

By Senator Hays

20-01162-11

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1                                   A bill to be entitled  
2           An act relating to the Department of Financial  
3           Services; amending s. 20.121, F.S.; revising duties of  
4           the Division of Consumer Services; amending ss. 284.01  
5           and 284.36, F.S.; revising criteria for premiums  
6           charged to agencies and departments for purposes of  
7           the State Risk Management Trust Fund; amending s.  
8           284.42, F.S.; revising reporting requirements for the  
9           Department of Financial Services and the Department of  
10          Management Services on the state insurance program;  
11          requiring the Division of Risk Management to analyze  
12          and report on certain agency return-to-work programs  
13          and activities; amending s. 284.50, F.S.; requiring  
14          certain agencies to establish and maintain return-to-  
15          work programs for certain employees; providing program  
16          goals; requiring the Division of Risk Management to  
17          evaluate agency risk management programs; requiring  
18          reports; requiring agencies to respond to the  
19          division's evaluation and recommendations within a  
20          specified time; requiring the division to submit the  
21          evaluation report to the legislative appropriations  
22          committees in certain circumstances; amending s.  
23          440.13, F.S.; revising requirements for determining  
24          the amount of a reimbursement for repackaged or  
25          re-labeled prescription medication; providing  
26          limitations; amending s. 440.50, F.S.; providing for  
27          reversion of certain unencumbered and undisbursed  
28          funds to the Workers' Compensation Administration  
29          Trust Fund; providing an effective date.

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

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33 Section 1. Paragraph (h) of subsection (2) of section  
34 20.121, Florida Statutes, is amended to read:

35 20.121 Department of Financial Services.—There is created a  
36 Department of Financial Services.

37 (2) DIVISIONS.—The Department of Financial Services shall  
38 consist of the following divisions:

39 (h) The Division of Consumer Services.

40 1. The Division of Consumer Services shall perform the  
41 following functions concerning products or services regulated by  
42 the department ~~of Financial Services~~ or by ~~either office~~ of the  
43 Office of Insurance Regulation ~~Financial Services Commission~~:

44 a. Receive inquiries and complaints from consumers.

45 b. Prepare and disseminate such information as the  
46 department deems appropriate to inform or assist consumers.

47 c. Provide direct assistance and advocacy for consumers who  
48 request such assistance or advocacy.

49 d. With respect to apparent or potential violations of law  
50 or applicable rules by a person or entity licensed by the  
51 department or office ~~by either office of the commission~~, report  
52 ~~such~~ apparent or potential violations ~~violation~~ to the office or  
53 the appropriate division of the department ~~or office of the~~  
54 ~~commission~~, which may take such further action as it deems  
55 appropriate.

56 e. Designate an employee of the division as primary contact  
57 for consumers on issues relating to sinkholes.

58 2. Any person licensed or issued a certificate of authority

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59 by the department or by the Office of Insurance Regulation shall  
60 respond, in writing, to the Division of Consumer Services within  
61 20 days after receipt of a written request for information from  
62 the division concerning a consumer complaint. The response must  
63 address the issues and allegations raised in the ~~this~~ complaint.  
64 The division may, ~~in its discretion,~~ impose an administrative  
65 penalty for failure to comply with this subparagraph of ~~in an~~  
66 ~~amount~~ up to \$2,500 per violation upon any entity licensed by  
67 the department or the office ~~of Insurance Regulation~~ and \$250  
68 for the first violation, \$500 for the second violation, and up  
69 to \$1,000 per violation thereafter upon any individual licensed  
70 by the department or the office ~~of Insurance Regulation~~.

71 3. The department may adopt rules to administer ~~implement~~  
72 ~~the provisions of~~ this paragraph.

73 4. The powers, duties, and responsibilities expressed or  
74 granted in this paragraph do ~~shall~~ not limit the powers, duties,  
75 and responsibilities of the Department of Financial Services,  
76 the Financial Services Commission, the Office of Insurance  
77 Regulation, or the Office of Financial Regulation set forth  
78 elsewhere in the Florida Statutes.

79 Section 2. Subsection (5) of section 284.01, Florida  
80 Statutes, is amended to read:

81 284.01 State Risk Management Trust Fund; coverages to be  
82 provided.—

83 (5) Premiums charged to agencies for coverage shall be  
84 adopted ~~promulgated~~ on a retrospective rating arrangement based  
85 upon actual losses accruing to the fund and loss prevention  
86 results, taking into account reasonable expectations,  
87 maintenance, and stability of the fund and cost of reinsurance.

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88 Section 3. Section 284.36, Florida Statutes, is amended to  
89 read:

90 284.36 Appropriation deposits; premium payment.—Premiums  
91 for coverage by the State Risk Management Trust Fund as  
92 calculated on all coverages shall be billed and charged to each  
93 state agency according to coverages obtained by the fund for  
94 their benefit, and such obligations shall be paid promptly by  
95 each agency from its operating budget upon presentation of a  
96 bill therefor. After the first year of operation, premiums to be  
97 charged to all departments of the state are to be computed on a  
98 retrospective rating arrangement based upon actual losses  
99 accruing to the fund and loss prevention results, taking into  
100 account reasonable expectations, the maintenance and stability  
101 of the fund, and the cost of insurance.

