

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           amending s. 440.107, F.S.; authorizing the  
4           department to issue an order of conditional  
5           release from a stop-work order if an employer  
6           complies with coverage requirements and a  
7           penalty payment agreement; amending s. 627.311,  
8           F.S.; establishing three tiers of employers  
9           eligible for coverage under the plan; providing  
10          for criteria and rates for each tier; deleting  
11          references to subplans; providing for  
12          assessments to cover deficits in tiers one and  
13          two; providing procedures to collect the  
14          assessment; exempting the plan from specified  
15          premium tax and assessments; requiring the  
16          Auditor General to conduct an operational audit  
17          of the association; requiring the association  
18          to comply with the Florida Single Audit Act, if  
19          certain conditions are met; providing  
20          appropriations; amending s. 627.0915, F.S.,  
21          relating to drug-free workplace discounts;  
22          providing for notice by insurers to employers  
23          of the availability of premium discounts where  
24          certain drug-free workplace programs are used;  
25          appropriating moneys from the Workers'  
26          Compensation Administration Trust Fund to fund  
27          plan deficits; providing transitional  
28          provisions to subplan "D" policies; providing  
29          legislative intent to create a state workers'  
30          compensation mutual fund under certain  
31          conditions; establishing the Workers'

1 Compensation Insurance Market Evaluation  
2 Committee; providing for appointment of  
3 members; requiring the committee to monitor and  
4 report; requiring the Office of Insurance  
5 Regulation and workers' compensation insurers  
6 to report certain information; specifying  
7 meeting dates and interim reports for the  
8 committee; providing for reimbursement for  
9 travel and per diem; providing legislative  
10 intent as to the type of mutual fund it intends  
11 to create; prohibiting insurers from providing  
12 coverage to any person who is an affiliated  
13 person of a person who is delinquent in the  
14 payment of premiums, assessments, penalties, or  
15 surcharges owed to the plan; amending s.  
16 440.16(7), F.S., which limits workers'  
17 compensation benefits to a nonresident alien  
18 for the death of the worker; providing  
19 effective dates.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Paragraph (a) of subsection (7) of section  
24 440.107, Florida Statutes, is amended to read:

25 440.107 Department powers to enforce employer  
26 compliance with coverage requirements.--

27 (7)(a) Whenever the department determines that an  
28 employer who is required to secure the payment to his or her  
29 employees of the compensation provided for by this chapter has  
30 failed to secure the payment of workers' compensation required  
31 by this chapter or to produce the required business records

1 under subsection (5) within 5 business days after receipt of  
2 the written request of the department, such failure shall be  
3 deemed an immediate serious danger to public health, safety,  
4 or welfare sufficient to justify service by the department of  
5 a stop-work order on the employer, requiring the cessation of  
6 all business operations. If the department makes such a  
7 determination, the department shall issue a stop-work order  
8 within 72 hours. The order shall take effect when served upon  
9 the employer or, for a particular employer work site, when  
10 served at that work site. In addition to serving a stop-work  
11 order at a particular work site which shall be effective  
12 immediately, the department shall immediately proceed with  
13 service upon the employer which shall be effective upon all  
14 employer work sites in the state for which the employer is not  
15 in compliance. A stop-work order may be served with regard to  
16 an employer's work site by posting a copy of the stop-work  
17 order in a conspicuous location at the work site. The order  
18 shall remain in effect until the department issues an order  
19 releasing the stop-work order upon a finding that the employer  
20 has come into compliance with the coverage requirements of  
21 this chapter and has paid any penalty assessed under this  
22 section. The department may issue an order of conditional  
23 release from a stop-work order to an employer upon a finding  
24 that the employer has complied with coverage requirements of  
25 this chapter and has agreed to remit periodic payments of the  
26 penalty pursuant to a payment agreement schedule with the  
27 department. If an order of conditional release is issued,  
28 failure by the employer to meet any term or condition of such  
29 penalty payment agreement shall result in the immediate  
30 reinstatement of the stop-work order and the entire unpaid  
31 balance of the penalty shall become immediately due. The

1 department may require an employer who is found to have failed  
2 to comply with the coverage requirements of s. 440.38 to file  
3 with the department, as a condition of release from a  
4 stop-work order, periodic reports for a probationary period  
5 that shall not exceed 2 years that demonstrate the employer's  
6 continued compliance with this chapter. The department shall  
7 by rule specify the reports required and the time for filing  
8 under this subsection.

9 Section 2. Subsection (5) of section 627.311, Florida  
10 Statutes, is amended to read:

11 627.311 Joint underwriters and joint reinsurers;  
12 public records and public meetings exemptions.--

13 (5)(a) The office shall, after consultation with  
14 insurers, approve a joint underwriting plan of insurers which  
15 shall operate as a nonprofit entity. For the purposes of this  
16 subsection, the term "insurer" includes group self-insurance  
17 funds authorized by s. 624.4621, commercial self-insurance  
18 funds authorized by s. 624.462, assessable mutual insurers  
19 authorized under s. 628.6011, and insurers licensed to write  
20 workers' compensation and employer's liability insurance in  
21 this state. The purpose of the plan is to provide workers'  
22 compensation and employer's liability insurance to applicants  
23 who are required by law to maintain workers' compensation and  
24 employer's liability insurance and who are in good faith  
25 entitled to but who are unable to procure ~~purchase~~ such  
26 insurance through the voluntary market. The plan must have  
27 actuarially sound rates that are not competitive with approved  
28 voluntary market rates so that the plan functions as a  
29 residual market mechanism ~~assure that the plan is~~  
30 ~~self-supporting~~.

