1983

Session Law 83-203

Florida Senate & House of Representatives

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### LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

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Florida Legislature

History of Legislation
1983 Regular Session
1983 Special Sessions A, B, C
1982 Special Session H

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826—488-4371
S 0377

GENERAL BILL BY KIRKPATRICK AND OTHERS (IDENTICAL H 4479)

Motor vehicle licenses: Provides increased fines for persons who violate provisions relating to the issuance of "M.A., uniform traffic control laws." Amends §114.05, effective date: 10/01/83.

04/13/83 SENATE COMM. REPORT: FAVORABLE WITH AMEND. BY GOVERNMENTAL OPERATIONS - SJ 00108
04/14/83 SENATE NOW IN APPROPRIATIONS - SJ 00108
05/04/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE APPROPRIATIONS
05/16/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE APPROPRIATIONS
05/20/83 SENATE ON COMMITTEE AGENDA - APPROPRIATIONS, 05/21/83, 2:00 PM, RM, A
05/24/83 SENATE COMM. REPORT: C/S PLACED ON CALENDAR BY APPROPRIATIONS - SJ 00450
05/27/83 SENATE C/S READ FIRST TIME - SJ 00451
06/03/83 SENATE INDEFINITELY POSTPONED & W/O ISCR 120911 WAS ON CALENDAR

S 0378 LOCAL BILL BY YUGI (IDENTICAL H 0374)

Brevard CO/County-Courts: Requires parties instituting civil actions in courts within Brevard Co. to pay such amount as Board of County Commissioners may designate by ordinance for a legal clerk's program in each county. Effective date: 06/10/83.

04/22/83 SENATE PREFILED
04/30/83 SENATE REFERRED TO RULES AND CALENDAR
05/15/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE RULES AND CALENDAR
06/26/83 SENATE CONSIDERED, PLACED ON LOCAL CALENDAR BY RULES AND CALENDAR - SJ 00108
06/27/83 SENATE PASSED; YEAS 36 NAYS 0 - SJ 00108
06/05/83 SENATE IN MESSAGES
05/12/83 SENATE RECEIVED, PLACED ON CALENDAR - HJ 00438
05/27/83 HOUSE SUBSITUATED FOR HD 3742 READ SECONDO AND THIRDS TIMES; PASSED; YEAS 51 NAYS 0 - HJ 00468
06/27/83 SENATE PASSED; YEAS 36 NAYS 0 - SJ 00108
06/11/83 SENATE PREFILED

S 0380 GENERAL BILL BY KIRKPATRICK AND OTHERS (IDENTICAL H 0438)

Traffic control: Provides increased fines for persons who violate provisions relating to traffic control laws. Amends §114.05, effective date: 10/01/83.

04/13/83 SENATE PREFILED
04/30/83 SENATE REFERRED TO TRANSPORTATION, FINANCE, TAXATION AND CLAIMS
05/04/83 SENATE INTRODUCED; REFERRED TO TRANSPORTATION, FINANCE, TAXATION AND CLAIMS - HJ 00347
05/05/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; PASSED; YEAS 36 NAYS 0 - HJ 0084
05/03/83 HOUSE IN MESSAGES
05/03/83 HOUSE RECEIVED, REFERRED TO FINANCE & TAXATION, APPROPRIATIONS - HJ 00347
05/09/83 HOUSE COMM. REPORT: FAVORABLE BY TRANSPORTATION - SJ 00108
04/14/83 SENATE COMM. REPORT: FAVORABLE BY TRANSPORTATION - SJ 00108
04/18/83 SENATE NOW IN FINANCE, TAXATION AND CLAIMS - SJ 00108
04/20/83 SENATE ON COMMITTEE AGENDA - TRANSPORTATION, 04/21/83, 2:00 PM, RM, C
04/20/83 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY TRANSPORTATION, TAXATION AND CLAIMS - SJ 00108
04/28/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; PASSED; YEAS 36 NAYS 0 - SJ 00108
05/03/83 HOUSE IN MESSAGES
05/03/83 HOUSE RECEIVED, REFERRED TO FINANCE & TAXATION, APPROPRIATIONS - HJ 00347
05/09/83 HOUSE COMM. REPORT: FAVORABLE BY COMMERC., TRANSPORTATION - SJ 00108
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05/30/83 HOUSE WITHDRAWN FROM APPROPRIATIONS - HJ 00281, PLACED ON CALENDAR
06/03/83 HOUSE INTRODUCED; REFERRED TO TRANSPORTATION, FINANCE, TAXATION AND CLAIMS - HJ 00108
06/03/83 HOUSE EXTENSION OF TIME GRANTED COMMITTEE - SJ 00062
06/09/83 SENATE SIGNIFIED BY OFFICERS AND PRESENTED TO GOVERNOR
06/22/83 APPROVED BY GOVERNOR CHAPTER NO. 83-155

S 0384 RESOLUTION BY JEME AND OTHERS

INTERNATIONAL EDUCATION: Recognizes & supports components of international education in higher education in the state.

05/27/83 SENATE PREFILED
06/02/83 SENATE PLACED ON CONSENT CALENDAR; IDEN./SIM. HOUSE BILL SUBSTITUTED; LAID ON TABLE UNDER RULE
05/19/83 SENATE PASSED; YEAS 36 NAYS 0 - SJ 00050
06/01/83 SENATE PREFILED

S 0385 LOCAL BILL BY LANGLEY (IDENTICAL H 0338, SIMILAR S 0319)

SEAWORD; SJ/land GRANT; Grants unto City of Sanford Fee Simple Title To A Portion of Portion of Land, Mines And Or Controlled By State of Florida For Purposes Of Establishing Marina & Commercial Complex; Describes Said Grant; Provides Exceptions For Existing Riparian Ownership. Effective Date: Upon Becoming Law.

03/21/83 SENATE PREFILED
05/03/83 SENATE REFERRED TO RULES AND CALENDAR
05/04/83 SENATE INTRODUCED, REFERRED TO RULES AND CALENDAR - SJ 00038
05/05/83 SENATE CONTINUED ON NEXT PAGE

S 0386 LOCAL BILL BY YUGI (IDENTICAL H 0374)

Brevard Co/County-Courts: Requires parties instituting civil actions in courts within Brevard Co. to pay such amount as Board of County Commissioners may designate by ordinance for a legal clerk's program in each county. Effective date: 06/10/83.

04/22/83 SENATE PREFILED
04/30/83 SENATE REFERRED TO RULES AND CALENDAR
05/15/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE RULES AND CALENDAR
06/02/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE Rules And Calendar
05/19/83 SENATE WITHDRAWN FROM RULES AND CALENDAR; ADOPTED; YEAS 35 NAYS 0 - SJ 00050
A bill to be entitled
An act relating to insurance; amending s. 624.317, Florida Statutes, 1982 Supplement, providing for the investigation of administrators, creating s. 624.330, Florida Statutes; providing that entities which provide coverage for life and health insurance benefits are subject to the jurisdiction of the department except to the extent regulated by federal law, creating ss. 626.879-626.893, Florida Statutes; providing for the regulation of insurance administrators, defining administrator; providing for a certificate of authority; providing for a deposit of securities; requiring a written agreement to act as an administrator and the maintenance of records, providing certain trust and accounting procedures; providing grounds and procedures for suspension and revocation of a certificate of authority; providing an administrative fine, providing an effective date

Be It Enacted by the Legislature of the State of Florida

Section 1 Subsection (1) of section 624.317, Florida Statutes, 1982 Supplement, is amended to read:
624.317 Investigation of agents, adjusters, and others.--If it has reason to believe that any person has violated or is violating any provision of this code, or upon the written complaint signed by any interested person indicating that any such violation may exist, the department
shall conduct such investigation as it deems necessary of the
accounts, records, documents, and transactions pertaining to
or affecting the insurance affairs of any:

   (1) General agent, surplus line agent, adjuster,
administrator or other person

Section 2. Section 624 330, Florida Statutes, is
created to read:

   624 330 Jurisdiction regarding health or life
coverage.--

   (1) Notwithstanding any other provision of law, and
except as provided herein, any person which, in this state,
provides life insurance coverage, annuities, or coverage for
medical, surgical, chiropractic, physical therapy, speech
pathology, audiology, professional mental health, dental,
hospital, or optometric expenses, or any other health
insurance coverage, whether such coverage is by direct
payment, reimbursement, or otherwise, shall be subject to the
jurisdiction of the department and to all applicable
provisions of chapters 624 through 651, except to the extent
that the person shows that while providing such services it is
exempt from such jurisdiction and laws due to the preempt
of the Employee Retirement Income Security Act of 1974, 29

   (2) Any person providing any of the coverages or
benefits referred to in subsection (1), which is unable to
show that it is a qualified employee welfare benefit plan, as
defined in 29 U.S.C. 1002, as amended, and that it is exempt
from the provisions of chapters 624 through 651 shall submit
to an examination by the department to determine the
organization and solvency of the person and to determine

CODING: Words in struck through type are deletions from existing law, words underlined are additions
whether or not such person is in compliance with the
applicable provisions of such laws.

(3) If an employee welfare benefit plan is a multiple
employer welfare arrangement, as defined in 29 U.S.C. 1002, as
amended, and is fully insured, or is a multiple employer
welfare arrangement subject to an exemption granted by the
United States Secretary of Labor in accordance with 29 U.S.C.
1144(b) (6) (3), the applicable provisions of chapters 624
through 651, shall apply to such arrangements to the extent
that such laws provide standards requiring the maintenance of
specified levels of reserves and specified levels of
contributions and provisions to enforce such standards.

(4) In the case of a multiple employer welfare
arrangement which is not partially exempt from state law as
provided in subsection (3), such arrangement shall be subject
to the jurisdiction of the department and all applicable
provisions of chapters 624 through 651, regarding the conduct
of its business.

(5) Any agent, administrator, or other person engaged
in this state in the solicitation, negotiation, or
effectuation of any coverage, described in subsection (1) or
the inspection of risks, setting of rates, investigation or
adjustment of losses, collection of premiums, or any other
function connected with any such coverage shall be subject to
the jurisdiction of the department and to such examination as
it deems necessary of the accounts, records, documents, and
transactions pertaining to or affecting such coverage to the
same extent as the person or entity affording such coverage.

Section 3 Sections 626.879, 626.880, 626.881,
626.882, 626.883, 626.884, 626.885, 626.886, 626.887, 626.888,
PART VI
INSURANCE ADMINISTRATORS

626.879 Definitions --For the purpose of this part

(1) "Administrator" means any person who directly or
indirectly solicits or effects coverage, collects charges or
premiums from, or who adjusts or settles claims on, residents
of this state in connection with insured or self-insured
programs which provide life or health insurance coverage or
coverage of any of the other expenses described in s.
624.330(1), other than any of the following.

(a) An employer on behalf of such employer's employees
or the employees of one or more subsidiary of affiliated
corporations of such employer

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to
transact insurance in this state or is acting as an insurer
with respect to a policy lawfully issued and delivered by such
company in and pursuant to the laws of a state in which the
insurer was authorized to transact an insurance business.
Provided, however, that an insurer providing administrative
services to an uninsured or partially insured benefit plan to
which it provides no coverage or only provides specific or
aggregate excess loss insurance shall be an administrator
subject to the provisions of this part.

(d) A health care services plan, health maintenance
organization, professional service plan corporation, or a
person in the business of providing continuing care.
possessing a valid certificate of authority issued by the department, and their sales representatives

(e) A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

(f) An adjuster licensed in this state, whose activities are limited to the adjustment of claims.

(g) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(h) A trust, its trustees, agents and employees acting pursuant to such trust, established in conformity with 29 United States Code 186.

(i) A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting pursuant to such trust, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

(j) A financial institution which is subject to supervision or examination by federal or state banking authorities.

(k) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection, if such company does not adjust or settle claims.

