

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Cannon offered the following:

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3 **Amendment (with title amendment)**

4 Remove lines 105-494 and insert:

5 Section 2. Subsections (2), (3), and (4) of section

6 440.105, Florida Statutes, are amended to read:

7 440.105 Prohibited activities; reports; penalties;
8 limitations.--

9 (2) Whoever violates any provision of this subsection
10 commits a misdemeanor of the first degree, punishable as
11 provided in s. 775.082 or s. 775.083.

12 (a) It shall be unlawful for any employer to knowingly:

13 1. Coerce or attempt to coerce, as a precondition to
14 employment or otherwise, an employee to obtain a certificate of
15 election of exemption pursuant to s. 440.05.

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16 2. Discharge or refuse to hire an employee or job
17 applicant because the employee or applicant has filed a claim
18 for benefits under this chapter.

19 3. Discharge, discipline, or take any other adverse
20 personnel action against any employee for disclosing information
21 to the department or any law enforcement agency relating to any
22 violation or suspected violation of any of the provisions of
23 this chapter or rules promulgated hereunder.

24 ~~4. Violate a stop work order issued by the department~~
25 ~~pursuant to s. 440.107.~~

26 (b) It shall be unlawful for any insurance entity to
27 revoke or cancel a workers' compensation insurance policy or
28 membership because an employer has returned an employee to work
29 or hired an employee who has filed a workers' compensation
30 claim.

31 (3) Whoever violates any provision of this subsection
32 commits a misdemeanor of the first degree, punishable as
33 provided in s. 775.082 or s. 775.083.

34 (a) It shall be unlawful for any employer to knowingly
35 fail to update applications for coverage as required by s.
36 440.381(1) and department rules within 7 days after the
37 reporting date for any change in the required information, or to
38 post notice of coverage pursuant to s. 440.40.

39 ~~(b) It shall be unlawful for any employer to knowingly~~
40 ~~participate in the creation of the employment relationship in~~
41 ~~which the employee has used any false, fraudulent, or misleading~~
42 ~~oral or written statement as evidence of identity.~~

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43 ~~(b)(e)~~ It is unlawful for any attorney or other person, in
44 his or her individual capacity or in his or her capacity as a
45 public or private employee, or for any firm, corporation,
46 partnership, or association to receive any fee or other
47 consideration or any gratuity from a person on account of
48 services rendered for a person in connection with any
49 proceedings arising under this chapter, unless such fee,
50 consideration, or gratuity is approved by a judge of
51 compensation claims or by the Deputy Chief Judge of Compensation
52 Claims.

53 (4) Unless otherwise specifically provided, whoever
54 violates any provision of this subsection commits insurance
55 fraud, punishable as provided in paragraph (f).

56 (a) It shall be unlawful for any employer to knowingly:

57 1. Present or cause to be presented any false, fraudulent,
58 or misleading oral or written statement to any person as
59 evidence of compliance with s. 440.38.

60 2. Make a deduction from the pay of any employee entitled
61 to the benefits of this chapter for the purpose of requiring the
62 employee to pay any portion of premium paid by the employer to a
63 carrier or to contribute to a benefit fund or department
64 maintained by such employer for the purpose of providing
65 compensation or medical services and supplies as required by
66 this chapter.

67 3. Fail to secure workers' ~~payment~~ of compensation if
68 required to do so by this chapter.

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69 a. However, if an employer knowingly fails to secure
70 workers' compensation coverage for an employee when required by
71 this chapter and such employee subsequently suffers a work-
72 related injury requiring medical treatment, the employer commits
73 a felony of the second degree, punishable as provided in s.
74 775.082, s. 775.083, or s. 775.084.

75 b. However, if an employer knowingly fails to secure
76 workers' compensation coverage for an employee when required by
77 this chapter and such employee subsequently suffers a work-
78 related death, the employer commits a felony of the first
79 degree, punishable as provided in s. 775.082, s. 775.083, or s.
80 775.084.

