

Bill No. CS for SB 1486

Barcode 660558

CHAMBER ACTION

Senate

House

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Senator Campbell moved the following **amendment to House amendment** (865571):

Senate Amendment (with title amendment)

Between lines 1983 and 1984,

insert:

Section 28. Paragraph (f) of subsection (5) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(5) PROPERTY AND CASUALTY INSURANCE RISK

APPORTIONMENT.--The commission shall adopt by rule a joint underwriting plan to equitably apportion among insurers authorized in this state to write property insurance as defined in s. 624.604 or casualty insurance as defined in s. 624.605, the underwriting of one or more classes of property insurance or casualty insurance, except for the types of insurance that are included within property insurance or casualty insurance for which an equitable apportionment plan, assigned risk plan, or joint underwriting plan is authorized under s. 627.311 or subsection (1), subsection (2), subsection

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1 (3), subsection (4), or subsection (5) and except for risks
 2 eligible for flood insurance written through the federal flood
 3 insurance program to persons with risks eligible under
 4 subparagraph (a)1. and who are in good faith entitled to, but
 5 are unable to, obtain such property or casualty insurance
 6 coverage, including excess coverage, through the voluntary
 7 market. For purposes of this subsection, an adequate level of
 8 coverage means that coverage which is required by state law or
 9 by responsible or prudent business practices. The Joint
 10 Underwriting Association shall not be required to provide
 11 coverage for any type of risk for which there are no insurers
 12 providing similar coverage in this state. The office may
 13 designate one or more participating insurers who agree to
 14 provide policyholder and claims service, including the
 15 issuance of policies, on behalf of the participating insurers.

16 (a) The plan shall provide:

17 1. A means of establishing eligibility of a risk for
 18 obtaining insurance through the plan, which provides that:

19 a. A risk shall be eligible for such property
 20 insurance or casualty insurance as is required by Florida law
 21 if the insurance is unavailable in the voluntary market,
 22 including the market assistance program and the surplus lines
 23 market.

24 b. A commercial risk not eligible under
 25 sub-subparagraph a. shall be eligible for property or casualty
 26 insurance if:

27 (I) The insurance is unavailable in the voluntary
 28 market, including the market assistance plan and the surplus
 29 lines market;

30 (II) Failure to secure the insurance would
 31 substantially impair the ability of the entity to conduct its

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1 affairs; and

2 (III) The risk is not determined by the Risk
3 Underwriting Committee to be uninsurable.

4 c. In the event the Federal Government terminates the
5 Federal Crime Insurance Program established under 44 C.F.R.
6 ss. 80-83, Florida commercial and residential risks previously
7 insured under the federal program shall be eligible under the
8 plan.

9 d.(I) In the event a risk is eligible under this
10 paragraph and in the event the market assistance plan receives
11 a minimum of 100 applications for coverage within a 3-month
12 period, or 200 applications for coverage within a 1-year
13 period or less, for a given class of risk contained in the
14 classification system defined in the plan of operation of the
15 Joint Underwriting Association, and unless the market
16 assistance plan provides a quotation for at least 80 percent
17 of such applicants, such classification shall immediately be
18 eligible for coverage in the Joint Underwriting Association.

19 (II) Any market assistance plan application which is
20 rejected because an individual risk is so hazardous as to be
21 practically uninsurable, considering whether the likelihood of
22 a loss for such a risk is substantially higher than for other
23 risks of the same class due to individual risk
24 characteristics, prior loss experience, unwillingness to
25 cooperate with a prior insurer, physical characteristics and
26 physical location shall not be included in the minimum
27 percentage calculation provided above. In the event that there
28 is any legal or administrative challenge to a determination by
29 the office that the conditions of this subparagraph have been
30 met for eligibility for coverage in the Joint Underwriting
31 Association for a given classification, any eligible risk may

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1 obtain coverage during the pendency of any such challenge.

2 e. In order to qualify as a quotation for the purpose
3 of meeting the minimum percentage calculation in this
4 subparagraph, the quoted premium must meet the following
5 criteria:

6 (I) In the case of an admitted carrier, the quoted
7 premium must not exceed the premium available for a given
8 classification currently in use by the Joint Underwriting
9 Association or the premium developed by using the rates and
10 rating plans on file with the office by the quoting insurer,
11 whichever is greater.