A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage

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2. "Insurer" means any person undertaking to provide life or health insurance coverage or coverage of any of the other expenses described in s. 624 330(1)

626.880 Certificate of authority.--

(1) It is unlawful for any person to act as or hold himself out to be an administrator in this state without a valid certificate of authority issued by the department, pursuant to ss. 626.879 through 626.990 To qualify for and hold authority to act as an administrator in this state, an administrator must otherwise be in compliance with this code and with its charter powers, and must be incorporated under the laws of its state or country of domicile Failure of any person to hold such a certificate while acting as an administrator shall subject such person to a fine of not less than $5,000 nor more than $10,000 for each violation.

(2) A person applying for a certificate of authority shall file with the department an application upon a form to be furnished by the department, which shall include or have attached the following:

(a) The names, addresses and occupations of all incorporators and proposed directors and officers

(b) A certified copy of the corporate articles and bylaws and, for the 3 most recent years, the corporation's annual statements and reports

(c) Each agreement relating to the corporation to which any incorporator or proposed director or officer is a party.

(d) A statement of the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons.
(e) A statement of compensation to be provided
directors and officers.

(f) The forms to be used for any proposed contracts
between the administrator and insurers, and forms relating to
the provision of services to insureds

(g) Such other documents and information as the
department may reasonably require

(h) An application fee in the amount of $25. The
department shall deposit all sums collected under this
paragraph to the credit of the Insurance Commissioner's
Regulatory Trust Fund

(i) The department shall not issue a certificate of
authority if it determines that the administrator or any
principal thereof is not competent, trustworthy, financially
responsible, or of good personal and business reputation, or
has had an insurance license, permit, or certificate of
authority denied or revoked for cause by any state.

(j) A certificate of authority issued under this
section shall remain valid, unless suspended or revoked by the
department, as long as the certificate holder continues in
business in this state

626 881 Required deposit.--

(l) To assure the faithful performance of its
obligations in the event of insolvency, each administrator,
prior to the issuance of its certificate of authority, shall
deposit and maintain with the department securities of the
type eligible for deposit by insurers under s 625 52, which
securities shall be held in trust and shall have at all times
a market value in the amount specified. The initial deposit
for an administrator shall be in the amount of $50,000 for at
least the first full year of operation. The amount of the
initial deposit shall be adjusted annually thereafter on
October 1. The amount of the deposit shall be not less than
10 percent of the amount of total funds handled, except that
in no case shall deposit be less than $50,000 nor more than
$500,000. For purposes of fixing the amount of such deposit,
the amount of funds handled shall be determined by the total
funds handled by the administrator during the preceding year,
or if no funds were handled during the preceding year the
amount of funds reasonably estimated to be handled during the
current calendar year by the administrator.

(2) Securities deposited pursuant to this section
shall be for the benefit of, and subject to action thereon by,
any person sustaining an actionable injury due to the failure
of the administrator to faithfully perform its obligations to
insureds in the event of insolvency or impairment of any
administrator.

(3) The state shall be responsible for the safekeeping
of all securities deposited with the department under this
section. Such securities shall not, on account of being in
this state, be subject to taxation, but shall be held
exclusively and solely to guarantee the performance by the
administrator of its obligations to insureds.

(4) Such deposit shall be maintained unimpaired as
long as the administrator continues to do business in the
state. Whenever the administrator ceases to do business in
this state and furnishes proof satisfactory to the department
that it has discharged or otherwise adequately provided for
all its obligations to insureds in this state, the department
shall release the deposited securities to the parties entitled
thereto, on presentation of the department’s receipts for such
securities.
(5) The department may at any time enter an order modifying the amount specified under subsection (1) if it finds that there has been a substantial change in the facts on which the determination was based. The department shall hold a hearing within 30 days after receiving a request from the administrator which shall be submitted within 30 days after notification of the modification order. Failure to meet the new requirements within 30 days after final decision or after the expiration of the 30-day period for submitting the hearing request constitutes a ground for rehabilitation.

(6) Any decrease in a deposit authorized by this section shall be made only upon written request of the administrator.

626.882 Written agreement, provisions, maintenance of records.--

(1) No person may act as an administrator without a written agreement between such person as administrator and an insurer. Such written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and for 5 years thereafter.

(2) The written agreement shall contain provisions which include the requirements of ss. 626.883 through 626.888 except those requirements which do not apply to the functions performed by the administrator.

(3) The written agreement shall specify standards for all functions to be performed by the administrator.

(4) If a policy is issued to a trustee, a copy of the trust agreement and any amendments to such agreement shall be furnished to the insurer by the administrator, and a copy of the trust agreement shall be retained as part of the official
records of both the insurer and the administrator for the
duration of the policy and for 5 years thereafter

626.883 Administrator as intermediary, collections
held in fiduciary capacity; establishment of account,
disbursement; payment on behalf of insurer --

(1) If an insurer uses the services of an
administrator under the terms of a written agreement, the
payment to the administrator of any premiums or charges for
insurance by or on behalf of the insured shall be deemed to
have been received by the insurer. Return premiums or claim
payments forwarded by the insurer to the administrator shall
not be deemed to have been paid to the insured or claimant
until such payments are received by the insured or claimant.
Nothing in this act shall limit any right of the insurer
against the administrator resulting from such administrator's
failure to make payments to the insurer, insured, or claimant.

(2) Premiums collected by an administrator for an
insurer and return premiums received from an insurer shall be
held by the administrator in a fiduciary capacity. Such funds
shall be remitted immediately to the person entitled to such
funds or shall be deposited promptly in a fiduciary bank
account established and maintained by the administrator.

(3) If funds deposited in a fiduciary account have
been collected for more than one insurer, the administrator
shall keep records clearly recording the deposits into and
withdrawals from such account for each insurer. The
administrator shall, upon request of an insurer, furnish the
insurer with copies of such records.

(4) An administrator shall not pay any claim with
funds from a fiduciary account. Withdrawal of funds from such
account shall be made, as provided in the written agreement.
between the administrator and the insurer for any of the following:

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

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

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

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

(e) Payment to the administrator of such administrator's commission, fees or charges.

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

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

626.884 Maintenance of records, access; confidentiality.--

(1) Every administrator shall maintain at such administrator's principal administrative office for the duration of the written agreement, and for 5 years thereafter, adequate books and records of all transactions among such administrator, insurers and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance recordkeeping.

(2) The department shall have access to books and records maintained by the administrator for the purpose of examination, audit, and inspection. Any trade secrets contained in such books and records, including the identity and addresses of policyholders and certificateholders, shall

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be confidential except the department may use such information
in any proceedings instituted against the administrator.

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

626.885 Advertising approval.--An administrator may
use only such advertising pertaining to the business
underwritten by an insurer as has been approved in writing by
such insurer in advance of its use.

626.886 Delivery of written communications.--Any
policies, certificates, booklets, termination notices or other
written communications delivered by the insurer to the
administrator for delivery to its policyholders shall be
delivered by the administrator promptly after receipt of
instructions from the insurer to do so.

626.887 Adjustment or settlement of claims,
compensation.--Compensation to an administrator for any
policies when such administrator adjusts or settles claims
shall in no way be contingent on claim experience. This
section shall not prevent the compensation of an administrator
from being based on premiums or charges collected or number of
claims paid or processed.

626.888 Notice; statement of charge or premium for
coverage.--

(1) Where the services of an administrator are
utilized, such administrator shall provide a written notice
approved by the insurer to insured individuals advising them
of the identity of and relationship among the administrator,
the policyholder and the insurer

(2) Where an administrator collects funds, the
administrator shall identify and state separately in writing
to the person paying to the administrator any charge or
premium for coverage the amount of any such charge or premium
specified by the insurer for such coverage

626 889 Grounds for suspension or revocation of
certificate.--

(1) The certificate of authority of an administrator
shall be revoked or suspended if the department determines
that the administrator:

(a) Is in an unsound financial condition.

(b) Is using such methods or practices in the conduct
of its business so as to render its further transaction of
business in this state hazardous or injurious to insured
persons or the public

(c) Has failed to pay any final judgment rendered
against it in this state within 60 days after the judgment
became final.

(2) The department may, in its discretion, suspend or
revoke the certificate of authority of an administrator if it
finds that the administrator

(a) Has violated any lawful rule or order of the
department or any provision of this chapter.

(b) Has refused to be examined or to produce its
accounts, records, and files for examination, or if any of its
officers have refused to give information with respect to its
affairs or have refused to perform any other legal obligation
as to such examination, when required by the department.
(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts, or, without just cause, has compelled insured persons to accept less than the amount due them, or to employ attorneys, or to bring suit against the administrator to secure full payment or settlement of such claims.

(d) Is affiliated with and under the same general management or interlocking directorate or ownership as another administrator which transacts business in this state without having a certificate of authority

(e) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the department

(f) Has been convicted of, or entered a plea of guilty or nolo contendere to a felony relating to the business of insurance or insurance administration, in this state or in any other state, without regard to whether adjudication was withheld.

(g) Is under suspension or revocation in another state.

(3) The department may, pursuant to s 12060, in its discretion and without advance notice or hearing thereon, immediately suspend the certificate of any administrator if it finds that one or more of the following circumstances exist

(a) The administrator is insolvent or impaired

(b) The deposit required by s 626881 is not maintained.

(c) Proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings regarding the administrator have been commenced in any state.
(d) The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(4) Violation of this part by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

626.890 Order; notice of suspension or revocation of certificate, effect, publication --

(1) Suspension or revocation of a certificate of authority of an administrator shall be by order of the department mailed to the administrator by registered or certified mail

(2) In its discretion, the department may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

626.891 Duration of suspension, obligations during suspension, reinstatement.--

(1) Suspension of an administrator's certificate of authority shall be for such period, not to exceed 1 year, as is fixed in the order of suspension, unless such suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

(2) During the period of suspension, the administrator shall file its annual statement and pay fees as required under this part as if the certificate had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate has not otherwise terminated, the certificate shall automatically be reinstated, unless the causes of the suspension have not been removed, or
the administrator is otherwise not in compliance with the
requirements of this part.

626.892 Administrative fine --

(1) If the department finds that one or more grounds
exist for the revocation or suspension of a certificate of
authority issued under this part, the department may, in lieu
of or in addition to such suspension or revocation, impose a
fine upon the administrator

(2) With respect to any nonwillful violation, of a
lawful order or rule of the department or a provision of this
part, the department may impose a fine upon the administrator
in an amount not to exceed $1,000 per violation. In no event
shall such fine exceed an aggregate amount of $5,000 for all
nonwillful violations arising out of the same action. When an
administrator discovers a nonwillful violation, the
administrator shall correct the violation and, if restitution
is due it shall include interest at 12 percent per annum from
either the date of the violation or the date of inception of
the affected person's policy, at the administrator's option.
The restitution may be a credit against future premiums due
provided that the interest shall accumulate until the premiums
are due. If the amount of restitution due to any person is
$50 or more, and the administrator wishes to credit it against
future premiums, it shall notify such person that he may
receive a check instead of a credit. If the credit is on a
policy which is not renewed, the administrator shall pay the
restitution to the person to whom it is due.

(3) With respect to any willful violation of a lawful
order or rule of the department or a provision of this part,
the department may impose a fine upon the administrator in an
amount not to exceed $5,000 per violation. In no event shall
such fine exceed an aggregate amount of $25,000 for all willful violations arising out of the same action. In addition to such fines, such administrator shall make restitution when due in accordance with the provisions of subsection (2).

(4) The failure of an administrator to make restitution when due as required under this section shall constitute a willful violation of this part. However, if an administrator in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the department of the circumstances, and the failure to make restitution pending a determination thereof shall not constitute a violation of this part.

626 893 Annual statement.--

(1) Each authorized administrator shall file with the department a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before March 1, or within such extension of time therefor as the department, for good cause, may have granted, and shall be for the preceding calendar year. The statement shall be in such form and shall contain such matters as the department shall prescribe and shall be verified by at least two officers of such administrator.

(2) At the time of filing, the administrator shall pay a filing fee in the amount specified in s. 624 501 for the filing of an annual statement by an insurer.