1 (b) The operation of the plan is subject to the  
2 supervision of a 9-member board of governors. The board of  
3 governors shall be comprised of:

4 1. Three members appointed by the Financial Services  
5 Commission. Each member appointed by the commission shall  
6 serve at the pleasure of the commission;

7 2. Two of the 20 domestic insurers, as defined in s.  
8 624.06(1), having the largest voluntary direct premiums  
9 written in this state for workers' compensation and employer's  
10 liability insurance, which shall be elected by those 20  
11 domestic insurers;

12 3. Two of the 20 foreign insurers as defined in s.  
13 624.06(2) having the largest voluntary direct premiums written  
14 in this state for workers' compensation and employer's  
15 liability insurance, which shall be elected by those 20  
16 foreign insurers;

17 4. One person appointed by the largest property and  
18 casualty insurance agents' association in this state; and

19 5. The consumer advocate appointed under s. 627.0613  
20 or the consumer advocate's designee.

21  
22 Each board member shall serve a 4-year term and may serve  
23 consecutive terms. A vacancy on the board shall be filled in  
24 the same manner as the original appointment for the unexpired  
25 portion of the term. The Financial Services Commission shall  
26 designate a member of the board to serve as chair. No board  
27 member shall be an insurer which provides services to the plan  
28 or which has an affiliate which provides services to the plan  
29 or which is serviced by a service company or third-party  
30 administrator which provides services to the plan or which has  
31 an affiliate which provides services to the plan. The minutes,

1 audits, and procedures of the board of governors are subject  
2 to chapter 119.

3 (c) The operation of the plan shall be governed by a  
4 plan of operation that is prepared at the direction of the  
5 board of governors. The plan of operation may be changed at  
6 any time by the board of governors or upon request of the  
7 office. The plan of operation and all changes thereto are  
8 subject to the approval of the office. The plan of operation  
9 shall:

10 1. Authorize the board to engage in the activities  
11 necessary to implement this subsection, including, but not  
12 limited to, borrowing money.

13 2. Develop criteria for eligibility for coverage by  
14 the plan, including, but not limited to, documented rejection  
15 by at least two insurers which reasonably assures that  
16 insureds covered under the plan are unable to acquire coverage  
17 in the voluntary market. ~~Any insured may voluntarily elect to~~  
18 ~~accept coverage from an insurer for a premium equal to or~~  
19 ~~greater than the plan premium if the insurer writing the~~  
20 ~~coverage adheres to the provisions of s. 627.171.~~

21 3. Require notice from the agent to the insured at the  
22 time of the application for coverage that the application is  
23 for coverage with the plan and that coverage may be available  
24 through an insurer, group self-insurers' fund, commercial  
25 self-insurance fund, or assessable mutual insurer through  
26 another agent at a lower cost.

27 4. Establish programs to encourage insurers to provide  
28 coverage to applicants of the plan in the voluntary market and  
29 to insureds of the plan, including, but not limited to:

30 a. Establishing procedures for an insurer to use in  
31 notifying the plan of the insurer's desire to provide coverage

1 to applicants to the plan or existing insureds of the plan and  
2 in describing the types of risks in which the insurer is  
3 interested. The description of the desired risks must be on a  
4 form developed by the plan.

5 b. Developing forms and procedures that provide an  
6 insurer with the information necessary to determine whether  
7 the insurer wants to write particular applicants to the plan  
8 or insureds of the plan.

9 c. Developing procedures for notice to the plan and  
10 the applicant to the plan or insured of the plan that an  
11 insurer will insure the applicant or the insured of the plan,  
12 and notice of the cost of the coverage offered; and developing  
13 procedures for the selection of an insuring entity by the  
14 applicant or insured of the plan.

15 d. Provide for a market-assistance plan to assist in  
16 the placement of employers. All applications for coverage in  
17 the plan received 45 days before the effective date for  
18 coverage shall be processed through the market-assistance  
19 plan. A market-assistance plan specifically designed to serve  
20 the needs of small, good policyholders as defined by the board  
21 must be finalized by January 1, 1994.

22 5. Provide for policy and claims services to the  
23 insureds of the plan of the nature and quality provided for  
24 insureds in the voluntary market.

25 6. Provide for the review of applications for coverage  
26 with the plan for reasonableness and accuracy, using any  
27 available historic information regarding the insured.

28 7. Provide for procedures for auditing insureds of the  
29 plan which are based on reasonable business judgment and are  
30 designed to maximize the likelihood that the plan will collect  
31 the appropriate premiums.

1           8. Authorize the plan to terminate the coverage of and  
2 refuse future coverage for any insured that submits a  
3 fraudulent application to the plan or provides fraudulent or  
4 grossly erroneous records to the plan or to any service  
5 provider of the plan in conjunction with the activities of the  
6 plan.

7           9. Establish service standards for agents who submit  
8 business to the plan.

9           10. Establish criteria and procedures to prohibit any  
10 agent who does not adhere to the established service standards  
11 from placing business with the plan or receiving, directly or  
12 indirectly, any commissions for business placed with the plan.

13           11. Provide for the establishment of reasonable safety  
14 programs for all insureds in the plan. All insureds of the  
15 plan must participate in the safety program.

16           12. Authorize the plan to terminate the coverage of  
17 and refuse future coverage to any insured who fails to pay  
18 premiums or surcharges when due; who, at the time of  
19 application, is delinquent in payments of workers'  
20 compensation or employer's liability insurance premiums or  
21 surcharges owed to an insurer, group self-insurers' fund,  
22 commercial self-insurance fund, or assessable mutual insurer  
23 licensed to write such coverage in this state; or who refuses  
24 to substantially comply with any safety programs recommended  
25 by the plan.

