

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1344

INTRODUCER: Rules Committee; Banking and Insurance Committee and Senator Braynon

SUBJECT: Insurance Association Appointments

DATE: April 4, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<u>Favorable</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1344 provides that the Property Casualty Insurers Association of America and the Florida Insurance Council will make recommendations to the Chief Financial Officer (CFO) for an appointment to the board of governors of the Florida Medical Malpractice Joint Underwriting Association. Current law provides that the recommendations be made by the Alliance of American Insurers and the National Association of Independent Insurers. Those entities have merged to form the Property Casualty Insurers Association of America.

This bill provides that the CFO may select the representative of casualty insurers on the Florida Birth-Related Neurological Injury Compensation Association (NICA) board of directors from a list of at least three names, one recommended by the Property Casualty Insurers Association of America, one recommended by the Florida Insurance Council, and one recommended by the American Insurance Association. Current law provides that those recommendations are made by the American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers. This bill provides that the American Congress of Obstetricians and Gynecologists, District XII will make recommendations to the CFO for an appointment to the NICA board of directors. The CFO is not required to make a selection from the trade association nominees.

This bill provides that the Governor must appoint one member to the eleven member board of directors of the Florida Workers' Compensation Insurance Guaranty Association. This member

must have commercial insurance experience. This bill reduces from 3 to 2 the members of the board of directors that are selected by self-insurance funds and appointed by the CFO. This bill changes the information that must be filed with the Office of Insurance Regulation as part of an application for a certificate of authority to act as an insurance administrator and allows an insurer that uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator.

This bill amends sections 626.9541 and 627.7283, F.S., to allow the refund of unearned motor vehicle insurance premium by electronic transfer.

This bill takes effect July 1, 2014.

## II. Present Situation:

### Florida Medical Malpractice Joint Underwriting Association

Section 627.351, F.S., creates the Florida Medical Malpractice Joint Underwriting Association (Association). The Association was created in 1975 to assure the availability of medical liability insurance to Florida health care providers.<sup>1</sup> The Association is a source of insurance for those medical providers who may be unable to obtain coverage from the competitive voluntary insurance market.<sup>2</sup>

Section 627.351(4)(c), F.S., provides that the Association operates under the supervision of a board of governors. The board of governors consists of:

- Representatives of five of the insurers participating in the Joint Underwriting Association;
- An attorney to be named by The Florida Bar;
- A physician to be named by the Florida Medical Association;
- A dentist to be named by the Florida Dental Association; and
- A hospital representative to be named by the Florida Hospital Association.<sup>3</sup>

The CFO selects the representatives of the five insurers. The insurer representatives are selected as follows:

- One insurer representative is selected from recommendations of the American Insurance Association.
- One insurer representative is selected from recommendations of the Alliance of American Insurers.
- One insurer representative is selected from recommendations of the National Association of Independent Insurers.
- Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations.<sup>4</sup>

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<sup>1</sup> See <https://www.fmmjua.com/fmmjua/Controller?page=faq> (accessed March 14, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> See s. 627.351(4)(c), F.S.

<sup>4</sup> *Id.*

## Florida Birth-Related Neurological Injury Compensation Association

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was enacted by the Legislature in 1988.<sup>5</sup> The Plan was created to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries. Although the benefits paid under the Plan are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing to resolve the claim.<sup>6</sup>

The entity charged with administering the Plan is the NICA. Under s. 766.315(4), F.S., NICA's duties include:

- Administering the plan, itself.
- Administering the funds collected.
- Reviewing and paying claims.
- Directing the investment and reinvestment of any surplus funds over losses and expenses.
- Reinsuring the risks of the plan in whole or in part.
- Suing and being sued, appearing and defending, in all actions and proceedings in its name.
- Taking such legal action as may be necessary to avoid payment of improper claims.<sup>7</sup>

The Plan is governed by a board of five directors.<sup>8</sup> The directors are appointed for staggered terms of 3 years or until their successors are appointed and have qualified.<sup>9</sup> The directors are appointed by the CFO as follows:

- One citizen representative.
- One representative of participating physicians.
- One representative of hospitals.
- One representative of casualty insurers.
- One representative of physicians other than participating physicians.<sup>10</sup>

Section 766.315(2)(a), F.S., provides that the CFO may select:

- The representative of the participating physicians from a list of at least three names to be recommended by the Florida Obstetric and Gynecologic Society.
- The representative of hospitals from a list of at least three names to be recommended by the Florida Hospital Association.
- The representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of American Insurers, and one by the National Association of Independent Insurers.
- The representative of physicians other than participating physicians from a list of three names to be recommended by the Florida Medical Association and a list of three names to be recommended by the Florida Osteopathic Medical Association.<sup>11</sup>

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<sup>5</sup> Chapter 88-1, ss. 60-75, L.O.F., was enacted by the Legislature in an attempt to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics, according to the legislative findings and intent cited in s. 766.301(1)(c), F.S.

