1 A bill to be entitled
2 An act relating to a joint underwriting plan of insurers;
3 amending s. 627.311, F.S.; revising provisions requiring
4 the Office of Insurance Regulation to approve a joint
5 underwriting plan for workers' compensation and employer's
6 liability insurers; requiring plan rates to be
7 noncompetitive with the voluntary market for certain
8 purposes; deleting authorization for insureds to select
9 certain alternative coverages; requiring the plan of
10 operation to establish three tiers for eligible employers;
11 specifying criteria and rates for each tier; providing for
12 an Assigned Risk Adjustment Program for certain employers;
13 deleting provisions requiring establishment of certain
14 subplans; providing policyholder choice under certain
15 circumstances; providing requirements for premiums under
16 such tiers; revising criteria, requirements, and
17 limitations for a required depopulation program to reduce
18 numbers of insureds under the tiers; providing an
19 application fee for administration and fraud prevention;
20 revising certain tier notice requirements; providing for
21 funding of the plan through deficit funding; providing for
22 a one-time capital contribution from the Workers'
23 Compensation Administration Trust Fund to defray deficits
24 prior to certain assessments; providing a mechanism for
25 collecting deficit assessments; providing duties of the
26 office; providing requirements, procedures, and
27 limitations for collecting and enforcing deficit
28 assessments; providing for transfers of funds from the

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29 Workers' Compensation Administration Trust Fund to the
30 plan under certain circumstances; providing an exclusion
31 for deficit assessments from certain taxes; specifying
32 that deficit assessments are plan funds when collected;
33 providing notice requirements for certain policies;
34 providing for liability of certain insureds for certain
35 additional deficit assessments; specifying venue for
36 proceedings to enforce or collect assessments; expanding a
37 prohibition against providing certain persons with
38 workers' compensation and employers' liability insurance;
39 providing an exclusion for the plan from certain taxes and
40 assessments; providing an effective date.
41
42 Be It Enacted by the Legislature of the State of Florida:
43
44 Section 1. Paragraphs (a), (c), (d), (e), (g), and (p) of
45 subsection (5) of section 627.311, Florida Statutes, are
46 amended, and paragraph (q) is added to said subsection, to read:
47 627.311 Joint underwriters and joint reinsurers; public
48 records and public meetings exemptions.--
49 (5)(a) The office shall, after consultation with insurers,
50 approve a joint underwriting plan of insurers which shall
51 operate as a nonprofit entity. For the purposes of this
52 subsection, the term "insurer" includes group self-insurance
53 funds authorized by s. 624.4621, commercial self-insurance funds
54 authorized by s. 624.462, assessable mutual insurers authorized
55 under s. 628.6011, and insurers licensed to write workers'
56 compensation and employer's liability insurance in this state.

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57 The purpose of the plan is to provide workers' compensation and
58 employer's liability insurance to applicants who are required by
59 law to maintain workers' compensation and employer's liability
60 insurance and who are in good faith entitled to but who are
61 unable to <u>procure</u> ~~purchase~~ such insurance through the voluntary
62 market. The plan must have actuarially sound rates that <u>ensure</u>
63 ~~assure~~ that the plan is self-supporting.
64 (c) The operation of the plan shall be governed by a plan
65 of operation that is prepared at the direction of the board of
66 governors. The plan of operation may be changed at any time by
67 the board of governors or upon request of the office. The plan
68 of operation and all changes thereto are subject to the approval
69 of the office. The plan of operation shall:
70 1. Authorize the board to engage in the activities
71 necessary to implement this subsection, including, but not
72 limited to, borrowing money.
73 2. Develop criteria for eligibility for coverage by the
74 plan, including, but not limited to, documented rejection by at
75 least two insurers which reasonably assures that insureds
76 covered under the plan are unable to acquire coverage in the
77 voluntary market. ~~Any insured may voluntarily elect to accept~~
78 ~~coverage from an insurer for a premium equal to or greater than~~
79 ~~the plan premium if the insurer writing the coverage adheres to~~
80 ~~the provisions of s. 627.171.~~
81 3. Require notice from the agent to the insured at the
82 time of the application for coverage that the application is for
83 coverage with the plan and that coverage may be available
84 through an insurer, group self-insurers' fund, commercial self-

