By the Committees on Appropriations; Judiciary; Health, Aging, and Long-Term Care; Banking and Insurance; and Senators Saunders and Peaden

309-2447-03

1 A bill to be entitled
2 An act relating to medical malpractice
3 insurance; providing legislative findings;
4 amending s. 624.462, F.S.; authorizing health
5 care providers to form a commercial
6 self-insurance fund; amending s. 627.062, F.S.;
7 providing that an insurer may not require
8 arbitration of a rate filing for medical
9 malpractice; providing additional requirements
10 for medical malpractice insurance rate filings;
11 providing that portions of judgments and
12 settlements entered against a medical
13 malpractice insurer for bad-faith actions or
14 for punitive damages against the insurer, as
15 well as related taxable costs and attorney's
16 fees, may not be included in an insurer's base
17 rate; providing for review of rate filings by
18 the Office of Insurance Regulation for
19 excessive, inadequate, or unfairly
20 discriminatory rates; requiring insurers to
21 apply a discount based on the health care
22 provider's loss experience; amending s.
23 627.0645, F.S.; excepting medical malpractice
24 insurers from certain annual filings; amending
25 s. 627.4147, F.S.; revising certain
26 notification criteria for medical and
27 osteopathic physicians; requiring prior
28 notification of a rate increase; authorizing
29 the purchase of insurance by certain health
30 care providers; amending s. 627.912, F.S.;
31 increasing the limit on a fine; requiring the

1 Office of Insurance Regulation to adopt by rule
2 requirements for reporting financial
3 information; creating s. 627.41491, F.S.;
4 requiring the Office of Insurance Regulation to
5 require health care providers to annually
6 publish certain rate comparison information;
7 creating s. 627.41493, F.S.; requiring a
8 medical malpractice insurance rate rollback;
9 providing for subsequent increases under
10 certain circumstances; requiring approval for
11 use of certain medical malpractice insurance
12 rates; creating s. 627.41492, F.S.; requiring
13 the Office of Insurance Regulation to publish
14 an annual medical malpractice report; creating
15 s. 627.41495, F.S.; providing for consumer
16 participation in review of medical malpractice
17 rate changes; providing for public inspection;
18 providing for adoption of rules by the Office
19 of Insurance Regulation; providing for a
20 mechanism to make effective the Florida Medical
21 Malpractice Insurance Fund in the event the
22 roll back of medical malpractice insurance
23 rates is not completed; creating the Florida
24 Medical Malpractice Insurance Fund; providing
25 purpose; providing governance by a board of
26 governors; providing for the fund to issue
27 medical malpractice policies to any physician
28 regardless of specialty; providing for
29 regulation by the Office of Insurance
30 Regulation of the Financial Services
31 Commission; providing applicability; providing

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1 for initial funding; providing for tax-exempt
2 status; providing for initial capitalization;
3 providing for termination of the fund;
4 providing that practitioners licensed under ch.
5 458 or ch. 459, F.S., must, as a licensure
6 requirement, obtain and maintain professional
7 liability coverage; requiring the Office of
8 Insurance Regulation to order insurers to make
9 rate filings effective January 1, 2004, which
10 reflect the impact of the act; providing
11 criteria for such rate filing; amending s.
12 456.049, F.S.; requiring the Department of
13 Health to report certain liability claims to
14 the Office of Insurance Regulation; amending s.
15 627.357, F.S.; providing guidelines for the
16 formation and regulation of certain
17 self-insurance funds; creating s. 627.9121,
18 F.S.; requiring certain claims, judgments, or
19 settlements to be reported to the Office of
20 Insurance Regulation; providing penalties;
21 requiring the Office of Program Policy Analysis
22 and Government Accountability to study and
23 report to the Legislature on requirements for
24 coverage by the Florida Birth-Related
25 Neurological Injury Compensation Association;
26 authorizing health care facilities to apply to
27 the Department of Financial Services for
28 discounts in insurance rates after reducing
29 adverse incidents and serious events at the
30 facility; requiring health care facilities to
31 apply to the Department of Financial Services

1 for the certification of programs recommended
2 by the Florida Center for Excellence in Health
3 Care; requiring the Department of Financial
4 Services to develop criteria for the
5 certification; requiring insurers to file rates
6 with the Department of Financial Services for
7 review under specified circumstances; creating
8 s. 627.0662, F.S.; providing definitions;
9 requiring each medical liability insurer to
10 report certain information to the Office of
11 Insurance Regulation; providing for
12 determination of whether excessive profit has
13 been realized; requiring return of excessive
14 amounts; amending s. 766.106, F.S.; providing
15 for application of common law principles of
16 good faith to an insurance company's bad-faith
17 actions arising out of medical malpractice
18 claims; providing that an insurer shall not be
19 held to have acted in bad faith for certain
20 activities during the presuit period and for
21 120 days after that period; providing
22 legislative intent; providing for severability;
23 providing a contingent effective date.
24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Findings.--
28 (1) The Legislature finds that Florida is in the midst
29 of a medical malpractice insurance crisis of unprecedented
30 magnitude.
31

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1 (2) The Legislature finds that this crisis threatens
2 the quality and availability of health care for all Florida
3 citizens.
4 (3) The Legislature finds that the rapidly growing
5 population and the changing demographics of Florida make it
6 imperative that students continue to choose Florida as the
7 place they will receive their medical educations and practice
8 medicine.
9 (4) The Legislature finds that Florida is among the
10 states with the highest medical malpractice insurance premiums
11 in the nation.
12 (5) The Legislature finds that the cost of medical
13 malpractice insurance has increased dramatically during the
14 past decade and both the increase and the current cost are
15 substantially higher than the national average.
16 (6) The Legislature finds that the increase in medical
17 malpractice liability insurance rates is forcing physicians to
18 practice medicine without professional liability insurance, to
19 leave Florida, to not perform high-risk procedures, or to
20 retire early from the practice of medicine.
21 (7) The Governor created the Governor's Select Task
22 Force on Healthcare Professional Liability Insurance to study
23 and make recommendations to address these problems.
24 (8) The Legislature has reviewed the findings and
25 recommendations of the Governor's Select Task Force on
26 Healthcare Professional Liability Insurance.
27 (9) The Legislature finds that the Governor's Select
28 Task Force on Healthcare Professional Liability Insurance has
29 established that a medical malpractice insurance crisis exists
30 in the State of Florida which can be alleviated by the
31 adoption of comprehensive legislatively enacted reforms.