26           13. Authorize the board of governors to provide the  
27 services required by the plan through staff employed by the  
28 plan, through reasonably compensated service providers who  
29 contract with the plan to provide services as specified by the  
30 board of governors, or through a combination of employees and  
31 service providers.



1           14. Provide for service standards for service  
2 providers, methods of determining adherence to those service  
3 standards, incentives and disincentives for service, and  
4 procedures for terminating contracts for service providers  
5 that fail to adhere to service standards.

6           15. Provide procedures for selecting service providers  
7 and standards for qualification as a service provider that  
8 reasonably assure that any service provider selected will  
9 continue to operate as an ongoing concern and is capable of  
10 providing the specified services in the manner required.

11           16. Provide for reasonable accounting and  
12 data-reporting practices.

13           17. Provide for annual review of costs associated with  
14 the administration and servicing of the policies issued by the  
15 plan to determine alternatives by which costs can be reduced.

16           18. Authorize the acquisition of such excess insurance  
17 or reinsurance as is consistent with the purposes of the plan.

18           19. Provide for an annual report to the office on a  
19 date specified by the office and containing such information  
20 as the office reasonably requires.

21           20. Establish multiple rating plans for various  
22 classifications of risk which reflect risk of loss, hazard  
23 grade, actual losses, size of premium, and compliance with  
24 loss control. At least one of such plans must be a  
25 preferred-rating plan to accommodate small-premium  
26 policyholders with good experience as defined in  
27 sub-subparagraph 22.a.

28           21. Establish agent commission schedules.

29           22. For employers otherwise eligible for coverage  
30 under the plan, establish three tiers of employers meeting the

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1 criteria and subject to the rate limitations specified in this  
2 subparagraph.

3 a. Tier One.--

4 (I) Criteria, rated employers.--An employer that has  
5 an experience modification rating shall be included in Tier  
6 One if it meets all of the following:

7 (A) The experience modification is below 1.00;

8 (B) The employer had no lost-time claims subsequent to  
9 the applicable experience modification rating period; and

10 (C) The total of the employer's medical-only claims  
11 subsequent to the applicable experience modification rating  
12 period did not exceed 20 percent of premium.

13 (II) Criteria, nonrated employers.--An employer that  
14 does not have an experience modification rating shall be  
15 included in Tier One if it meets all of the following:

16 (A) The employer had no lost-time claims for the  
17 3-year period immediately preceding the inception date or  
18 renewal date of its coverage under the plan;

19 (B) The total of the employer's medical-only claims  
20 for the 3-year period immediately preceding the inception date  
21 or renewal date of its coverage under the plan did not exceed  
22 20 percent of premium;

23 (C) It has secured workers' compensation coverage for  
24 the entire three-year period immediately preceding the  
25 inception date or renewal date of its coverage under the plan;

26 (D) It is able to provide the plan with a loss history  
27 generated by its prior workers' compensation insurer, except  
28 that if the employer is not able to produce a loss history due  
29 to the insolvency of an insurer, the employer may, in lieu of  
30 the loss history, submit an affidavit from the employer and

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1 the employer's insurance agent setting forth the loss history;  
2 and  
3 (E) It is not a new business.  
4 (III) Premiums.--The premiums for Tier One insureds  
5 shall be set at a premium level 25 percent above the  
6 comparable voluntary market premiums until the plan has  
7 sufficient, credible experience as determined by the board to  
8 establish an actuarially sound rate for Tier One, at which  
9 point the board shall, subject to paragraph (e), adjust the  
10 rate, if necessary, to produce actuarially sound rates;  
11 provided the rate adjustment does not take effect until  
12 January 1, 2007.  
13 b. Tier Two.--  
14 (I) Criteria, rated employers.--An employer that has  
15 an experience modification rating shall be included in Tier  
16 Two if it meets all of the following:  
17 (A) The experience modification is equal to or greater  
18 than 1.00 but not greater than 1.10;  
19 (B) The employer had no lost-time claims subsequent to  
20 the applicable experience modification rating period; and  
21 (C) The total of the employer's medical-only claims  
22 subsequent to the applicable experience modification rating  
23 period did not exceed 20 percent of premium.  
24 (II) Criteria, non-rated employers.--An employer that  
25 does not have any experience modification rating shall be  
26 included in Tier Two if it is a new business. An employer  
27 shall be included in Tier Two if it has less than 3 years of  
28 loss experience in the 3-year period immediately preceding the  
29 inception date or renewal date of its coverage under the plan  
30 and it meets all of the following:  
31

1       (A) The employer had no lost-time claims for the  
2 3-year period immediately preceding the inception date or  
3 renewal date of its coverage under the plan;

4       (B) The total of the employer's medical-only claims  
5 for the 3-year period immediately preceding the inception date  
6 or renewal date of its coverage under the plan did not exceed  
7 20 percent of premium; and

8       (C) It is able to provide the plan with a loss history  
9 generated by the workers' compensation insurer that provided  
10 coverage for the portion or portions of such period during  
11 which the employer had secured workers' compensation coverage.  
12 If the employer is not able to produce a loss history due to  
13 the insolvency of an insurer, the employer may, in lieu of the  
14 loss history, submit an affidavit from the employer and the  
15 employer's insurance agent setting forth the loss history.