Section 4. This act shall take effect October 1, 1983.
SENATE SUMMARY

Provides the Department of Insurance with jurisdiction to examine multiple employer trusts, established pursuant to the Federal Employee Retirement Income Security Act of 1974 to provide life and health insurance to employees, to determine the applicability of state insurance law unless such entity can show that it is exempt from state law due to the federal act. Provides for the examination, regulation, and certification of insurance administrators as defined. Provides trust and accounting procedures. Provides that no persons may act as an administrator without a written agreement between such person as administrator and an insurer. Collections by an administrator must be held in a fiduciary capacity. Provides that compensation to an administrator for any policies when the administrator adjusts or settles claims shall not be contingent on claim experience. Provides grounds and procedures for revocation and suspension of certificates of authority and an administrative fine in lieu thereof.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
I. SUMMARY AND PURPOSE

Multiple Employer Trusts (MET) are insured or self-funded trusts which provide life and health insurance benefits to employees. The theory behind such trusts was that employers, who cannot afford the rates of the large commercial insurers, would be given the advantage of group health insurance through participation in a MET. However, state insurance departments did not have jurisdiction to regulate MET's because the trusts purported to be Employee Retirement Income Security Act (ERISA) plans which are not subject to state insurance regulation. In order to remedy this situation, federal legislation was enacted which permits the state to determine if the alleged MET is an ERISA plan. If the entity cannot demonstrate this status, then the state insurance department has jurisdiction to regulate the trust. To conform with the federal legislation, the proposed bill provides the ability for the insurance department to make this determination.

The bill provides for regulation of non-profit MET's that is less stringent than the MET's which will be regulated under the regular provisions of the Insurance Code. In addition, the bill creates a regulatory scheme for third party administrators which includes obtaining certificates of authority, depositing securities and maintaining accounts and records.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Under present law, MET's that qualify as ERISA plans are exempt from state regulation, but if a MET is regulated under ERISA then current federal law provides that an employer who establishes such a plan must meet certain minimum standards so as to protect the interests of workers who participate in the plan. These requirements include age and service provisions, minimum
retirement benefits, reserve requirements, reporting and disclosure provisions and spouse protection.

**B. EFFECT OF PROPOSED CHANGES**

The proposed bill enables the Department of Insurance to determine if a purported MET is exempt from state law and thus regulated under ERISA. If the entity cannot show that it is an ERISA plan, then the state insurance law will apply to the MET. Further, MET's that are qualified ERISA plans will be subject to state insurance laws as long as it is not inconsistent with ERISA. However, if the MET is non-profit and meets other requirements, then the MET will be subjected to the Florida Non-Profit Multiple Employer Welfare Arrangement Act. The major provisions of this newly created act include:

1. The requirement that a non-profit MET obtain approval of the department to establish and maintain a non-profit MET (s. 624.438, F.S.). Approval may be given upon a showing that the MET is:

   a. Non-profit.
   b. Established by a trade or industry organized for purposes other than obtaining or providing insurance.
   c. Operated pursuant to a trust agreement.
   d. Not offered or advertised to the public.

2. A required deposit or bond in the amount of $50,000 or 5% of annualized net premiums whichever is greater. In lieu of the deposit or bond, a surety bond may be filed (s. 624.440, F.S.).

3. Restrictions on maximum net retention to the greater of 10% of the arrangements net worth or 10% of its annualized net premium for any one risk. Maximum net retention on all of the contracts shall not exceed annualized net premiums (s. 624.441, F.S.).

4. Submission of a financial statement showing the net worth of the non-profit MET is $500,000 and has a combined working capital necessary to establish financial strength (s. 624.442, F.S.).

5. Conditions for suspension or revocation of a non-profit MET and provisions for notice thereof (s. 624.444, F.S.).

The third part of the bill provides guidelines for regulating third party administrators. The major provisions include:

1. The administrator must obtain a certificate of authority from the Department of Insurance. Failure to do so subjects the person to a fine. In order to obtain the certificate, the applicant must file a form with the department detailing its contracts with insurers and sources of funds (s. 626.880).

2. The administrator must deposit and maintain securities with the department. The initial deposit is $50,000 for the first year of operation and adjusted annually thereafter according to the total funds handled during the previous year, to a maximum of $500,000.

The bill provides that a surety bond may be filed in lieu of the deposit required.
The bill also provides that the deposit requirement will not apply to an administrator who:

(a) Does not collect or control premiums or other charges; or

(b) Administers the plan of a single employer in accordance with ERISA; or

(c) Administers for authorized insurance companies.

However, the deposit requirement will apply to any administrator who directly or indirectly controls an insurer through ownership or other business relations.

3. The administrator must enter into written agreements with an insurer in order to act as an administrator. The written agreement must be part of the official records of the administrator and the insurer and must specify the functions to be performed by the administrator (s. 626.882).

4. The administrator is required to maintain accounts and records of premiums or insurance charges collected on behalf of the insurer. These premiums shall be deposited by the administrator in a fiduciary account with limited rights to withdraw from the account (s. 626.883).

5. The administrator must maintain records of all transactions which the Department of Insurance shall have access to for purpose of examination, audit and inspection (s. 626.884).

6. The administrator shall give notice to insured individuals advising them that his services are being used (s. 626.888).

7. Mandatory and discretionary grounds for suspension or revocation of the certificate (s. 626.889, F.S.). An administrative fine in lieu of suspension or revocation is also created by the proposed bill (s. 626.8893, F.S.).

The bill provides an exemption of ERISA plans and self-funded non-insured plans by an individual employer in accordance with ERISA (ss. 627.551 and 627.651, F.S.).

II. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

A non-profit MET will be required to place a deposit of $50,000 or 5% of annualized net premiums with the department unless a surety bond is filed. A net worth of $500,000 must also be shown.

An administrator, unless exempt, will be required to place an initial deposit of $50,000 with the department. The deposit will be adjusted annually to an amount equivalent to 10% of the total funds handled during the previous year, to a maximum of $500,000.

Additionally, the bill requires a fee of $25 be submitted by each administrator applying for a certificate of authority.

B. PUBLIC SECTOR CONSIDERATIONS

The new administrative requirements to the department can be handled by the present staff with little economic increase in administration.
III. COMMENTS
None.

IV. AMENDMENTS

Prepared by: ____________________________
Hala Ayoub

Staff Director: ____________________________
Wyatt T. Martin
A bill to be entitled
An act relating to insurance; amending s. 624.317, Florida Statutes, 1982 Supplement;
providing for the examination of administrators; creating s. 624.330, Florida Statutes; providing that entities which provide coverage for life and health insurance benefits are subject to the jurisdiction of the department except to the extent regulated by federal law; creating ss. 624.436-624.447, Florida Statutes, establishing the Florida Non-Profit Multiple Employer Welfare Arrangement Act; creating sections 626.879-626.990, Florida Statutes; providing for the regulation of insurance administrators; defining administrator; requiring a certificate of authority; providing for a deposit of securities; requiring a written agreement; maintenance of records; certain accounting procedures; providing grounds for suspension and other penalties; amending s. 627.551(6) and s. 627.651(5), Florida Statutes, 1982 Supplement, providing applicability of group requirements; providing an effective date.

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

Section 1. Subsection (1) of section 624.317, Florida Statutes, 1982 Supplement, is amended to read:

624.317 Investigation of agents, adjusters, and others.—If it has reason to believe that any person has
violated or is violating any provision of this code, or upon the written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such investigation as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of any:

(1) General agent, surplus line agent, adjuster, administrator, or other person.

Section 2. Section 624.330, Florida Statutes, is created to read.

624.330 Jurisdiction regarding health or life coverage.--

(1) Notwithstanding any other provision of law, and except as provided herein, any person or other entity which, in this state, provides life insurance coverage, annuities, or coverage for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, or any other health insurance coverage, whether such coverage is by direct payment, reimbursement, or otherwise, shall be subject to the jurisdiction of the department and to all applicable provisions of chapters 624-651, Florida Statutes, except to the extent that the person or other entity shows that while providing such services it is exempt from such jurisdiction and laws due to the preemption of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq, as amended.

(2) Any person or entity, providing any of the coverages or benefits referred to in subsection (1), which is unable to show that it is a qualified employee welfare benefit plan, as defined in 29 U.S.C. 1002, as amended, and that it is
exempt from the provisions of chapters 624-651, Florida Statutes, shall submit to an examination by the department to determine the organization and solvency of the person or the entity, and to determine whether or not such entity is in compliance with the applicable provisions of such laws.

(3) In the case of an employee welfare benefit plan which is a multiple employer welfare arrangement, as such terms are defined in 29 U.S.C. 1002, as amended, and is fully insured or which is a multiple employer welfare arrangement subject to an exemption granted by the United States Secretary of Labor, in accordance with 29 U.S.C. 1144(b)(6)(B), the applicable provisions of chapters 624-651, Florida Statutes, shall apply to such arrangements to the extent that such laws provide standards requiring the maintenance of specified levels of reserves and specified levels of contributions and provisions to enforce such standards.

(4) In the case of a multiple employer welfare arrangement which is not partially exempt from state law as provided in subsection (3), such arrangement shall be subject to the jurisdiction of the department and all applicable provisions of chapters 624-651, Florida Statutes, regarding the conduct of its business.

(5) Any licensed agent, administrator, or other person engaged in this state in the solicitation, negotiation, or effectuation of any coverage described in subsection (1) or the inspection of risks, setting of rates, investigation or adjustment of losses, collection of premiums, or any other function connected with any such coverage shall be subject to the jurisdiction of the department and to such examination as it deems necessary of the accounts, records, documents and...
transactions pertaining to or affecting such coverage to the
same extent as the person or entity affording such coverage.

Section 3. Sections 624.436, 624.437, 624.438,
624.439, 624.440, 624.441, 624.442, 624.443, 624.444, 624.445,
624.446 and 624.447, Florida Statutes, are created to read:

624.436 Florida Non-Profit Multiple Employer Welfare
Arrangement Act.--Sections 624.423 through 624.447 shall be
known and may be cited as the "Florida Non-Profit Multiple
Employer Welfare Arrangements Act."

624.437 Definition; approval required.--

(1) For the purposes of this act, the term "multiple
employer welfare arrangement" means an employee welfare
benefit plan or any other arrangement which is established or
maintained for the purpose of offering or providing health
insurance benefits or any other benefits described in s.
624.330(1), other than life insurance benefits, to the
employees of two or more employers, or to their beneficiaries,
except that such term does not include any such plan or other
arrangement which is established or maintained pursuant to a
collective bargaining agreement or by a rural electric
cooperative.

(2) No person shall establish or maintain a multiple
employer welfare arrangement unless such arrangement is
approved by the department.

(3) This section shall not apply to a multiple
employer welfare arrangement which offers or provides benefits
which are fully insured by an authorized insurer or to an
arrangement which is subject to an exemption granted by the
United States Secretary of Labor, in accordance with 29 U.S.C.
1144(b)(6)(B).

624.438 General eligibility for approval.--
To qualify for and retain approval of the department to establish and maintain a multiple employer welfare arrangement, an arrangement must otherwise be in compliance with this act and must be:

(a) Non-profit;

(b) Established by a trade or industry association of employers which has a constitution or bylaws, and has been organized and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance;

(c) Operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the arrangement and shall be responsible for all operations of the arrangement. A majority of the trustees selected shall be owners, partners, officers, directors, or employees of one or more employers in the arrangement. A trustee shall not be an owner, officer, or employee of the administrator of the arrangement. The trustees shall have the authority to approve applications of association members for participation in the arrangement and to contract with an authorized administrator to administer the day-to-day affairs of the arrangement;

(d) Neither offered nor advertised to the public generally; and

(e) Operated in accordance with sound actuarial principles.

The department shall not grant or continue approval to transact insurance in this state as to any arrangement the management of which is found by it to be incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the employers or employees.
participating in the arrangement, or which it has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

(3) The arrangement shall issue to each covered employee a policy, contract, certificate or other evidence of the benefits and coverages provided.

624.439 Application.--The association shall file with the department an application for approval of the arrangement upon a form to be furnished by the department, which shall include or have attached the following:

(1) A copy of the constitution or bylaws of the association.

(2) The names and addresses of the trustees of the arrangement.

(3) A copy of the bylaws or trust agreement which governs the operation of the arrangement.

(4) A copy of the contract between the trust and the administrator, if other than the trustees.

