

CHAMBER ACTION

1 The Elder & Long-Term Care Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to nursing homes; amending s. 400.023,  
7 F.S.; providing legislative findings; limiting the  
8 liability of community-based nursing home facilities and  
9 their subcontractors; providing application; specifying  
10 nonapplication of limitations of liability to certain  
11 persons under certain circumstances; defining the terms  
12 "community-based nursing home facility" and  
13 "subcontractor"; providing requirements to qualify as a  
14 community-based nursing home facility; requiring the  
15 Agency for Health Care Administration to verify compliance  
16 with certain required facility criteria; amending s.  
17 633.022, F.S.; requiring nursing homes to be protected by  
18 certain automatic sprinkler systems; providing a schedule;  
19 authorizing the Division of State Fire Marshal to grant  
20 certain time extensions; authorizing the division to adopt  
21 certain rules; providing for administrative sanctions  
22 under certain circumstances; requiring adjustments to  
23 certain provider Medicaid rates for reimbursement for

24 Medicaid's portion of costs to meet certain requirements;  
 25 requiring funding for such adjustments to come from  
 26 existing nursing home appropriations; creating s. 633.024,  
 27 F.S.; providing legislative findings and intent; creating  
 28 s. 633.0245, F.S.; authorizing the State Fire Marshal to  
 29 enter into an investment agreement with public  
 30 depositories to establish the State Fire Marshal Nursing  
 31 Home Fire Protection Loan Guarantee Program as a limited  
 32 loan guarantee program to retrofit nursing homes with fire  
 33 protection systems; providing investment and agreement  
 34 limitations; requiring the State Fire Marshal to solicit  
 35 requests for proposals; providing for application  
 36 requirements and procedures; providing for review and  
 37 approval by the State Fire Marshal; providing application  
 38 requirements and procedures for program loans by public  
 39 depositories; providing deadlines and limitations;  
 40 limiting certain claims for loss under certain  
 41 circumstances; providing a definition; authorizing the  
 42 State Fire Marshal to adopt rules; providing an effective  
 43 date.

44  
 45 Be It Enacted by the Legislature of the State of Florida:

46  
 47 Section 1. Subsection (8) is added to section 400.023,  
 48 Florida Statutes, to read:

49 400.023 Civil enforcement.--

50 (8)(a) The Legislature makes the following findings:

51       1. Liability insurance premiums for community-based  
 52 nursing home facilities have increased dramatically in recent  
 53 years, resulting in increased nursing home care costs for most  
 54 patients and functional unavailability of liability insurance  
 55 for most community-based nursing home facilities.

56       2. The primary cause of increased liability insurance  
 57 premiums has been the substantial increase in loss payments to  
 58 claimants caused by tremendous increases in the amounts of paid  
 59 claims.

60       3. The high cost of liability claims for community-based  
 61 nursing home facilities in this state can be substantially  
 62 alleviated by imposing reasonable limitations on damages, while  
 63 preserving the right of either party to have its case heard by a  
 64 jury.

65       4. Nonprofit nursing facilities consistently rank higher  
 66 than for-profit nursing facilities according to quality of care  
 67 standards established by the Agency for Health Care  
 68 Administration, and the vast majority of Gold Seal facilities  
 69 are nonprofit.

70       5. Excessive awards of noneconomic damages threaten the  
 71 ability of community-based nursing home facilities to continue  
 72 to provide appropriate care for patients. A reasonable  
 73 limitation on noneconomic damages will reduce the high cost of  
 74 claims without jeopardizing the right of each party to be heard  
 75 by a jury.

76       (b) In any claim against a community-based nursing home  
 77 facility or a subcontractor of the facility brought pursuant to  
 78 this part alleging a violation of a resident's rights or

