

**By** the Committees on Rules; and Banking and Insurance; and  
Senator Braynon

595-03705-14

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1                   A bill to be entitled  
2           An act relating to insurance; amending s. 626.8805,  
3           F.S.; revising insurance administrator application  
4           requirements; amending s. 626.8817, F.S.; authorizing  
5           an insurer's designee to provide certain coverage  
6           information to an insurance administrator; authorizing  
7           an insurer to contract a third party to conduct a  
8           review of the operations of an insurance administrator  
9           under certain circumstances; amending s. 626.882,  
10          F.S.; prohibiting a person from acting as an insurance  
11          administrator without a specific written agreement;  
12          amending s. 626.883, F.S.; requiring an insurance  
13          administrator to furnish fiduciary account records to  
14          an insurer or its designee; requiring administrator  
15          withdrawals from a fiduciary account to be made  
16          according to a specific written agreement; providing  
17          that an insurer's designee may authorize payment of  
18          claims; amending s. 626.884, F.S.; revising an  
19          insurer's right of access to certain administrator  
20          records; amending s. 626.89, F.S.; revising the  
21          deadline for filing certain financial statements;  
22          amending s. 626.9541, F.S.; revising provisions for  
23          unfair methods of competition and unfair or deceptive  
24          acts relating to conducting certain insurance  
25          transactions through credit card facilities; amending  
26          s. 627.351, F.S.; revising the entities that make  
27          recommendations to the Chief Financial Officer for  
28          appointment to the board of governors of the Joint  
29          Underwriting Association; amending s. 627.7283, F.S.;

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30 allowing the electronic transfer of unearned premiums  
31 under specified circumstances; amending s. 631.912,  
32 F.S.; revising the appointment process for members of  
33 the board of directors of the Florida Workers'  
34 Compensation Insurance Guaranty Association; amending  
35 s. 766.315, F.S.; revising the entities that make  
36 recommendations to the Chief Financial Officer for  
37 appointment to the board of directors of the Florida  
38 Birth-Related Neurological Injury Compensation  
39 Association; providing an effective date.  
40

41 Be It Enacted by the Legislature of the State of Florida:  
42

43 Section 1. Paragraph (c) of subsection (2) and subsection  
44 (3) of section 626.8805, Florida Statutes, are amended to read:  
45 626.8805 Certificate of authority to act as administrator.-

46 (2) The administrator shall file with the office an  
47 application for a certificate of authority upon a form to be  
48 adopted by the commission and furnished by the office, which  
49 application shall include or have attached the following  
50 information and documents:

51 (c) The names, addresses, official positions, and  
52 professional qualifications of the individuals employed or  
53 retained by the administrator who are responsible for the  
54 conduct of the affairs of the administrator, including all  
55 members of the board of directors, board of trustees, executive  
56 committee, or other governing board or committee, and the  
57 principal officers in the case of a corporation or ~~7~~ the partners  
58 or members in the case of a partnership or association, ~~and any~~

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59 ~~other person who exercises control or influence over the affairs~~  
60 of the administrator.

61 (3) The applicant shall make available for inspection by  
62 the office copies of all contracts relating to services provided  
63 by the administrator to ~~with~~ insurers or other persons using  
64 ~~utilizing~~ the services of the administrator.

65 Section 2. Subsections (1) and (3) of section 626.8817,  
66 Florida Statutes, are amended to read:

67 626.8817 Responsibilities of insurance company with respect  
68 to administration of coverage insured.—

69 (1) If an insurer uses the services of an administrator,  
70 the insurer is responsible for determining the benefits, premium  
71 rates, underwriting criteria, and claims payment procedures  
72 applicable to the coverage and for securing reinsurance, if any.  
73 The rules pertaining to these matters shall be provided, in  
74 writing, by the insurer or its designee to the administrator.  
75 The responsibilities of the administrator as to any of these  
76 matters shall be set forth in a ~~the~~ written agreement binding  
77 upon ~~between~~ the administrator and the insurer.