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85 insurance fund, or assessable mutual insurer through another
86 agent at a lower cost.
87 4. Establish programs to encourage insurers to provide
88 coverage to applicants of the plan in the voluntary market and
89 to insureds of the plan, including, but not limited to:
90 a. Establishing procedures for an insurer to use in
91 notifying the plan of the insurer's desire to provide coverage
92 to applicants to the plan or existing insureds of the plan and
93 in describing the types of risks in which the insurer is
94 interested. The description of the desired risks must be on a
95 form developed by the plan.
96 b. Developing forms and procedures that provide an insurer
97 with the information necessary to determine whether the insurer
98 wants to write particular applicants to the plan or insureds of
99 the plan.
100 c. Developing procedures for notice to the plan and the
101 applicant to the plan or insured of the plan that an insurer
102 will insure the applicant or the insured of the plan, and notice
103 of the cost of the coverage offered; and developing procedures
104 for the selection of an insuring entity by the applicant or
105 insured of the plan.
106 d. Provide for a market-assistance plan to assist in the
107 placement of employers. All applications for coverage in the
108 plan received 45 days before the effective date for coverage
109 shall be processed through the market-assistance plan. A market-
110 assistance plan specifically designed to serve the needs of
111 small, good policyholders as defined by the board must be
112 finalized by January 1, 1994.

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113 5. Provide for policy and claims services to the insureds
114 of the plan of the nature and quality provided for insureds in
115 the voluntary market.
116 6. Provide for the review of applications for coverage
117 with the plan for reasonableness and accuracy, using any
118 available historic information regarding the insured.
119 7. Provide for procedures for auditing insureds of the
120 plan which are based on reasonable business judgment and are
121 designed to maximize the likelihood that the plan will collect
122 the appropriate premiums.
123 8. Authorize the plan to terminate the coverage of and
124 refuse future coverage for any insured that submits a fraudulent
125 application to the plan or provides fraudulent or grossly
126 erroneous records to the plan or to any service provider of the
127 plan in conjunction with the activities of the plan.
128 9. Establish service standards for agents who submit
129 business to the plan.
130 10. Establish criteria and procedures to prohibit any
131 agent who does not adhere to the established service standards
132 from placing business with the plan or receiving, directly or
133 indirectly, any commissions for business placed with the plan.
134 11. Provide for the establishment of reasonable safety
135 programs for all insureds in the plan. All insureds of the plan
136 must participate in the safety program.
137 12. Authorize the plan to terminate the coverage of and
138 refuse future coverage to any insured who fails to pay premiums
139 or surcharges when due; who, at the time of application, is
140 delinquent in payments of workers' compensation or employer's

141 liability insurance premiums or surcharges owed to an insurer,
142 group self-insurers' fund, commercial self-insurance fund, or
143 assessable mutual insurer licensed to write such coverage in
144 this state; or who refuses to substantially comply with any
145 safety programs recommended by the plan.
146 13. Authorize the board of governors to provide the
147 services required by the plan through staff employed by the
148 plan, through reasonably compensated service providers who
149 contract with the plan to provide services as specified by the
150 board of governors, or through a combination of employees and
151 service providers.
152 14. Provide for service standards for service providers,
153 methods of determining adherence to those service standards,
154 incentives and disincentives for service, and procedures for
155 terminating contracts for service providers that fail to adhere
156 to service standards.
157 15. Provide procedures for selecting service providers and
158 standards for qualification as a service provider that
159 reasonably assure that any service provider selected will
160 continue to operate as an ongoing concern and is capable of
161 providing the specified services in the manner required.
162 16. Provide for reasonable accounting and data-reporting
163 practices.
164 17. Provide for annual review of costs associated with the
165 administration and servicing of the policies issued by the plan
166 to determine alternatives by which costs can be reduced.
167 18. Authorize the acquisition of such excess insurance or
168 reinsurance as is consistent with the purposes of the plan.