16       (IV) Premiums.--The premiums for Tier Two insureds  
17 shall be set at a premium level 50 percent above the  
18 comparable voluntary market premiums until the plan has  
19 sufficient, credible experience as determined by the board to  
20 establish an actuarially sound rate for Tier Two, at which  
21 point the board shall, subject to paragraph (e), adjust the  
22 rate, if necessary, to produce actuarially sound rates;  
23 provided the rate adjustment does not take effect until  
24 January 1, 2007.

25       c. Tier Three.--

26       (I) Eligibility.--An employer shall be included in  
27 Tier Three if it does not meet the criteria for Tier One or  
28 Tier Two.

29       (II) Rates.--The board shall establish, subject to  
30 paragraph (e), and the plan shall charge actuarially sound  
31

1 rates for the Tier Three insureds. Establish four subplans as  
2 follows:

3 a. ~~Subplan "A" must include those insureds whose~~  
4 ~~annual premium does not exceed \$2,500 and who have neither~~  
5 ~~incurred any lost time claims nor incurred medical only claims~~  
6 ~~exceeding 50 percent of their premium for the immediate 2~~  
7 ~~years.~~

8 b. ~~Subplan "B" must include insureds that are~~  
9 ~~employers identified by the board of governors as high risk~~  
10 ~~employers due solely to the nature of the operations being~~  
11 ~~performed by those insureds and for whom no market exists in~~  
12 ~~the voluntary market, and whose experience modifications are~~  
13 ~~less than 1.00.~~

14 c. ~~Subplan "C" must include all insureds within the~~  
15 ~~plan that are not eligible for subplan "A," subplan "B," or~~  
16 ~~subplan "D."~~

17 d. ~~Subplan "D" must include any employer, regardless~~  
18 ~~of the length of time for which it has conducted business~~  
19 ~~operations, which has an experience modification factor of~~  
20 ~~1.10 or less and either employs 15 or fewer employees or is an~~  
21 ~~organization that is exempt from federal income tax pursuant~~  
22 ~~to s. 501(c)(3) of the Internal Revenue Code and receives more~~  
23 ~~than 50 percent of its funding from gifts, grants, endowments,~~  
24 ~~or federal or state contracts. The rate plan for subplan "D"~~  
25 ~~shall be the same rate plan as the plan approved under ss.~~  
26 ~~627.091-627.151, and each participant in subplan "D" shall pay~~  
27 ~~the premium determined under such rate plan, plus a surcharge~~  
28 ~~determined by the board to be sufficient to ensure that the~~  
29 ~~plan does not compete with the voluntary market rate for any~~  
30 ~~participant, but not to exceed 25 percent. However, the~~  
31 ~~surcharge shall not exceed 10 percent for an organization that~~

1 ~~is exempt from federal income tax pursuant to s. 501(c)(3) of~~  
 2 ~~the Internal Revenue Code.~~

3 23. For Tier One or Tier Two employers which employ no  
 4 nonexempt employees or which report payroll which is less than  
 5 the minimum wage hourly rate for one full-time employee for  
 6 one year at 40 hours per week, the plan shall establish  
 7 actuarially sound premiums, provided, however, that the  
 8 premiums may not exceed \$2,500. These premiums shall be in  
 9 addition to the fee specified in subparagraph 26. When the  
 10 plan establishes actuarially sound rates for all employers in  
 11 Tier One and Tier Two, the premiums for employers referred to  
 12 in this paragraph are no longer subject to the \$2,500 cap.

13 ~~24.23.~~ Provide for a depopulation program to reduce  
 14 the number of insureds in the plan. ~~subplan "D."~~ If an  
 15 employer insured through the plan ~~subplan "D"~~ is offered  
 16 coverage from a voluntary market carrier:

17 a. During the first 30 days of coverage under the plan  
 18 ~~subplan~~;

19 b. Before a policy is issued under the plan ~~subplan~~;

20 c. By issuance of a policy upon expiration or  
 21 cancellation of the policy under the plan ~~subplan~~; or

22 d. By assumption of the plan's ~~subplan's~~ obligation  
 23 with respect to an in-force policy,

24  
 25 that employer is no longer eligible for coverage through the  
 26 plan. The premium for risks assumed by the voluntary market  
 27 carrier must be no greater than the same premium the insured  
 28 would have paid under the plan, and shall be adjusted upon  
 29 renewal to reflect changes in the plan rates and the tier for  
 30 which the insured would qualify as of the time of renewal. The  
 31 insured may be charged such premiums only for the first 2

1 ~~years of coverage in the voluntary market plus, for the first~~  
2 ~~2 years, the surcharge as determined in sub-subparagraph 22.d.~~

3 A premium under this subparagraph, ~~including surcharge,~~ is  
4 deemed approved and is not an excess premium for purposes of  
5 s. 627.171.

6 ~~25.24.~~ Require that policies issued ~~under subplan "D"~~  
7 and applications ~~for such policies~~ must include a notice that  
8 the policy ~~issued under subplan "D"~~ could be replaced by a  
9 policy issued from a voluntary market carrier and that, if an  
10 offer of coverage is obtained from a voluntary market carrier,  
11 the policyholder is no longer eligible for coverage through  
12 ~~the plan. subplan "D."~~ The notice must also specify that  
13 acceptance of coverage under ~~the plan subplan "D"~~ creates a  
14 conclusive presumption that the applicant or policyholder is  
15 aware of this potential.

16 26. Require that each application for coverage and  
17 each renewal premium be accompanied by a nonrefundable fee of  
18 \$475 to cover costs of administration and fraud prevention.

19 The board may, with the approval of the office, increase the  
20 amount of the fee pursuant to a rate filing to reflect  
21 increased costs of administration and fraud prevention. The  
22 fee is not subject to commission and is fully earned upon  
23 commencement of coverage.