81 (b) It is ~~shall be~~ unlawful for any person:

82 1. To knowingly make, or cause to be made, any false,
83 fraudulent, or misleading oral or written statement for the
84 purpose of obtaining or denying any benefit or payment under
85 this chapter.

86 2. To present or cause to be presented any written or oral
87 statement as part of, or in support of, a claim for payment or
88 other benefit pursuant to any provision of this chapter, knowing
89 that such statement contains any false, incomplete, or
90 misleading information concerning any fact or thing material to
91 such claim.

92 3. To prepare or cause to be prepared any written or oral
93 statement that is intended to be presented to any employer,
94 insurance company, or self-insured program in connection with,
95 or in support of, any claim for payment or other benefit

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96 | pursuant to any provision of this chapter, knowing that such
97 | statement contains any false, incomplete, or misleading
98 | information concerning any fact or thing material to such claim.

99 | 4. To knowingly assist, conspire with, or urge any person
100 | to engage in activity prohibited by this section.

101 | 5. To knowingly make any false, fraudulent, or misleading
102 | oral or written statement, or to knowingly omit or conceal
103 | material information, required by s. 440.185 or s. 440.381, for
104 | the purpose of obtaining workers' compensation coverage or for
105 | the purpose of avoiding, delaying, or diminishing the amount of
106 | payment of any workers' compensation premiums.

107 | 6. To knowingly misrepresent or conceal payroll,
108 | classification of workers, or information regarding an
109 | employer's loss history which would be material to the
110 | computation and application of an experience rating modification
111 | factor for the purpose of avoiding or diminishing the amount of
112 | payment of any workers' compensation premiums.

113 | 7. To knowingly present or cause to be presented any
114 | false, fraudulent, or misleading oral or written statement to
115 | any person as evidence of compliance with s. 440.38, as evidence
116 | of eligibility for a certificate of exemption under s. 440.05.

117 | 8. To knowingly violate a stop-work order issued by the
118 | department pursuant to s. 440.107.

119 | ~~9. To knowingly present or cause to be presented any~~
120 | ~~false, fraudulent, or misleading oral or written statement to~~
121 | ~~any person as evidence of identity for the purpose of obtaining~~

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122 ~~employment or filing or supporting a claim for workers'~~
123 ~~compensation benefits.~~

124 (c) It shall be unlawful for any physician licensed under
125 chapter 458, osteopathic physician licensed under chapter 459,
126 chiropractic physician licensed under chapter 460, podiatric
127 physician licensed under chapter 461, optometric physician
128 licensed under chapter 463, or any other practitioner licensed
129 under the laws of this state to knowingly and willfully assist,
130 conspire with, or urge any person to fraudulently violate any of
131 the provisions of this chapter.

132 (d) It shall be unlawful for any person or governmental
133 entity licensed under chapter 395 to maintain or operate a
134 hospital in such a manner so that such person or governmental
135 entity knowingly and willfully allows the use of the facilities
136 of such hospital by any person, in a scheme or conspiracy to
137 fraudulently violate any of the provisions of this chapter.

138 (e) It shall be unlawful for any attorney or other person,
139 in his or her individual capacity or in his or her capacity as a
140 public or private employee, or any firm, corporation,
141 partnership, or association, to knowingly assist, conspire with,
142 or urge any person to fraudulently violate any of the provisions
143 of this chapter.

144 (f) If the monetary value of any violation of this
145 subsection:

146 1. Is less than \$20,000, the offender commits a felony of
147 the third degree, punishable as provided in s. 775.082, s.
148 775.083, or s. 775.084.

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149 2. Is \$20,000 or more, but less than \$100,000, the
150 offender commits a felony of the second degree, punishable as
151 provided in s. 775.082, s. 775.083, or s. 775.084.

152 3. Is \$100,000 or more, the offender commits a felony of
153 the first degree, punishable as provided in s. 775.082, s.
154 775.083, or s. 775.084.