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169 19. Provide for an annual report to the office on a date
170 specified by the office and containing such information as the
171 office reasonably requires.
172 20. Establish multiple rating plans for various
173 classifications of risk which reflect risk of loss, hazard
174 grade, actual losses, size of premium, and compliance with loss
175 control. At least one of such plans must be a preferred-rating
176 plan to accommodate small-premium policyholders with good
177 experience as defined in sub-subparagraph 22.a.
178 21. Establish agent commission schedules.
179 22. <u>For employers otherwise eligible for coverage under</u>
180 <u>the plan, establish three tiers of employers meeting the</u>
181 <u>criteria and subject to the rate limitations specified in this</u>
182 <u>subparagraph.</u> ~~Establish four subplans as follows:~~
183 a. <u>Tier One.--</u>
184 <u>(I) Criteria; rated employers.--An employer that has an</u>
185 <u>experience modification rating shall be included in Tier One if</u>
186 <u>the employer meets all of the following:</u>
187 <u>(A) The experience modification is below 1.00.</u>
188 <u>(B) The employer had no lost-time claims subsequent to the</u>
189 <u>applicable experience modification rating period.</u>
190 <u>(C) The total of the employer's medical-only claims</u>
191 <u>subsequent to the applicable experience modification rating</u>
192 <u>period did not exceed 20 percent of premium.</u>
193 <u>(II) Criteria; non-rated employers.--An employer that does</u>
194 <u>not have an experience modification rating shall be included in</u>
195 <u>Tier One if the employer meets all of the following:</u>

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196 (A) The employer had no lost-time claims for the 3-year
197 period immediately preceding the inception date or renewal date
198 of the employer's coverage under the plan.
199 (B) The total of the employer's medical-only claims for
200 the 3-year period immediately preceding the inception date or
201 renewal date of the employer's coverage under the plan did not
202 exceed 20 percent of premium.
203 (C) The employer has secured workers' compensation
204 coverage for the entire 3-year period immediately preceding the
205 inception date or renewal date of the employer's coverage under
206 the plan.
207 (D) The employer is able to provide the plan with a loss
208 history generated by the employer's prior workers' compensation
209 insurer, except if the employer is not able to produce a loss
210 history due to the insolvency of an insurer, the receiver shall
211 provide to the plan, upon the request of the employer or the
212 employer's agent, a copy of the employer's loss history from the
213 records of the insolvent insurer if the loss history is
214 contained in records of the insurer which are in the possession
215 of the receiver. If the receiver is unable to produce the loss
216 history, the employer may, in lieu of the loss history, submit
217 an affidavit from the employer and the employer's insurance
218 agent setting forth the loss history.
219 (E) The employer is not a new business.
220 (III) Premiums.--The premiums for Tier One insureds shall
221 be set at a premium level 25 percent above the comparable
222 voluntary market premiums until the plan has sufficient
223 experience as determined by the board to establish an

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224 actuarially sound rate for Tier One, at which point the board
225 shall, subject to paragraph (e), adjust the rates, if necessary,
226 to produce actuarially sound rates, provided such rate
227 adjustment shall not take effect prior to January 1, 2007.
228 ~~Subplan "A" must include those insureds whose annual premium~~
229 ~~does not exceed $2,500 and who have neither incurred any lost-~~
230 ~~time claims nor incurred medical-only claims exceeding 50~~
231 ~~percent of their premium for the immediate 2 years.~~
232 b. Tier Two.--
233 (I) Criteria; rated employers.--An employer that has an
234 experience modification rating shall be included in Tier Two if
235 the employer meets all of the following:
236 (A) The experience modification is equal to or greater
237 than 1.00 but not greater than 1.10.
238 (B) The employer had no lost-time claims subsequent to the
239 applicable experience modification rating period.
240 (C) The total of the employer's medical-only claims
241 subsequent to the applicable experience modification rating
242 period did not exceed 20 percent of premium.
243 (II) Criteria; non-rated employers.--An employer that does
244 not have any experience modification rating shall be included in
245 Tier Two if the employer is a new business. An employer shall be
246 included in Tier Two if the employer has less than 3 years of
247 loss experience in the 3-year period immediately preceding the
248 inception date or renewal date of the employer's coverage under
249 the plan and the employer meets all of the following:

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250 (A) The employer had no lost-time claims for the 3-year
251 period immediately preceding the inception date or renewal date
252 of the employer's coverage under the plan.
253 (B) The total of the employer's medical-only claims for
254 the 3-year period immediately preceding the inception date or
255 renewal date of the employer's coverage under the plan did not
256 exceed 20 percent of premium.
257 (C) The employer is able to provide the plan with a loss
258 history generated by the workers' compensation insurer that
259 provided coverage for the portion or portions of such period
260 during which the employer had secured workers' compensation
261 coverage, except if the employer is not able to produce a loss
262 history due to the insolvency of an insurer, the receiver shall
263 provide to the plan, upon the request of the employer or the
264 employer's agent, a copy of the employer's loss history from the
265 records of the insolvent insurer if the loss history is
266 contained in records of the insurer which are in the possession
267 of the receiver. If the receiver is unable to produce the loss
268 history, the employer may, in lieu of the loss history, submit
269 an affidavit from the employer and the employer's insurance
270 agent setting forth the loss history.
271 (III) Premiums.--The premiums for Tier Two insureds shall
272 be set at a rate level 50 percent above the comparable voluntary
273 market premiums until the plan has sufficient experience as
274 determined by the board to establish an actuarially sound rate
275 for Tier Two, at which point the board shall, subject to
276 paragraph (e), adjust the rates, if necessary, to produce

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277 actuarially sound rates, provided such rate adjustment shall not
278 take effect prior to January 1, 2007.
279 (IV) Assigned Risk Adjustment Program.--Employers assigned
280 to Tier Two shall be subject to the Assigned Risk Adjustment
281 Program, as applicable. ~~Subplan "B" must include insureds that~~
282 ~~are employers identified by the board of governors as high-risk~~
283 ~~employers due solely to the nature of the operations being~~
284 ~~performed by those insureds and for whom no market exists in the~~
285 ~~voluntary market, and whose experience modifications are less~~
286 ~~than 1.00.~~
287 c. Tier Three.--
288 (I) Eligibility.--An employer shall be included in Tier
289 Three if the employer does not meet the criteria for Tier One or
290 Tier Two.
291 (II) Rates.--The board shall establish, subject to
292 paragraph (e), and the plan shall charge, actuarially sound
293 rates for Tier Three insureds.
294 (III) Assigned Risk Adjustment Program.--Employers
295 assigned to Tier Three shall be subject to the Assigned Risk
296 Adjustment Program, as applicable. ~~Subplan "C" must include all~~
297 ~~insureds within the plan that are not eligible for subplan "A,"~~
298 ~~subplan "B," or subplan "D."~~
299 ~~d. Subplan "D" must include any employer, regardless of~~
300 ~~the length of time for which it has conducted business~~
301 ~~operations, which has an experience modification factor of 1.10~~
302 ~~or less and either employs 15 or fewer employees or is an~~
303 ~~organization that is exempt from federal income tax pursuant to~~
304 ~~s. 501(c)(3) of the Internal Revenue Code and receives more than~~

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305 ~~50 percent of its funding from gifts, grants, endowments, or~~
306 ~~federal or state contracts. The rate plan for subplan "D" shall~~
307 ~~be the same rate plan as the plan approved under ss. 627.091-~~
308 ~~627.151, and each participant in subplan "D" shall pay the~~
309 ~~premium determined under such rate plan, plus a surcharge~~
310 ~~determined by the board to be sufficient to ensure that the plan~~
311 ~~does not compete with the voluntary market rate for any~~
312 ~~participant, but not to exceed 25 percent. However, the~~
313 ~~surcharge shall not exceed 10 percent for an organization that~~
314 ~~is exempt from federal income tax pursuant to s. 501(c)(3) of~~
315 ~~the Internal Revenue Code.~~
316 23. For Tier One or Tier Two employers in construction
317 class codes which employ no nonexempt employees or which report
318 payroll that is insufficient to develop premiums in excess of
319 $2,500, establish premiums of $2,500, which shall be in addition
320 to the fee specified in subparagraph 26. When the board
321 establishes actuarially sound rates for Tier One and Tier Two,
322 the board shall also establish actuarially sound rates for
323 minimum premium policies in those tiers.
324 24. ~~23.~~ Provide for a depopulation program to reduce the
325 number of insureds in the plan ~~subplan "D."~~ If an employer
326 insured through the plan ~~subplan "D"~~ is offered coverage from a
327 voluntary market carrier:
328 a. During the first 30 days of coverage under the plan
329 ~~subplan~~;
330 b. Before a policy is issued under the plan ~~subplan~~;
331 c. By issuance of a policy upon expiration or cancellation
332 of the policy under the plan ~~subplan~~; or