12 (II) In the case of an authorized surplus lines
13 insurer, the quoted premium must not exceed the premium
14 available for a given classification currently in use by the
15 Joint Underwriting Association by more than 25 percent, after
16 consideration of any individual risk surcharge or credit.

17 f. Any agent who falsely certifies the unavailability
18 of coverage as provided by sub-subparagraphs a. and b., is
19 subject to the penalties provided in s. 626.611.

20 2. A means for the equitable apportionment of profits
21 or losses and expenses among participating insurers.

22 3. Rules for the classification of risks and rates
23 which reflect the past and prospective loss experience.

24 4. A rating plan which reasonably reflects the prior
25 claims experience of the insureds. Such rating plan shall
26 include at least two levels of rates for risks that have
27 favorable loss experience and risks that have unfavorable loss
28 experience, as established by the plan.

29 5. Reasonable limits to available amounts of
30 insurance. Such limits may not be less than the amounts of
31 insurance required of eligible risks by Florida law.

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1 6. Risk management requirements for insurance where
2 such requirements are reasonable and are expected to reduce
3 losses.

4 7. Deductibles as may be necessary to meet the needs
5 of insureds.

6 8. Policy forms which are consistent with the forms in
7 use by the majority of the insurers providing coverage in the
8 voluntary market for the coverage requested by the applicant.

9 9. A means to remove risks from the plan once such
10 risks no longer meet the eligibility requirements of this
11 paragraph. For this purpose, the plan shall include the
12 following requirements: At each 6-month interval after the
13 activation of any class of insureds, the board of governors or
14 its designated committee shall review the number of
15 applications to the market assistance plan for that class. If,
16 based on these latest numbers, at least 90 percent of such
17 applications have been provided a quotation, the Joint
18 Underwriting Association shall cease underwriting new
19 applications for such class within 30 days, and notification
20 of this decision shall be sent to the office, the major
21 agents' associations, and the board of directors of the market
22 assistance plan. A quotation for the purpose of this
23 subparagraph shall meet the same criteria for a quotation as
24 provided in sub-subparagraph 1.e. All policies which were
25 previously written for that class shall continue in force
26 until their normal expiration date, at which time, subject to
27 the required timely notification of nonrenewal by the Joint
28 Underwriting Association, the insured may then elect to
29 reapply to the Joint Underwriting Association according to the
30 requirements of eligibility. If, upon reapplication, those
31 previously insured Joint Underwriting Association risks meet

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1 the eligibility requirements, the Joint Underwriting
2 Association shall provide the coverage requested.

3 10. A means for providing credits to insurers against
4 any deficit assessment levied pursuant to paragraph (c), for
5 risks voluntarily written through the market assistance plan
6 by such insurers.

7 11. That the Joint Underwriting Association shall
8 operate subject to the supervision and approval of a board of
9 governors consisting of 13 individuals appointed by the Chief
10 Financial Officer, and shall have an executive or underwriting
11 committee. At least four of the members shall be
12 representatives of insurance trade associations as follows:
13 one member from the American Insurance Association, one member
14 from the Alliance of American Insurers, one member from the
15 National Association of Independent Insurers, and one member
16 from an unaffiliated insurer writing coverage on a national
17 basis. Two representatives shall be from two of the statewide
18 agents' associations. Each board member shall be appointed to
19 serve for 2-year terms beginning on a date designated by the
20 plan and shall serve at the pleasure of the Chief Financial
21 Officer. Members may be reappointed for subsequent terms.

22 (b) Rates used by the Joint Underwriting Association
23 shall be actuarially sound. To the extent applicable, the rate
24 standards set forth in s. 627.062 shall be considered by the
25 office in establishing rates to be used by the joint
26 underwriting plan. The initial rate level shall be determined
27 using the rates, rules, rating plans, and classifications
28 contained in the most current Insurance Services Office (ISO)
29 filing with the office or the filing of other licensed rating
30 organizations with an additional increment of 25 percent of
31 premium. For any type of coverage or classification which