1 (10) The Legislature finds that making high-quality
2 health care available to the citizens of this state is an
3 overwhelming public necessity.
4 (11) The Legislature finds that ensuring that
5 physicians continue to practice in Florida is an overwhelming
6 public necessity.
7 (12) The Legislature finds that ensuring the
8 availability of affordable professional liability insurance
9 for physicians is an overwhelming public necessity.
10 (13) The Legislature finds, based upon the findings
11 and recommendations of the Governor's Select Task Force on
12 Healthcare Professional Liability Insurance, the findings and
13 recommendations of various study groups throughout the nation,
14 and the experience of other states, that the overwhelming
15 public necessities of making quality health care available to
16 the citizens of this state, of ensuring that physicians
17 continue to practice in Florida, and of ensuring that those
18 physicians have the opportunity to purchase affordable
19 professional liability insurance cannot be met unless
20 comprehensive legislation is adopted.
21 (14) The Legislature finds that the provisions of this
22 act are naturally and logically connected to each other and to
23 the purpose of making quality health care available to the
24 citizens of Florida.
25 Section 2. Subsection (2) of section 624.462, Florida
26 Statutes, is amended to read:
27 624.462 Commercial self-insurance funds.--
28 (2) As used in ss. 624.460-624.488, "commercial
29 self-insurance fund" or "fund" means a group of members,
30 operating individually and collectively through a trust or
31 corporation, that must be:

(a) Established by:

1. A not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated under the laws of this state, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year;

2. A self-insurance trust fund organized pursuant to s. 627.357 and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance pursuant to this section. Each member of a commercial self-insurance trust fund established pursuant to this subsection must maintain membership in the self-insurance trust fund organized pursuant to s. 627.357; ~~or~~

3. A group of 10 or more health care providers, as defined in s. 627.351(4)(h); or

4.~~3.~~ A not-for-profit group comprised of no less than 10 condominium associations as defined in s. 718.103(2), which is incorporated under the laws of this state, which restricts its membership to condominium associations only, and which has been organized and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance.

(b)1. In the case of funds established pursuant to subparagraph (a)2. or subparagraph (a)4.~~subparagraph (a)3.~~, operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the fund and which shall be responsible for all operations of the fund. The majority of the trustees shall be owners, partners, officers, directors, or employees of one or more members of

1 the fund. The trustees shall have the authority to approve
2 applications of members for participation in the fund and to
3 contract with an authorized administrator or servicing company
4 to administer the day-to-day affairs of the fund.
5 2. In the case of funds established pursuant to
6 subparagraph (a)1. or subparagraph (a)3., operated pursuant to
7 a trust agreement by a board of trustees or as a corporation
8 by a board of directors which board shall:
9 a. Be responsible to members of the fund or
10 beneficiaries of the trust or policyholders of the
11 corporation;
12 b. Appoint independent certified public accountants,
13 legal counsel, actuaries, and investment advisers as needed;
14 c. Approve payment of dividends to members;
15 d. Approve changes in corporate structure; and
16 e. Have the authority to contract with an
17 administrator authorized under s. 626.88 to administer the
18 day-to-day affairs of the fund including, but not limited to,
19 marketing, underwriting, billing, collection, claims
20 administration, safety and loss prevention, reinsurance,
21 policy issuance, accounting, regulatory reporting, and general
22 administration. The fees or compensation for services under
23 such contract shall be comparable to the costs for similar
24 services incurred by insurers writing the same lines of
25 insurance, or where available such expenses as filed by
26 boards, bureaus, and associations designated by insurers to
27 file such data. A majority of the trustees or directors shall
28 be owners, partners, officers, directors, or employees of one
29 or more members of the fund.
30
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1 Section 3. Paragraph (a) of subsection (6) of section
2 627.062, Florida Statutes, is amended, and subsection (7) is
3 added to that section, to read:
4 627.062 Rate standards.--
5 (6)(a) After any action with respect to a rate filing
6 that constitutes agency action for purposes of the
7 Administrative Procedure Act, except for a rate filing for
8 medical malpractice, an insurer may, in lieu of demanding a
9 hearing under s. 120.57, require arbitration of the rate
10 filing. Arbitration shall be conducted by a board of
11 arbitrators consisting of an arbitrator selected by the
12 department, an arbitrator selected by the insurer, and an
13 arbitrator selected jointly by the other two arbitrators. Each
14 arbitrator must be certified by the American Arbitration
15 Association. A decision is valid only upon the affirmative
16 vote of at least two of the arbitrators. No arbitrator may be
17 an employee of any insurance regulator or regulatory body or
18 of any insurer, regardless of whether or not the employing
19 insurer does business in this state. The department and the
20 insurer must treat the decision of the arbitrators as the
21 final approval of a rate filing. Costs of arbitration shall be
22 paid by the insurer.
23 (7)(a) The provisions of this subsection apply only
24 with respect to rates for medical malpractice insurance and
25 shall control to the extent of any conflict with other
26 provisions of this section.
27 (b) Any portion of a judgment entered or settlement
28 paid as a result of a statutory or common-law bad-faith action
29 and any portion of a judgment entered which awards punitive
30 damages against an insurer may not be included in the
31 insurer's rate base, and shall not be used to justify a rate