24 (d)1. The funding of the plan shall include premiums  
25 as provided in subparagraph (c)22. and assessments as provided  
26 in this paragraph.

27 2.a. If the board determines that a deficit exists in  
28 Tier One or Tier Two or that there is any deficit remaining  
29 attributable to the former subplan "D" and that the deficit  
30 cannot reasonably be funded without the use of deficit  
31 assessments, the board shall request the Office of Insurance

1 Regulation to levy, by order, a deficit assessment against  
2 premiums charged to insureds for workers' compensation  
3 insurance by insurers as defined in s. 631.904(5). The office  
4 shall issue the order after verifying the amount of the  
5 deficit. The assessment shall be specified as a percentage of  
6 future premium collections, as recommended by the board and  
7 approved by the office. The same percentage shall apply to  
8 premiums on all workers' compensation policies issued or  
9 renewed during the 12-month period beginning on the effective  
10 date of the assessment, as specified in the order.

11 b. With respect to each insurer collecting premiums  
12 that are subject to the assessment, the insurer shall collect  
13 the assessment at the same time as it collects the premium  
14 payment for each policy and shall remit the assessments  
15 collected to the plan as provided in the order issued by the  
16 Office of Insurance Regulation. The office shall verify the  
17 accurate and timely collection and remittance of deficit  
18 assessments and shall report the information to the board.  
19 Each insurer collecting assessments shall provide the  
20 information with respect to premiums and collections as may be  
21 required by the office to enable the office to monitor and  
22 audit compliance with this paragraph.

23 c. Deficit assessments are not considered a part of an  
24 insurer's rate, are not premium and are not subject to the  
25 premium tax, to the assessments under ss. 440.49 and 440.51,  
26 to the surplus lines tax, to any fees, or to any commissions.  
27 The deficit assessment imposed becomes plan funds at the  
28 moment of collection and does not constitute income for any  
29 purpose, including financial reporting on the insurer's income  
30 statement. An insurer is liable for all assessments that it  
31 collects and must treat the failure of an insured to pay an



1 assessment as a failure to pay premium. An insurer is not  
2 liable for uncollectible assessments.

3 d. When an insurer is required to return unearned  
4 premium, it shall also return any collected assessments  
5 attributable to the unearned premium.

6 3.a. All policies issued to Tier Three insureds shall  
7 be assessable. All Tier Three assessable policies must be  
8 clearly identified as assessable by containing, in contrasting  
9 color and in not less than 10-point type, the following  
10 statements: "This is an assessable policy. If the plan is  
11 unable to pay its obligations, policyholders will be required  
12 to contribute on a pro rata earned premium basis the money  
13 necessary to meet any assessment levied."

14 b. The board may from time to time assess Tier Three  
15 insureds to whom the plan has issued assessable policies for  
16 the purpose of funding plan deficits. Any assessment shall be  
17 based upon a reasonable actuarial estimate of the amount of  
18 the deficit, taking into account the amount needed to fund  
19 medical and indemnity reserves and reserves for incurred but  
20 not reported claims, and allowing for general administrative  
21 expenses, the cost of levying and collecting the assessment, a  
22 reasonable allowance for estimated uncollectible assessments,  
23 and both allocated and unallocated loss adjustment expenses.

24 c. Each Tier Three insured's share of a deficit shall  
25 be computed by applying to the premium earned on the insured's  
26 policy or policies during the period to be covered by the  
27 assessment the ratio of the total deficit to the total  
28 premiums earned during the period upon all policies subject to  
29 the assessment. In the event one or more Tier Three insureds  
30 fail to pay an assessment, the other Tier Three insureds shall  
31 be liable on a proportionate basis for additional assessments

1 to fund the deficit. The plan may compromise and settle  
2 individual assessment claims without affecting the validity of  
3 or amounts due on assessments levied against other insureds.  
4 The plan may offer and accept discounted payments for  
5 assessments which are promptly paid. The plan may offset the  
6 amount of any unpaid assessment against unearned premiums  
7 which may otherwise be due to an insured. The plan shall  
8 institute legal action when necessary and appropriate to  
9 collect the assessment from any insured who fails to pay an  
10 assessment when due.

11 d. The venue of a proceeding to enforce or collect an  
12 assessment or to contest the validity or amount of an  
13 assessment shall be in the Circuit Court of Leon County.

14 e. If the board finds that a deficit in Tier Three  
15 exists for any period and that an assessment is necessary, it  
16 shall certify to the office the need for an assessment. No  
17 sooner than 30 days after the date of the certification, the  
18 board shall notify in writing each insured who is to be  
19 assessed that an assessment is being levied against the  
20 insured, and informing the insured of the amount of the  
21 assessment, the period for which the assessment is being  
22 levied, and the date by which payment of the assessment is  
23 due. The board shall establish a date by which payment of the  
24 assessment is due, which may not be sooner than 30 days or  
25 later than 120 days after the date on which notice of the  
26 assessment is mailed to the insured. The plan must be funded  
27 through actuarially sound premiums charged to insureds of the  
28 plan.