(5) A current financial statement of the arrangement at the inception of the arrangement, in accordance with s. 624.442.

(6) Evidence of compliance with s. 624.441.

(7) The securities or surety bond required by s. 624.440.

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(8) A copy of the policy, contract, certificate, or other evidence of the benefits and coverages provided to covered employees.

(9) Evidence satisfactory to the department showing that the arrangement is operated in accordance with sound actuarial principles.

(10) Such additional information as the department may reasonably require.

624.440 Required deposit or bond --

(1) To assure the faithful performance of its obligations to its member employers and covered employees, every arrangement shall, prior to approval by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52 in the amount of $50,000 or 5 percent of annualized net premiums, whichever is greater.

(2) In lieu of the deposit required under subsection (1), and arrangement may file with the department a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the department's approval. No bond shall be cancelled or subject to cancellation unless at least 60 days' advance notice thereof in writing is filed with the department. No bond shall be approved unless it covers liabilities arising from all policies and contracts issued and entered into during the time the bond is in effect and unless the department is satisfied that the bond provides the same degree of security as would be provided by a deposit of securities.

624.441 Maximum net retention.--
(1) The maximum net retention on any one risk, either
individual or family, shall not exceed the greater of 10
percent of the arrangement's net worth or 10 percent of its
annualized net premium.

(1) In addition, the maximum net retention on all of
the arrangement's contracts in force shall not exceed the
arrangement's annualized net premium.

(3) Annualized net premium is defined as the total
annualized premium on contracts in force less the total
annualized general expenses of the arrangement.

624.442 Financial requirements; statement; annual
report; reserves.--

(1) Each arrangement shall submit a current financial
statement, prepared in accordance with generally accepted
accounting principles, at the inception of the arrangement
showing that its net worth is not less than $500,000, its
combined ratio of current assets to current liabilities is more
than 1-to-1 and it has a combined working capital of an amount
establishing financial strength and liquidity of the
arrangement to pay claims promptly and showing evidence of the
financial ability of the arrangement to meet its obligations
to covered employees. In no event shall the cumulative net
worth or current ratio of the combined assets and liabilities
of all members be less than the minimum amounts currently
required for an arrangement to qualify.

(2) In considering the financial strength and
liquidity of the arrangement to pay claims promptly, the
department will take into consideration contracts or policies
of aggregate excess insurance in accordance with s. 624.441.
The trustees shall satisfy the department that the gross
annual premiums of the arrangement will be no less than
PCB 83-33

$500,000, and that the combined premiums of the initial

1 membership is at least $100,000. The trustees shall submit, 2

2 at least 10 days prior to the proposed effective date,

3 positive proof that the members have paid into a common claims

4 fund in a designated depository, cash premiums in an amount of

5 not less than $50,000 or 10 percent of the estimated annual

6 premium of the members at inception, whichever amount is

7 greater. The remainder of the deposit premiums shall be

8 collected based on the schedule adopted by the trustees.

9 (3) Each arrangement shall file with the department an

10 annual statement of financial condition within three months

11 after the close of its fiscal year. Such statement shall be a

12 certified audit and shall be in a form acceptable to the

13 department. The department may prescribe by rule a uniform

14 accounting system if it determines that this is necessary to

15 ensure the accurate reporting of the arrangement's financial

16 condition.

17 (4) The loss reserves of the arrangement shall be

18 reviewed annually by a qualified actuary for the purpose of

19 determining that proper reserves have been established

20 according to acceptable reserving standards. Such review

21 shall evaluate the loss development of the arrangement and

22 shall estimate the incurred but not reported reserves and the

23 loss development reserves that the arrangement should

24 establish. The actuarial report shall be due and filed with

25 the department at the same time as the financial statement.

26 624 443 Place of business, maintenance of records.--

27 Each arrangement shall have and maintain its principal place

28 of business in this state and shall keep therein complete

29 records of its assets, transactions, and affairs in accordance

30

31 CODING: Words in struck through type are deletions from existing law, words underlined are additions.
with such methods and systems as one customary for or suitable
to the kind or kinds of business transacted.

624.444 Suspension, revocation of approval.--

(1) The department shall suspend or revoke an
arrangement's approval if it finds that the arrangement:

(a) Is in unsound financial condition;

(b) Is using such methods and practices in the conduct
of its business as to render its further transation of
insurance in this state hazardous or injurious to its covered
employees or to the public;

(c) Has failed to pay any final judgment rendered
against it in this state within 60 days after the judgment
became final; or

(d) No longer meets the requirements for the authority
originally granted.

(2) The department may, in its discretion, suspend or
revoke the approval of an arrangement if it finds that the
arrangement

(a) Has violated any lawful order or rule of the
department or any provision of this act; or

(b) Has refused to be examined or to produce its
accounts, records, and files for examination, or if any of its
officers have refused to give information with respect to its
affairs or to perform any other legal obligation as to such
examination, when required by the department.

624.445 Order, notice, duration, effect of suspension
or revocation, administrative fine.--

(1) Suspension or revocation of an arrangement's
approval shall be in accordance with ss. 624.420 and 624.421.

(2) If the department finds that one or more grounds
exist for the discretionary revocation or suspension of an
arrangement's approval under this act, the department may, in lieu of or in addition to such revocation or suspension, impose a fine upon such arrangement, in accordance with s. 624.4211.

624.446 Examination.--Multiple employer welfare arrangements approved under this act shall be subject to periodic examination by the department in the same manner, and subject to the same terms and conditions, applicable to insurers under part II of chapter 624.

624.447 Applicability of related laws.--In addition to the provisions of the code cited in this act, parts I, II, and III of chapter 625 and part VII of chapter 626, shall apply to multiple employer welfare arrangements. No section of the code not expressly and specifically cited in this act shall apply to multiple employer welfare arrangements.

Section 4. Sections 626.879, 626.880, 626.881, 626.882, 626.883, 626.884, 626.885, 626.886, 626.887, 626.888, 626.889, 626.8891, 626.8892, 626.8893, and 626.990, Florida Statutes, are created to read:

PART VI

INSURANCE ADMINISTRATORS

626.879 Definitions.--

(1) For the purpose of this part, an "administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with insured or self-insured programs which provide life or health insurance coverage or coverage of any of the other expenses described in s. 624.330(1), other than any of the following:

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(a) An employer on behalf of such employer's employees or the employees of one or more subsidiary of affiliated corporations of such employer.

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business.

Provided, however, that an insurer providing administrative services to an uninsured or partially insured benefit plan to which it provides no coverage or only provides specific or aggregate excess loss insurance shall be an administrator subject to the provisions of this part.

(d) A health care services plan, health maintenance organization, professional service plan corporation, or a person in the business of providing continuing care, possessing a valid certificate of authority issued by the department, and their sales representatives.

(e) A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

(f) An adjuster licensed in this State whose activities are limited to the adjustment of claims.

(g) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(h) A trust, its trustees, agents and employees acting pursuant to such trust, established in conformity with 29 U.S.C. 186.
(1) A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting pursuant to such trust, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

(2) A financial institution which is subject to supervision or examination by federal or state authorities.

(k) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection, if such company does not adjust or settle claims.

(l) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage.

(m) A person approved by the Division of Workers' Compensation to administer self-insured workers' compensation plans. However, if a workers' compensation administrator also administers any of the coverages or expenses described in ss. 624 330(1), the provisions of ss. 626.789-626.900 shall apply to the portion of the business attributable to such coverages or expenses.

(2) For the purposes of this part, an "insurer" includes any person undertaking to provide life or health insurance coverage or coverage of any of the other expenses described in ss. 624 330(1).

626.880 Certificate of authority.--

(1) It is unlawful for any person to act as or hold himself out to be an administrator in this state, without a valid certificate of authority issued by the department.

CODING Words in struck through type are deletions from existing law, words underlined are additions.
pursuant to ss 626.879-626.990. To qualify for and hold
authority to act as an administrator in this state, an
administrator must otherwise be in compliance with this code
and with its charter powers, and must be in compliance with
this code and with its charter powers, and must be
incorporated under the laws of its state or country of
domicile. Failure of any person to hold such a certificate
while acting as an administrator shall subject such person to
a fine or not less than $5,000 nor more than $10,000 for each
violation.

(2) The administrator shall file with the department
an application for a certificate of authority upon a form to
be furnished by the department, which shall include or have
attached the following:
(a) The names, addresses and occupations of all
incorporators and proposed directors and officers.
(b) A certified copy of the corporate articles and
bylaws and, for the 3 most recent years, the corporation's
annual statements and reports
(c) Each agreement relating to the corporation to
which any incorporator or proposed director or officer is a
party.
(d) A statement of the amount and sources of the funds
available for organization expenses and the proposed
arrangements for reimbursement and compensation of
incorporators or other persons.
(e) A statement of compensation to be provided
directors and officers.
(f) The forms to be used for any proposed contracts
between the administrator and insurers, and forms relating to
the provision of services to insureds.

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(g) Such other documents and information as the department may reasonably require.

(h) An application fee in the amount of $25. The department shall deposit all sums collected under this paragraph to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(4) The department shall not issue a certificate of authority if it determines that the administrator or any principal thereof is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had an insurance license denied for cause by any state.

(5) A certificate of authority issued under this section shall remain valid, unless suspended or revoked by the department, as long as the certificate holder continues in business in this state.

626.881 Required deposit.--

(1) To assure the faithful performance of its obligations in the event of insolvency, each administrator, prior to the issuance of its certificate of authority, shall deposit and maintain with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall be held in trust and shall have at all times a market value in the amount specified. The initial deposit for an administrator shall be in the amount of $50,000 for at least the first full year of operation. The amount of the initial deposit shall be adjusted annually thereafter on October 1. The amount of the deposit shall be not less than ten percent of the amount of total funds handled, except that in no case shall deposit be less than $50,000 nor more than $500,000. For purposes of fixing the amount of such deposit, the amount of funds handled shall be determined by the total...
funds handled by the administrator during the preceding year,
or if no funds were handled during the preceding year the
amount of funds reasonably estimated to be handled during the
current calendar year by the administrator.

(2) Securities deposited pursuant to this section
shall be for the benefit of, and subject to action thereon by,
any person sustaining an actionable injury due to the failure
of the administrator to faithfully perform its obligations to
insureds in the event of insolvency or impairment of any
administrator.

(3) The state shall be responsible for the safekeeping
of all securities deposited with the department under this
section. Such securities shall not, on account of being in
this state, be subject to taxation, but shall be held
exclusively and solely to guarantee the performance by the
administrator of its obligations to insureds.

(4) Such deposit shall be maintained unimpaired as
long as the administrator continues to do business in the
state. Whenever the administrator ceases to do business in
this state and furnishes proof satisfactory to the department
that it has discharged or otherwise adequately provided for
all its obligations to insureds in this state, the department
shall release the deposited securities to the parties entitled
thereto, on presentation of the department's receipts for such
securities.

(5) The department may at any time enter an order
modifying the amount specified under subsection (1) if it
finds that there has been a substantial change in the facts on
which the determination was based. The department shall hold
a hearing within 30 days after receiving a request from the
administrator which shall be submitted within 30 days after
notification of the modification order. Failure to meet the
new requirements within 30 days after final decision or after
the expiration of the 30 day period for submitting the hearing
request constitutes a ground for rehabilitation.

(6) Any decrease in a deposit authorized by this
section shall be made only upon written request of the
administrator.

(7) In lieu of the deposit required under subsection
(1), an administrator may file with the department a surety
bond in like amount. The bond shall be one issued by an
authorized surety insurer, shall be for the same purpose as
the deposit in lieu of which it is filed, and shall be subject
to the department's approval. No bond shall be cancelled or
subject to cancellation unless at least 60 days' advance
notice thereof in writing is filed with the department. No
bond shall be approved unless it covers liabilities arising
from all policies and contracts issued and entered into during
the time the bond is in effect and unless the department is
satisfied that the bond provides the same degree of security
as would be provided by a deposit of securities.