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1 or rate change. Any common-law bad-faith action identified as
2 such and any portion of a settlement entered as a result of a
3 statutory or portion of a settlement wherein an insurer agrees
4 to pay specific punitive damages may not be used to justify a
5 rate or rate change. The portion of the taxable costs and
6 attorney's fees which is identified as being related to the
7 bad faith and punitive damages in these judgments and
8 settlements may not be included in the insurer's rate base and
9 may not be utilized to justify a rate or rate change.
10 (c) Upon reviewing a rate filing and determining
11 whether the rate is excessive, inadequate, or unfairly
12 discriminatory, the Office of Insurance Regulation shall
13 consider, in accordance with generally accepted and reasonable
14 actuarial techniques, past and present prospective loss
15 experience, either using loss experience solely for this state
16 or giving greater credibility to this state's loss data.
17 (d) Rates shall be deemed excessive if, among other
18 standards established by this section, the rate structure
19 provides for replenishment of reserves or surpluses from
20 premiums when the replenishment is attributable to investment
21 losses.
22 (e) The insurer must apply a discount or surcharge
23 based on the health care provider's loss experience, or shall
24 establish an alternative method giving due consideration to
25 the provider's loss experience. The insurer must include in
26 the filing a copy of the surcharge or discount schedule or a
27 description of the alternative method used, and must provide a
28 copy of such schedule or description, as approved by the
29 office, to policyholders at the time of renewal and to
30 prospective policyholders at the time of application for
31 coverage.

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Section 4. Subsections (1) and (2) of section 627.0645, Florida Statutes, are amended to read:

627.0645 Annual filings.--

(1) Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance to which this part applies, except:

(a) Workers' compensation and employer's liability insurance; or

(b) Commercial property and casualty insurance as defined in s. 627.0625(1) other than commercial multiple line, ~~and~~ commercial motor vehicle, and medical malpractice,

shall make an annual base rate filing for each such line with the department no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

(2)(a) Deviations, except for medical malpractice, filed by an insurer to any rating organization's base rate filing are not subject to this section.

(b) The department, after receiving a request to be exempted from the provisions of this section, may, for good cause due to insignificant numbers of policies in force or insignificant premium volume, exempt a company, by line of coverage, from filing rates or rate certification as required by this section.

Section 5. Effective October 1, 2003, section 627.4147, Florida Statutes, is amended to read:

627.4147 Medical malpractice insurance contracts.--

(1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or

1 services, including those of the Florida Medical Malpractice
2 Joint Underwriting Association, shall include:
3 (a) A clause requiring the insured to cooperate fully
4 in the review process prescribed under s. 766.106 if a notice
5 of intent to file a claim for medical malpractice is made
6 against the insured.
7 (b)1. Except as provided in subparagraph 2., a clause
8 authorizing the insurer or self-insurer to determine, to make,
9 and to conclude, without the permission of the insured, any
10 offer of admission of liability and for arbitration pursuant
11 to s. 766.106, settlement offer, or offer of judgment, if the
12 offer is within the policy limits. It is against public policy
13 for any insurance or self-insurance policy to contain a clause
14 giving the insured the exclusive right to veto any offer for
15 admission of liability and for arbitration made pursuant to s.
16 766.106, settlement offer, or offer of judgment, when such
17 offer is within the policy limits. However, any offer of
18 admission of liability, settlement offer, or offer of judgment
19 made by an insurer or self-insurer shall be made in good faith
20 and in the best interests of the insured.
21 2.a. With respect to physicians licensed under chapter
22 458 or chapter 459 or dentists licensed under chapter 466, a
23 clause clearly stating whether or not the insured has the
24 exclusive right to veto any offer of admission of liability
25 and for arbitration pursuant to s. 766.106, settlement offer,
26 or offer of judgment if the offer is within policy limits. An
27 insurer or self-insurer shall not make or conclude, without
28 the permission of the insured, any offer of admission of
29 liability and for arbitration pursuant to s. 766.106,
30 settlement offer, or offer of judgment, if such offer is
31 outside the policy limits. However, any offer for admission of

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1 liability and for arbitration made under s. 766.106,
2 settlement offer, or offer of judgment made by an insurer or
3 self-insurer shall be made in good faith and in the best
4 interest of the insured.
5 b. If the policy contains a clause stating the insured
6 does not have the exclusive right to veto any offer or
7 admission of liability and for arbitration made pursuant to s.
8 766.106, settlement offer or offer of judgment, the insurer or
9 self-insurer shall provide to the insured or the insured's
10 legal representative by certified mail, return receipt
11 requested, a copy of the final offer of admission of liability
12 and for arbitration made pursuant to s. 766.106, settlement
13 offer or offer of judgment and at the same time such offer is
14 provided to the claimant. A copy of any final agreement
15 reached between the insurer and claimant shall also be
16 provided to the insurer or his or her legal representative by
17 certified mail, return receipt requested not more than 10 days
18 after affecting such agreement.
19 c. Physicians licensed under chapter 458 or chapter
20 459 and dentists licensed under chapter 466 may purchase an
21 insurance policy pursuant to this subparagraph if such
22 policies are available. Insurers may offer such policies,
23 notwithstanding any other provision of law to the contrary.
24 (c) A clause requiring the insurer or self-insurer to
25 notify the insured no less than 90 ~~60~~ days prior to the
26 effective date of cancellation of the policy or contract and,
27 in the event of a determination by the insurer or self-insurer
28 not to renew the policy or contract, to notify the insured no
29 less than 90 ~~60~~ days prior to the end of the policy or
30 contract period. If cancellation or nonrenewal is due to
31 nonpayment or loss of license, 10 days' notice is required.