29 ~~2. The plan may issue assessable policies only to~~  
30 ~~those insureds in subplans "C" and "D." Subject to~~  
31 ~~verification by the department, the board may levy assessments~~

1 ~~against insureds in subplan "C" or subplan "D," on a pro rata~~  
2 ~~earned premium basis, to fund any deficits that exist in those~~  
3 ~~subplans. Assessments levied against subplan "C" participants~~  
4 ~~shall cover only the deficits attributable to subplan "C," and~~  
5 ~~assessments levied against subplan "D" participants shall~~  
6 ~~cover only the deficits attributable to subplan "D." In no~~  
7 ~~event may the plan levy assessments against any person or~~  
8 ~~entity, except as authorized by this paragraph. Those~~  
9 ~~assessable policies must be clearly identified as assessable~~  
10 ~~by containing, in contrasting color and in not less than~~  
11 ~~10 point type, the following statements: "This is an~~  
12 ~~assessable policy. If the plan is unable to pay its~~  
13 ~~obligations, policyholders will be required to contribute on a~~  
14 ~~pro rata earned premium basis the money necessary to meet any~~  
15 ~~assessment levied."~~

16 ~~3. The plan may issue assessable policies with~~  
17 ~~differing terms and conditions to different groups within~~  
18 ~~subplans "C" and "D" when a reasonable basis exists for the~~  
19 ~~differentiation.~~

20 4. The plan may offer rating, dividend plans, and  
21 other plans to encourage loss prevention programs.

22 (e) The plan shall establish and use its rates and  
23 rating plans, and the plan may establish and use changes in  
24 rating plans at any time, but no more frequently than two  
25 times per any rating class for any calendar year. By December  
26 1, 1993, and December 1 of each year thereafter, the board  
27 shall, except as provided in subparagraph (c)22., establish  
28 and use actuarially sound rates for use by the plan to assure  
29 that the plan is self-funding while those rates are in effect.  
30 Such rates and rating plans must be filed with the office  
31 within 30 calendar days after their effective dates, and shall

1 be considered a "use and file" filing. Any disapproval by the  
2 office must have an effective date that is at least 60 days  
3 from the date of disapproval of the rates and rating plan and  
4 must have prospective effect only. The plan may not be subject  
5 to any order by the office to return to policyholders any  
6 portion of the rates disapproved by the office. The office may  
7 not disapprove any rates or rating plans unless it  
8 demonstrates that such rates and rating plans are excessive,  
9 inadequate, or unfairly discriminatory.

10 (f) No later than June 1 of each year, the plan shall  
11 obtain an independent actuarial certification of the results  
12 of the operations of the plan for prior years, and shall  
13 furnish a copy of the certification to the office. If, after  
14 the effective date of the plan, the projected ultimate  
15 incurred losses and expenses and dividends for prior years  
16 exceed collected premiums, accrued net investment income, and  
17 prior assessments for prior years, the certification is  
18 subject to review and approval by the office before it becomes  
19 final.

20 (g) Whenever a deficit exists, the plan shall, within  
21 90 days, provide the office with a program to eliminate the  
22 deficit within a reasonable time. The deficit may be funded  
23 through increased premiums charged to insureds of the plan for  
24 subsequent years, through the use of policyholder surplus  
25 attributable to any year, through the use of assessments as  
26 provided in subparagraph (d)2., and through assessments on  
27 ~~insureds in the plan if the plan uses~~ assessable policies as  
28 provided in subparagraph (d)3.

29 (h) Any premium or assessments collected by the plan  
30 in excess of the amount necessary to fund projected ultimate  
31 incurred losses and expenses of the plan and not paid to

1 insureds of the plan in conjunction with loss prevention or  
2 dividend programs shall be retained by the plan for future  
3 use.

4 (i) The decisions of the board of governors do not  
5 constitute final agency action and are not subject to chapter  
6 120.

7 (j) Policies for insureds shall be issued by the plan.

8 (k) The plan created under this subsection is liable  
9 only for payment for losses arising under policies issued by  
10 the plan with dates of accidents occurring on or after January  
11 1, 1994.

12 (l) Plan losses are the sole and exclusive  
13 responsibility of the plan, and payment for such losses must  
14 be funded in accordance with this subsection and must not  
15 come, directly or indirectly, from insurers or any guaranty  
16 association for such insurers.

17 (m) Each joint underwriting plan or association  
18 created under this section is not a state agency, board, or  
19 commission. However, for the purposes of s. 199.183(1) only,  
20 the joint underwriting plan is a political subdivision of the  
21 state and is exempt from the corporate income tax.

22 (n) Each joint underwriting plan or association may  
23 elect to pay premium taxes on the premiums received on its  
24 behalf or may elect to have the member insurers to whom the  
25 premiums are allocated pay the premium taxes if the member  
26 insurer had written the policy. The joint underwriting plan or  
27 association shall notify the member insurers and the  
28 Department of Revenue by January 15 of each year of its  
29 election for the same year. As used in this paragraph, the  
30 term "premiums received" means the consideration for  
31 insurance, by whatever name called, but does not include any

1 policy assessment or surcharge received by the joint  
2 underwriting association as a result of apportioning losses or  
3 deficits of the association pursuant to this section.

4 (o) Neither the plan nor any member of the board of  
5 governors is liable for monetary damages to any person for any  
6 statement, vote, decision, or failure to act, regarding the  
7 management or policies of the plan, unless:

8 1. The member breached or failed to perform her or his  
9 duties as a member; and

10 2. The member's breach of, or failure to perform,  
11 duties constitutes:

12 a. A violation of the criminal law, unless the member  
13 had reasonable cause to believe her or his conduct was not  
14 unlawful. A judgment or other final adjudication against a  
15 member in any criminal proceeding for violation of the  
16 criminal law estops that member from contesting the fact that  
17 her or his breach, or failure to perform, constitutes a  
18 violation of the criminal law; but does not estop the member  
19 from establishing that she or he had reasonable cause to  
20 believe that her or his conduct was lawful or had no  
21 reasonable cause to believe that her or his conduct was  
22 unlawful;

23 b. A transaction from which the member derived an  
24 improper personal benefit, either directly or indirectly; or

25 c. Recklessness or any act or omission that was  
26 committed in bad faith or with malicious purpose or in a  
27 manner exhibiting wanton and willful disregard of human  
28 rights, safety, or property. For purposes of this  
29 sub-subparagraph, the term "recklessness" means the acting, or  
30 omission to act, in conscious disregard of a risk:

31

1 (I) Known, or so obvious that it should have been  
2 known, to the member; and

3 (II) Known to the member, or so obvious that it should  
4 have been known, to be so great as to make it highly probable  
5 that harm would follow from such act or omission.