102 Section 4. Section 284.42, Florida Statutes, is amended to  
103 read:

104 284.42 Reports on state insurance program.—

105 (1) The Department of Financial Services, with the  
106 Department of Management Services, shall conduct ~~make~~ an  
107 analysis of the state insurance program each year and submit the  
108 results on or before January 1 in a report to the Governor, the  
109 President of the Senate, and the Speaker of the House of  
110 Representatives ~~annually~~, which must ~~shall~~ include:

111 (a) Complete underwriting information as to the nature of  
112 the risks accepted for self-insurance and those risks that are  
113 transferred to the insurance market.

114 (b) The funds allocated to the Florida Casualty Risk  
115 Management Trust Fund and premiums paid for insurance through  
116 the market.

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117 (c) The method of handling legal matters and the cost  
118 allocated.

119 (d) The method and cost of handling inspection and  
120 engineering of risks.

121 (e) The cost of risk management service purchased.

122 (f) The cost of managing the State Insurance Program by the  
123 Department of Financial Services and the Department of  
124 Management Services.

125 (2) The Department of Financial Services and the Department  
126 of Management Services ~~departments~~ shall make available complete  
127 claims history including description of loss, claims paid and  
128 reserved, and the cost of all claims handled by the state.

129 (3) Beginning January 1, 2012, the Division of Risk  
130 Management shall include in its annual report an analysis of  
131 agency return-to-work efforts, including, but not limited to,  
132 agency return-to-work program performance metrics and a status  
133 report on participating return-to-work programs. The report must  
134 specify benchmarks, including, but not limited to, the average  
135 lost-time claims per year, per agency; the total number of lost  
136 claims; and specific agency measurable outcomes indicating the  
137 change in performance from year to year.

138 Section 5. Subsections (3) and (4) are added to section  
139 284.50, Florida Statutes, to read:

140 284.50 Loss prevention program; safety coordinators;  
141 Interagency Advisory Council on Loss Prevention; employee  
142 recognition program.—

143 (3) All agencies that are provided workers' compensation  
144 insurance coverage by the State Risk Management Trust Fund which  
145 employ more than 6,000 full-time employees shall establish and

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146 maintain return-to-work programs for employees who are receiving  
147 workers' compensation benefits. Such programs shall have the  
148 primary goal of enabling injured employees to remain at work or  
149 return to work to perform job duties within the physical or  
150 mental functional limitations and restrictions established by  
151 the employees' treating physicians. If such limitations or  
152 restrictions are not established in writing by an employee's  
153 treating physician, the employee shall be deemed to be able to  
154 fully perform the same job duties he or she performed before the  
155 injury.

156 (4) The Division of Risk Management shall evaluate each  
157 agency's risk management programs, including, but not limited  
158 to, return-to-work, safety, and loss prevention programs, at  
159 least once every 5 years. Reports, including any recommended  
160 corrective action resulting from such evaluations, shall be  
161 provided to the head of the agency being evaluated, the Chief  
162 Financial Officer, and the director of the Division of Risk  
163 Management. The agency head must provide to the Division of Risk  
164 Management a response to all report recommendations within 45  
165 days and a plan to implement any corrective action to be taken  
166 as part of the response. If the agency disagrees with any final  
167 report recommendations, including any recommended corrective  
168 action, or if the agency fails to implement any recommended  
169 corrective action within a reasonable time, the division shall  
170 submit the evaluation report to the appropriate legislative  
171 appropriations committees.

172 Section 6. Paragraph (c) of subsection (12) of section  
173 440.13, Florida Statutes, is amended to read:

174 440.13 Medical services and supplies; penalty for

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175 violations; limitations.-

176 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
177 REIMBURSEMENT ALLOWANCES.-

178 (c) As to reimbursement for a prescription medication,  
179 regardless of the location or provider from whom the claimant  
180 receives the prescription medication, the reimbursement amount  
181 ~~for a prescription~~ shall be the average wholesale price plus  
182 \$4.18 for the dispensing fee, unless ~~except where~~ the carrier  
183 has contracted for a lower amount. If the drug has been  
184 repackaged or relabeled, the reimbursement amount shall be  
185 calculated by multiplying the number of units dispensed times  
186 the per-unit average wholesale price set by the original  
187 manufacturer of the underlying drug, which may not be the  
188 manufacturer of the repackaged or relabeled drug, plus a \$4.18  
189 dispensing fee, unless the carrier has contracted for a lower  
190 amount. The repackaged or relabeled drug price may not exceed  
191 the amount otherwise payable had the drug not been repackaged or  
192 relabeled. Fees for pharmaceuticals and pharmaceutical services  
193 shall be reimbursable at the applicable fee schedule amount. If  
194 ~~where~~ the employer or carrier has contracted for such services  
195 and the employee elects to obtain them through a provider not a  
196 party to the contract, the carrier shall reimburse at the  
197 schedule, negotiated, or contract price, whichever is lower. ~~No~~  
198 Such contract may not ~~shall~~ rely on a provider that is not  
199 reasonably accessible to the employee.

200 Section 7. Subsection (5) is added to section 440.50,  
201 Florida Statutes, to read:

202 440.50 Workers' Compensation Administration Trust Fund.-

203 (5) Funds appropriated by operating appropriation or

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204 nonoperating transfer from the Workers' Compensation  
205 Administration Trust Fund to the Department of Education, the  
206 Agency for Health Care Administration, the Department of  
207 Business and Professional Regulation, the Department of  
208 Management Services, the First District Court of Appeal, and the  
209 Justice Administrative Commission which remain unencumbered as  
210 of June 30 or undisbursed as of September 30 each year revert to  
211 the Workers' Compensation Administration Trust Fund.

212 Section 8. This act shall take effect July 1, 2011.