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(d) A clause requiring the insurer or self-insurer to notify the insured no less than 60 days prior to the effective date of a rate increase. The provisions of s. 627.4133 shall apply to such notice and to the failure of the insurer to provide such notice to the extent not in conflict with this section.

(2) ~~Each insurer covered by this section may require the insured to be a member in good standing, i.e., not subject to expulsion or suspension, of a duly recognized state or local professional society of health care providers which maintains a medical review committee.~~No professional society shall expel or suspend a member solely because he or she participates in a health maintenance organization licensed under part I of chapter 641.

(3) This section shall apply to all policies issued or renewed after October 1, 2003 ~~1985~~.

Section 6. Subsections (2) and (4) of section 627.912, Florida Statutes, are amended to read:

627.912 Professional liability claims and actions; reports by insurers.--

(2) The reports required by subsection (1) shall contain:

(a) The name, address, and specialty coverage of the insured.

(b) The insured's policy number.

(c) The date of the occurrence which created the claim.

(d) The date the claim was reported to the insurer or self-insurer.

(e) The name and address of the injured person. This information is confidential and exempt from the provisions of

1 s. 119.07(1), and must not be disclosed by the department
2 without the injured person's consent, except for disclosure by
3 the department to the Department of Health. This information
4 may be used by the department for purposes of identifying
5 multiple or duplicate claims arising out of the same
6 occurrence.
7 (f) The date of suit, if filed.
8 (g) The injured person's age and sex.
9 (h) The total number and names of all defendants
10 involved in the claim.
11 (i) The date and amount of judgment or settlement, if
12 any, including the itemization of the verdict, together with a
13 copy of the settlement or judgment.
14 (j) In the case of a settlement, such information as
15 the department may require with regard to the injured person's
16 incurred and anticipated medical expense, wage loss, and other
17 expenses.
18 (k) The loss adjustment expense paid to defense
19 counsel, and all other allocated loss adjustment expense paid.
20 (l) The date and reason for final disposition, if no
21 judgment or settlement.
22 (m) A summary of the occurrence which created the
23 claim, which shall include:
24 1. The name of the institution, if any, and the
25 location within the institution at which the injury occurred.
26 2. The final diagnosis for which treatment was sought
27 or rendered, including the patient's actual condition.
28 3. A description of the misdiagnosis made, if any, of
29 the patient's actual condition.
30 4. The operation, diagnostic, or treatment procedure
31 causing the injury.

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5. A description of the principal injury giving rise to the claim.

6. The safety management steps that have been taken by the insured to make similar occurrences or injuries less likely in the future.

(n) Any other information required by the office ~~department~~ to analyze and evaluate the nature, causes, location, cost, and damages involved in professional liability cases. The Financial Services Commission shall adopt by rule requirements for additional information to assist the office in its analysis and evaluation of the nature, causes, location, cost, and damages involved in professional liability cases reported by insurers under this section.

(4) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting hereunder or its agents or employees or the department or its employees for any action taken by them under this section. The department shall ~~may~~ impose a fine of $250 per day per case, but not to exceed a total of $10,000 ~~$1,000~~ per case, against an insurer that violates the requirements of this section. This subsection applies to claims accruing on or after October 1, 1997.

Section 7. Section 627.41491, Florida Statutes, is created to read:

627.41491 Medical malpractice rate comparison.--The Office of Insurance Regulation shall annually publish a comparison of the rate in effect for each medical malpractice insurer and self-insurer and the Florida Medical Malpractice Joint Underwriting Association. Such rate comparison shall be made available to the public through the Internet and other

1 commonly used means of distribution no later than July 1 of
2 each year.
3 Section 8. Section 627.41492, Florida Statutes, is
4 created to read:
5 627.41492 Annual medical malpractice report.--The
6 Office of Insurance Regulation shall prepare an annual report
7 by October 1 of each year, which shall be available to the
8 public and posted on the Internet, which includes the
9 following information:
10 (1) A summary and analysis of the closed claim
11 information required to be reported pursuant to s. 627.912.
12 (2) A summary and analysis of the annual and quarterly
13 financial reports filed by each insurer writing medical
14 malpractice insurance in this state.
15 Section 9. Section 627.41493, Florida Statutes, is
16 created to read:
17 627.41493 Insurance rate rollback.--
18 (1) For medical malpractice insurance policies issued
19 or renewed on or after July 1, 2003, and before July 1, 2004,
20 every insurer, including the Florida Medical Malpractice Joint
21 Underwriting Association, shall reduce its rates and premiums
22 to levels that were in effect on January 1, 2002.
23 (2) For medical malpractice insurance policies issued
24 or renewed on or after July 1, 2003, and before July 1, 2004,
25 rates and premiums reduced pursuant to subsection (1) may only
26 be increased if the director of the Office of Insurance
27 Regulation finds that an insurer or the Florida Medical
28 Malpractice Joint Underwriting Association is unable to earn a
29 fair rate of return. Any such increase must be approved by the
30 director of the Office of Insurance Regulation prior to being
31 used.