6 (p) No insurer shall provide workers' compensation and  
7 employer's liability insurance to any person who is delinquent  
8 in the payment of premiums, assessments, penalties, or  
9 surcharges owed to the plan or to any person who is an  
10 affiliated person of a person who is delinquent in the payment  
11 of premiums, assessments, penalties, or surcharges owed to the  
12 plan. For the purposes of this paragraph, the term "affiliated  
13 person" of another person means:

14 1. The spouse of such other natural person;

15 2. Any person who directly or indirectly owns or  
16 controls, or holds with the power to vote, 5 percent or more  
17 of the outstanding voting securities of such other person;

18 3. Any person who directly or indirectly owns 5  
19 percent or more of the outstanding voting securities that are  
20 directly or indirectly owned or controlled, or held with the  
21 power to vote, by such other person;

22 4. Any person or group of persons who directly or  
23 indirectly control, are controlled by, or are under common  
24 control with such other person;

25 5. Any officer, director, trustee, partner, owner,  
26 manager, joint venturer, or employee, or other person  
27 performing duties similar to persons in those positions, of  
28 such other person; or

29 6. Any person who has an officer, director, trustee,  
30 partner, or joint venturer in common with such other person.

31

1           (g) Effective July 1, 2004, the plan is exempt from  
2 the premium tax under s. 624.509 and any assessments under ss.  
3 440.49 and 440.51.

4           Section 3. The Auditor General shall perform an  
5 operational audit, as defined in section 11.45(1), Florida  
6 Statutes, of the Workers' Compensation Joint Underwriting  
7 Association created under section 627.311(5), Florida  
8 Statutes. The scope of the audit shall also include:

9           (1) An analysis of the adequacy and appropriateness of  
10 the rates and reserves of the association. The Auditor General  
11 shall engage an independent consulting actuary who is an  
12 enrolled actuary to evaluate the rates and the reserves of the  
13 association.

14           (2) An evaluation of costs associated with the  
15 administration and servicing of the policies issued by the  
16 association to determine alternatives by which costs can be  
17 reduced.

18  
19 The Auditor General shall submit a report to the Governor, the  
20 President of the Senate, and the Speaker of the House of  
21 Representatives no later than October 1, 2004.

22           Section 4. The Workers' Compensation Joint  
23 Underwriting Association is subject to the Florida Single  
24 Audit Act, as provided in section 215.97, Florida Statutes, if  
25 the association expends a total amount of state financial  
26 assistance equal to or in excess of \$300,000 in any fiscal  
27 year. Such audit reports shall be submitted to the President  
28 of the Senate, the Speaker of the House of Representatives,  
29 and the Governor pursuant to section 215.97, Florida Statutes.

30           Section 5. The sum of \$50,000 in nonrecurring funds is  
31 appropriated from the Workers' Compensation Administration



1 Trust Fund to the Office of the Auditor General for the  
2 purpose of engaging an actuary to evaluate the rates and  
3 reserves of the Florida Workers' Compensation Joint  
4 Underwriting Association as required by section 3.

5 Section 6. Section 627.0915, Florida Statutes, is  
6 amended to read:

7 627.0915 Rate filings; workers' compensation,  
8 drug-free workplace, and safe employers.--

9 (1) The office shall approve rating plans for workers'  
10 compensation and employer's liability insurance that give  
11 specific identifiable consideration in the setting of rates to  
12 employers that either implement a drug-free workplace program  
13 pursuant to s. 440.102 and rules adopted thereunder by the  
14 commission or implement a safety program pursuant to  
15 provisions of the rating plan or implement both a drug-free  
16 workplace program and a safety program. The plans must be  
17 actuarially sound and must state the savings anticipated to  
18 result from such drug-testing and safety programs.

19 (2) An insurer offering a rate plan approved under  
20 this section shall notify the employer at the time of a  
21 written offer of insurance and at the time of each renewal of  
22 the policy of the availability of the premium discount where a  
23 drug-free workplace plan is used by the employer pursuant to  
24 s. 440.102 and related rules. The commission shall adopt rules  
25 to implement this section.

26 Section 7. Notwithstanding the provisions of sections  
27 440.50 and 440.51, Florida Statutes, for the 2004-2005 fiscal  
28 year:

29 (1) The sum of \$10 million is appropriated from the  
30 Workers' Compensation Administration Trust Fund in the  
31 Department of Financial Services for transfer to the workers'

1 compensation joint underwriting plan provided in section  
2 627.311(5), Florida Statutes, as a capital contribution to  
3 fund any deficit in the plan. The Chief Financial Officer  
4 shall transfer the funds to the plan no later than July 31,  
5 2004.