78 (3) ~~If in cases in which~~ an administrator administers  
79 benefits for more than 100 certificateholders on behalf of an  
80 insurer, the insurer shall, at least semiannually, conduct a  
81 review of the operations of the administrator. At least one such  
82 review must be an onsite audit of the operations of the  
83 administrator. The insurer may contract with a qualified third  
84 party to conduct such review.

85 Section 3. Subsections (1) and (4) of section 626.882,  
86 Florida Statutes, are amended to read:

87 626.882 Agreement between administrator and insurer;

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88 required provisions; maintenance of records.—

89 (1) ~~A No~~ person may not act as an administrator without a  
90 written agreement, as required under s. 626.8817, which  
91 specifies the rights, duties, and obligations of the between  
92 ~~such person as~~ administrator and ~~an~~ insurer.

93 (4) If a policy is issued to a trustee or trustees, a copy  
94 of the trust agreement and any amendments to that agreement  
95 shall be furnished to the insurer or its designee by the  
96 administrator and shall be retained as part of the official  
97 records of both the administrator and the insurer for the  
98 duration of the policy and for 5 years thereafter.

99 Section 4. Subsections (3), (4), and (5) of section  
100 626.883, Florida Statutes, are amended to read:

101 626.883 Administrator as intermediary; collections held in  
102 fiduciary capacity; establishment of account; disbursement;  
103 payments on behalf of insurer.—

104 (3) If charges or premiums deposited in a fiduciary account  
105 have been collected on behalf of or for more than one insurer,  
106 the administrator shall keep records clearly recording the  
107 deposits in and withdrawals from such account on behalf of or  
108 for each insurer. The administrator shall, upon request of an  
109 insurer or its designee, furnish such insurer or designee with  
110 copies of records pertaining to deposits and withdrawals on  
111 behalf of or for such insurer.

112 (4) The administrator may not pay any claim by withdrawals  
113 from a fiduciary account. Withdrawals from such account shall be  
114 made as provided in the written agreement required under ss.  
115 626.8817 and 626.882 ~~between the administrator and the insurer~~  
116 for any of the following:

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117 (a) Remittance to an insurer entitled to such remittance.

118 (b) Deposit in an account maintained in the name of such  
119 insurer.

120 (c) Transfer to and deposit in a claims-paying account,  
121 with claims to be paid as provided by such insurer.

122 (d) Payment to a group policyholder for remittance to the  
123 insurer entitled to such remittance.

124 (e) Payment to the administrator of the commission, fees,  
125 or charges of the administrator.

126 (f) Remittance of return premium to the person or persons  
127 entitled to such ~~return~~ premium.

128 (5) All claims paid by the administrator from funds  
129 collected on behalf of the insurer shall be paid only on drafts  
130 of, and as authorized by, such insurer or its designee.

131 Section 5. Subsection (3) of section 626.884, Florida  
132 Statutes, is amended to read:

133 626.884 Maintenance of records by administrator; access;  
134 confidentiality.—

135 (3) The insurer shall retain the right of continuing access  
136 to books and records maintained by the administrator sufficient  
137 to permit the insurer to fulfill all of its contractual  
138 obligations to insured persons, subject to any restrictions in  
139 the written agreement pertaining to ~~between the insurer and the~~  
140 ~~administrator~~ on the proprietary rights of the parties in such  
141 books and records.