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1 (3) The provisions of this section control to the
2 extent of any conflict with the provision of s. 627.062.
3 Section 10. If, as of July 1, 2004, the director of
4 the Office of Insurance Regulation determines that the rates
5 of medical malpractice insurers have been reduced to the level
6 in effect January 1, 2002, but have not remained at the level
7 for the previous year beginning July 1, 2003, or that the
8 medical malpractice insurers have proposed increases from the
9 January 1, 2002, level that are greater than 15 percent for
10 either of the next 2 years beginning July 1, 2004, then the
11 Florida Medical Malpractice Insurance Fund established by
12 section 11 of this act shall begin offering coverage.
13 Section 11. Florida Medical Malpractice Insurance
14 Fund.--
15 (1) FINDINGS AND PURPOSES.--The Legislature finds and
16 declares that there is a compelling state interest in
17 maintaining the availability and affordability of health care
18 services to the citizens of Florida. This state interest is
19 seriously threatened by the increased cost and decreased
20 availability of medical malpractice insurance to physicians.
21 To the extent that the private sector is unable to maintain a
22 viable and orderly market for medical malpractice insurance,
23 state actions to maintain the availability and affordability
24 of medical malpractice insurance are a valid and necessary
25 exercise of the police power.
26 (2) DEFINITIONS.--As used in this section:
27 (a) "Fund" means the Florida Medical Malpractice
28 Insurance Fund, as created pursuant to this section.
29 (b) "Physician" means a physician licensed under
30 chapter 458 or chapter 459, Florida Statutes.
31

1 (3) FLORIDA MEDICAL MALPRACTICE INSURANCE FUND
2 CREATED.--Effective October 1, 2003, there is created the
3 Florida Medical Malpractice Insurance Fund, which shall be
4 subject to the requirements of this section. However, the fund
5 shall not begin providing or offering coverage until the date
6 the director of the Office of Insurance Regulation makes the
7 determination specified in section 10 of this act.
8 (a) The fund shall be administered by a board of
9 governors consisting of seven members who are appointed as
10 follows:
11 1. Three members by the Governor;
12 2. Three members by the Chief Financial Officer; and
13 3. One member by the other six board members.
14
15 Board members shall serve at the pleasure of the appointing
16 authority. Two board members must be doctors licensed in this
17 state and the Governor and the Chief Financial Officer shall
18 each appoint one of these doctors.
19 (b) The board shall submit a plan of operation, which
20 must be approved by the Office of Insurance Regulation of the
21 Financial Services Commission. The plan of operation and other
22 actions of the board shall not be considered rules subject to
23 the requirements of chapter 120, Florida Statutes.
24 (c) Except as otherwise provided by this section, the
25 fund shall be subject to the requirements of state law which
26 apply to authorized insurers.
27 (d) Moneys in the fund may not be expended, loaned, or
28 appropriated except to pay obligations of the fund arising out
29 of medical malpractice insurance policies issued to physicians
30 and the costs of administering the fund, including the
31 purchase of reinsurance as the board deems prudent. The board

1 shall enter into an agreement with the State Board of
2 Administration, which shall invest one-third of the moneys in
3 the fund pursuant to ss. 215.44-215.52, Florida Statutes. The
4 board shall enter into an agreement with the Division of
5 Treasury of the Department of Financial Services, which shall
6 invest two-thirds of the moneys in the fund pursuant to the
7 requirements for the investment of state funds in chapter 17,
8 Florida Statutes. Earnings from all investments shall be
9 retained in the fund, except as otherwise provided in this
10 section.
11 (e) The fund may employ or contract with such staff
12 and professionals as the board deems necessary for the
13 administration of the fund.
14 (f) There shall be no liability on the part of any
15 member of the board, its agents, or any employee of the state
16 for any action taken by them in the performance of their
17 powers and duties under this section. Such immunity does not
18 apply to any willful tort or to breach of any contract or
19 agreement.
20 (g) The fund is not a member insurer of the Florida
21 Insurance Guaranty Association established pursuant to part II
22 of chapter 631, Florida Statutes. The fund is not subject to
23 sections 624.407, 624.408, 624.4095, and 624.411, Florida
24 Statutes.
25 (4) MEDICAL MALPRACTICE INSURANCE POLICIES.--The board
26 must offer medical malpractice insurance to any physician,
27 regardless of his or her specialty, but may adopt underwriting
28 requirements, as specified in its plan of operation. The fund
29 shall offer limits of coverage of $250,000 per claim/$500,000
30 annual aggregate; $500,000 per claim/$1 million annual
31 aggregate; and $1 million per claim/$2 million annual

1 aggregate. The fund shall also allow policyholders to select
2 from policies with deductibles of $100,000, $200,000, and
3 $250,000; excess coverage limits of $250,000 per claim and
4 $750,000 annual aggregate; $1 million per claim and $3 million
5 annual aggregate; or $2 million and $4 million annual
6 aggregate. The fund shall offer such other limits as specified
7 in its plan of operation.
8 (5) PREMIUM RATES.--The premium rates for coverage
9 offered by the fund must be actuarially sound and shall be
10 subject to the same requirements that apply to authorized
11 insurers issuing medical malpractice insurance, except that:
12 (a) The rates shall not include any factor for
13 profits; and
14 (b) The anticipated future investment income of the
15 fund, as projected in its rate filing, must be approximately
16 equal to the actual investment income that the fund has
17 earned, on average, for the prior 7 years. For those years of
18 the prior 7 years during which the fund was not in operation,
19 the anticipated future investment income must be approximately
20 equal to the actual average investment income earned by the
21 State Board of Administration for the moneys available for
22 investment under ss. 215.44-215.53, Florida Statutes, and the
23 average annual investment income earned by the Division of
24 Treasury of the Department of Financial Services for the
25 investment of state funds under chapter 17, Florida Statutes,
26 in the same proportion as specified in paragraph (3)(d).
27 (6) TAX EXEMPTION.--The fund shall be a political
28 subdivision of the state and is exempt from the corporate
29 income tax under chapter 220, Florida Statutes, and the
30 premiums shall not be subject to the premium tax imposed by s.
31 624.509, Florida Statutes. It is also the intent of the