(8) This section shall not apply to an administrator
which:

(a) Does not collect or control premiums or other
charges,

(b) Administers the plan of a single employer in
accordance with the Employee Retirement Income Security Act of
1974, as amended, and complies with the bonding requirement of
said act, or

(c) Administers for authorized insurance companies and
provides a bond in accordance with its contracts with such
companies.
However, this section shall apply to any administrator which directly or indirectly controls an insur er through ownership or other business relations.

626.882 Written agreement; provision; maintenance of records --

(1) No person may act as an administrator without a written agreement between such person as administrator and an insurer. Such written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and for five years thereafter.

(2) The written agreement shall contain provisions which include the requirements of 626.881-626.888 except as those requirements do not apply to the functions performed by the administrator.

(3) The written agreement shall specify standards as to all functions to be performed by the administrator.

(4) If a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments to such agreement shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy and for five years thereafter.

626.883 Administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payment on behalf of insurer. --

(1) If an insurer utilizes the services of an administrator under the terms of a written agreement, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to

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have been received by the insurer, and return premiums or
claim payments forwarded by the insurer to the administrator
shall not be deemed to have been paid to the insured or
claimant until such payments are received by the insured or
claimant. Nothing in this part shall limit any right of the
insurer against the administrator resulting from such
administrator's failure to make payments to the insurer,
insureds or claimants.

(2) All insurance charges or premiums collected by an
administrator on behalf of or for an insurer or insurers, and
return premiums received from such insurer or insurers, shall
be held by the administrator in a fiduciary capacity. Such
funds shall be immediately remitted to the person or persons
entitled to such funds or shall be deposited promptly in a
fiduciary account established and maintained by the
administrator in a financial institution.

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

(4) The administrator shall not pay any claim by
withdrawals from a fiduciary account. Withdrawals from such
account shall be made, as provided in the written agreement
between the administrator and the insurer for any of the
following:

(a) Remittance to an insurer entitled to such
remittance.
1. (b) Deposit in an account maintained in the name of such insurer.
2. (c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided by such insurer.
3. (d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.
4. (e) Payment to the administrator of such administrator's commission, fees or charges.
5. (f) Remittance of return premium to the person or persons entitled to such return premiums.
6. (5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

626.884 Maintenance of records; access; confidentiality.--

(1) Every administrator shall maintain at such administrator's principal administrative office for the duration of the written agreement and for five years thereafter adequate books and records of all transactions among such administrator, insurers and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping.

(2) The department shall have access to books and records maintained by the administrator for the purpose of examination, audit and inspection. Any trade secrets contained in such books and records, including the identity and addresses of policyholders and certificate holders, shall be confidential except the department may use such information in any proceedings instituted against the administrator.

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator.
1 sufficient to permit the insurer to fulfill all of its
2 contractual obligations to insured persons, subject to any
3 restrictions in the written agreement between the insurer and
4 the administrator on the proprietary rights of the parties in
5 such books and records.
6 626.885 Advertising approval.--An administrator may
7 use only such advertising pertaining to the business
8 underwritten by an insurer as has been approved in writing by
9 such insurer in advance of its use.
10
11 626.886 Delivery of written communications.--Any
12 policies, certificates, booklets, termination notices or other
13 written communications delivered by the insurer to the
14 administrator for delivery to its policyholders shall be
15 delivered by the administrator promptly after receipt of
16 instructions from the insurer to do so.
17
18 626.887 Adjustment or settlement of claims,
19 compensation.--Compensation to an administrator for any
20 policies where such administrator adjusts or settles claims
21 shall in no way be contingent on claim experience. This
22 section shall not prevent the compensation of an administrator
23 from being based on premiums or charges collected or number of
24 claims paid or processed.
25
26 626.888 Notice; statement of charge or premium for
27 coverage.--
28 (1) Where the services of an administrator are
29 utilized, such administrator shall provide a written notice
30 approved by the insurer to insured individuals advising them
31 of the identity of and relationship among the administrator,
32 the policyholder and the insurer.
33
34 (2) Where an administrator collects funds, the
35 administrator shall identify and state separately in writing
36
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to the person paying to the administrator any charge or
premium for coverage the amount of any such charge or premium
specified by the insurer for such coverage.

626.889 Grounds for suspension or revocation of
certificate --

(1) The certificate of authority of an administrator
shall be revoked or suspended if the department determines
that the administrator:

(a) Is in an unsound financial condition.

(b) Is using such methods or practices in the conduct
of its business so as to render its further transaction of
business in this state hazardous or injurious to insured
persons or the public.

(c) Has failed to pay any final judgment rendered
against it in this state within 60 days after the judgment
became final.

(2) The department may, in its discretion, suspend or
revoke the certificate of authority of an administrator if it
finds that the administrator:

(a) Has violated any lawful rule or order of the
department or any provision of this chapter.

(b) Has refused to be examined or to product its
accounts, records, and files for examination, or if any of its
officers have refused to give information with respect to its
affairs or have refused to perform any other legal obligation
as to such examination, when required by the department.

(c) Has, without just cause, refused to pay proper
claims or perform services arising under its contracts, or,
without just cause, has compelled insured persons to accept
less than the amount due them, or to employ attorneys, or to
bring suit against the administrator to secure full payment or
settlement of such claims.

(d) Is affiliated with and under the same general
management or interlocking directorate or ownership as another
administrator which transacts business in this state without
having a certificate of authority.

(e) At any time fails to meet any qualification for
which issuance of the certificate could have been refused had
such failure then existed and been known to the department.

(f) Has been convicted of, or entered a plea of guilty
or nolo contendere to, a felony relating to the business of
insurance or insurance administration, in this state or in any
other state, without regard to whether adjudication was
withheld.

(g) Is under suspension or revocation in another
state.

(i) The department may, pursuant to s. 120.60, in its
discretion and without advance notice or hearing thereon,
immediately suspend the certificate of any administrator if it
finds that one or more of the following circumstances exist:

(a) The administrator is insolvent or impaired.

(b) The deposit required by s. 626.881 is not
maintained.

(c) Proceedings for receivership, conservatorship,
rehabilitation, or other delinquency proceedings regarding the
administrator have been commenced in any state.

(d) The financial condition or business practices of
the administrator otherwise pose an imminent threat to the
public health, safety, or welfare of the residents of this
state.
(4) Violation of this part by any insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

626.8891 Order; notice of suspension or revocation of certificate, effect; publication.--

(1) Suspension or revocation of a certificate of authority of an administrator shall be by order of the department mailed to the administrator by registered or certified mail.

(2) In its discretion, the department may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

626.8892 Duration of suspension; obligations during suspension; reinstatement.--

(1) Suspension of an administrator's certificate of authority shall be for such period, not to exceed one year, as is fixed in the order of suspension, unless such suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

(2) During the period of suspension, the administrator shall file its annual statement and pay fees as required under this part as if the certificate had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate has not otherwise terminated, the certificate shall automatically be reinstated, unless the causes of the suspension have not been removed, or the administrator is otherwise not in compliance with the requirements of this part.

626.8893 Administrative fine in lieu of suspension or revocation --
(1) If the department finds that one or more grounds exist for the revocation or suspension of a certificate of authority issued under this part, the department may, in lieu of such suspension or revocation, impose a fine upon the administrator.

(2) With respect to any nonwillful violation, such fine shall not exceed $1,000 per violation. In no event shall such fine exceed an aggregate amount of $5,000 for all nonwillful violations arising out of the same action. When an administrator discovers a nonwillful violation, the administrator shall correct the violation and, if restitution is due it shall include interest at 12 percent per annum from either the date of the violation or the date of inception of the affected person's policy, at the administrator's option. The restitution may be a credit against future premiums due provided that the interest shall accumulate until the premiums are due. If the amount of restitution due to any person is $50 or more, and the administrator wishes to credit it against future premiums, it shall notify such person that he may receive a check instead of a credit. If the credit is on a policy which is not renewed, the administrator shall pay the restitution to the person to whom it is due.

(3) With respect to any knowing and willful violation of a lawful order or rule of the department or a provision of this part, the department may impose a fine upon the administrator in an amount not to exceed $5,000 for each such violation. In no event shall such fine exceed an aggregate amount of $25,000 for all knowing and willful violations arising out of the same action. In addition to such fines, such administrator shall make restitution when due in accordance with the provisions of subsection (2).

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(4) The failure of an administrator to make restitution when due as required under this section shall constitute a willful violation of this part. However, if an administrator in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the department of the circumstances, and the failure to make restitution pending a determination thereof shall not constitute a violation of this part.

626.900 Annual statement --

(1) Each authorized administrator shall file with the department a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before March 1, or within such extension of time thereafter as the department, for good cause, may have granted, and shall be for the preceding calendar year. The statement shall be in such form and shall contain such matters as the department shall prescribe and shall be verified by at least two officers of such administrator.

(2) At the time of filing, the administrator shall pay a filing fee in the amount specified in s. 624.501 for the filing of an annual statement by an insurer.

Section 5. Subsection (6) of section 627.551, Florida Statutes, 1982 Supplement, is amended to read:

627.551 Group contracts and plans of self-insurance must meet group requirements.--

(6) This section does not apply to any plan which is established or maintained in accordance with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406.

Section 6. Subsection (5) of section 627.651, Florida Statutes, 1982 Supplement, is amended to read:
627 651 Group contracts and plans of self-insurance must meet group requirements.--

(5) This section does not apply to any self-funded, non-insured plan which is established or maintained by an individual employer in accordance with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406.

Section 7. This act shall take effect October 1, 1983.
I. SUMMARY AND PURPOSE

This proposed committee bill is being presented on behalf of the Department of Insurance.

According to the department, millions of dollars of unpaid health claims of Florida residents have resulted from the insolvency of a large number of self-insured health benefit plans. These plans were operating without authorization under the law under the guise of ERISA plans. They were not ERISA plans and they became insolvent as the result of fraud, mismanagement, or both. Typically, these plans have involved the formation of trusts to which employers have subscribed and hence are commonly referred to as multiple employer trusts or MET's.

The proposed bill attempts to deal with four problems regarding these plans.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

1. Jurisdiction to examine the plans:

When the U.S. Congress passed the Employee Retirement Income Security Act, a broad preemption was included to indicate that ERISA plans were exempt from all state insurance laws.

Basically, in order to be a legitimate ERISA plan, the plan must be established and controlled by a legitimate employer or employee organization. When a third party controls the program and is responsible for providing benefits, an insurance program rather than an ERISA plan is presented.

When the department has attempted to examine such programs to determine whether they are legitimate, the programs have claimed to be ERISA plans and have effectively delayed and
prevented examinations. Therefore, the department has been unable to determine whether the plans should be subject to state regulation.

2. Third party administrators:

At present there are no Florida laws which regulate the activities of administrators with regard to life or health insurance coverages. The only statute which even relates to such activities is section 112.08(1), Florida Statutes, which provides that administrators providing services to self-funded governmental health insurance programs must be approved by the Department of Insurance.

3. Trade association plans:

As a result of the broad preemption provisions of ERISA, several self-funded medical benefit plans were established and are presently being operated subject to the control of legitimate employer associations. For example, the department has been advised that the Florida Homebuilders Association has a program covering 9,000 participating employers and generating annual premiums of $8 million. Since the participating employers actually control the operation of the association and the program, this and similar plans were thought to be legitimate ERISA plans exempt from state insurance regulation.

However, in January of this year, President Reagan signed the Erlenborn/Burton Act which amends the broad preemption provision of ERISA and provides that Multiple Employer Welfare Arrangements (MEWA's) established by employer associations are subject to state insurance regulation.

The department believes that, given the recent federal legislation, employer association programs to which employees and employers are required to contribute would be prohibited by section 624.401, Florida Statutes, 1982 Supplement, which proscribes the unauthorized transaction of insurance.

4. Mandated benefits:

During the 1982 sunset review of the Insurance Code, subsection (5) was added to s. 627.551, and subsection (4) was added to s. 627.651, to specify that self-insurance plans could not be contributory by employees, provided that the prohibition on employee contributions was not applicable to a plan established in accordance with ERISA. The intent of the reference to ERISA was to recognize that the prohibition on contributory self-funded programs was inapplicable to an ERISA plan exempt from state insurance regulation.

