

CHAMBER ACTION

1 The Commerce Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to community behavioral health agencies;
7 creating s. 624.4624, F.S.; authorizing certain nonprofit
8 community mental health or substance abuse providers to
9 form a self-insurance fund for certain purposes; providing
10 operating requirements of the self-insurance fund;
11 providing certain application exceptions for such fund;
12 requiring certain funds to initially be organized and
13 operate as a commercial self-insurance fund for a time
14 certain; requiring certain self-insurance funds to comply
15 with certain annual financial statement requirements for a
16 time certain; proscribing certain self-insurance funds
17 from being considered insurers for certain purposes;
18 creating s. 394.9085, F.S.; limiting net economic damages
19 per claim in certain tort actions brought against certain
20 programs or facilities; providing criteria for such
21 claims; requiring that damages be offset by certain
22 collateral source payments; requiring that costs to defend
23 actions be assumed by the provider or its insurer;

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24 providing for exclusivity of such liability; providing for
 25 extension of certain immunities to employees of such
 26 programs or facilities; providing an exception; requiring
 27 eligible providers to obtain and maintain certain general
 28 liability coverage; specifying that persons providing
 29 contractual services to the state are not considered
 30 agents or employees for certain purposes; providing for an
 31 annual increase in the conditional limitations on damages;
 32 providing an effective date.

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34 Be It Enacted by the Legislature of the State of Florida:

35

36 Section 1. Section 624.4624, Florida Statutes, is created
 37 to read:

38 624.4624 Nonprofit community mental health and substance
 39 abuse provider self-insurance fund.--

40 (1) Notwithstanding any other provisions of law, any two
 41 or more nonprofit community mental health or substance abuse
 42 providers, which are members in good standing of a nonprofit
 43 statewide association which has been in existence for at least
 44 10 years and is comprised of at least 50 community-based mental
 45 health and substance abuse agencies which are primarily publicly
 46 funded and located in this state, may form a self-insurance fund
 47 for the purpose of pooling and spreading liabilities of its
 48 group members in any property or casualty risk or surety
 49 insurance or securing the payment of benefits under chapter 440,
 50 provided the nonprofit community mental health and substance
 51 abuse provider self-insurance fund created must:

52 (a) Have annual normal premiums in excess of \$5 million.

53 (b) Maintain a continuing program of excess insurance
 54 coverage and reserve evaluation to protect the financial
 55 stability of the fund in an amount and manner determined by a
 56 qualified and independent actuary.

57 (c) Submit to the office annually an audited fiscal year-
 58 end financial statement by an independent certified public
 59 accountant within 6 months after the end of the fiscal year.

60 (d) Have a governing body which is comprised entirely of
 61 community mental health and substance abuse provider officials.

62 (2) A nonprofit community mental health and substance
 63 abuse provider self-insurance fund that meets the requirements
 64 of this section is not subject to s. 624.4621 and is not
 65 required to file any report with the department under s.
 66 440.38(2)(b) required of group self-insurer funds qualified
 67 under s. 624.4621. If any of the requirements of this section
 68 are not met, the nonprofit mental health and substance abuse
 69 provider self-insurance fund is subject to the requirements of
 70 s. 624.4621.

71 (3)(a) Notwithstanding subsection (2), a nonprofit
 72 community mental health and substance abuse provider self-
 73 insurance fund created under this section after October 1, 2005,
 74 shall initially be subject to the requirements of a commercial
 75 fund under s. 624.4621 and, for the first 5 years of its
 76 existence, shall be subject to all the requirements applied to
 77 commercial self-insurance funds or to group self-insurance
 78 funds, respectively.

79 (b)1. A nonprofit community mental health and substance
 80 abuse provider self-insurance fund formed after January 1, 2006,
 81 shall, for its first 5 fiscal years, file with the office full
 82 and true statements of its financial condition, transactions,
 83 and affairs. An annual statement covering the preceding fiscal
 84 year shall be filed within 60 days after the end of the fund's
 85 fiscal year and quarterly statements shall be filed within 45
 86 days after each such date. The office may, for good cause, grant
 87 an extension of time for filing an annual or quarterly
 88 statement. The statements shall contain information generally
 89 included in insurers' financial statements prepared in
 90 accordance with generally accepted insurance accounting
 91 principles and practices and in a form generally used by
 92 insurers for financial statements, sworn to by at least two
 93 executive officers of the self-insurance fund. The form for
 94 financial statements shall be the form currently approved by the
 95 National Association of Insurance Commissioners for use by
 96 property and casualty insurers.

97 2. Each annual statement shall contain a statement of
 98 opinion on loss and loss adjustment expense reserves made by a
 99 member of the American Academy of Actuaries. Workpapers in
 100 support of the statement of opinion must be provided to the
 101 office upon request.

102 Section 2. No self-insurance fund created under this act
 103 shall be deemed to be or considered to be an insurer for any
 104 purpose under chapter 631, Florida Statutes.

105 Section 3. Section 394.9085, Florida Statutes, is created
 106 to read:

107 394.9085 Behavioral provider liability.--
 108 (1) In any tort action based on services provided for
 109 crisis stabilization brought against a detoxification program as
 110 defined in s. 397.311(18)(b), an addictions receiving facility
 111 as defined in s. 397.311(18)(a), or a designated public
 112 receiving facility as defined in s. 394.455(26), net economic
 113 damages shall be limited to \$1 million per liability claim,
 114 including, but not limited to, past and future medical expenses,
 115 wage loss, and loss of earning capacity, offset by any
 116 collateral source payment paid in accordance with s. 768.76. In
 117 any tort action based on services provided for crisis
 118 stabilization brought against any detoxification program as
 119 defined in s. 397.311(18)(b), an addictions receiving facility
 120 as defined in s. 397.311(18)(a), or a designated public
 121 receiving facility as defined in s. 394.455(26), noneconomic
 122 damages shall be limited to \$200,000 per claim. Any claim may be
 123 settled up to policy limits without further act of the
 124 Legislature. A claims bill may be brought on behalf of a
 125 claimant pursuant to s. 768.28 for any amount exceeding the
 126 limits specified in this subsection. Any costs in defending
 127 actions brought under this section shall be assumed by the
 128 provider or its insurer.
 129 (2) The liability of a detoxification program as defined
 130 in s. 397.311(18)(b), an addictions receiving facility as
 131 defined in s. 397.311(18)(a), or any designated public receiving
 132 facility as defined in s. 394.455(26) shall be exclusive and in
 133 place of all other liability of such provider. The same
 134 immunities from liability enjoyed by such providers shall extend

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135 to each employee of the provider when such employee is acting in
136 furtherance of the provider's responsibilities under its
137 contract with the department. Such immunities shall not be
138 applicable to a provider or employee who acts in a culpably
139 negligent manner or with willful and wanton disregard or
140 unprovoked physical aggression when such acts result in injury
141 or death.

142 (3) The eligible provider under this section must, as part
143 of its contract, obtain and maintain a minimum of \$1 million per
144 claim and \$3 million per incident in general liability coverage.

145 (4) This section does not designate a person who provides
146 contracted services to the Department of Children and Family
147 Services as an employee or agent of the state for purposes of
148 chapter 440.

149 (5) The Legislature is cognizant of the increasing costs
150 of goods and services each year and recognizes that fixing a set
151 amount of compensation actually has the effect of a reduction in
152 compensation each year. Accordingly, the conditional limitations
153 on damages in this section shall be increased at the rate of 5
154 percent each year, prorated from the July 1, 2005, to the date
155 at which damages subject to such limitations are awarded by
156 final judgment or settlement.

157 Section 4. This act shall take effect July 1, 2005.