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1 Legislature that the fund be exempt from federal income
2 taxation. The Financial Services Commission and the fund shall
3 seek an opinion from the Internal Revenue Service as to the
4 tax-exempt status of the fund and shall make such
5 recommendations to the Legislature as the board deems
6 necessary to obtain tax-exempt status.
7 (7) INITIAL CAPITALIZATION.--The fund shall enter into
8 an agreement with the Florida Birth-Related Neurological
9 Injury Compensation (NICA) Fund for a loan of $100 million to
10 the fund to occur when the fund is established. Repayment of
11 the loan by the fund shall be in five equal annual payments,
12 each made no later than December 31, commencing during the
13 fourth year of operation of the fund after the fund begins to
14 offer medical malpractice insurance. Interest shall accrue on
15 the outstanding amount of the loan at an annual rate equal to
16 the annual rate of investment income earned by the NICA Fund.
17 The moneys loaned to the fund pursuant to this subsection
18 shall be considered admitted assets of the fund for purposes
19 of chapter 625, Florida Statutes.
20 (8) RULES.--The Financial Services Commission may
21 adopt rules to implement and administer the provisions of this
22 section.
23 (9) REVERSION OF FUND ASSETS UPON TERMINATION.--The
24 fund and the duties of the board under this section shall
25 stand repealed on a date 10 years after the date the Florida
26 Medical Malpractice Insurance Fund begins offering coverage
27 pursuant to this section, unless reviewed and saved from
28 repeal through reenactment by the Legislature. Upon
29 termination of the fund, all assets of the fund shall revert
30 to the General Revenue Fund.
31

1 Section 12. Notwithstanding any law to the contrary,
2 if the Florida Medical Malpractice Insurance Fund begins
3 offering coverage pursuant to section 11 of this act, all
4 practitioners licensed under chapter 458 or chapter 459,
5 Florida Statutes, as a condition of licensure shall be
6 required to maintain financial responsibility by obtaining and
7 maintaining professional liability coverage in an amount not
8 less than $250,000 per claim, with a minimum annual aggregate
9 of not less than $500,000, from an authorized insurer as
10 defined under section 624.09, Florida Statutes, from a surplus
11 lines insurer as defined under section 629.914(2), Florida
12 Statutes, from a risk retention group as defined under section
13 627.942, Florida Statutes, from the Joint Underwriting
14 Association established under section 627.357(4), Florida
15 Statutes, or through a plan of self-insurance as provided in
16 section 627.357 or section 624.462, Florida Statutes, or from
17 the Medical Malpractice Insurance Fund.
18 (b) Physicians and osteopathic physicians who are
19 exempt from the financial responsibility requirements under
20 section 458.320(5)(a),(b),(c),(d),(e) and (f) and section
21 459.0085(5)(a),(b),(c),(d),(e), and (f), Florida Statutes,
22 shall not be subject to the requirements of this section.
23 Section 13. Section 627.41495, Florida Statutes, is
24 created to read:
25 627.41495 Public hearings for medical malpractice rate
26 filings.--
27 (1) Upon the filing of a proposed rate change by a
28 medical malpractice insurer or self-insurance fund, which
29 filing would result in an average statewide increase of 25
30 percent, or more, pursuant to standards determined by the
31 office, the insurer or self-insurance fund shall mail notice

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1 of such filing to each of its policyholders or members. The
2 notices shall also inform the policyholders and members that a
3 public hearing may be requested on the rate filing and the
4 procedures for requesting a public hearing, as established by
5 rule, by the Financial Services Commission.
6 (2) The rate filing shall be available for public
7 inspection. If any policyholder or member of an insurer or
8 self-insurance fund that makes a rate filing described in
9 subsection (1) requests the Office of Insurance Regulation to
10 hold a hearing within 30 days after the mailing of the
11 notification of the proposed rate changes to the insureds, the
12 office shall hold a hearing within 30 days after such request.
13 Any policyholder or member may participate in such hearing.
14 The commission shall adopt rules implementing the provisions
15 of this section.
16 Section 14. (1) The Office of Insurance Regulation
17 shall order insurers to make a rate filing effective January
18 1, 2004, for medical malpractice which reduces rates by a
19 presumed factor that reflects the impact the changes contained
20 in all medical malpractice legislation enacted by the Florida
21 Legislature in 2003 will have on such rates, as determined by
22 the Office of Insurance Regulation. In determining the
23 presumed factor, the office shall use generally accepted
24 actuarial techniques and standards provided in section
25 627.062, Florida Statutes, in determining the expected impact
26 on losses, expenses, and investment income of the insurer.
27 Inclusion in the presumed factor of the expected impact of
28 such legislation shall be held in abeyance during the review
29 of such measure's validity in any proceeding by a court of
30 competent jurisdiction.
31