However, as part of the glitch bill, the clause relating to ERISA was deleted from ss. 627.551(5) and 627.651(4) and new ss. 627.551(6) and 627.651(5) were created to provide that Florida's group laws did not apply to ERISA plans.

The changes effected by the glitch bill have a potentially adverse impact on the provisions of mandated life and health benefits to Florida residents.
B. EFFECT OF PROPOSED CHANGES

1. Jurisdiction to examine:

   Section 2 of the proposed legislation confers jurisdiction upon the department to conduct examinations of purported ERISA plans.

   The department has, under current law, the burden of proving that a given program is not an ERISA plan before conducting an examination. However, the examination is generally necessary in order to determine whether a program is a legitimate ERISA plan.

   The proposed legislation would clarify that a program claiming to be established under ERISA has the burden of establishing that it is in fact an ERISA plan. If it fails to do so, it would be subject to examination to allow the department to determine the nature and extent of the plan.

   The legislation will enable the department to determine whether a purported ERISA plan is in fact operated in accordance with federal law, and to take corrective action to prevent or minimize losses if an unauthorized insurance operation is presented.

   The legislation is largely derived from model legislation of the National Association of Insurance Commissioners and has been enacted in California and Illinois -- states which have also experienced difficulty in conducting timely investigations of purported ERISA plans. According to the department, this type of legislation has already been successfully used in California to examine and shut down an unauthorized insurer which had falsely claimed to be an ERISA plan.

2. Third party administrators:

   The department states that most of the self-funded MET's which have become insolvent were established, managed and controlled by third party administrators. In addition, many of the multiple employer trusts insured by authorized insurers which have become insolvent were established and controlled not by insurers but by third-party administrators.

   Third-party administrators have become a significant force in the insurance industry. They control large blocks of business and often are larger than the insurers with whom they deal. According to the department, one of the larger Florida administrators employs 625 people and handles about $200 million in premium payments each year.

   Administrators have in the past established and controlled insured and self-insured medical benefit programs which have, according to the department, become insolvent due to poor management, fraud or a combination of both. However, when insolvencies have occurred, administrators typically have simply changed their name and address and started a new program.

   Sections 1 and 4 of the proposed legislation establish the department's jurisdiction over third-party administrators. Major provisions include:

   1. The administrator must obtain a certificate of authority from the Department of Insurance. Failure to do so subjects the person to a fine. In order to obtain the certificate, the applicant must file a form with the department detailing its contracts with insurers and sources of funds (s. 626.860).
2. The administrator must deposit and maintain securities with the department. The initial deposit is $50,000 for the first year of operation and adjusted annually thereafter according to the total funds handled during the previous year, to a maximum of $500,000.

The bill provides that a surety bond may be filed in lieu of the deposit required.

The bill also provides that the deposit requirement will not apply to an administrator who:

(a) Does not collect or control premiums or other charges; or

(b) Administers the plan of a single employer in accordance with ERISA; or

(c) Administers for authorized insurance companies.

However, the deposit requirement will apply to any administrator who directly or indirectly controls an insurer through ownership or other business relations.

3. The administrator must enter into written agreements with an insurer in order to act as an administrator. The written agreement must be part of the official records of the administrator and the insurer and must specify the functions to be performed by the administrator (s. 626.882).

4. The administrator is required to maintain accounts and records of premiums or insurance charges collected on behalf of the insurer. These premiums shall be deposited by the administrator in a fiduciary account with limited rights to withdraw from the account (s. 626.883).

5. The administrator must maintain records of all transactions which the Department of Insurance shall have access to for purpose of examination, audit and inspection (s. 626.884).

6. The administrator shall give notice to insured individuals advising them that his services are being used (s. 626.888).

7. Mandatory and discretionary grounds for suspension or revocation of the certificate (s. 626.889). An administrative fine in lieu of suspension or revocation is also created by the proposed bill (s. 626.8893).

By requiring a certificate of authority to act as an administrator and establishing other requirements, the legislation should prevent future insolvencies and, if an insolvency does occur, minimize the adverse effect and preclude the administrator from establishing another similar program.
3. Trade association plans:

The department states that a legitimate association which was formed and is operated for purposes other than providing insurance coverage, but which establishes a self-funded medical benefit program need not be subject to all requirements of the Insurance Code.

However, the department requests the authority to require that detailed information be furnished in order to distinguish legitimate association programs from those which are not in fact controlled by participating employers. In addition, even as to programs controlled by legitimate associations, where employers and employees have contributed millions of dollars into a plan which promises to pay medical benefits at a future date, the department states that the program should be subject to regulation by the department to the extent necessary to assure actuarial soundness and the ability to pay future claims.

At the request of representatives of employer associations, the department has attempted in section 3 to set forth a system of regulation, short of subjecting association programs to the entire Insurance Code, which provides the minimal amount of regulation the department believes is necessary.

Plans meeting the qualifications of the department would be governed by the proposed "Florida Non-Profit Multiple Employer Welfare Arrangements Act," contained in section 3 of the bill. The major provisions of the act include:

(1) The requirement that a MET obtain approval of the department to establish and maintain a MET (s. 624.438). Approval may be given upon a showing that the MET is:
   (a) Non-profit.
   (b) Established by a trade or industry organized for purposes other than obtaining or providing insurance.
   (c) Operated pursuant to a trust agreement.
   (d) Not offered or advertised to the public.

(2) A required deposit or bond in the amount of $50,000 or 5% of annualized net premiums whichever is greater. In lieu of the deposit or bond, a surety bond may be filed (s. 624.440).

(3) Restrictions on maximum net retention to the greater of 10% of the arrangements net worth or 10% of its annualized net premium for any one risk. Maximum net retention on all of the contracts shall not exceed annualized net premiums (s. 624.441).

(4) Submission of a financial statement showing the net worth of the non-profit MET is $500,000 and has a combined working capital necessary to establish financial strength (s. 624.442).

(5) Conditions for suspension or revocation of a non-profit MET and provisions for notice thereof (s. 624.444).

4. Mandated benefits:

Under existing case precedents, while an ERISA plan is not subject to state insurance laws (including those relating to mandated benefits), if an ERISA plan funds its obligations by purchasing an insurance policy, that policy must contain any benefits mandated by state law. Given the present language of subsections (6) and (5) of sections 627.551 and 627.651, Florida
Statutes, 1982 Supplement, an insurer could argue that it can issue a group insurance policy to an employer which does not contain the benefits which the Legislature has determined should be included in any insurance policy issued in Florida.

Section 5 and 6 of the proposed bill provides that the mandated benefits section apply unless the plan is one which is self-funded, non-insured, established and maintained by an individual employer in accordance with federal ERISA statutes.

II. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

A non-profit MET will be required to place a deposit of $50,000 or 5% of annualized net premiums with the department unless a surety bond is filed. A net worth of $500,000 must also be shown.

An administrator, unless exempt, will be required to place an initial deposit of $50,000 with the department. The deposit will be adjusted annually to an amount equivalent to 10% of the total funds handled during the previous year, to a maximum of $500,000.

Additionally, the bill requires a fee of $25 be submitted by each administrator applying for a certificate of authority.

B. PUBLIC SECTOR CONSIDERATIONS

The Department of Insurance indicates that the new requirements can be handled by the present staff with little increase in the cost of administration.

III. COMMENTS

None.

IV. AMENDMENTS

Prepared by:  
William F. Quattlebaum

Staff Director:  
Wyatt T. Martin
A bill to be entitled
An act relating to insurance; amending s. 624.317, Florida Statutes, 1982 Supplement; providing for the examination of administrators; creating s. 624.330, Florida Statutes; providing that entities which provide coverage for life and health insurance benefits are subject to the jurisdiction of the department except to the extent regulated by federal law; creating ss. 624.436-624.447, Florida Statutes, establishing the Florida Non-Profit Multiple Employer Welfare Arrangement Act; creating sections 626.879-626.990, Florida Statutes; providing for the regulation of insurance administrators; defining administrator; requiring a certificate of authority; providing for a deposit of securities; requiring a written agreement; maintenance of records; certain accounting procedures; providing grounds for suspension and other penalties; amending s. 627.551(6) and s. 627.651(5), Florida Statutes, 1982 Supplement, providing applicability of group requirements; providing an effective date.

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

Section 1. Subsection (1) of section 624.317, Florida Statutes, 1982 Supplement, is amended to read:

624.317 Investigation of agents, adjusters, and others.--If it has reason to believe that any person has
violated or is violating any provision of this code, or upon
the written complaint signed by any interested person
indicating that any such violation may exist, the department
shall conduct such investigation as it deems necessary of the
accounts, records, documents, and transactions pertaining to
or affecting the insurance affairs of any:

(1) General agent, surplus line agent, adjuster,
administrator, or other person.

Section 2. Section 624.330, Florida Statutes, is
created to read:

624.330 Jurisdiction regarding health or life
coverage.--

(1) Notwithstanding any other provision of law, and
except as provided herein, any person or other entity which,
in this state, provides life insurance coverage, annuities, or
coverage for medical, surgical, chiropractic, physical
therapy, speech pathology, audiology, professional mental
health, dental, hospital, or optometric expenses, or any other
health insurance coverage, whether such coverage is by direct
payment, reimbursement, or otherwise, shall be subject to the
jurisdiction of the department and to all applicable
provisions of chapters 624-651, Florida Statutes, except to
the extent that the person or other entity shows that while
providing such services it is exempt from such jurisdiction
and laws due to the preemption of the Employee Retirement
amended.

(2) Any person or entity, providing any of the
coverages or benefits referred to in subsection (1), which is
unable to show that it is a qualified employee welfare benefit
plan, as defined in 29 U.S.C. 1002, as amended, and that it is
exempt from the provisions of chapters 624-651, Florida Statutes, shall submit to an examination by the department to determine the organization and solvency of the person or the entity, and to determine whether or not such entity is in compliance with the applicable provisions of such laws.

(3) In the case of an employee welfare benefit plan which is a multiple employer welfare arrangement, as such terms are defined in 29 U.S.C. 1002, as amended, and is fully insured or which is a multiple employer welfare arrangement subject to an exemption granted by the United States Secretary of Labor, in accordance with 29 U.S.C. 1144(b)(6)(B), the applicable provisions of chapters 624-651, Florida Statutes, shall apply to such arrangements to the extent that such laws provide standards requiring the maintenance of specified levels of reserves and specified levels of contributions and provisions to enforce such standards.

(4) In the case of a multiple employer welfare arrangement which is not partially exempt from state law as provided in subsection (3), such arrangement shall be subject to the jurisdiction of the department and all applicable provisions of chapters 624-651, Florida Statutes, regarding the conduct of its business.

(5) Any licensed agent, administrator, or other person engaged in this state in the solicitation, negotiation, or effectuation of any coverage described in subsection (1) or the inspection of risks, setting of rates, investigation or adjustment of losses, collection of premiums, or any other function connected with any such coverage shall be subject to the jurisdiction of the department and to such examination as it deems necessary of the accounts, records, documents and
transactions pertaining to or affecting such coverage to the same extent as the person or entity affording such coverage.

Section 3. Sections 624.436, 624.437, 624.438, 624.439, 624.440, 624.441, 624.442, 624.443, 624.444, 624.445, 624.446 and 624.447, Florida Statutes, are created to read:

624.436 Florida Non-Profit Multiple Employer Welfare Arrangement Act.--Sections 624.423 through 624.447 shall be known and may be cited as the "Florida Non-Profit Multiple Employer Welfare Arrangements Act."

624.437 Definition; approval required.--

(1) For the purposes of this act, the term "multiple employer welfare arrangement" means an employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health insurance benefits or any other benefits described in s. 624.330(1), other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained pursuant to a collective bargaining agreement or by a rural electric cooperative.

(2) No person shall establish or maintain a multiple employer welfare arrangement unless such arrangement is approved by the department.

(3) This section shall not apply to a multiple employer welfare arrangement which offers or provides benefits which are fully insured by an authorized insurer or to an arrangement which is subject to an exemption granted by the United States Secretary of Labor, in accordance with 29 U.S.C. 1144(b)(6)(B).