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1 lends itself to manual rating for which the Insurance Services
2 Office or another licensed rating organization does not file
3 or publish a rate, the Joint Underwriting Association shall
4 file and use an initial rate based on the average current
5 market rate. The initial rate level for the rate plan shall
6 also be subject to an experience and schedule rating plan
7 which may produce a maximum of 25 percent debits or credits.
8 For any risk which does not lend itself to manual rating and
9 for which no rate has been promulgated under the rate plan,
10 the board shall develop and file with the office, subject to
11 its approval, appropriate criteria and factors for rating the
12 individual risk. Such criteria and factors shall include, but
13 not be limited to, loss rating plans, composite rating plans,
14 and unique and unusual risk rating plans. The initial rates
15 required under this paragraph shall be adjusted in conformity
16 with future filings by the Insurance Services Office with the
17 office and shall remain in effect until such time as the Joint
18 Underwriting Association has sufficient data as to
19 independently justify an actuarially sound change in such
20 rates.

21 (c)1. In the event an underwriting deficit exists for
22 any policy year the plan is in effect, any surplus which has
23 accrued from previous years and is not projected within
24 reasonable actuarial certainty to be needed for payment for
25 claims in the year the surplus arose shall be used to offset
26 the deficit to the extent available.

27 2. As to any remaining deficit, the board of governors
28 of the Joint Underwriting Association shall levy and collect
29 an assessment in an amount sufficient to offset such deficit.
30 Such assessment shall be levied against the insurers
31 participating in the plan during the year giving rise to the

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1 assessment. Any assessments against insurers for the lines of
2 property and casualty insurance issued to commercial risks
3 shall be recovered from the participating insurers in the
4 proportion that the net direct premium of each insurer for
5 commercial risks written during the preceding calendar year
6 bears to the aggregate net direct premium written for
7 commercial risks by all members of the plan for the lines of
8 insurance included in the plan. Any assessments against
9 insurers for the lines of property and casualty insurance
10 issued to personal risks eligible under sub-subparagraph
11 (a)1.a. or sub-subparagraph (a)1.c. shall be recovered from
12 the participating insurers in the proportion that the net
13 direct premium of each insurer for personal risks written
14 during the preceding calendar year bears to the aggregate net
15 direct premium written for personal risks by all members of
16 the plan for the lines of insurance included in the plan.

17 3. The board shall take all reasonable and prudent
18 steps necessary to collect the amount of assessment due from
19 each participating insurer and policyholder, including, if
20 prudent, filing suit to collect such assessment. If the board
21 is unable to collect an assessment from any insurer, the
22 uncollected assessments shall be levied as an additional
23 assessment against the participating insurers and any
24 participating insurer required to pay an additional assessment
25 as a result of such failure to pay shall have a cause of
26 action against such nonpaying insurer.

27 4. Any funds or entitlements that the state may be
28 eligible to receive by virtue of the Federal Government's
29 termination of the Federal Crime Insurance Program referenced
30 in sub-subparagraph (a)1.c. may be used under the plan to
31 offset any subsequent underwriting deficits that may occur

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1 from risks previously insured with the Federal Crime Insurance
2 Program.

3 5. Assessments shall be included as an appropriate
4 factor in the making of rates as provided in s. 627.3512.

5 6.a. The Legislature finds that the potential for
6 unlimited assessments under this paragraph may induce insurers
7 to attempt to reduce their writings in the voluntary market,
8 and that such actions would worsen the availability problems
9 that the association was created to remedy. It is the intent
10 of the Legislature that insurers remain fully responsible for
11 covering any deficits of the association; however, it is also
12 the intent of the Legislature to provide a means by which
13 assessment liabilities may be amortized over a period of
14 years.

15 b. The total amount of deficit assessments under this
16 paragraph with respect to any year may not exceed 10 percent
17 of the statewide total gross written premium for all insurers
18 for the coverages referred to in the introductory language of
19 this subsection for the prior year, except that if the deficit
20 with respect to any plan year exceeds such amount and bonds
21 are issued under sub-subparagraph c. to defray the deficit,
22 the total amount of assessments with respect to such deficit
23 may not in any year exceed 10 percent of the deficit, or such
24 lesser percentage as is sufficient to retire the bonds as
25 determined by the board, and shall continue annually until the
26 bonds are retired.

