to  
28 assist any employee who has a behavioral or medical disorder,  
29 substance abuse problem, or emotional difficulty that ~~which~~  
30 affects the employee's job performance, except as otherwise  
31 provided in s. 112.0455(11).

1            ~~7.h.~~ Information relating to negotiations for  
2 financing, reinsurance, depopulation, or contractual services,  
3 until the conclusion of the negotiations.

4            ~~8.i.~~ Minutes of closed meetings regarding confidential  
5 and exempt underwriting files or confidential and exempt, ~~and~~  
6 ~~minutes of closed meetings regarding an open claims files,~~  
7 ~~file~~ until termination of all litigation and settlement of all  
8 claims with regard to that claim, except that information  
9 otherwise made confidential or exempt by law must be redacted.

10  
11 When an authorized insurer is considering underwriting a risk  
12 insured by the association, relevant confidential and exempt  
13 underwriting files and confidential and exempt claims files  
14 may be released to the insurer if ~~provided~~ the insurer agrees  
15 in writing, notarized and under oath, to maintain the  
16 confidential and exempt status ~~confidentiality~~ of such files.

17 When a file is transferred to an insurer, that file is no  
18 longer a public record because it is not held by an agency  
19 subject to the provisions of the public records law. The  
20 association may make the following information obtained from  
21 confidential and exempt underwriting files and confidential  
22 and exempt claims files available to licensed general lines  
23 insurance agents: name, address, and telephone number of the  
24 automobile owner or insured; location of the risk; rating  
25 information; loss history; and policy type. The receiving  
26 licensed general lines insurance agent must maintain ~~retain~~  
27 the confidential and exempt status ~~confidentiality~~ of the  
28 information received.

29            ~~(b)2.~~ Portions of association meetings ~~of the Florida~~  
30 ~~Automobile Joint Underwriting Association~~ during which  
31 confidential and exempt underwriting files or confidential and

1 exempt open claims files are discussed are exempt from the  
2 provisions of s. 286.011 and s. 24(b), Art. I of the State  
3 Constitution. All closed portions of association meetings  
4 ~~which are closed to the public~~ shall be recorded by a court  
5 reporter. The court reporter shall record the times of  
6 commencement and termination of the meeting, all discussion  
7 and proceedings, the names of all persons present at any time,  
8 and the names of all persons speaking. No portion of any  
9 closed meeting shall be off the record. Subject to the  
10 provisions of this paragraph and s. 119.07(2)(a), the court  
11 reporter's notes of any closed meeting shall be retained by  
12 the association for a minimum of 5 years. A copy of the  
13 transcript, less any confidential and exempt information  
14 ~~matters~~, of any closed meeting during which confidential and  
15 exempt claims files are discussed shall become public as to an  
16 individual claim file ~~claims~~ after settlement of that ~~the~~  
17 claim.

18  
19 ~~This paragraph is subject to the Open Government Sunset Review~~  
20 ~~Act of 1995 in accordance with s. 119.15, and shall stand~~  
21 ~~repealed on October 2, 2003, unless reviewed and saved from~~  
22 ~~repeal through reenactment by the Legislature.~~

23 (5)~~(4)~~(a) Effective upon this act becoming a law, the  
24 department shall, after consultation with insurers, approve a  
25 joint underwriting plan of insurers which shall operate as a  
26 nonprofit entity. For the purposes of this subsection, the  
27 term "insurer" includes group self-insurance funds authorized  
28 by s. 624.4621, commercial self-insurance funds authorized by  
29 s. 624.462, assessable mutual insurers authorized under s.  
30 628.6011, and insurers licensed to write workers' compensation  
31 and employer's liability insurance in this state. The purpose



1 of the plan is to provide workers' compensation and employer's  
2 liability insurance to applicants who are required by law to  
3 maintain workers' compensation and employer's liability  
4 insurance and who are in good faith entitled to but who are  
5 unable to purchase such insurance through the voluntary  
6 market. The joint underwriting plan shall issue policies  
7 beginning January 1, 1994. The plan must have actuarially  
8 sound rates that assure that the plan is self-supporting.

9 (b) The operation of the plan is subject to the  
10 supervision of a 13-member board of governors. The board of  
11 governors shall be comprised of:

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

17 2. Five of the 20 foreign insurers as defined in s.  
18 624.06(2) having the largest voluntary direct premiums written  
19 in this state for workers' compensation and employer's  
20 liability insurance, which shall be elected by those 20  
21 foreign insurers;

22 3. One person, who shall serve as the chair, appointed  
23 by the Insurance Commissioner;

24 4. One person appointed by the largest property and  
25 casualty insurance agents' association in this state; and

26 5. The consumer advocate appointed under s. 627.0613  
27 or the consumer advocate's designee.

28

29 Each board member shall serve a 4-year term and may serve  
30 consecutive terms. No board member shall be an insurer which  
31 provides service to the plan or which has an affiliate which

1 provides services to the plan or which is serviced by a  
2 service company or third-party administrator which provides  
3 services to the plan or which has an affiliate which provides  
4 services to the plan. The minutes, audits, and procedures of  
5 the board of governors are subject to chapter 119.

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

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

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

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

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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.

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.