333 d. By assumption of the plan's ~~subplan's~~ obligation with
334 respect to an in-force policy,
335
336 that employer is no longer eligible for coverage through the
337 plan. The premium for risks assumed by the voluntary market
338 carrier must be the same premium ~~plus, for the first 2 years,~~
339 ~~the surcharge~~ as the insured would have paid under the plan, and
340 shall be adjusted upon renewal to reflect changes in the plan
341 rates and the tier for which the insured would qualify as of the
342 time of renewal. Such premium change shall occur upon renewal,
343 but in no event more than once annually ~~determined in sub-~~
344 ~~subparagraph 22.d~~. A premium under this subparagraph~~, including~~
345 ~~surcharge,~~ is deemed approved and is not an excess premium for
346 purposes of s. 627.171.
347 25.~~24.~~ Require that policies issued ~~under subplan "D"~~ and
348 applications ~~for such policies~~ must include a notice that the
349 policy ~~issued under subplan "D"~~ could be replaced by a policy
350 issued from a voluntary market carrier and that, if an offer of
351 coverage is obtained from a voluntary market carrier, the
352 policyholder is no longer eligible for coverage through the plan
353 ~~subplan "D~~.~~"~~ The notice must also specify that acceptance of
354 coverage under the plan ~~subplan "D"~~ creates a conclusive
355 presumption that the applicant or policyholder is aware of this
356 potential.
357 26. Require that each application for coverage and each
358 renewal premium be accompanied by a nonrefundable fee of $475 to
359 cover costs of administration and fraud prevention. The board
360 may, with the approval of the office, increase the amount of the

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361 fee pursuant to a rate filing to reflect increased costs of
362 administration and fraud prevention. The fee is not subject to
363 commission and is fully earned upon commencement of coverage.
364 (d)1. The funding of the plan shall include premiums as
365 provided in subparagraph (c)22. and assessments as provided in
366 this paragraph. ~~The plan must be funded through actuarially~~
367 ~~sound premiums charged to insureds of the plan.~~
368 2.a. If the board determines that a deficit exists in Tier
369 One or Tier Two or that there is any deficit remaining
370 attributable to any of the plan's former subplans and that the
371 deficit cannot be funded without the use of deficit assessments,
372 the board shall request the office to levy, by order, a deficit
373 assessment against premiums charged to insureds for workers'
374 compensation insurance by insurers as defined in s. 631.904(5).
375 The office shall issue the order after verifying the amount of
376 the deficit. The assessment shall be specified as a percentage
377 of future premium collections, as recommended by the board and
378 approved by the office. The same percentage shall apply to
379 premiums on all workers' compensation policies issued or renewed
380 during the 12-month period beginning on the effective date of
381 the assessment, as specified in the order.
382 b. With respect to each insurer collecting premiums that
383 are subject to the assessment, the insurer shall collect the
384 assessment at the same time as the insurer collects the premium
385 payment for each policy and shall remit the assessments
386 collected to the plan as provided in the order issued by the
387 office. The office shall verify the accurate and timely
388 collection and remittance of deficit assessments and shall

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389 report such information to the board. Each insurer collecting
390 assessments shall provide such information with respect to
391 premiums and collections as may be required by the office to
392 enable the office to monitor and audit compliance with this
393 paragraph.
394 c. Deficit assessments are not considered part of an
395 insurer's rate, are not premium, and are not subject to the
396 premium tax, to the assessments under ss. 440.49 and 440.51, to
397 the surplus lines tax, to any fees, or to any commissions. The
398 deficit assessment imposed shall become plan funds at the moment
399 of collection and shall not constitute income to the insurer for
400 any purpose, including financial reporting on the insurer's
401 income statement. An insurer is liable for all assessments that
402 the insurer collects and must treat the failure of an insured to
403 pay an assessment as a failure to pay premium. An insurer is not
404 liable for uncollectible assessments.
405 d. When an insurer is required to return unearned premium,
406 the insurer shall also return any collected assessments
407 attributable to the unearned premium. The plan may issue
408 assessable policies only to those insureds in subplans "C" and
409 "D." Subject to verification by the department, the board may
410 levy assessments against insureds in subplan "C" or subplan "D,"
411 on a pro rata earned premium basis, to fund any deficits that
412 exist in those subplans. Assessments levied against subplan "C"
413 participants shall cover only the deficits attributable to
414 subplan "C," and assessments levied against subplan "D"
415 participants shall cover only the deficits attributable to
416 subplan "D." In no event may the plan levy assessments against