79 | negligence causing injury to or the death of a resident,  
 80 | noneconomic damages, as defined in s. 766.202(8), shall be  
 81 | limited to \$200,000 per claimant regardless of the number of  
 82 | defendants or individual claimants. A claims bill may be brought  
 83 | on behalf of a claimant pursuant to s. 768.28 for any amount  
 84 | exceeding the limits specified in this subsection. Any offset of  
 85 | collateral source payments made as of the date of the settlement  
 86 | or judgment shall be in accordance with s. 768.76. A community-  
 87 | based facility shall not be liable in tort for the acts or  
 88 | omissions of its subcontractors or the officers, agents, or  
 89 | employees of its subcontractors. The liability of a facility and  
 90 | subcontractors pursuant to this subsection shall be exclusive  
 91 | and in place of all other liability of such facility and  
 92 | subcontractors, except as otherwise provided in this section and  
 93 | in s. 400.0237. The same limitation on liability enjoyed by such  
 94 | facilities and subcontractors shall extend as well to each  
 95 | employee of the facility and the subcontractors when such  
 96 | employee is acting in furtherance of the facility's business,  
 97 | including the transportation of clients served in privately  
 98 | owned vehicles. The limitation on liability shall not be  
 99 | applicable to a facility, a subcontractor, or an employee of  
 100 | either in the event of intentional misconduct or gross  
 101 | negligence as defined in s. 400.0237, nor shall the limitation  
 102 | on liability be applicable to employees of the same facility or  
 103 | subcontractor when each is operating in the furtherance of the  
 104 | facility's business but the employees are assigned primarily to  
 105 | unrelated works within private or public employment. The same  
 106 | limitation on liability enjoyed by a facility and subcontractor

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107 shall also apply to any sole proprietor, partner, corporate  
108 officer, director, supervisor, or other person who in the course  
109 and scope of his or her duties acts in a managerial or  
110 policymaking capacity and the conduct that caused the alleged  
111 injury arose within the course and scope of those managerial or  
112 policymaking duties.

113 (c) For the purposes of this subsection, "community-based  
114 nursing home facility" means a nursing home facility that meets  
115 all of the following requirements:

116 1. The number of nursing home beds in the facility may not  
117 exceed 240.

118 2. The facility must obtain 400 hours of assistance from  
119 onsite volunteers each month. The facility must require that  
120 volunteers sign in and out with staff of the facility upon  
121 entering or leaving the facility. The facility must maintain  
122 records of volunteers' names, addresses, and the number of hours  
123 volunteered in a manner that will enable the agency to verify  
124 compliance with this subsection.

125 3. The facility must maintain general and professional  
126 liability insurance coverage that is in force at all times with  
127 limits that are not less than \$250,000 per claim and not less  
128 than \$500,000 in annual aggregate. No more than 10 percent of  
129 the available insurance limits required by this section shall be  
130 used to fund defense attorney fees and costs.

131 4. The facility is a not-for-profit corporation.

132 (d) The agency shall verify compliance with paragraph (c)  
133 at the time of each inspection of a facility that claims to be  
134 community-based as defined in this subsection.

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135       (e) For purposes of this subsection, "subcontractor" means  
 136 those subcontractors performing direct care services.

137       Section 2. Subsection (4) is added to section 633.022,  
 138 Florida Statutes, to read:

139       633.022 Uniform firesafety standards.--The Legislature  
 140 hereby determines that to protect the public health, safety, and  
 141 welfare it is necessary to provide for firesafety standards  
 142 governing the construction and utilization of certain buildings  
 143 and structures. The Legislature further determines that certain  
 144 buildings or structures, due to their specialized use or to the  
 145 special characteristics of the person utilizing or occupying  
 146 these buildings or structures, should be subject to firesafety  
 147 standards reflecting these special needs as may be appropriate.

148       (4)(a) Notwithstanding any provision of law to the  
 149 contrary, each nursing home licensed under part II of chapter  
 150 400 shall be protected by an approved, supervised automatic  
 151 sprinkler system in accordance with section 9 of National Fire  
 152 Protection Association, Inc., Life Safety Code, in accordance  
 153 with the following schedule:

154       1. Each hazardous area of each nursing home shall be  
 155 protected by an approved, supervised automatic sprinkler system  
 156 by no later than December 31, 2008.

157       2. Each entire nursing home shall be protected by an  
 158 approved, supervised automatic sprinkler system by no later than  
 159 December 31, 2010.

160       (b) The division may grant up to two 1-year extensions of  
 161 the time limits for compliance in subparagraph (a)2. if the

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162 division determines that the nursing home has been prevented  
 163 from complying for reasons beyond its control.

164 (c) The division is authorized to adopt any rule necessary  
 165 for the implementation and enforcement of this subsection. The  
 166 division shall enforce this subsection in accordance with the  
 167 provisions of this chapter, and any nursing home licensed under  
 168 part II of chapter 400 that is in violation of this subsection  
 169 may be subject to administrative sanctions by the division  
 170 pursuant to this chapter.