<sup>6</sup> See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

<sup>7</sup> Section 766.315(4), F.S.

<sup>8</sup> See s. 766.315(1)(a), F.S.

<sup>9</sup> See s. 766.315(1)(b), F.S.

<sup>10</sup> See s. 766.315(1)(c), F.S.

<sup>11</sup> See s. 766.315(2)(a), F.S.

The CFO is not required to make any appointment from among the nominees of such respective associations.<sup>12</sup>

### **Property Casualty Insurers Association of America**

The Property Casualty Insurers Association of America is a trade association representing more than 1,000 companies. Its purpose is to advocate its members' public policy positions at the state and federal levels and to provide its members with targeted industry information. Its members write over \$190 billion in annual premium, 46 percent of the U.S. automobile insurance market, 32 percent of the homeowners market, 38 percent of the commercial property and liability market, and 41 percent of the private workers compensation market.<sup>13</sup>

The Property Casualty Insurers Association of America was formed in a merger between the Alliance of American Insurers and the National Association of Independent Insurers.<sup>14</sup>

### **Florida Insurance Council**

The Florida Insurance Council is a trade association representing 236 companies. Its purpose is to represent the insurance sector in legislative, regulatory, judicial and executive branch forums. Its members write \$33 billion in premium and provide all lines of coverage. It was established in 1962.<sup>15</sup>

### **American Congress of Obstetricians and Gynecologists, District XII**

The American Congress of Obstetricians and Gynecologists has over 57,000 members. Its goals are to serve as an advocate for quality health care for women, to maintain high standards of clinical practice and continuing education, and to promote patient education and involvement in medical care. It was founded in 1951.<sup>16</sup> District XII of the College includes Florida.<sup>17</sup> The Florida Obstetrics and Gynecologic Society does not elect its board. Its board members are members of the board of the American Congress of Obstetricians and Gynecologists, District XII.<sup>18</sup>

### **Florida Workers' Compensation Insurance Guaranty Association**

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) provides a mechanism for the payment of covered claims in the event of the insolvency of a member insurer.<sup>19</sup> FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds and determines if such claims are covered claims which should be paid or settled with funds from FWCIGA. FWCIGA also determines whether an assessment

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<sup>12</sup> See s. 766.315(2)(a), F.S.

<sup>13</sup> <http://www.pciaa.net/web/sitehome.nsf/lcpublic/8?opendocument> (last accessed March 20, 2014).

<sup>14</sup> See News Release by the National Association of Independent Insurers and the Alliance of American Insurers, December 14, 2003, and New Release by the National Association of Independent Insurers, January 2, 2004.

<sup>15</sup> <http://www.flains.org/about-us.html> (last accessed March 20, 2014).

<sup>16</sup> [http://www.acog.org/About\\_ACOG/Leadership\\_and\\_Governance](http://www.acog.org/About_ACOG/Leadership_and_Governance) (last accessed March 20, 2014).

<sup>17</sup> [http://www.acog.org/About\\_ACOG/ACOG\\_Districts](http://www.acog.org/About_ACOG/ACOG_Districts) (last accessed March 20, 2014).

<sup>18</sup> <https://www.flobgyn.org/about/bylaws/> (last accessed March 20, 2014).

<sup>19</sup> See <http://www.fwciga.org/home> (last accessed April 3, 2014).

against its members is necessary to pay covered claims of an insolvent insurer, or to reimburse FWCIGA for expenses associated with carrying out its statutory functions.<sup>20</sup>

Section 631.912, Florida Statutes, creates an eleven member board of directors to govern the FWCIGA. The board consists of:

- The insurance consumer advocate appointed under s. 627.0613 or designee.
- One person appointed by the CFO.
- Six persons appointed by the Department of Financial Services selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium. At least two of the private carriers shall be foreign carriers authorized to do business in this state.
- Three persons appointed by the Department of Financial Services selected by the self-insurance funds.<sup>21</sup>

Each board member serves for a 4-year term and may be reappointed.<sup>22</sup>

### **Insurance Administrators**

An insurance administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with an insurance policy. To operate as an insurance administrator, a person must obtain a certificate of authority to act as an administrator from the Office of Insurance Regulation.<sup>23</sup> An insurer who utilizes an insurance administrator must at least semiannually conduct a review of the operations of an administrator that administers more than 100 certificateholders of that insurer.<sup>24</sup> An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.<sup>25</sup> Administrators must also file an annual financial statement with the OIR containing the administrator's financial condition, transactions, and affairs no later than March 1 of each year.<sup>26</sup>