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417 ~~any person or entity, except as authorized by this paragraph.~~
418 ~~Those assessable policies must be clearly identified as~~
419 ~~assessable by containing, in contrasting color and in not less~~
420 ~~than 10-point type, the following statements: "This is an~~
421 ~~assessable policy. If the plan is unable to pay its obligations,~~
422 ~~policyholders will be required to contribute on a pro rata~~
423 ~~earned premium basis the money necessary to meet any assessment~~
424 ~~levied."~~
425 3.<u>a. All policies issued to Tier Three insureds shall be</u>
426 <u>assessable. All Tier Three assessable policies must be clearly</u>
427 <u>identified as assessable by containing, in contrasting color and</u>
428 <u>in not less than 10-point type, the following statement:</u>
429
430 <u>"This is an assessable policy. If the plan is unable to</u>
431 <u>pay its obligations, policyholders will be required to</u>
432 <u>contribute on a pro rata earned premium basis the money</u>
433 <u>necessary to meet any assessment levied."</u>
434
435 <u>b. The board may from time to time assess Tier Three</u>
436 <u>insureds to whom the plan has issued assessable policies for the</u>
437 <u>purpose of funding plan deficits. Any such assessment shall be</u>
438 <u>based upon a reasonable actuarial estimate of the amount of the</u>
439 <u>deficit, taking into account the amount needed to fund medical</u>
440 <u>and indemnity reserves and reserves for incurred but not</u>
441 <u>reported claims, and allowing for general administrative</u>
442 <u>expenses, the cost of levying and collecting the assessment, a</u>
443 <u>reasonable allowance for estimated uncollectible assessments,</u>
444 <u>and allocated and unallocated loss adjustment expenses.</u>

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445 c. Each Tier Three insured's share of a deficit shall be
446 computed by applying to the premium earned on the insured's
447 policy or policies during the period to be covered by the
448 assessment the ratio of the total deficit to the total premiums
449 earned during such period upon all policies subject to the
450 assessment. If one or more Tier Three insureds fail to pay an
451 assessment, the other Tier Three insureds shall be liable on a
452 proportionate basis for additional assessments to fund the
453 deficit. The plan may compromise and settle individual
454 assessment claims without affecting the validity of or amounts
455 due on assessments levied against other insureds. The plan may
456 offer and accept discounted payments for assessments which are
457 promptly paid. The plan may offset the amount of any unpaid
458 assessment against unearned premiums which may otherwise be due
459 to an insured. The plan shall institute legal action when
460 necessary and appropriate to collect the assessment from any
461 insured who fails to pay an assessment when due.
462 d. The venue of a proceeding to enforce or collect an
463 assessment or to contest the validity or amount of an assessment
464 shall be in the Circuit Court of Leon County.
465 e. If the board finds that a deficit in Tier Three exists
466 for any period and that an assessment is necessary, the board
467 shall certify to the office the need for an assessment. No
468 sooner than 30 days after the date of such certification, the
469 board shall notify in writing each insured who is to be assessed
470 that an assessment is being levied against the insured, and
471 informing the insured of the amount of the assessment, the
472 period for which the assessment is being levied, and the date by

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473 which payment of the assessment is due. The board shall
474 establish a date by which payment of the assessment is due,
475 which shall be no sooner than 30 days nor later than 120 days
476 after the date on which notice of the assessment is mailed to
477 the insured.
478 f. Whenever the board makes a determination that the plan
479 does not have a sufficient cash basis to meet 3 months of
480 projected cash needs due to a deficit in Tier Three, the board
481 may request the department to transfer funds from the Workers'
482 Compensation Administration Trust Fund to the plan in an amount
483 sufficient to fund the difference between the amount available
484 and the amount needed to meet a 3-month projected cash need as
485 determined by the board and verified by the office, subject to
486 the approval of the Legislative Budget Commission. If the
487 Legislative Budget Commission approves a transfer of funds under
488 this sub-subparagraph, the plan shall report to the Legislature
489 the transfer of funds and the Legislature shall review the plan
490 during the next legislative session or the current legislative
491 session, if the transfer occurs during a legislative session.
492 This sub-subparagraph shall not apply until the plan determines
493 and the office verifies that assessments collected by the plan
494 pursuant to sub-subparagraph b. are insufficient to fund the
495 deficit in Tier Three and to meet 3 months of projected cash
496 needs. ~~The plan may issue assessable policies with differing~~
497 ~~terms and conditions to different groups within subplans "C" and~~
498 ~~"D" when a reasonable basis exists for the differentiation.~~
499 4. The plan may offer rating, dividend plans, and other
500 plans to encourage loss prevention programs.

