

Bill No. CS for CS for SB 1488, 1st Eng.

Barcode 964362

CHAMBER ACTION

Senate

House

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11 Senator Campbell moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 66, between lines 9 and 10,

15

16 insert:

17 Section 27. Paragraph (f) of subsection (5) of section
18 627.351, Florida Statutes, is amended to read:

19 627.351 Insurance risk apportionment plans.--

20 (5) PROPERTY AND CASUALTY INSURANCE RISK

21 APPORTIONMENT.--The commission shall adopt by rule a joint
22 underwriting plan to equitably apportion among insurers
23 authorized in this state to write property insurance as
24 defined in s. 624.604 or casualty insurance as defined in s.
25 624.605, the underwriting of one or more classes of property
26 insurance or casualty insurance, except for the types of
27 insurance that are included within property insurance or
28 casualty insurance for which an equitable apportionment plan,
29 assigned risk plan, or joint underwriting plan is authorized
30 under s. 627.311 or subsection (1), subsection (2), subsection
31 (3), subsection (4), or subsection (5) and except for risks

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

15 (a) The plan shall provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 6. Risk management requirements for insurance where

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1 such requirements are reasonable and are expected to reduce
2 losses.

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

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

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

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1 Association shall provide the coverage requested.

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

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

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

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

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

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

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

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

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

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1 Program.

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

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

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

26 c. The governing body of any unit of local government,
27 any residents or businesses of which are insured by the
28 association, may issue bonds as defined in s. 125.013 or s.
29 166.101 from time to time to fund an assistance program, in
30 conjunction with the association, for the purpose of defraying
31 deficits of the association. Revenue bonds may not be issued

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

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

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

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

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

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

7
8 The acceptance or rejection of a risk by the underwriting
9 committee shall be construed as the private placement of
10 insurance, and the provisions of chapter 120 shall not apply.

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

22
23 (Redesignate subsequent sections.)

24
25
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 On page 7, line 23, after the second semicolon,
29
30 insert:

31 amending s. 627.351, F.S.; providing exceptions

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1 to certain grants of immunity under this
2 section;
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