171 (d) Adjustments shall be made to the provider Medicaid  
 172 rate to allow reimbursement over a 5-year period for Medicaid's  
 173 portion of the costs incurred to meet the requirements of this  
 174 subsection. Funding for this adjustment shall come from existing  
 175 nursing home appropriations.

176 Section 3. Section 633.024, Florida Statutes, is created  
 177 to read:

178 633.024 Legislative findings and intent; ensuring  
 179 effective fire protection of vulnerable nursing home residents  
 180 essential; retrofit of existing nursing homes expedited by  
 181 limited state loan guarantee; funding through Insurance  
 182 Regulatory Trust Fund.--

183 (1) It is the intent of the Legislature to promote the  
 184 essential public purpose of ensuring effective fire protection  
 185 for the safety and welfare of nursing home residents of this  
 186 state who, because of their inability to protect themselves, are  
 187 most vulnerable to catastrophic injury or death in the event of  
 188 a fire. The Legislature finds that this purpose is served by  
 189 requiring the installation of appropriate fire protection

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190 systems in all nursing home facilities in this state that do not  
 191 currently have fire protection systems in operation for the  
 192 protection of their residents. The Legislature finds that the  
 193 high capital cost of retrofitting appropriate fire protection  
 194 systems at nursing home facilities not originally designed with  
 195 fire protection systems has discouraged the owners and operators  
 196 of such facilities from doing so. The Legislature therefore  
 197 finds that state action to provide a limited state guarantee of  
 198 loans covering these capital costs will expedite the immediate  
 199 installation of fire protection systems at facilities that lack  
 200 such systems and thereby ensure effective protection for those  
 201 nursing home populations that are now most vulnerable to the  
 202 catastrophic effects of fire.

203 (2) Because the Insurance Regulatory Trust Fund is funded  
 204 by the proceeds of fire insurance premiums written in this  
 205 state, the Legislature finds that it is in the public interest  
 206 for moneys held in the Insurance Regulatory Trust Fund to be  
 207 used to fund the limited loan guarantee program that mobilizes  
 208 private funding for the retrofitting of fire protection systems  
 209 at unprotected nursing homes located in this state.

210 Section 4. Section 633.0245, Florida Statutes, is created  
 211 to read:

212 633.0245 State Fire Marshal Nursing Home Fire Protection  
 213 Loan Guarantee Program.--

214 (1) The State Fire Marshal, with the assistance of the  
 215 Division of Treasury of the Department of Financial Services,  
 216 may enter into an investment agreement concerning the investment  
 217 of certain funds held in the Insurance Regulatory Trust Fund for



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218 the purpose of establishing a limited loan guarantee program to  
 219 be known as the State Fire Marshal Nursing Home Fire Protection  
 220 Loan Guarantee Program. The investment must be limited as  
 221 follows:

222 (a) Not more than \$4 million of the balance in the  
 223 Insurance Regulatory Trust Fund in any fiscal year may be at  
 224 risk at any time for the purpose of limited loan guarantees.

225 (b) Such funds at risk at any time may not be used to  
 226 guarantee any limited loan guarantee agreement for a period  
 227 longer than 10 years.

228 (c) No limited loan guarantee agreement based on invested  
 229 funds may be entered into after December 1, 2006.

230 (2) The State Fire Marshal may enter into limited loan  
 231 guarantee agreements with one or more financial institutions  
 232 qualified as public depositories in this state. Such agreements  
 233 shall provide a limited guarantee by the State of Florida  
 234 covering no more than 50 percent of the principal sum loaned by  
 235 such financial institution to an eligible nursing home, as  
 236 defined in subsection (10), for the sole purpose of the initial  
 237 installation at such nursing home of a fire protection system,  
 238 as defined in s. 633.021(8), approved by the State Fire Marshal  
 239 as being in compliance with the provisions of s. 633.022 and  
 240 rules adopted thereunder.

241 (3) The State Fire Marshal shall solicit requests for  
 242 proposals from qualified financial institutions willing to fund  
 243 loans to eligible nursing homes for the installation of fire  
 244 protection systems approved by the State Fire Marshal under the  
 245 State Fire Marshal Nursing Home Fire Protection Loan Guarantee

246 Program. Each request for proposal shall specify the terms and  
 247 conditions under which the responding institution is prepared to  
 248 make loans under the program, including, but not limited to,  
 249 applicable interest rates, repayment terms, credit policies,  
 250 loan fees, and proposed security interests to be executed by the  
 251 borrower. After evaluation of all requests for proposals, the  
 252 State Fire Marshal shall select one or more responding  
 253 institutions as designated lenders under the program.