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501 (e) The plan shall establish and use its rates and rating
502 plans, and the plan may establish and use changes in rating
503 plans at any time, but no more frequently than two times per any
504 rating class for any calendar year. By December 1, 1993, and
505 December 1 of each year thereafter, except as provided in
506 subparagraph (c)22., the board shall establish and use
507 actuarially sound rates for use by the plan to assure that the
508 plan is self-funding while those rates are in effect. Such rates
509 and rating plans must be filed with the office within 30
510 calendar days after their effective dates, and shall be
511 considered a "use and file" filing. Any disapproval by the
512 office must have an effective date that is at least 60 days from
513 the date of disapproval of the rates and rating plan and must
514 have prospective effect only. The plan may not be subject to any
515 order by the office to return to policyholders any portion of
516 the rates disapproved by the office. The office may not
517 disapprove any rates or rating plans unless it demonstrates that
518 such rates and rating plans are excessive, inadequate, or
519 unfairly discriminatory.
520 (g) Whenever a deficit exists, the plan shall, within 90
521 days, provide the office with a program to eliminate the deficit
522 within a reasonable time. The deficit may be funded through
523 increased premiums charged to insureds of the plan for
524 subsequent years, through the use of policyholder surplus
525 attributable to any year, through the use of assessments as
526 provided in subparagraph (d)2., and through assessments on
527 ~~insureds in the plan if the plan uses~~ assessable policies as
528 provided in subparagraph (d)3.

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529 (p) No insurer shall provide workers' compensation and
530 employer's liability insurance to any person who is delinquent
531 in the payment of premiums, assessments, penalties, or
532 surcharges owed to the plan or to any person who is an
533 affiliated person of a person who is delinquent in the payment
534 of premiums, assessments, penalties, or surcharges owed to the
535 plan. For purposes of this paragraph, the term "affiliated
536 person" of another person means:
537 1. The spouse of such other natural person;
538 2. Any person who directly or indirectly owns or controls,
539 or holds with the power to vote, 5 percent or more of the
540 outstanding voting securities of such other person;
541 3. Any person who directly or indirectly owns 5 percent or
542 more of the outstanding voting securities that are directly or
543 indirectly owned or controlled, or held with the power to vote,
544 by such other person;
545 4. Any person or group of persons who directly or
546 indirectly control, are controlled by, or are under common
547 control with such other person;
548 5. Any officer, director, trustee, partner, owner,
549 manager, joint venturer, or employee, or other person performing
550 duties similar to persons in those positions, of such other
551 persons; or
552 6. Any person who has an officer, director, trustee,
553 partner, or joint venturer in common with such other person.
554 (q) Effective July 1, 2004, the plan is exempt from the
555 premium tax under s. 624.509 and any assessments under ss.
556 440.49 and 440.51.

CODING: Words stricken are deletions; words underlined are additions.

557 Section 2. Notwithstanding the provisions of ss. 440.50
558 and 440.51, Florida Statutes, for the 2004-2005 fiscal year the
559 sum of $25 million is appropriated from the Workers'
560 Compensation Administration Trust Fund in the Department of
561 Financial Services for transfer to the workers' compensation
562 joint underwriting plan provided in s. 627.311(5), Florida
563 Statutes, as a capital contribution to fund any deficit in the
564 plan. The Chief Financial Officer shall transfer such funds to
565 the plan no later than July 31, 2004. An additional amount not
566 to exceed $10 million is appropriated from the Workers'
567 Compensation Administration Trust Fund for transfer to the
568 workers' compensation joint underwriting plan provided in s.
569 627.311(5), Florida Statutes, subject to the approval of the
570 Legislative Budget Commission, if the Board of Governors and the
571 Office of Insurance Regulation determine that a deficit exists
572 in Tier One or Tier Two or that there is any deficit remaining
573 attributable to the former Subplan "D" under former s.
574 627.311(5)(c)22., Florida Statutes, and that the deficit cannot
575 be funded without the use of deficit assessments as authorized
576 by s. 627.351(5)(d), Florida Statutes.
577 Section 3. Except as otherwise provided herein, this act
578 shall take effect July 1, 2004.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.