### **Electronic Transfer of Funds**

If the insured cancels a policy of motor vehicle insurance, section 627.7283, F.S., requires the insurer to mail the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation. If an insurer cancels a policy of motor vehicle insurance, section 627.7283, F.S., requires the insurer to mail the unearned premium portion of any premium within 15 days after the effective date of the policy cancellation. If the unearned premium is not mailed within the statutory period, the insurer is required to pay to the insured 8 percent interest on the amount due.<sup>27</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *See* s. 631.912(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *See* s. 626.8805, F.S.

<sup>24</sup> *See* s. 626.8817, F.S.

<sup>25</sup> *See* s. 626.882, F.S.

<sup>26</sup> *See* s. 626.89, F.S.

<sup>27</sup> *See* s. 627.7283(3), F.S.

### **III. Effect of Proposed Changes:**

#### **Appointments to Boards**

This bill provides that the Property Casualty Insurers Association of America will recommend appointments to the board of governors of the Florida Medical Malpractice Joint Underwriting Association and to the board of directors of the NICA instead of the Alliance of American Insurers and the National Association of Independent Insurers. This bill provides that the Florida Insurance Council will also recommend appointments to those two boards.

This bill changes the entities that will make recommendations to the CFO for appointment as insurer representatives on the Florida Medical Malpractice Joint Underwriting Association Board of Governors. The CFO will make selections from recommendations as follows:

- One insurer representative is selected from recommendations of the American Insurance Association.
- One insurer representative is selected from recommendations of the Property Casualty Insurers Association of America.
- One insurer representative is selected from recommendations of the Florida Insurance Council.
- Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations.

Selections will no longer have to be made from recommendations by the Alliance of American Insurers and the National Association of Independent Insurers.

The bill provides that the CFO may select the representative of casualty insurers on the NICA board of directors from a list of at least three names, one recommended by the Property Casualty Insurers Association of America, one recommended by the Florida Insurance Council, and one recommended by the American Insurance Association. The bill also provides that the CFO may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII instead of the Florida Obstetric and Gynecologic Society. The CFO is not required to make a selection from the trade association nominees.

This bill changes the appointments made to the FWCIGA board of directors. It provides that the Governor must make one appointment. The Governor's appointment must have commercial insurance experience. This bill provides that the Department of Financial Services will appoint two persons selected by the self-insurance funds instead of the current three.

#### **Insurance Administrators**

This bill amends s. 626.8805, F.S., changing the information that must be filed with the OIR or made available for OIR inspection as part of an application for a certificate of authority to act as an insurance administrator. The bill requires the applicant to provide the names, addresses, official positions and professional qualifications of individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator.

Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.

This bill allows an insurer who uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificate holders on behalf of the insurer.

This bill also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator specifies the rights, duties, and obligations of the administrator and insurer. Any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator are governed by the written agreement between the parties required under s. 626.8817, F.S.

This bill amends s. 626.89, F.S., to change the filing date for annual reports with the Office of Insurance Regulation from March 1 to within three months after the end of the administrator's fiscal year. This bill also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis.

#### **Electronic Transfer of Funds**

This bill amends sections 626.9541 and 627.7283, F.S., to allow the refund of unearned motor vehicle insurance premium by electronic transfer.

This bill takes effect July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.8805, 626.8817, 626.882, 626.883, 626.884, 626.89, 626.9541, 627.351, 627.7283, 631.912, 766.315.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on April 2, 2014:**

The Rules Committee adopted an amendment to provide that the Governor must make an appointment to the Florida Workers' Compensation Insurance Guaranty Association board of directors. A second amendment allows the refund of unearned motor vehicle insurance premium by electronic transfer. A third amendment allows insurers to use a qualified third party to conduct required reviews of insurance administrator and allows annual financial statements of insurance administrators to cover the prior fiscal year.

**CS by Banking and Insurance on March 19, 2014:**

The Banking and Insurance Committee adopted amendments to provide that the Florida Insurance Council will make recommendations for appointment to the board of governors of the Florida Medical Malpractice Joint Underwriting Association and the NICA board of directors and to provide that the American Congress of Obstetricians and Gynecologists, District XII will make recommendations for appointment to the NICA board of directors instead of the Florida Obstetric and Gynecologic Society.

**B. Amendments:**

None.