142 Section 6. Subsections (1) and (2) of section 626.89,  
143 Florida Statutes, are amended to read:

144 626.89 Annual financial statement and filing fee; notice of  
145 change of ownership.—

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146 (1) Each authorized administrator shall annually file with  
147 the office a full and true statement of its financial condition,  
148 transactions, and affairs within 3 months after the end of the  
149 administrator's fiscal year. ~~The statement shall be filed~~  
150 ~~annually on or before March 1~~ or within such extension of time  
151 ~~therefor~~ as the office for good cause may have granted. The  
152 statement must and shall be for the preceding fiscal calendar  
153 year and must. ~~The statement shall be in such form and contain~~  
154 such matters as the commission prescribes and must ~~shall~~ be  
155 verified by at least two officers of the ~~such~~ administrator. ~~An~~  
156 ~~administrator whose sole stockholder is an association~~  
157 ~~representing health care providers which is not an affiliate of~~  
158 ~~an insurer, an administrator of a pooled governmental self-~~  
159 ~~insurance program, or an administrator that is a university may~~  
160 ~~submit the preceding fiscal year's statement within 2 months~~  
161 ~~after its fiscal year end.~~

162 (2) Each authorized administrator shall also file an  
163 audited financial statement performed by an independent  
164 certified public accountant. The audited financial statement  
165 shall be filed with the office within 5 months after the end of  
166 the administrator's fiscal year and be ~~on or before June 1~~ for  
167 the preceding fiscal calendar year ending ~~December 31~~. ~~An~~  
168 ~~administrator whose sole stockholder is an association~~  
169 ~~representing health care providers which is not an affiliate of~~  
170 ~~an insurer, an administrator of a pooled governmental self-~~  
171 ~~insurance program, or an administrator that is a university may~~  
172 ~~submit the preceding fiscal year's audited financial statement~~  
173 ~~within 5 months after the end of its fiscal year~~. An audited  
174 financial statement prepared on a consolidated basis must

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175 include a columnar consolidating or combining worksheet that  
176 must be filed with the statement and must comply with the  
177 following:

178 (a) Amounts shown on the consolidated audited financial  
179 statement must be shown on the worksheet;

180 (b) Amounts for each entity must be stated separately; and

181 (c) Explanations of consolidating and eliminating entries  
182 must be included.

183 Section 7. Paragraph (q) of subsection (1) of section  
184 626.9541, Florida Statutes, is amended to read:

185 626.9541 Unfair methods of competition and unfair or  
186 deceptive acts or practices defined.—

187 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
188 ACTS.—The following are defined as unfair methods of competition  
189 and unfair or deceptive acts or practices:

190 (q) *Certain insurance transactions through credit card*  
191 *facilities prohibited.*—

192 1. Except as provided in subparagraph 3., no person shall  
193 knowingly solicit or negotiate ~~any~~ insurance; seek or accept  
194 applications for insurance; issue or deliver any policy;  
195 receive, collect, or transmit premiums, to or for an ~~any~~  
196 insurer; or otherwise transact insurance in this state, or  
197 relative to a subject of insurance resident, located, or to be  
198 performed in this state, through the arrangement or facilities  
199 of a credit card facility or organization, for the purpose of  
200 insuring credit card holders or prospective credit card holders.  
201 The term "credit card holder" as used in this paragraph means a  
202 ~~any~~ person who may pay the charge for purchases or other  
203 transactions through the credit card facility or organization,

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204 whose credit with such facility or organization is evidenced by  
205 a credit card identifying such person as being one whose charges  
206 the credit card facility or organization will pay, and who is  
207 identified as such upon the credit card ~~either~~ by name, account  
208 number, symbol, insignia, or ~~any~~ other method or device of  
209 identification. This subparagraph does not apply as to health  
210 insurance or to credit life, credit disability, or credit  
211 property insurance.

212 2. If ~~Whenever~~ any person does or performs in this state  
213 any of the acts in violation of subparagraph 1. for or on behalf  
214 of an ~~any~~ insurer or credit card facility, such insurer or  
215 credit card facility shall be deemed ~~held~~ to be doing business  
216 in this state and, if an insurer, shall be subject to the same  
217 state, county, and municipal taxes as insurers that have been  
218 legally qualified and admitted to do business in this state by  
219 agents or otherwise are subject, the same to be assessed and  
220 collected against such insurers; and such person so doing or  
221 performing any of such acts is ~~shall be~~ personally liable for  
222 all such taxes.

