

## ENROLLED

HB 5603, Engrossed 1

2010 Legislature

1 A bill to be entitled

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

26  
27 Be It Enacted by the Legislature of the State of Florida:  
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29 Section 1. Paragraph (h) of subsection (2) of section  
 30 20.121, Florida Statutes, is amended to read:

31 20.121 Department of Financial Services.—There is created  
 32 a Department of Financial Services.

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

35 (h) The Division of Consumer Services.

36 1. The Division of Consumer Services shall perform the  
 37 following functions concerning products or services regulated by  
 38 the department ~~of Financial Services~~ or by ~~either office of the~~  
 39 Office of Insurance Regulation ~~Financial Services Commission~~:

40 a. Receive inquiries and complaints from consumers.

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

43 c. Provide direct assistance and advocacy for consumers  
 44 who request such assistance or advocacy.

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

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

54 2. Any person licensed or issued a certificate of  
 55 authority by the department or by the Office of Insurance  
 56 Regulation shall respond, in writing, to the Division of

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

68 |         3. The department may adopt rules to administer ~~implement~~  
 69 | ~~the provisions of~~ this paragraph.

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

76 |         Section 2. Subsection (5) of section 284.01, Florida  
 77 | Statutes, is amended to read:

78 |         284.01 State Risk Management Trust Fund; coverages to be  
 79 | provided.—

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

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85 Section 3. Section 284.36, Florida Statutes, is amended to  
 86 read:

87 284.36 Appropriation deposits; premium payment.—Premiums  
 88 for coverage by the State Risk Management Trust Fund as  
 89 calculated on all coverages shall be billed and charged to each  
 90 state agency according to coverages obtained by the fund for  
 91 their benefit, and such obligations shall be paid promptly by  
 92 each agency from its operating budget upon presentation of a  
 93 bill therefor. After the first year of operation, premiums to be  
 94 charged to all departments of the state are to be computed on a  
 95 retrospective rating arrangement based upon actual losses  
 96 accruing to the fund and loss prevention results, taking into  
 97 account reasonable expectations, the maintenance and stability  
 98 of the fund, and the cost of insurance.

99 Section 4. Subsection (1) of section 284.42, Florida  
 100 Statutes, is amended to read:

101 284.42 Reports on state insurance program.—

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

108 1. (a) Complete underwriting information as to the nature  
 109 of the risks accepted for self-insurance and those risks that  
 110 are transferred to the insurance market.

111 2. (b) The funds allocated to the Florida Casualty Risk  
 112 Management Trust Fund and premiums paid for insurance through

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113 the market.

114 ~~3.(e)~~ The method of handling legal matters and the cost  
115 allocated.

116 ~~4.(d)~~ The method and cost of handling inspection and  
117 engineering of risks.

118 ~~5.(e)~~ The cost of risk management service purchased.

119 ~~6.(f)~~ The cost of managing the State Insurance Program by  
120 the Department of Financial Services and the Department of  
121 Management Services.

122 (b) Beginning January 1, 2012, the Division of Risk  
123 Management shall include in its annual report an analysis of  
124 agency return-to-work efforts, including, but not limited to,  
125 agency return-to-work program performance metrics and a status  
126 report on participating return-to-work programs. The report  
127 shall specify benchmarks, including, but not limited to, the  
128 average lost-time claims per year, per agency; the total number  
129 of lost claims; and specific agency measurable outcomes  
130 indicating the change in performance from year to year.

131 Section 5. Subsections (4) and (5) are added to section  
132 284.50, Florida Statutes, to read:

133 284.50 Loss prevention program; safety coordinators;  
134 Interagency Advisory Council on Loss Prevention; employee  
135 recognition program.—

136 (4) All agencies that are provided workers' compensation  
137 insurance coverage by the State Risk Management Trust Fund that  
138 employ more than 6,000 full-time employees shall establish and  
139 maintain return-to-work programs for employees who are receiving  
140 workers' compensation benefits. Such programs shall have the

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141 primary goal of enabling injured workers to remain at work or  
142 return to work to perform job duties within the physical or  
143 mental functional limitations and restrictions established by  
144 the workers' treating physicians. If no such limitations or  
145 restrictions are established in writing by a worker's treating  
146 physician, the worker shall be deemed to be able to fully  
147 perform the same work duties he or she performed prior to the  
148 injury.

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

166 Section 6. Paragraph (c) of subsection (12) of section  
167 440.13, Florida Statutes, is amended to read:

168 440.13 Medical services and supplies; penalty for

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169 | violations; limitations.—

170 |       (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM  
 171 | REIMBURSEMENT ALLOWANCES.—

172 |       (c) As to reimbursement for a prescription medication,  
 173 | regardless of the location or provider from which the claimant  
 174 | receives the prescription medication, the reimbursement amount  
 175 | for a prescription shall be the average wholesale price plus  
 176 | \$4.18 for the dispensing fee, except when ~~where~~ the carrier has  
 177 | contracted for a lower amount. The reimbursement amount for a  
 178 | drug that has been repackaged or relabeled shall be calculated  
 179 | by multiplying the number of units dispensed times the per-unit  
 180 | average wholesale price set by the original manufacturer of the  
 181 | underlying drug, which shall not be the manufacturer of the  
 182 | repackaged or relabeled drug, plus a \$4.18 dispensing fee,  
 183 | except when the carrier has contracted for a lower amount. In no  
 184 | case shall the repackaged or relabeled drug price exceed the  
 185 | amount otherwise payable had the drug not been repackaged or  
 186 | relabeled. Fees for pharmaceuticals and pharmaceutical services  
 187 | shall be reimbursable at the applicable fee schedule amount.  
 188 | Where the employer or carrier has contracted for such services  
 189 | and the employee elects to obtain them through a provider not a  
 190 | party to the contract, the carrier shall reimburse at the  
 191 | schedule, negotiated, or contract price, whichever is lower. No  
 192 | such contract shall rely on a provider that is not reasonably  
 193 | accessible to the employee.

194 |       Section 7. Subsection (5) is added to section 440.50,  
 195 | Florida Statutes, to read:

196 |       440.50 Workers' Compensation Administration Trust Fund.—

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197       (5) Funds appropriated by operating appropriation or  
198 nonoperating transfer from the Workers' Compensation  
199 Administration Trust Fund to the Department of Education, the  
200 Agency for Health Care Administration, the Department of  
201 Business and Professional Regulation, the Department of  
202 Management Services, the First District Court of Appeal, and the  
203 Justice Administrative Commission remaining unencumbered as of  
204 June 30 or undisbursed as of September 30 each year shall revert  
205 to the Workers' Compensation Administration Trust Fund.

206       Section 8. This act shall take effect July 1, 2010.