155 Section 3. Section 448.09, Florida Statutes, is amended to
156 read:

157 448.09 Unauthorized aliens; employment prohibited.--

158 (1) It is ~~shall be~~ unlawful for any person knowingly to
159 employ, hire, recruit, or refer, either for herself or himself
160 or on behalf of another, for private or public employment within
161 the state, an alien who is not duly authorized to work by the
162 immigration laws or the Attorney General of the United States.

163 (2) It is unlawful to knowingly present or cause to be
164 presented any false, fraudulent, or misleading oral or written
165 statements to any person as evidence of identity for the purpose
166 of obtaining employment. ~~The first violation of subsection (1)~~
167 ~~shall be a noncriminal violation as defined in s. 775.08(3) and,~~
168 ~~upon conviction, shall be punishable as provided in s.~~
169 ~~775.082(5) by a civil fine of not more than \$500, regardless of~~
170 ~~the number of aliens with respect to whom the violation~~
171 ~~occurred.~~

172 (3) Any person who violates ~~has been previously convicted~~
173 ~~for a violation of subsection (1) or subsection (2) is and who~~
174 ~~thereafter violates subsection (1), shall be guilty of a~~
175 misdemeanor of the first ~~second~~ degree, punishable as provided

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176 in s. 775.082 or s. 775.083. ~~Any such subsequent violation of~~
177 ~~this section shall constitute a separate offense with respect to~~
178 ~~each unauthorized alien.~~

179 Section 4. Section 624.15, Florida Statutes, is amended to
180 read:

181 624.15 General penalty.--

182 (1) Each willful violation of this code or rule of the
183 department, office, or commission as to which a greater penalty
184 is not provided by another provision of this code or rule of the
185 department, office, or commission or by other applicable laws of
186 this state is a misdemeanor of the second degree and is, in
187 addition to any prescribed applicable denial, suspension, or
188 revocation of certificate of authority, license, or permit,
189 punishable as provided in s. 775.082 or s. 775.083. Each
190 instance of such violation shall be considered a separate
191 offense.

192 (2) Each willful violation of an emergency rule or order
193 of the department, office, or commission by a person who is not
194 licensed, authorized, or eligible to engage in business in
195 accordance with the Florida Insurance Code is a felony of the
196 third degree, punishable as provided in s. 775.082, s. 775.083,
197 or s. 775.084. Each instance of such violation is a separate
198 offense. This subsection does not apply to licensees or
199 affiliated parties of licensees.

200 Section 5. Subsection (2) of section 624.155, Florida
201 Statutes, is amended to read:

202 624.155 Civil remedy.--

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203 (2) Any party may bring a civil action against any person
204 acting as an unauthorized insurer without a certificate of
205 authority if such party is damaged by a violation of s. 624.401
206 by that person the unauthorized insurer.

207 Section 6. Subsection (9) is added to section 626.112,
208 Florida Statutes, to read:

209 626.112 License and appointment required; agents, customer
210 representatives, adjusters, insurance agencies, service
211 representatives, managing general agents.--

212 (9) Any person who transacts insurance or otherwise
213 engages in insurance activities in this state without a license
214 in violation of this section commits a felony of the third
215 degree, punishable as provided in s. 775.082, s. 775.083, or s.
216 775.084.

217 Section 7. Paragraph (d) of subsection (4) of section
218 626.901, Florida Statutes, is amended to read:

219 626.901 Representing or aiding unauthorized insurer
220 prohibited.--

221 (4) This section does not apply to:

222 (d) Independently procured coverage written pursuant to s.
223 626.938 which is not solicited, marketed, or sold within this
224 state.

225 Section 8. Section 626.918, Florida Statutes, is amended
226 to read:

227 626.918 Eligible surplus lines insurers.--

228 (1) A No surplus lines agent may not shall place any
229 coverage with any unauthorized insurer which is not then an

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230 eligible surplus lines insurer, except as permitted under
231 subsections ~~(6)(5)~~ and ~~(7)(6)~~.