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

1 | policyholders with good experience as defined in  
2 | sub-subparagraph 22.a.  
3 |       21. Establish agent commission schedules.  
4 |       22. Establish three subplans as follows:  
5 |       a. Subplan "A" must include those insureds whose  
6 | annual premium does not exceed \$2,500 and who have neither  
7 | incurred any lost-time claims nor incurred medical-only claims  
8 | exceeding 50 percent of their premium for the immediate 2  
9 | years.  
10 |       b. Subplan "B" must include insureds that are  
11 | employers identified by the board of governors as high-risk  
12 | employers due solely to the nature of the operations being  
13 | performed by those insureds and for whom no market exists in  
14 | the voluntary market, and whose experience modifications are  
15 | less than 1.00.  
16 |       c. Subplan "C" must include all other insureds within  
17 | the plan.  
18 |       (d) The plan must be funded through actuarially sound  
19 | premiums charged to insureds of the plan. The plan may issue  
20 | assessable policies only to those insureds in subplan "C."  
21 | Those assessable policies must be clearly identified as  
22 | assessable by containing, in contrasting color and in not less  
23 | than 10-point type, the following statements: "This is an  
24 | assessable policy. If the plan is unable to pay its  
25 | obligations, policyholders will be required to contribute on a  
26 | pro rata earned premium basis the money necessary to meet any  
27 | assessment levied." The plan may issue assessable policies  
28 | with differing terms and conditions to different groups within  
29 | the plan when a reasonable basis exists for the  
30 | differentiation. The plan may offer rating, dividend plans,  
31 | and other plans to encourage loss prevention programs.

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

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

30           (g) Whenever a deficit exists, the plan shall, within  
31 90 days, provide the department with a program to eliminate

1 the deficit within a reasonable time. The deficit may be  
2 funded through increased premiums charged to insureds of the  
3 plan for subsequent years, through the use of policyholder  
4 surplus attributable to any year, and through assessments on  
5 insureds in the plan if the plan uses assessable policies.

6 (h) Any premium or assessments collected by the plan  
7 in excess of the amount necessary to fund projected ultimate  
8 incurred losses and expenses of the plan and not paid to  
9 insureds of the plan in conjunction with loss prevention or  
10 dividend programs shall be retained by the plan for future  
11 use.

12 (i) The decisions of the board of governors do not  
13 constitute final agency action and are not subject to chapter  
14 120.

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

16 (k) The plan created under this subsection is liable  
17 only for payment for losses arising under policies issued by  
18 the plan with dates of accidents occurring on or after January  
19 1, 1994.

20 (l) Plan losses are the sole and exclusive  
21 responsibility of the plan, and payment for such losses must  
22 be funded in accordance with this subsection and must not  
23 come, directly or indirectly, from insurers or any guaranty  
24 association for such insurers.

25 (m) Each joint underwriting plan or association  
26 created under this section is not a state agency, board, or  
27 commission. However, for the purposes of s. 199.183(1) only,  
28 the joint underwriting plan is a political subdivision of the  
29 state and is exempt from the corporate income tax.

30 (n) Each joint underwriting plan or association may  
31 elect to pay premium taxes on the premiums received on its



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

12 (o) Neither the plan nor any member of the board of  
13 governors is liable for monetary damages to any person for any  
14 statement, vote, decision, or failure to act, regarding the  
15 management or policies of the plan, unless:

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

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

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

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

3           c. Recklessness or any act or omission that was  
4 committed in bad faith or with malicious purpose or in a  
5 manner exhibiting wanton and willful disregard of human  
6 rights, safety, or property. For purposes of this  
7 sub-subparagraph, the term "recklessness" means the acting, or  
8 omission to act, in conscious disregard of a risk:

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

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

14           (p) No insurer shall provide workers' compensation and  
15 employer's liability insurance to any person who is delinquent  
16 in the payment of premiums, assessments, penalties, or  
17 surcharges owed to the plan.

18           (6)~~(5)~~ As used in this section and ss. 215.555 and  
19 627.351, the term "collateral protection insurance" means  
20 commercial property insurance of which a creditor is the  
21 primary beneficiary and policyholder and which protects or  
22 covers an interest of the creditor arising out of a credit  
23 transaction secured by real or personal property. Initiation  
24 of such coverage is triggered by the mortgagor's failure to  
25 maintain insurance coverage as required by the mortgage or  
26 other lending document. Collateral protection insurance is not  
27 residential coverage.

28           Section 2. Paragraph (a) of subsection (13) of section  
29 440.51, Florida Statutes, is amended to read:

30           440.51 Expenses of administration.--

31           (13) As used in s. 440.50 and this section, the term:

1 (a) "Plan" means the workers' compensation joint  
2 underwriting plan provided for in s. 627.311(5)~~s. 627.311(4)~~.

3 Section 3. Subsection (3) of section 631.912, Florida  
4 Statutes, is amended to read:

5 631.912 Board of directors.--

6 (3) Effective upon this act becoming a law, the  
7 persons on the board of directors created pursuant to s.  
8 627.311(5)(a)~~s. 627.311(4)(a)~~ who evidence a willingness to  
9 serve in writing, shall serve as an interim board of directors  
10 of the corporation until the initial board of directors has  
11 been appointed for the corporation in accordance with the  
12 provisions of subsection (1). The interim board of directors  
13 shall serve for a period not to exceed 6 months. The initial  
14 meeting shall be called by the commissioner within 30 days  
15 after this act becomes a law. The interim board of directors  
16 shall establish a process for the selection of persons to  
17 serve on the board of the Florida Workers' Compensation  
18 Insurance Guaranty Association in accordance with the terms of  
19 subsection (1). The board of directors shall adopt an interim  
20 plan of operation to effect the merger in s. 631.911 and avoid  
21 any interruption of benefit payments to injured workers. When  
22 necessary and upon approval of the chairs of their respective  
23 board of directors, the Florida Self-Insurance Fund Guaranty  
24 Association and the Florida Insurance Guaranty Association  
25 shall provide staff support to the interim board of directors.  
26 The board shall submit the interim plan to the commissioner,  
27 who shall approve or disapprove the plan within 30 days after  
28 receipt.

29 Section 4. This act shall take effect October 1, 2003.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 280

Reinserts current law regarding appointments to the FAJUA governing board because this issue is addressed in SB 1712.