6 (2) The workers' compensation joint underwriting plan  
7 set forth in section 627.311(5), Florida Statutes, may request  
8 the Department of Financial Services to transfer an amount not  
9 to exceed \$25 million from the Workers' Compensation  
10 Administration Trust Fund to the plan subject to the approval  
11 of the Legislative Budget Commission under sections 216.181  
12 and 216.292, Florida Statutes. The workers' compensation joint  
13 underwriting plan board of governors and the Office of  
14 Insurance Regulation must first certify to the Department of  
15 Financial Services that a deficit exists in the workers'  
16 compensation joint underwriting plan. The amount requested for  
17 transfer to the plan may not exceed the deficit amount jointly  
18 certified by the board of governors and the Office of  
19 Insurance Regulation to exist in Tier One or Tier Two or for  
20 any deficit remaining attributable to the former subplan "D"  
21 which cannot be funded without the use of deficit assessments  
22 as authorized by section 627.351(5)(d), Florida Statutes.

23 Section 8. Transitional provisions.--Effective upon  
24 this act becoming a law:

25 (1) Notwithstanding section 627.311(5), Florida  
26 Statutes, to the contrary, no policy in subplan "D" of the  
27 Florida Workers' Compensation Joint Underwriting Association  
28 is subject to an assessment for the purpose of funding a  
29 deficit.

30 (2) Any policy issued by the Florida Workers'  
31 Compensation Joint Underwriting Association with an effective

1 date between the date on which this act becomes a law and June  
2 30, 2004, shall be rerated and placed in the appropriate tier  
3 provided in section 627.311(5), Florida Statutes, as amended  
4 effective July 1, 2004, and shall be subject to the premiums  
5 and charges provided for in that section as amended.

6 Section 9. Effective upon this act becoming a law:

7 (1) The Legislature intends to create a state workers'  
8 compensation mutual fund if workers' compensation coverage is  
9 not generally available and affordable to small employers and  
10 organizations that are exempt from federal income tax under s.  
11 501(c)(3) of the Internal Revenue Code in Florida by October  
12 1, 2005. In order to make this determination, there is  
13 established the Workers' Compensation Insurance Market  
14 Evaluation Committee which shall consist of one member  
15 appointed by the Governor, who shall serve as chair; two  
16 members appointed by the President of the Senate; and two  
17 members appointed by the Speaker of the House of  
18 Representatives. The committee shall monitor and report on the  
19 number of insurers actively writing workers' compensation  
20 insurance in this state for small employers and organizations  
21 that are exempt from federal income tax under s. 501(c)(3) of  
22 the Internal Revenue Code, the number of policies issued,  
23 premium volume written, types of underwriting restrictions  
24 utilized, and the extent to which actual premiums charged vary  
25 from standard rates, such as the use of excess rates pursuant  
26 to section 627.171, Florida Statutes, and rate deviations  
27 pursuant to section 627.211, Florida Statutes. The Office of  
28 Insurance Regulation shall provide such related information to  
29 the committee as is requested, and workers' compensation  
30 insurers shall report such information to the office in the  
31 manner and format specified by the office.

1       (2) The committee shall meet once each month,  
2 beginning in August 2004, and shall provide interim reports to  
3 the appointing officers on October 1, 2004, December 1, 2004,  
4 and March 1, 2005, and at such additional times as the  
5 President of the Senate and the Speaker of the House of  
6 Representatives jointly require. Members of the committee  
7 shall be entitled to reimbursement for travel and per diem  
8 pursuant to section 112.061, Florida Statutes.

9       (3) If the Legislature determines that workers'  
10 compensation coverage is not generally available and  
11 affordable to small employers and organizations that are  
12 exempt from federal income tax under s. 501(c)(3) of the  
13 Internal Revenue Code in Florida, the Legislature intends to  
14 create a state mutual fund as a nonprofit entity for the  
15 benefit of its policyholders that are a small employer or an  
16 organization that is exempt from the federal income tax under  
17 s. 501(c)(3) of the Internal Revenue Code. The state mutual  
18 fund would compete with private carriers and would be charged  
19 with the public mission of customer service, quality loss  
20 prevention, timely claims management, active fighting of  
21 fraud, and compassionate care for injured workers, at the  
22 lowest cost consistent with actuarial sound rates. The fund  
23 should primarily rely on an in-house staff of professional  
24 employees, rather than contracting with servicing carriers. It  
25 is further intended that the state appropriate adequate  
26 initial capitalization for the fund and that the fund be  
27 subject to the same financial and other requirements as apply  
28 to an authorized insurer.

29       Section 10. Subsection (7) of section 440.16, Florida  
30 Statutes, is amended to read:

31       440.16 Compensation for death.--

1           ~~(7) Compensation under this chapter to aliens not~~  
2 ~~residents (or about to become nonresidents) of the United~~  
3 ~~States or Canada shall be the same in amount as provided for~~  
4 ~~residents, except that dependents in any foreign country shall~~  
5 ~~be limited to surviving spouse and child or children, or if~~  
6 ~~there be no surviving spouse or child or children, to~~  
7 ~~surviving father or mother whom the employee has supported,~~  
8 ~~either wholly or in part, for the period of 1 year prior to~~  
9 ~~the date of the injury, and except that the judge of~~  
10 ~~compensation claims may, at the option of the judge of~~  
11 ~~compensation claims, or upon the application of the insurance~~  
12 ~~carrier, commute all future installments of compensation to be~~  
13 ~~paid to such aliens by paying or causing to be paid to them~~  
14 ~~one half of the commuted amount of such future installments of~~  
15 ~~compensation as determined by the judge of compensation~~  
16 ~~claims, and provided further that compensation to dependents~~  
17 ~~referred to in this subsection shall in no case exceed~~  
18 ~~\$75,000.~~

19           Section 11. Except as otherwise expressly provided in  
20 this act, and except for this section, which shall take effect  
21 upon becoming a law, this act shall take effect July 1, 2004.

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