223 3. A licensed agent or insurer may solicit or negotiate ~~any~~  
224 insurance; seek or accept applications for insurance; issue or  
225 deliver any policy; receive, collect, or transmit premiums, to  
226 or for an ~~any~~ insurer; or otherwise transact insurance in this  
227 state, or relative to a subject of insurance resident, located,  
228 or to be performed in this state, through the arrangement or  
229 facilities of a credit card facility or organization, for the  
230 purpose of insuring credit card holders or prospective credit  
231 card holders if:

232 a. The insurance or policy which is the subject of the



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233 transaction is noncancelable by any person other than the named  
234 insured, the policyholder, or the insurer;

235 b. Any refund of unearned premium is made ~~directly~~ to the  
236 credit card holder by mail or electronic transfer; and

237 c. The credit card transaction is authorized by the  
238 signature of the credit card holder or other person authorized  
239 to sign on the credit card account.

240

241 The conditions enumerated in sub-subparagraphs a.-c. do not  
242 apply to health insurance or to credit life, credit disability,  
243 or credit property insurance; and sub-subparagraph c. does not  
244 apply to property and casualty insurance if ~~so long as~~ the  
245 transaction is authorized by the insured.

246 4. No person may use or disclose information resulting from  
247 the use of a credit card in conjunction with the purchase of  
248 insurance if, ~~when~~ such information is to the advantage of the  
249 ~~such~~ credit card facility or an insurance agent, or is to the  
250 detriment of the insured or any other insurance agent; except  
251 that this provision does not prohibit a credit card facility  
252 from using or disclosing such information in a ~~any~~ judicial  
253 proceeding or consistent with applicable law on credit  
254 reporting.

255 5. ~~No~~ Such insurance may not ~~shall~~ be sold through a credit  
256 card facility in conjunction with membership in any automobile  
257 club. The term "automobile club" means a legal entity that  
258 ~~which~~, in consideration of dues, assessments, or periodic  
259 payments of money, promises its members or subscribers to assist  
260 them in matters relating to the ownership, operation, use, or  
261 maintenance of a motor vehicle; however, the term ~~definition of~~

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262 ~~automobile clubs~~ does not include persons, associations, or  
263 corporations that ~~which~~ are organized and operated solely for  
264 the purpose of conducting, sponsoring, or sanctioning motor  
265 vehicle races, exhibitions, or contests upon racetracks, or upon  
266 race courses established and marked as such for the duration of  
267 such particular event. The words "motor vehicle" used herein  
268 shall be the same as defined in chapter 320.

269 Section 8. Paragraph (c) of subsection (4) of section  
270 627.351, Florida Statutes, is amended to read:

271 627.351 Insurance risk apportionment plans.—

272 (4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

273 (c) The Joint Underwriting Association shall operate  
274 subject to the supervision and approval of a board of governors  
275 consisting of representatives of five of the insurers  
276 participating in the Joint Underwriting Association, an attorney  
277 ~~to be~~ named by The Florida Bar, a physician ~~to be~~ named by the  
278 Florida Medical Association, a dentist ~~to be~~ named by the  
279 Florida Dental Association, and a hospital representative ~~to be~~  
280 named by the Florida Hospital Association. The Chief Financial  
281 Officer shall select the representatives of the five insurers.  
282 One insurer representative shall be selected from  
283 recommendations of the American Insurance Association. One  
284 insurer representative shall be selected from recommendations of  
285 the Property Casualty Insurers Association of America Alliance  
286 ~~of American Insurers~~. One insurer representative shall be  
287 selected from recommendations of the Florida Insurance Council  
288 ~~National Association of Independent Insurers~~. Two insurer  
289 representatives shall be selected to represent insurers that are  
290 not affiliated with these associations. ~~The board of governors~~

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291 ~~shall choose,~~ During the first meeting of the board after June  
292 30 of each year, the board shall choose one of its members to  
293 serve as chair of the board and another member to serve as vice  
294 chair of the board. There is ~~shall be~~ no liability on the part  
295 of, and no cause of action ~~of any nature~~ shall arise against,  
296 any member insurer, self-insurer, or its agents or employees,  
297 the Joint Underwriting Association or its agents or employees,  
298 members of the board of governors, or the office or its  
299 representatives for any action taken by them in the performance  
300 of their powers and duties under this subsection.