232 (2) ~~An~~ ~~no~~ unauthorized insurer may not ~~shall~~ be or become
233 an eligible surplus lines insurer unless made eligible by the
234 office in accordance with the following conditions:

235 (a) Eligibility of the insurer must be requested in
236 writing by the Florida Surplus Lines Service Office;

237 (b) The insurer must be currently an authorized insurer in
238 the state or country of its domicile as to the kind or kinds of
239 insurance proposed to be so placed and must have been such an
240 insurer for not less than the 3 years next preceding or must be
241 the wholly owned subsidiary of such authorized insurer or must
242 be the wholly owned subsidiary of an already eligible surplus
243 lines insurer as to the kind or kinds of insurance proposed for
244 a period of not less than the 3 years next preceding. However,
245 the office may waive the 3-year requirement if the insurer
246 provides a product or service not readily available to the
247 consumers of this state or has operated successfully for a
248 period of at least 1 year next preceding and has capital and
249 surplus of not less than \$25 million;

250 (c) Before granting eligibility, the requesting surplus
251 lines agent or the insurer shall furnish the office with a duly
252 authenticated copy of its current annual financial statement in
253 the English language and with all monetary values therein
254 expressed in United States dollars, at an exchange rate (in the
255 case of statements originally made in the currencies of other
256 countries) then-current and shown in the statement, and with

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257 such additional information relative to the insurer as the
258 office may request;

259 (d)1. The insurer must have and maintain surplus as to
260 policyholders of not less than \$15 million; in addition, an
261 alien insurer must also have and maintain in the United States a
262 trust fund for the protection of all its policyholders in the
263 United States under terms deemed by the office to be reasonably
264 adequate, in an amount not less than \$5.4 million. Any such
265 surplus as to policyholders or trust fund shall be represented
266 by investments consisting of eligible investments for like funds
267 of like domestic insurers under part II of chapter 625 provided,
268 however, that in the case of an alien insurance company, any
269 such surplus as to policyholders may be represented by
270 investments permitted by the domestic regulator of such alien
271 insurance company if such investments are substantially similar
272 in terms of quality, liquidity, and security to eligible
273 investments for like funds of like domestic insurers under part
274 II of chapter 625. Clean, irrevocable, unconditional, and
275 evergreen letters of credit issued or confirmed by a qualified
276 United States financial institution, as defined in subsection
277 (3), may be used to fund the trust;

278 2. For those surplus lines insurers that were eligible on
279 January 1, 1994, and that maintained their eligibility
280 thereafter, the required surplus as to policyholders shall be:

281 a. On December 31, 1994, and until December 30, 1995, \$2.5
282 million.

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HOUSE AMENDMENT

Bill No. HB 967 CS

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283 b. On December 31, 1995, and until December 30, 1996, \$3.5
284 million.

285 c. On December 31, 1996, and until December 30, 1997, \$4.5
286 million.

287 d. On December 31, 1997, and until December 30, 1998, \$5.5
288 million.

289 e. On December 31, 1998, and until December 30, 1999, \$6.5
290 million.

291 f. On December 31, 1999, and until December 30, 2000, \$8
292 million.

293 g. On December 31, 2000, and until December 30, 2001, \$9.5
294 million.

295 h. On December 31, 2001, and until December 30, 2002, \$11
296 million.

297 i. On December 31, 2002, and until December 30, 2003, \$13
298 million.

299 j. On December 31, 2003, and thereafter, \$15 million.

