

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representatives Brown, Berfield, Clarke, Goodlette, and Ross offered the following:

**Amendment (with title amendment)**

Remove line(s) 4914-5108, and insert:

Section 34. Effective July, 1, 2003, paragraphs (b), (c), and (d) of subsection (4) of section 627.311, Florida Statutes, are amended to read

627.311 Joint underwriters and joint reinsurers.--

(4)

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

1. Three members appointed by the Financial Services Commission. Each member appointed by the commission shall serve at the pleasure of the commission;

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27 ~~2.1.~~ Two ~~Five~~ of the 20 domestic insurers, as defined in  
28 s. 624.06(1), having the largest voluntary direct premiums  
29 written in this state for workers' compensation and employer's  
30 liability insurance, which shall be elected by those 20 domestic  
31 insurers;

32 ~~3.2.~~ Two ~~Five~~ of the 20 foreign insurers as defined in s.  
33 624.06(2) having the largest voluntary direct premiums written  
34 in this state for workers' compensation and employer's liability  
35 insurance, which shall be elected by those 20 foreign insurers;

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

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

40 5. The consumer advocate appointed under s. 627.0613 or  
41 the consumer advocate's designee.

42  
43 Each board member shall serve a 4-year term and may serve  
44 consecutive terms. A vacancy on the board shall be filled in the  
45 same manner as the original appointment for the unexpired  
46 portion of the term. The Financial Services Commission shall  
47 designate a member of the board to serve as chair. No board  
48 member shall be an insurer which provides service to the plan or  
49 which has an affiliate which provides services to the plan or  
50 which is serviced by a service company or third-party  
51 administrator which provides services to the plan or which has  
52 an affiliate which provides services to the plan. The minutes,  
53 audits, and procedures of the board of governors are subject to  
54 chapter 119.

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55 (c) The operation of the plan shall be governed by a plan  
56 of operation that is prepared at the direction of the board of  
57 governors. The plan of operation may be changed at any time by  
58 the board of governors or upon request of the department. The  
59 plan of operation and all changes thereto are subject to the  
60 approval of the department. The plan of operation shall:

61 1. Authorize the board to engage in the activities  
62 necessary to implement this subsection, including, but not  
63 limited to, borrowing money.

64 2. Develop criteria for eligibility for coverage by the  
65 plan, including, but not limited to, documented rejection by at  
66 least two insurers which reasonably assures that insureds  
67 covered under the plan are unable to acquire coverage in the  
68 voluntary market. Any insured may voluntarily elect to accept  
69 coverage from an insurer for a premium equal to or greater than  
70 the plan premium if the insurer writing the coverage adheres to  
71 the provisions of s. 627.171.

72 3. Require notice from the agent to the insured at the  
73 time of the application for coverage that the application is for  
74 coverage with the plan and that coverage may be available  
75 through an insurer, group self-insurers' fund, commercial self-  
76 insurance fund, or assessable mutual insurer through another  
77 agent at a lower cost.

78 4. Establish programs to encourage insurers to provide  
79 coverage to applicants of the plan in the voluntary market and  
80 to insureds of the plan, including, but not limited to:

81 a. Establishing procedures for an insurer to use in  
82 notifying the plan of the insurer's desire to provide coverage  
83 to applicants to the plan or existing insureds of the plan and

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84 in describing the types of risks in which the insurer is  
85 interested. The description of the desired risks must be on a  
86 form developed by the plan.

87 b. Developing forms and procedures that provide an insurer  
88 with the information necessary to determine whether the insurer  
89 wants to write particular applicants to the plan or insureds of  
90 the plan.

91 c. Developing procedures for notice to the plan and the  
92 applicant to the plan or insured of the plan that an insurer  
93 will insure the applicant or the insured of the plan, and notice  
94 of the cost of the coverage offered; and developing procedures  
95 for the selection of an insuring entity by the applicant or  
96 insured of the plan.

97 d. Provide for a market-assistance plan to assist in the  
98 placement of employers. All applications for coverage in the  
99 plan received 45 days before the effective date for coverage  
100 shall be processed through the market-assistance plan. A market-  
101 assistance plan specifically designed to serve the needs of  
102 small good policyholders as defined by the board must be  
103 finalized by January 1, 1994.

104 5. Provide for policy and claims services to the insureds  
105 of the plan of the nature and quality provided for insureds in  
106 the voluntary market.

107 6. Provide for the review of applications for coverage  
108 with the plan for reasonableness and accuracy, using any  
109 available historic information regarding the insured.

110 7. Provide for procedures for auditing insureds of the  
111 plan which are based on reasonable business judgment and are

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112 designed to maximize the likelihood that the plan will collect  
113 the appropriate premiums.

114 8. Authorize the plan to terminate the coverage of and  
115 refuse future coverage for any insured that submits a fraudulent  
116 application to the plan or provides fraudulent or grossly  
117 erroneous records to the plan or to any service provider of the  
118 plan in conjunction with the activities of the plan.

119 9. Establish service standards for agents who submit  
120 business to the plan.

121 10. Establish criteria and procedures to prohibit any  
122 agent who does not adhere to the established service standards  
123 from placing business with the plan or receiving, directly or  
124 indirectly, any commissions for business placed with the plan.

125 11. Provide for the establishment of reasonable safety  
126 programs for all insureds in the plan. All insureds of the plan  
127 must participate in the safety program.

128 12. Authorize the plan to terminate the coverage of and  
129 refuse future coverage to any insured who fails to pay premiums  
130 or surcharges when due; who, at the time of application, is  
131 delinquent in payments of workers' compensation or employer's  
132 liability insurance premiums or surcharges owed to an insurer,  
133 group self-insurers' fund, commercial self-insurance fund, or  
134 assessable mutual insurer licensed to write such coverage in  
135 this state; or who refuses to substantially comply with any  
136 safety programs recommended by the plan.