301 Section 9. Subsections (1), (2), and (3) of section  
302 627.7283, Florida Statutes, are amended to read:

303 627.7283 Cancellation; return of premium.—

304 (1) If the insured cancels a policy of motor vehicle  
305 insurance, the insurer must mail or electronically transfer the  
306 unearned portion of any premium paid within 30 days after the  
307 effective date of the policy cancellation or receipt of notice  
308 or request for cancellation, whichever is later. This  
309 requirement applies to a cancellation initiated by an insured  
310 for any reason.

311 (2) If an insurer cancels a policy of motor vehicle  
312 insurance, the insurer must mail or electronically transfer the  
313 unearned premium portion of any premium within 15 days after the  
314 effective date of the policy cancellation.

315 (3) If the unearned premium is not mailed or electronically  
316 transferred within the applicable period, the insurer must pay  
317 to the insured 8 percent interest on the amount due. If the  
318 unearned premium is not mailed or electronically transferred  
319 within 45 days after the applicable period, the insured may

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320 bring an action against the insurer pursuant to s. 624.155.

321 Section 10. Subsection (1) of section 631.912, Florida  
322 Statutes, is amended to read:

323 631.912 Board of directors.—

324 (1) The board of directors of the corporation shall consist  
325 of 11 persons, 1 of whom is the insurance consumer advocate  
326 appointed under s. 627.0613 or designee and 1 of whom is  
327 designated by the Chief Financial Officer. The department shall  
328 appoint to the board 6 persons selected by private carriers from  
329 among the 20 workers' compensation insurers with the largest  
330 amount of net direct written premium as determined by the  
331 department, and 2 ~~3~~ persons selected by the self-insurance  
332 funds. The Governor shall appoint 1 person who has commercial  
333 insurance experience. At least two of the private carriers shall  
334 be foreign carriers authorized to do business in this state. The  
335 board shall elect a chairperson from among its members. The  
336 Chief Financial Officer may remove any board member for cause.  
337 Each board member shall be appointed to serve ~~for~~ a 4-year term  
338 and may be reappointed. A vacancy on the board shall be filled  
339 for the remaining period of the term in the same manner by which  
340 the original appointment was made.

341 Section 11. Paragraph (a) of subsection (2) of section  
342 766.315, Florida Statutes, is amended to read:

343 766.315 Florida Birth-Related Neurological Injury  
344 Compensation Association; board of directors.—

345 (2) (a) The Chief Financial Officer may select the  
346 representative of the participating physicians from a list of at  
347 least three names ~~to be~~ recommended by the American Congress of  
348 Obstetricians and Gynecologists, District XII ~~Florida Obstetric~~

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349 ~~and Gynecologic Society~~; the representative of hospitals from a  
350 list of at least three names ~~to be~~ recommended by the Florida  
351 Hospital Association; the representative of casualty insurers  
352 from a list of at least three names, one of which is recommended  
353 by the American Insurance Association, one of which is  
354 recommended by the Florida Insurance Council Alliance of  
355 American Insurers, and one of which is recommended by the  
356 Property Casualty Insurers Association of America National  
357 Association of Independent Insurers; and the representative of  
358 physicians, other than participating physicians, from a list of  
359 three names ~~to be~~ recommended by the Florida Medical Association  
360 and a list of three names ~~to be~~ recommended by the Florida  
361 Osteopathic Medical Association. However, ~~In no case shall~~ the  
362 Chief Financial Officer is not required ~~be bound~~ to make an ~~any~~  
363 appointment from among the nominees of the ~~such~~ respective  
364 associations.

365 Section 12. This act shall take effect July 1, 2014.