1 (2) Any insurer or rating organization that contends
2 that the rate provided for in subsection (1) is excessive,
3 inadequate, or unfairly discriminatory shall separately state
4 in its filing the rate it contends is appropriate and shall
5 state with specificity the factors or data that it contends
6 should be considered in order to produce such appropriate
7 rate. The insurer or rating organization shall be permitted to
8 use all of the generally accepted actuarial techniques, as
9 provided in section 627.062, Florida Statutes, in making any
10 filing pursuant to this subsection. The Office of Insurance
11 Regulation shall review each such exception and approve or
12 disapprove it prior to use. It shall be the insurer's burden
13 to actuarially justify any deviations from the rates filed
14 under subsection (1). Each insurer or rating organization
15 shall include in the filing the expected impact of all
16 malpractice legislation enacted by the Florida Legislature in
17 2003 on losses, expenses, and rates. If any provision of this
18 act is held invalid by a court of competent jurisdiction, the
19 department shall permit an adjustment of all rates filed under
20 this section to reflect the impact of such holding on such
21 rates, so as to ensure that the rates are not excessive,
22 inadequate, or unfairly discriminatory.
23 Section 15. Subsection (3) is added to section
24 456.049, Florida Statutes, to read:
25 456.049 Health care practitioners; reports on
26 professional liability claims and actions.--
27 (3) The department must forward the information
28 collected under this section to the Office of Insurance
29 Regulation.
30 Section 16. Subsection (10) of section 627.357,
31 Florida Statutes, is amended to read:

627.357 Medical malpractice self-insurance.--

(10)(a)1. An application to form a self-insurance fund under this section must be filed with the Office of Insurance Regulation ~~A self-insurance fund may not be formed under this section after October 1, 1992~~.

2. The Financial Services Commission must ensure that self-insurance funds remain solvent and provide insurance coverage purchased by participants. The Financial Services Commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 17. Section 627.9121, Florida Statutes, is created to read:

627.9121 Required reporting of claims; penalties.--Each entity that makes payment under a policy of insurance, self-insurance, or otherwise in settlement or partial settlement of, or in satisfaction of a judgment in, a medical malpractice action or claim that is required to report information to the National Practitioner Data Bank under 42 U.S.C. section 11131 must also report the same information to the Office of Insurance Regulation. The Office of Insurance Regulation shall include such information in the data that it compiles under s. 627.912. The office must compile and review the data collected pursuant to this section and must assess an administrative fine on any entity that fails to fully comply with the requirements imposed by law.

Section 18. The Office of Program Policy Analysis and Government Accountability shall complete a study of the eligibility requirements for a birth to be covered under the Florida Birth-Related Neurological Injury Compensation Association and submit a report to the Legislature by January 1, 2004, recommending whether or not the statutory criteria

1 for a claim to qualify for referral to the Florida
2 Birth-Related Neurological Injury Compensation Association
3 under section 766.302, Florida Statutes, should be modified.
4 Section 19. Patient safety discount.--A health care
5 facility licensed pursuant to chapter 395, Florida Statutes,
6 may apply to the Department of Financial Services for
7 certification of any program that is recommended by the
8 Florida Center for Excellence in Health Care to reduce adverse
9 incidents, as defined in section 395.0197, Florida Statutes,
10 which result in the reduction of serious events at that
11 facility. The department shall develop criteria for such
12 certification. Insurers shall file with the department a
13 discount in the rate or rates applicable for insurance
14 coverage to reflect the effect of a certified program. A
15 health care facility shall receive a discount in the rate or
16 rates applicable for mandated basic insurance coverage
17 required by law. In reviewing filings under this section, the
18 department shall consider whether, and the extent to which,
19 the program certified under this section is otherwise covered
20 under a program of risk management offered by an insurance
21 company or exchange or self-insurance plan providing medical
22 professional liability coverage.
23 Section 20. Section 627.0662, Florida Statutes, is
24 created to read:
25 627.0662 Excessive profits for medical liability
26 insurance prohibited.--
27 (1) As used in this section:
28 (a) "Medical liability insurance" means insurance that
29 is written on a professional liability insurance policy issued
30 to a health care practitioner or on a liability insurance
31

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1 policy covering medical malpractice claims issued to a health
2 care facility.
3 (b) "Medical liability insurer" means any insurance
4 company or group of insurance companies writing medical
5 liability insurance in this state and does not include any
6 self-insurance fund or other nonprofit entity writing such
7 insurance.
8 (2) Each medical liability insurer shall file with the
9 Office of Insurance Regulation, prior to July 1 of each year
10 on forms adopted by the Financial Services Commission, the
11 following data for medical liability insurance business in
12 this state. The data shall include both voluntary and joint
13 underwriting association business, as follows:
14 (a) Calendar-year earned premium.
15 (b) Accident-year incurred losses and loss adjustment
16 expenses.
17 (c) The administrative and selling expenses incurred
18 in this state or allocated to this state for the calendar
19 year.
20 (d) Policyholder dividends incurred during the
21 applicable calendar year.
22 (3)(a) Excessive profit has been realized if there has
23 been an underwriting gain for the 10 most recent
24 calendar-accident years combined which is greater than the
25 anticipated underwriting profit plus 5 percent of earned
26 premiums for those calendar-accident years.
27 (b) As used in this subsection with respect to any
28 10-year period, "anticipated underwriting profit" means the
29 sum of the dollar amounts obtained by multiplying, for each
30 rate filing of the insurer group in effect during such period,
31 the earned premiums applicable to such rate filing during such

1 period by the percentage factor included in such rate filing
2 for profit and contingencies, such percentage factor having
3 been determined with due recognition to investment income from
4 funds generated by business in this state. Separate
5 calculations need not be made for consecutive rate filings
6 containing the same percentage factor for profits and
7 contingencies.
8 (4) Each medical liability insurer shall also file a
9 schedule of medical liability insurance loss in this state and
10 loss adjustment experience for each of the 10 most recent
11 accident years. The incurred losses and loss adjustment
12 expenses shall be valued as of March 31 of the year following
13 the close of the accident year, developed to an ultimate
14 basis, and at nine 12-month intervals thereafter, each
15 developed to an ultimate basis, to the extent that a total of
16 three evaluations is provided for each accident year. The
17 first year to be so reported shall be accident year 2004, such
18 that the reporting of 10 accident years will not take place
19 until accident years 2012 and 2013 have become available.
20 (5) Each insurer group's underwriting gain or loss for
21 each calendar-accident year shall be computed as follows: the
22 sum of the accident-year incurred losses and loss adjustment
23 expenses as of March 31 of the following year, developed to an
24 ultimate basis, plus the administrative and selling expenses
25 incurred in the calendar year, plus policyholder dividends
26 applicable to the calendar year, shall be subtracted from the
27 calendar-year earned premium to determine the underwriting
28 gain or loss.
29 (6) For the 10 most recent calendar-accident years,
30 the underwriting gain or loss shall be compared to the
31 anticipated underwriting profit.