254 (4) The State Fire Marshal shall prescribe by rule an  
 255 application form for participation in the State Fire Marshal  
 256 Nursing Home Fire Protection Loan Guarantee Program to be  
 257 submitted by each eligible nursing home that desires to install  
 258 a fire protection system funded by a loan from a designated  
 259 lender under the program. Nothing in this section shall be  
 260 deemed to require an eligible nursing home to do business with a  
 261 designated lender. At a minimum, the application shall require  
 262 each applicant to provide the following information:

263 (a) The name and address of the eligible nursing home.

264 (b) The name and address of the owner of the nursing home  
 265 or, if the owner is a partnership, the name and address of the  
 266 general partner.

267 (c) The lessee of the nursing home premises, if any.

268 (d) A complete description of the structure or structures  
 269 where the fire protection system is to be installed, including  
 270 age, physical dimensions, overall square footage, a real extent  
 271 of proposed coverage areas, and other relevant information  
 272 concerning the premises.

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273 (e) Bed capacity of the nursing home, including beds  
 274 eligible for Medicare or Medicaid reimbursement.

275 (f) A statement regarding the availability to the  
 276 applicant of third-party reimbursement for installation of the  
 277 fire protection system.

278 (g) The location of closest water mains and fire hydrants,  
 279 if any.

280 (h) Complete sealed drawings showing the fire protection  
 281 system to be installed.

282 (i) Cost documentation, with a separate breakdown of cost  
 283 for labor and materials.

284 (j) Verification of the application by the applicant.

285 (5) The State Fire Marshal shall evaluate each application  
 286 submitted under this section to determine whether the proposed  
 287 fire protection system is feasible for installation as proposed  
 288 and complies with all applicable firesafety code provisions. An  
 289 application may not be approved without a positive determination  
 290 by the State Fire Marshal under this subsection. If the State  
 291 Fire Marshal is able to determine that the proposed fire  
 292 protection system is feasible and complies with applicable  
 293 firesafety codes, the application shall be approved for  
 294 submission to one or more lenders for funding. If the  
 295 application is insufficient, the State Fire Marshal shall notify  
 296 the applicant in writing and identify areas of deficiency that  
 297 must be corrected in order for the application to be approved.

298 (6) As soon as practicable after approval, each approved  
 299 application shall be submitted by the State Fire Marshal to one  
 300 or more designated lenders for funding. Upon request of a

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301 designated lender, an approved applicant shall provide the  
 302 lender with documentation of its credit history and financial  
 303 status. If, after review of the applicant's documentation, a  
 304 lender refuses to fund the application, the lender shall  
 305 promptly notify the applicant and the State Fire Marshal in  
 306 writing of any reasons for its action. If the lender agrees to  
 307 fund the application, the lender shall notify the applicant and  
 308 the State Fire Marshal and schedule a closing date for the loan.

309 (7) At closing, the applicant shall execute appropriate  
 310 documents necessary to provide the lender and the State Fire  
 311 Marshal with a security interest in the property where the fire  
 312 protection system is to be installed. The State Fire Marshal  
 313 shall then execute a limited loan guarantee in favor of the  
 314 lender guaranteeing no more than 50 percent of the face value of  
 315 the loan.

316 (8) A designated lender covered by a limited state  
 317 guarantee for a loan under this section is not entitled to file  
 318 a claim for loss pursuant to the guarantee unless all reasonable  
 319 and normal remedies available and customary for lending  
 320 institutions for resolving problems of loan repayments are  
 321 exhausted. If the lender has received collateral security in  
 322 connection with the loan, the lender must first exhaust all  
 323 available remedies against the collateral security.

324 (9) No application for participation in the State Fire  
 325 Marshal Nursing Home Fire Protection Loan Guarantee Program may  
 326 be accepted by the State Fire Marshal after June 30, 2006.

327 (10) For purposes of this section, "eligible nursing home"  
 328 means a nursing home facility that provides nursing services as

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329 defined in chapter 464, is licensed under part II of chapter  
330 400, and is certified by the Agency for Health Care  
331 Administration to lack an installed fire protection system as  
332 defined in s. 633.021(8).

333 (11) The State Fire Marshal may adopt any rules necessary  
334 to implement the provisions of this section.

335 Section 5. This act shall take effect July 1, 2005.