137 13. Authorize the board of governors to provide the  
138 services required by the plan through staff employed by the  
139 plan, through reasonably compensated service providers who  
140 contract with the plan to provide services as specified by the

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141 board of governors, or through a combination of employees and  
142 service providers.

143 14. Provide for service standards for service providers,  
144 methods of determining adherence to those service standards,  
145 incentives and disincentives for service, and procedures for  
146 terminating contracts for service providers that fail to adhere  
147 to service standards.

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

153 16. Provide for reasonable accounting and data-reporting  
154 practices.

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

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

160 19. Provide for an annual report to the department on a  
161 date specified by the department and containing such information  
162 as the department reasonably requires.

163 20. Establish multiple rating plans for various  
164 classifications of risk which reflect risk of loss, hazard  
165 grade, actual losses, size of premium, and compliance with loss  
166 control. At least one of such plans must be a preferred-rating  
167 plan to accommodate small-premium policyholders with good  
168 experience as defined in sub-subparagraph 22.a.

169 21. Establish agent commission schedules.

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170 22. Establish four ~~three~~ subplans as follows:

171 a. Subplan "A" must include those insureds whose annual  
172 premium does not exceed \$2,500 and who have neither incurred any  
173 lost-time claims nor incurred medical-only claims exceeding 50  
174 percent of their premium for the immediate 2 years.

175 b. Subplan "B" must include insureds that are employers  
176 identified by the board of governors as high-risk employers due  
177 solely to the nature of the operations being performed by those  
178 insureds and for whom no market exists in the voluntary market,  
179 and whose experience modifications are less than 1.00.

180 c. Subplan "C" must include all ~~other~~ insureds within the  
181 plan that are not eligible for subplan "A," subplan "B," or  
182 subplan "D."

183 d. Subplan "D" must include any employer, regardless of  
184 the length of time for which it has conducted business  
185 operations, which has an experience modification factor of 1.10  
186 or less and either employs 15 or fewer employees or is an  
187 organization that is exempt from federal income tax pursuant to  
188 s. 501(c)(3) of the Internal Revenue Code and receives more than  
189 50 percent of its funding from gifts, grants, endowments, or  
190 federal or state contracts. The rate plan for subplan "D" shall  
191 be the same rate plan as the plan approved under ss. 627.091-  
192 627.151 and each participant in subplan "D" shall pay the  
193 premium determined under such rate plan, plus a surcharge  
194 determined by the board to be sufficient to ensure that the plan  
195 does not compete with the voluntary market rate for any  
196 participant, but not to exceed 25 percent. However, the  
197 surcharge shall not exceed 10 percent for an organization that

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198 is exempt from federal income tax pursuant to s. 501(c)(3) of  
199 the Internal Revenue Code.

200 23. Provide for a depopulation program to reduce the  
201 number of insureds in subplan "D." If an employer insured  
202 through subplan "D" is offered coverage from a voluntary market  
203 carrier:

204 a. During the first 30 days of coverage under the subplan;

205 b. Before a policy is issued under the subplan;

206 c. By issuance of a policy upon expiration or cancellation  
207 of the policy under the subplan; or

208 d. By assumption of the subplan's obligation with respect  
209 to an in-force policy,

210  
211 that employer is no longer eligible for coverage through the  
212 plan. The premium for risks assumed by the voluntary market  
213 carrier must be the same premium plus, for the first 2 years,  
214 the surcharge as determined in sub-subparagraph 22.d. A premium  
215 under this subparagraph, including surcharge, is deemed approved  
216 and is not an excess premium for purposes of s. 627.171.

217 24. Require that policies issued under subplan "D" and  
218 applications for such policies must include a notice that the  
219 policy issued under subplan "D" could be replaced by a policy  
220 issued from a voluntary market carrier and that, if an offer of  
221 coverage is obtained from a voluntary market carrier, the  
222 policyholder is no longer eligible for coverage through subplan  
223 "D." The notice must also specify that acceptance of coverage  
224 under subplan "D" creates a conclusive presumption that the  
225 applicant or policyholder is aware of this potential.

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226 (d)1. The plan must be funded through actuarially sound  
227 premiums charged to insureds of the plan.

228 2. The plan may issue assessable policies only to those  
229 insureds in subplan "C-" and subplan "D." Subject to  
230 verification by the department, the board may levy assessments  
231 against insureds in subplan "C" or subplan "D," on a pro rata  
232 earned premium basis, to fund any deficits that exist in those  
233 subplans. Assessments levied against subplan "C" participants  
234 shall cover only the deficits attributable to subplan "C," and  
235 assessments levied against subplan "D" participants shall cover  
236 only the deficits attributable to subplan "D." In no event may  
237 the plan levy assessments against any person or entity, except  
238 as authorized by this paragraph. Those assessable policies must  
239 be clearly identified as assessable by containing, in  
240 contrasting color and in not less than 10-point type, the  
241 following statements: "This is an assessable policy. If the plan  
242 is unable to pay its obligations, policyholders will be required  
243 to contribute on a pro rata earned premium basis the money  
244 necessary to meet any assessment levied."

245 3. The plan may issue assessable policies with differing  
246 terms and conditions to different groups within subplans "C" and  
247 "D" the plan when a reasonable basis exists for the  
248 differentiation.

249 4. The plan may offer rating, dividend plans, and other  
250 plans to encourage loss prevention programs.

251  
252 ===== T I T L E A M E N D M E N T =====  
253 Remove line(s) 92, and insert:

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254 F.S.; revising membership of the board of governors of the  
255 workers' compensation joint underwriting plan; requiring  
256 participation in safety programs;

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