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1 (7) If the medical liability insurer has realized an
2 excessive profit, the office shall order a return of the
3 excessive amounts to policyholders after affording the insurer
4 an opportunity for hearing and otherwise complying with the
5 requirements of chapter 120. Such excessive amounts shall be
6 refunded to policyholders in all instances unless the insurer
7 affirmatively demonstrates to the office that the refund of
8 the excessive amounts will render the insurer or a member of
9 the insurer group financially impaired or will render it
10 insolvent.
11 (8) The excessive amount shall be refunded to
12 policyholders on a pro rata basis in relation to the final
13 compilation year earned premiums to the voluntary medical
14 liability insurance policyholders of record of the insurer
15 group on December 31 of the final compilation year.
16 (9) Any return of excessive profits to policyholders
17 under this section shall be provided in the form of a cash
18 refund or a credit towards the future purchase of insurance.
19 (10)(a) Cash refunds to policyholders may be rounded
20 to the nearest dollar.
21 (b) Data in required reports to the office may be
22 rounded to the nearest dollar.
23 (c) Rounding, if elected by the insurer group, shall
24 be applied consistently.
25 (11)(a) Refunds to policyholders shall be completed as
26 follows:
27 1. If the insurer elects to make a cash refund, the
28 refund shall be completed within 60 days after entry of a
29 final order determining that excessive profits have been
30 realized; or
31

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1 2. If the insurer elects to make refunds in the form
2 of a credit to renewal policies, such credits shall be applied
3 to policy renewal premium notices which are forwarded to
4 insureds more than 60 calendar days after entry of a final
5 order determining that excessive profits have been realized.
6 If an insurer has made this election but an insured thereafter
7 cancels his or her policy or otherwise allows the policy to
8 terminate, the insurer group shall make a cash refund not
9 later than 60 days after termination of such coverage.
10 (b) Upon completion of the renewal credits or refund
11 payments, the insurer shall immediately certify to the office
12 that the refunds have been made.
13 (12) Any refund or renewal credit made pursuant to
14 this section shall be treated as a policyholder dividend
15 applicable to the year in which it is incurred, for purposes
16 of reporting under this section for subsequent years.
17 Section 21. Present subsections (5) through (12) of
18 section 766.106, Florida Statutes, are redesignated as
19 subsections (6) through (13), respectively, and a new
20 subsection (5) is added to that section, to read:
21 766.106 Notice before filing action for medical
22 malpractice; presuit screening period; offers for admission of
23 liability and for arbitration; informal discovery; review.--
24 (5)(a) With regard to insurance company bad-faith
25 causes of action arising out of medical malpractice claims,
26 the action shall be brought pursuant to common law and not
27 pursuant to s. 624.155.
28 (b) An insurer shall not be held to have acted in bad
29 faith for failure to timely pay its policy limits if it
30 tenders its policy limits and meets the reasonable conditions
31 of settlement prior to the conclusion of the presuit screening

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1 period provided for in subsection (4); during an extension
2 provided for therein; during a period of 120 days thereafter;
3 or during a 60-day period after the filing of an amended
4 medical malpractice complaint alleging new facts previously
5 unknown to the insurer.
6 (c) It is the intent of the Legislature to encourage
7 all insurers, insureds, and their assigns and legal
8 representatives to act in good faith during a medical
9 negligence action, both during the presuit period and the
10 litigation.
11 Section 22. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 invalidity does not affect other provisions or applications of
14 the act which can be given effect without the invalid
15 provision or application, and to this end the provisions of
16 this act are severable.
17 Section 23. Except as otherwise expressly provided in
18 this act, this act shall take effect upon becoming a law.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
2 Senate Bill CS/CS/SB 560
3
4 The committee substitute requires medical malpractice
insurance rate rollbacks. For any coverage for medical
5 malpractice insurance subject to ch. 627, F.S., that is issued
or renewed on or after July 1, 2003, every insurer must reduce
6 its charges to levels that were in effect on January 1, 2002.

7 The bill as amended creates the Florida Medical Malpractice
Insurance Fund which can provide excess coverage effective
8 October 1, 2003. A trigger to effect the operation of the
Florida Medical Malpractice Insurance Fund is established.
9 The provision provides that if the director of the Office of
Insurance Regulation determines that the rates of medical
10 malpractice insurers have been reduced to the January 1, 2002,
level, but have not remained at that level for the year
11 beginning July 1, 2003, or that the medical malpractice
insurers have proposed increases that are greater than 15
12 percent in either of the next two years beginning July 1,
2004, the , then the Florida Medical Malpractice Insurance
13 Fund shall begin providing coverage.

14 If the Florida Medical Malpractice Insurance Fund is
triggered, all medical and osteopathic physicians must obtain
15 and maintain professional liability coverage in an amount not
less than $250,000 per claim and $500,000 in the aggregate
16 from an entity authorized to underwrite such coverage.
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