300 3. The capital and surplus requirements as set forth in
301 subparagraph 2. do not apply in the case of an insurance
302 exchange created by the laws of individual states, where the
303 exchange maintains capital and surplus pursuant to the
304 requirements of that state, or maintains capital and surplus in
305 an amount not less than \$50 million in the aggregate. For an
306 insurance exchange which maintains funds in the amount of at
307 least \$12 million for the protection of all insurance exchange
308 policyholders, each individual syndicate shall maintain minimum
309 capital and surplus in an amount not less than \$3 million. If

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310 the insurance exchange does not maintain funds in the amount of
311 at least \$12 million for the protection of all insurance
312 exchange policyholders, each individual syndicate shall meet the
313 minimum capital and surplus requirements set forth in
314 subparagraph 2.;

315 4. A surplus lines insurer which is a member of an
316 insurance holding company that includes a member which is a
317 Florida domestic insurer as set forth in its holding company
318 registration statement, as set forth in s. 628.801 and rules
319 adopted thereunder, may elect to maintain surplus as to
320 policyholders in an amount equal to the requirements of s.
321 624.408, subject to the requirement that the surplus lines
322 insurer shall at all times be in compliance with the
323 requirements of chapter 625.

324

325 The election shall be submitted to the office and shall be
326 effective upon the office's being satisfied that the
327 requirements of subparagraph 4. have been met. The initial date
328 of election shall be the date of office approval. The election
329 approval application shall be on a form adopted by commission
330 rule. The office may approve an election form submitted pursuant
331 to subparagraph 4. only if it was on file with the former
332 Department of Insurance before February 28, 1998;

333 (e) The insurer must be of good reputation as to the
334 providing of service to its policyholders and the payment of
335 losses and claims;

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336 (f) The insurer must be eligible, as for authority to
337 transact insurance in this state, under s. 624.404(3); and

338 (g) This subsection does not apply as to unauthorized
339 insurers made eligible under s. 626.917 as to wet marine and
340 aviation risks.

341 (3) For purposes of subsection (2) relating to letters of
342 credit, the term "qualified United States financial institution"
343 means an institution that:

344 (a) Is organized or, in the case of a United States office
345 of a foreign banking organization, is licensed under the laws of
346 the United States or any state thereof.

347 (b) Is regulated, supervised, and examined by United
348 States or state authorities having regulatory authority over
349 banks and trust companies.

350 (c) Has been determined by the office or the Securities
351 Valuation Office of the National Association of Insurance
352 Commissioners to meet such standards of financial condition and
353 standing as are considered necessary and appropriate to regulate
354 the quality of financial institutions whose letters of credit
355 are acceptable to the office.

356 (4)(3) The office shall from time to time publish a list
357 of all currently eligible surplus lines insurers and shall mail
358 a copy thereof to each licensed surplus lines agent at his or
359 her office of record with the office.

360 (5)(4) This section shall not be deemed to cast upon the
361 office any duty or responsibility to determine the actual
362 financial condition or claims practices of any unauthorized

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363 insurer; and the status of eligibility, if granted by the
364 office, shall indicate only that the insurer appears to be sound
365 financially and to have satisfactory claims practices and that
366 the office has no credible evidence to the contrary.

367 ~~(6)~~(5) When it appears that any particular insurance risk
368 which is eligible for export, but on which insurance coverage,
369 in whole or in part, is not procurable from the eligible surplus
370 lines insurers, after a search of eligible surplus lines
371 insurers, then the surplus lines agent may file a supplemental
372 signed statement setting forth such facts and advising the
373 office that such part of the risk as shall be unprocurable, as
374 aforesaid, is being placed with named unauthorized insurers, in
375 the amounts and percentages set forth in the statement. Such
376 named unauthorized insurer shall, however, before accepting any
377 risk in this state, deposit with the department cash or
378 securities acceptable to the office and department of the market
379 value of \$50,000 for each individual risk, contract, or
380 certificate, which deposit shall be held by the department for
381 the benefit of Florida policyholders only; and the surplus lines
382 agent shall procure from such unauthorized insurer and file with
383 the office a certified copy of its statement of condition as of
384 the close of the last calendar year. If such statement reveals,
385 including both capital and surplus, net assets of at least that
386 amount required for licensure of a domestic insurer, then the
387 surplus lines agent may proceed to consummate such contract of
388 insurance. Whenever any insurance risk, or any part thereof, is
389 placed with an unauthorized insurer, as provided herein, the