27 c. The governing body of any unit of local government,
28 any residents or businesses of which are insured by the
29 association, may issue bonds as defined in s. 125.013 or s.
30 166.101 from time to time to fund an assistance program, in
31 conjunction with the association, for the purpose of defraying

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1 deficits of the association. Revenue bonds may not be issued
2 until validated pursuant to chapter 75, unless a state of
3 emergency is declared by executive order or proclamation of
4 the Governor pursuant to s. 252.36 making such findings as are
5 necessary to determine that it is in the best interests of,
6 and necessary for, the protection of the public health,
7 safety, and general welfare of residents of this state and the
8 protection and preservation of the economic stability of
9 insurers operating in this state, and declaring it an
10 essential public purpose to permit certain municipalities or
11 counties to issue such bonds as will provide relief to
12 claimants and policyholders of the joint underwriting
13 association and insurers responsible for apportionment of
14 association losses. The unit of local government shall enter
15 into such contracts with the association as are necessary to
16 carry out this paragraph. Any bonds issued under this
17 sub-subparagraph shall be payable from and secured by moneys
18 received by the association from assessments under this
19 paragraph, and assigned and pledged to or on behalf of the
20 unit of local government for the benefit of the holders of
21 such bonds. The funds, credit, property, and taxing power of
22 the state or of the unit of local government shall not be
23 pledged for the payment of such bonds. If any of the bonds
24 remain unsold 60 days after issuance, the office shall require
25 all insurers subject to assessment to purchase the bonds,
26 which shall be treated as admitted assets; each insurer shall
27 be required to purchase that percentage of the unsold portion
28 of the bond issue that equals the insurer's relative share of
29 assessment liability under this subsection. An insurer shall
30 not be required to purchase the bonds to the extent that the
31 office determines that the purchase would endanger or impair

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1 the solvency of the insurer.

2 7. The plan shall provide for the deferment, in whole
3 or in part, of the assessment of an insurer if the office
4 finds that payment of the assessment would endanger or impair
5 the solvency of the insurer. In the event an assessment
6 against an insurer is deferred in whole or in part, the amount
7 by which such assessment is deferred may be assessed against
8 the other member insurers in a manner consistent with the
9 basis for assessments set forth in subparagraph 2.

10 (d) Upon adoption of the plan, all insurers authorized
11 in this state to underwrite property or casualty insurance
12 shall participate in the plan.

13 (e) A Risk Underwriting Committee of the Joint
14 Underwriting Association composed of three members experienced
15 in evaluating insurance risks is created to review risks
16 rejected by the voluntary market for which application is made
17 for insurance through the joint underwriting plan. The
18 committee shall consist of a representative of the market
19 assistance plan created under s. 627.3515, a member selected
20 by the insurers participating in the Joint Underwriting
21 Association, and a member named by the Chief Financial
22 Officer. The Risk Underwriting Committee shall appoint such
23 advisory committees as are provided for in the plan and are
24 necessary to conduct its functions. The salaries and expenses
25 of the members of the Risk Underwriting Committee and its
26 advisory committees shall be paid by the joint underwriting
27 plan. The plan approved by the office shall establish criteria
28 and procedures for use by the Risk Underwriting Committee for
29 determining whether an individual risk is so hazardous as to
30 be uninsurable. In making this determination and in
31 establishing the criteria and procedures, the following shall

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1 be considered:

2 1. Whether the likelihood of a loss for the individual
3 risk is substantially higher than for other risks of the same
4 class; and

5 2. Whether the uncertainty associated with the
6 individual risk is such that an appropriate premium cannot be
7 determined.

8
9 The acceptance or rejection of a risk by the underwriting
10 committee shall be construed as the private placement of
11 insurance, and the provisions of chapter 120 shall not apply.

12 (f) There shall be no liability on the part of, and no
13 cause of action of any nature shall arise against, any member
14 insurer or its agents or employees, the Florida Property and
15 Casualty Joint Underwriting Association or its agents or
16 employees, members of the board of governors, the Chief
17 Financial Officer, or the office or its representatives for
18 any action taken by them in the performance of their duties
19 under this subsection. Such immunity does not apply to actions
20 for breach of any contract or agreement pertaining to
21 insurance, or any other willful tort, or for violations of s.
22 624.155.

23
24 (Redesignate subsequent sections.)

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26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 On line 2185, after the semicolon,

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31 insert:

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1 amending s. 627.351, F.S.; providing exceptions
2 to certain grants of immunity under this
3 section;

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