624.438 General eligibility for approval.--
(1) To qualify for and retain approval of the
department to establish and maintain a multiple employer
welfare arrangement, an arrangement must otherwise be in
compliance with this act and must be:
(a) Non-profit;
(b) Established by a trade or industry association of
employers which has a constitution or bylaws, and has been
organized and maintained in good faith for a continuous period
of 1 year for purposes other than that of obtaining or
providing insurance;
(c) Operated pursuant to a trust agreement by a board
of trustees which shall have complete fiscal control over the
arrangement and shall be responsible for all operations of the
arrangement. A majority of the trustees selected shall be
owners, partners, officers, directors, or employees of one or
more employers in the arrangement. A trustee shall not be an
owner, officer, or employee of the administrator of the
arrangement. The trustees shall have the authority to approve
applications of association members for participation in the
arrangement and to contract with an authorized administrator
to administer the day-to-day affairs of the arrangement;
(d) Neither offered nor advertised to the public
generally; and
(e) Operated in accordance with sound actuarial
principles.
(2) The department shall not grant or continue
approval to transact insurance in this state as to any
arrangement the management of which is found by it to be
incompetent or untrustworthy, or so lacking in insurance
company managerial experience as to make the proposed
operation hazardous to the employers or employees.
participating in the arrangement, or which it has good reason
to believe is affiliated directly or indirectly through
ownership, control, reinsurance transactions, or other
insurance or business relations, with any person or persons
whose business operations are or have been marked, to the
detriment of policyholders or stockholders or investors or
creditors or of the public, by manipulation of assets,
accounts, or reinsurance or by bad faith.

(3) The arrangement shall issue to each covered
employee a policy, contract, certificate or other evidence of
the benefits and coverages provided.

624.439 Application.--The association shall file with
the department an application for approval of the arrangement
upon a form to be furnished by the department, which shall
include or have attached the following:

(1) A copy of the constitution or bylaws of the
association.

(2) The names and addresses of the trustees of the
arrangement.

(3) A copy of the bylaws or trust agreement which
governs the operation of the arrangement.

(4) A copy of the contract between the trust and the
administrator, if other than the trustees.

(5) A current financial statement of the arrangement
at the inception of the arrangement, in accordance with s.
624.442.

(6) Evidence of compliance with s. 624.441.

(7) The securities or surety bond required by s.
624.440.

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(8) A copy of the policy, contract, certificate, or other evidence of the benefits and coverages provided to covered employees.

(9) Evidence satisfactory to the department showing that the arrangement is operated in accordance with sound actuarial principles.

(10) Such additional information as the department may reasonably require.

624.440 Required deposit or bond.--

(1) To assure the faithful performance of its obligations to its member employers and covered employees, every arrangement shall, prior to approval by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52 in the amount of $50,000 or 5 percent of annualized net premiums, whichever is greater.

(2) In lieu of the deposit required under subsection (1), an arrangement may file with the department a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the department's approval. No bond shall be cancelled or subject to cancellation unless at least 60 days' advance notice thereof in writing is filed with the department. No bond shall be approved unless it covers liabilities arising from all policies and contracts issued and entered into during the time the bond is in effect and unless the department is satisfied that the bond provides the same degree of security as would be provided by a deposit of securities.

624.441 Maximum net retention.--
(1) The maximum net retention on any one risk, either individual or family, shall not exceed the greater of 10 percent of the arrangement's net worth or 10 percent of its annualized net premium.

(1) In addition, the maximum net retention on all of the arrangement's contracts in force shall not exceed the arrangement's annualized net premium.

(3) Annualized net premium is defined as the total annualized premium on contracts in force less the total annualized general expenses of the arrangement.

624.442 Financial requirements; statement; annual report; reserves.--

(1) Each arrangement shall submit a current financial statement, prepared in accordance with generally accepted accounting principles, at the inception of the arrangement showing that its net worth is not less than $500,000, its combined ratio of current assets to current liabilities is more than 1-to-1 and it has a combined working capital of an amount establishing financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees. In no event shall the cumulative net worth or current ratio of the combined assets and liabilities of all members be less than the minimum amounts currently required for an arrangement to qualify.

(2) In considering the financial strength and liquidity of the arrangement to pay claims promptly, the department will take into consideration contracts or policies of aggregate excess insurance in accordance with s. 624.441. The trustees shall satisfy the department that the gross annual premiums of the arrangement will be no less than
$500,000, and that the combined premiums of the initial membership is at least $100,000. The trustees shall submit, at least 10 days prior to the proposed effective date, positive proof that the members have paid into a common claims fund in a designated depository, cash premiums in an amount of not less than $50,000 or 10 percent of the estimated annual premium of the members at inception, whichever amount is greater. The remainder of the deposit premiums shall be collected based on the schedule adopted by the trustees.

(3) Each arrangement shall file with the department an annual statement of financial condition within three months after the close of its fiscal year. Such statement shall be a certified audit and shall be in a form acceptable to the department. The department may prescribe by rule a uniform accounting system if it determines that this is necessary to ensure the accurate reporting of the arrangement's financial condition.

(4) The loss reserves of the arrangement shall be reviewed annually by a qualified actuary for the purpose of determining that proper reserves have been established according to acceptable reserving standards. Such review shall evaluate the loss development of the arrangement and shall estimate the incurred but not reported reserves and the loss development reserves that the arrangement should establish. The actuarial report shall be due and filed with the department at the same time as the financial statement.

624.443 Place of business; maintenance of records.-- Each arrangement shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with the laws of this state.
with such methods and systems as one customary for or suitable
to the kind or kinds of business transacted.

624.444 Suspension, revocation of approval.--

(1) The department shall suspend or revoke an
arrangement's approval if it finds that the arrangement:

(a) Is in unsound financial condition;

(b) Is using such methods and practices in the conduct
of its business as to render its further transation of
insurance in this state hazardous or injurious to its covered
employees or to the public;

(c) Has failed to pay any final judgment rendered
against it in this state within 60 days after the judgment
became final; or

(d) No longer meets the requirements for the authority
originally granted.

(2) The department may, in its discretion, suspend or
revoke the approval of an arrangement if it finds that the
arrangement:

(a) Has violated any lawful order or rule of the
department or any provision of this act; or

(b) Has refused to be examined or to produce its
accounts, records, and files for examination, or if any of its
officers have refused to give information with respect to its
affairs or to perform any other legal obligation as to such
examination, when required by the department.

624.445 Order, notice, duration, effect of suspension
or revocation; administrative fine.--

(1) Suspension or revocation of an arrangement's
approval shall be in accordance with ss. 624.420 and 624.421.

(2) If the department finds that one or more grounds
exist for the discretionary revocation or suspension of an

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arrangement's approval under this act, the department may, in
lieu of or in addition to such revocation or suspension,
impose a fine upon such arrangement, in accordance with s.
624.4211.

624.446 Examination.--Multiple employer welfare
arrangements approved under this act shall be subject to
periodic examination by the department in the same manner, and
subject to the same terms and conditions, applicable to
insurers under part II of chapter 624.

624.447 Applicability of related laws.--In addition to
the provisions of the code cited in this act, parts I, II, and
III of chapter 625 and part VII of chapter 626, shall apply to
multiple employer welfare arrangements. No section of the
code not expressly and specifically cited in this act shall
apply to multiple employer welfare arrangements.

Section 4. Sections 626.879, 626.880, 626.881,
626.882, 626.883, 626.884, 626.885, 626.886, 626.887, 626.888,
626.889, 626.8891, 626.8892, 626.8893, and 626.990, Florida
Statutes, are created to read:

PART VI

INSURANCE ADMINISTRATORS

626.879 Definitions.--

(1) For the purpose of this part, an "administrator"
is any person who directly or indirectly solicits or effects
coverage of, collects charges or premiums from, or who adjusts
or settles claims on, residents of this state in connection
with insured or self-insured programs which provide life or
health insurance coverage or coverage of any of the other
expenses described in s. 624.330(1), other than any of the
following:

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(a) An employer on behalf of such employer's employees or the employees of one or more subsidiary of affiliated corporations of such employer.

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business. Provided, however, that an insurer providing administrative services to an uninsured or partially insured benefit plan to which it provides no coverage or only provides specific or aggregate excess loss insurance shall be an administrator subject to the provisions of this part.

(d) A health care services plan, health maintenance organization, professional service plan corporation, or a person in the business of providing continuing care, possessing a valid certificate of authority issued by the department, and their sales representatives.

(e) A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

(f) An adjuster licensed in this State whose activities are limited to the adjustment of claims.

(g) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(h) A trust, its trustees, agents and employees acting pursuant to such trust, established in conformity with 29 U.S.C. 186.
(i) A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting pursuant to such trust, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

(ii) A financial institution which is subject to supervision or examination by federal or state authorities.

(k) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection, if such company does not adjust or settle claims.

(l) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage.

(m) A person approved by the Division of Workers' Compensation to administer self-insured workers' compensation plans. However, if a workers' compensation administrator also administers any of the coverages or expenses described in s. 624.330(1), the provisions of ss. 626.789-626.900 shall apply to the portion of the business attributable to such coverages or expenses.

(2) For the purposes of this part, an "insurer" includes any person undertaking to provide life or health insurance coverage or coverage of any of the other expenses described in s. 624.330(1).

626.880 Certificate of authority.--

(1) It is unlawful for any person to act as or hold himself out to be an administrator in this state, without a valid certificate of authority issued by the department.
pursuant to ss. 626.879-626.990. To qualify for and hold
authority to act as an administrator in this state, an
administrator must otherwise be in compliance with this code
and with its charter powers, and must be in compliance with
this code and with its charter powers, and must be
incorporated under the laws of its state or country of
domicile. Failure of any person to hold such a certificate
while acting as an administrator shall subject such person to
a fine or not less than $5,000 nor more than $10,000 for each
violation.

(2) The administrator shall file with the department
an application for a certificate of authority upon a form to
be furnished by the department, which shall include or have
attached the following:

(a) The names, addresses and occupations of all
incorporators and proposed directors and officers.

(b) A certified copy of the corporate articles and
bylaws and, for the 3 most recent years, the corporation's
annual statements and reports.

(c) Each agreement relating to the corporation to
which any incorporator or proposed director or officer is a
party.

(d) A statement of the amount and sources of the funds
available for organization expenses and the proposed
arrangements for reimbursement and compensation of
incorporators or other persons.

(e) A statement of compensation to be provided
directors and officers.

(f) The forms to be used for any proposed contracts
between the administrator and insurers, and forms relating to
the provision of services to insureds.
(g) Such other documents and information as the
department may reasonably require.

(h) An application fee in the amount of $25. The
department shall deposit all sums collected under this
paragraph to the credit of the Insurance Commissioner's
Regulatory Trust Fund.

(4) The department shall not issue a certificate of
authority if it determines that the administrator or any
principal thereof is not competent, trustworthy, financially
responsible or of good personal and business reputation, or
has had an insurance license denied for cause by any state.

(5) A certificate of authority issued under this
section shall remain valid, unless suspended or revoked by the
department, as long as the certificate holder continues in
business in this state.

626.881 Required deposit.--

(1) To assure the faithful performance of its
obligations in the event of insolvency, each administrator,
prior to the issuance of its certificate of authority, shall
deposit and maintain with the department securities of the
type eligible for deposit by insurers under s. 625.52, which
securities shall be held in trust and shall have at all times
a market value in the amount specified. The initial deposit
for an administrator shall be in the amount of $50,000 for at
least the first full year of operation. The amount of the
initial deposit shall be adjusted annually thereafter on
October 1. The amount of the deposit shall be not less than
ten percent of the amount of total funds handled, except that
in no case shall deposit be less than $50,000 nor more than
$500,000. For purposes of fixing the amount of such deposit,
the amount of funds handled shall be determined by the total
funds handled by the administrator during the preceding year, or if no funds were handled during the preceding year the amount of funds reasonably estimated to be handled during the current calendar year by the administrator.

(2) Securities deposited pursuant to this section shall be for the benefit of, and subject to action thereon by, any person sustaining an actionable injury due to the failure of the administrator to faithfully perform its obligations to insureds in the event of insolvency or impairment of any administrator.