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390 policy, binder, or cover note shall contain a statement signed
391 by the insured and the agent with the following notation: "The
392 insured is aware that certain insurers participating in this
393 risk have not been approved to transact business in Florida nor
394 have they been declared eligible as surplus lines insurers by
395 the Office of Insurance Regulation of Florida. The placing of
396 such insurance by a duly licensed surplus lines agent in Florida
397 shall not be construed as approval of such insurer by the Office
398 of Insurance Regulation of Florida. Consequently, the insured is
399 aware that the insured has severely limited the assistance
400 available under the insurance laws of Florida. The insured is
401 further aware that he or she may be charged a reasonable per
402 policy fee, as provided in s. 626.916(4), Florida Statutes, for
403 each policy certified for export." All other provisions of this
404 code shall apply to such placement the same as if such risks
405 were placed with an eligible surplus lines insurer.

406 ~~(7)(6)~~ When any particular insurance risk subject to
407 subsection ~~(6)(5)~~ is eligible for placement with an unauthorized
408 insurer and not more than 12.5 percent of the risk is so
409 subject, the office may, at its discretion, permit the agent to
410 obtain from the insured a signed statement as indicated in
411 subsection ~~(6)(5)~~. All other provisions of this code apply to
412 such placement the same as if such risks were placed with an
413 eligible surplus lines insurer.

414 Section 9. Subsections (1), (2), and (9) of section
415 626.938, Florida Statutes, are amended to read:

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416 626.938 Report and tax of independently procured
417 coverages.--

418 (1) Every insured who in this state procures or causes to
419 be procured or continues or renews insurance from another state
420 or country with an unauthorized foreign or alien insurer
421 legitimately licensed in that jurisdiction, or any self-insurer
422 who in this state so procures or continues excess loss,
423 catastrophe, or other insurance, upon a subject of insurance
424 resident, located, or to be performed within this state, other
425 than insurance procured through a surplus lines agent pursuant
426 to the Surplus Lines Law of this state or exempted from tax
427 under s. 626.932(4), shall, within 30 days after the date such
428 insurance was so procured, continued, or renewed, file a report
429 of the same with the Florida Surplus Lines Service Office in
430 writing and upon forms designated by the Florida Surplus Lines
431 Service Office and furnished to such an insured upon request, or
432 in a computer readable format as determined by the Florida
433 Surplus Lines Service Office. The report shall show the name and
434 address of the insured or insureds, the name and address of the
435 insurer, the subject of the insurance, a general description of
436 the coverage, the amount of premium currently charged therefor,
437 and such additional pertinent information as is reasonably
438 requested by the Florida Surplus Lines Service Office.

439 (2) Any insurance on a risk located in this state in an
440 unauthorized insurer legitimately

441
442 ===== T I T L E A M E N D M E N T =====

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443 Remove lines 14-19 and insert:
444 440.105, F.S.; deleting the provision that a violation of a
445 stop-work order is a misdemeanor of the first degree; increasing
446 penalties for employers unlawfully failing to secure workers'
447 compensation insurance when an employee is injured by or dies
448 from a work-related injury; deleting provisions relating to a
449 prohibition against employers participating in the creation of
450 employment relationships based on false, fraudulent, or
451 misleading information; deleting provisions relating to
452 presentation of false, fraudulent, or misleading information to
453 obtain employment; amending s. 448.09, F.S.; prohibiting the
454 presentation of certain false, fraudulent, or misleading
455 information for the purpose of obtaining employment; providing
456 penalties; revising penalties for unauthorized employment of
457 aliens; amending s. 624.15, F.S.; specifying

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