(3) The state shall be responsible for the safekeeping of all securities deposited with the department under this section. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the performance by the administrator of its obligations to insureds.

(4) Such deposit shall be maintained unimpaired as long as the administrator continues to do business in the state. Whenever the administrator ceases to do business in this state and furnishes proof satisfactory to the department that it has discharged or otherwise adequately provided for all its obligations to insureds in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipts for such securities.

(5) The department may at any time enter an order modifying the amount specified under subsection (1) if it finds that there has been a substantial change in the facts on which the determination was based. The department shall hold a hearing within 30 days after receiving a request from the administrator which shall be submitted within 30 days after...
notification of the modification order. Failure to meet the
new requirements within 30 days after final decision or after
the expiration of the 30 day period for submitting the hearing
request constitutes a ground for rehabilitation.

(6) Any decrease in a deposit authorized by this
section shall be made only upon written request of the
administrator.

(7) In lieu of the deposit required under subsection
(1), an administrator may file with the department a surety
bond in like amount. The bond shall be one issued by an
authorized surety insurer, shall be for the same purpose as
the deposit in lieu of which it is filed, and shall be subject
to the department's approval. No bond shall be cancelled or
subject to cancellation unless at least 60 days' advance
notice thereof in writing is filed with the department. No
bond shall be approved unless it covers liabilities arising
from all policies and contracts issued and entered into during
the time the bond is in effect and unless the department is
satisfied that the bond provides the same degree of security
as would be provided by a deposit of securities.

(8) This section shall not apply to an administrator
which:

(a) Does not collect or control premiums or other
charges;

(b) Administers the plan of a single employer in
accordance with the Employee Retirement Income Security Act of
1974, as amended, and complies with the bonding requirement of
said act; or

(c) Administers for authorized insurance companies and
provides a bond in accordance with its contracts with such
companies.
However, this section shall apply to any administrator which
directly or indirectly controls an insurer through ownership
or other business relations.

626.882 Written agreement; provisions; maintenance of
records.--

(1) No person may act as an administrator without a
written agreement between such person as administrator and an
insurer. Such written agreement shall be retained as part of
the official records of both the insurer and the administrator
for the duration of the agreement and for five years
thereafter.

(2) The written agreement shall contain provisions
which include the requirements of 626.883-626.888 except as
those requirements do not apply to the functions performed by
the administrator.

(3) The written agreement shall specify standards as
to all functions to be performed by the administrator.

(4) If a policy is issued to a trustee or trustees, a
copy of the trust agreement and any amendments to such
agreement shall be furnished to the insurer by the
administrator and shall be retained as part of the official
records of both the insurer and the administrator for the
duration of the policy and for five years thereafter.

626.883 Administrator as intermediary; collections
held in fiduciary capacity; establishment of account;
disbursement; payment on behalf of insurer.--

(1) If an insurer utilizes the services of an
administrator under the terms of a written agreement, the
payment to the administrator of any premiums or charges for
insurance by or on behalf of the insured shall be deemed to
have been received by the insurer, and return premiums or
claim payments forwarded by the insurer to the administrator
shall not be deemed to have been paid to the insured or
claimant until such payments are received by the insured or
claimant. Nothing in this part shall limit any right of the
insurer against the administrator resulting from such
administrator’s failure to make payments to the insurer,
insureds or claimants.

(2) All insurance charges or premiums collected by an
administrator on behalf of or for an insurer or insurers, and
return premiums received from such insurer or insurers, shall
be held by the administrator in a fiduciary capacity. Such
funds shall be immediately remitted to the person or persons
entitled to such funds or shall be deposited promptly in a
fiduciary account established and maintained by the
administrator in a financial institution.

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

(4) The administrator shall not pay any claim by
withdrawals from a fiduciary account. Withdrawals from such
account shall be made, as provided in the written agreement
between the administrator and the insurer for any of the
following:

(a) Remittance to an insurer entitled to such
remittance.
(b) Deposit in an account maintained in the name of such insurer.

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

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

(e) Payment to the administrator of such administrator's commission, fees or charges.

(f) Remittance of return premium to the person or persons entitled to such return premiums.

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by such insurer.

626.884 Maintenance of records; access; confidentiality.--

(1) Every administrator shall maintain at such administrator's principal administrative office for the duration of the written agreement and for five years thereafter adequate books and records of all transactions among such administrator, insurers and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping.

(2) The department shall have access to books and records maintained by the administrator for the purpose of examination, audit and inspection. Any trade secrets contained in such books and records, including the identity and addresses of policyholders and certificate holders, shall be confidential except the department may use such information in any proceedings instituted against the administrator.

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator.

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sufficient to permit the insurer to fulfill all of its
contractual obligations to insured persons, subject to any
restrictions in the written agreement between the insurer and
the administrator on the proprietary rights of the parties in
such books and records.

626.885 Advertising approval. — An administrator may
use only such advertising pertaining to the business
underwritten by an insurer as has been approved in writing by
such insurer in advance of its use.

626.886 Delivery of written communications. — Any
policies, certificates, booklets, termination notices or other
written communications delivered by the insurer to the
administrator for delivery to its policyholders shall be
delivered by the administrator promptly after receipt of
instructions from the insurer to do so.

626.887 Adjustment or settlement of claims;
compensation. — Compensation to an administrator for any
policies where such administrator adjusts or settles claims
shall in no way be contingent on claim experience. This
section shall not prevent the compensation of an administrator
from being based on premiums or charges collected or number of
claims paid or processed.

626.888 Notice; statement of charge or premium for
coverage. —

(1) Where the services of an administrator are
utilized, such administrator shall provide a written notice
approved by the insurer to insured individuals advising them
of the identity of and relationship among the administrator,
the policyholder and the insurer.

(2) Where an administrator collects funds, the
administrator shall identify and state separately in writing
626.888 Grounds for suspension or revocation of certificate.--

(1) The certificate of authority of an administrator shall be revoked or suspended if the department determines that the administrator:

(a) Is in an unsound financial condition;

(b) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public;

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(2) The department may, in its discretion, suspend or revoke the certificate of authority of an administrator if it finds that the administrator:

(a) Has violated any lawful rule or order of the department or any provision of this chapter;

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the department;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts, or, without just cause, has compelled insured persons to accept less than the amount due them, or to employ attorneys, or to
bring suit against the administrator to secure full payment or
settlement of such claims.

(d) Is affiliated with and under the same general
management or interlocking directorate or ownership as another
administrator which transacts business in this state without
having a certificate of authority.

(e) At any time fails to meet any qualification for
which issuance of the certificate could have been refused had
such failure then existed and been known to the department.

(f) Has been convicted of, or entered a plea of guilty
or nolo contendere to, a felony relating to the business of
insurance or insurance administration, in this state or in any
other state, without regard to whether adjudication was
withheld.

(g) Is under suspension or revocation in another
state.

(3) The department may, pursuant to s. 120.60, in its
discretion and without advance notice or hearing thereon,
immediately suspend the certificate of any administrator if it
finds that one or more of the following circumstances exist:

(a) The administrator is insolvent or impaired.

(b) The deposit required by s. 626.881 is not
maintained.

(c) Proceedings for receivership, conservatorship,
rehabilitation, or other delinquency proceedings regarding the
administrator have been commenced in any state.

(d) The financial condition or business practices of
the administrator otherwise pose an imminent threat to the
public health, safety, or welfare of the residents of this
state.
(4) Violation of this part by any insurer shall be grounds for suspension or revocation of the insurer’s certificate of authority in this state.

626.8891 Order; notice of suspension or revocation of certificate; effect; publication.--

(1) Suspension or revocation of a certificate of authority of an administrator shall be by order of the department mailed to the administrator by registered or certified mail.

(2) In its discretion, the department may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

626.8892 Duration of suspension; obligations during suspension; reinstatement.--

(1) Suspension of an administrator’s certificate of authority shall be for such period, not to exceed one year, as is fixed in the order of suspension, unless such suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

(2) During the period of suspension, the administrator shall file its annual statement and pay fees as required under this part as if the certificate had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate has not otherwise terminated, the certificate shall automatically be reinstated, unless the causes of the suspension have not been removed, or the administrator is otherwise not in compliance with the requirements of this part.

626.8893 Administrative fine in lieu of suspension or revocation.--

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(1) If the department finds that one or more grounds exist for the revocation or suspension of a certificate of authority issued under this part, the department may, in lieu of such suspension or revocation, impose a fine upon the administrator.

(2) With respect to any nonwillful violation, such fine shall not exceed $1,000 per violation. In no event shall such fine exceed an aggregate amount of $5,000 for all nonwillful violations arising out of the same action. When an administrator discovers a nonwillful violation, the administrator shall correct the violation and, if restitution is due it shall include interest at 12 percent per annum from either the date of the violation or the date of inception of the affected person's policy, at the administrator's option. The restitution may be a credit against future premiums due provided that the interest shall accumulate until the premiums are due. If the amount of restitution due to any person is $50 or more, and the administrator wishes to credit it against future premiums, it shall notify such person that he may receive a check instead of a credit. If the credit is on a policy which is not renewed, the administrator shall pay the restitution to the person to whom it is due.

(3) With respect to any knowing and willful violation of a lawful order or rule of the department or a provision of this part, the department may impose a fine upon the administrator in an amount not to exceed $5,000 for each such violation. In no event shall such fine exceed an aggregate amount of $25,000 for all knowing and willful violations arising out of the same action. In addition to such fines, such administrator shall make restitution when due in accordance with the provisions of subsection (2).
(4) The failure of an administrator to make restitution when due as required under this section shall constitute a willful violation of this part. However, if an administrator in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the department of the circumstances, and the failure to make restitution pending a determination thereof shall not constitute a violation of this part.

626.900 Annual statement.--

(1) Each authorized administrator shall file with the department a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before March 1, or within such extension of time therefor as the department, for good cause, may have granted, and shall be for the preceding calendar year. The statement shall be in such form and shall contain such matters as the department shall prescribe and shall be verified by at least two officers of such administrator.

(2) At the time of filing, the administrator shall pay a filing fee in the amount specified in s. 624.501 for the filing of an annual statement by an insurer.

Section 5. Subsection (6) of section 627.551, Florida Statutes, 1982 Supplement, is amended to read:

627.551 Group contracts and plans of self-insurance must meet group requirements.--

(6) This section does not apply to any self-funded, non-insured plan which is established or maintained by an individual employer in accordance with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406.

Section 6. Subsection (5) of section 627.651, Florida Statutes, 1982 Supplement, is amended to read:
627.651 Group contracts and plans of self-insurance must meet group requirements.—

(5) This section does not apply to any self-funded, non-insured plan which is established or maintained by an individual employer in accordance with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406.

Section 7. This act shall take effect October 1, 1983.
Notice of
COMMITTEE MEETING
House of Representatives

April 22, 1983

Health Care & Life & Health Insurance

subcommittee of
the Committee on Commerce
will meet in Committee Room 21 HOB at 1:00-2:00 p.m.
on April 26, 1983
to consider:

1. Introduction

2. PCB 83-44 - Medical malpractice insurance; PCF/FMMJUA

3. PCB 83-45 - Medical malpractice

4. PCB 83-33 - Multiple employer trusts II

5. HB 478 - Hazouri - Group, life and health insurance

I certify this notice was received in the Office of the Sergeant at Arms at 2:25 P.M., April 22, 1983.

Chairman

I certify this notice was filed by me in the Office of the Sergeant at Arms and the Office of the Clerk on April 22, 1983 and copies have been sent to the introducers of the bills listed therein as required by House Rules 6.4 and 6.6.

Vote taken on HB 478 -- passed with 1 amendment (vote: 7-0).


Vote taken on PCB 83-33 -- passed w/3 amendments (vote: 8-0).


1:42 PM Rep. Ogden questions Mr. Herzog.

1:47 PM Vince Rio speaks again stating that no one affected by this amendment has asked for it.

Vote taken on PCB 83-44 -- bill passes 8-0 with 5 amendments.

NOTE: PCB 83-45 -- no action taken; time did not permit.

2:00 PM RISE.