

By Senator Geller

29-1265-01

1 A bill to be entitled
2 An act relating to the rulemaking authority of
3 the Department of Insurance (RAB); amending s.
4 112.215, F.S.; providing for the administrative
5 costs of the deferred compensation plan;
6 amending s. 624.3161, 626.171, F.S.; directing
7 the department to adopt rules relating to
8 market conduct examinations and license
9 applications; amending s. 626.748, F.S.;
10 requiring insurance agents to maintain
11 specified records; amending s. 626.9541, F.S.;
12 revising provisions relating to unfair
13 competition and deceptive practices; amending
14 s. 627.062, F.S.; providing for filing forms
15 for rate standards; amending s. 627.0625, F.S.;
16 authorizing the department to adopt rules
17 relating to third-party claimants; creating s.
18 627.385, F.S.; providing rules of conduct for
19 residual market board members; creating s.
20 627.4065, F.S.; providing for notice of right
21 to return health insurance policies; amending
22 s. 627.7276, F.S.; providing for notice of
23 coverage of automobile policies; creating s.
24 627.795, F.S.; providing guidelines for title
25 insurance policies; creating 626.9552, F.S.;
26 providing standards for single interest
27 insurance; amending s. 627.918, F.S.; directing
28 the department to adopt rules relating to
29 reporting formats; amending s. 627.9408, F.S.;
30 authorizing the department to adopt rules for
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1 long-term care insurance; providing an
2 effective date.

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

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6 Section 1. Paragraph (e) is added to subsection (4) of
7 section 112.215, Florida Statutes, to read:

8 112.215 Government employees; deferred compensation
9 program.--

10 (4)

11 (e) The administrative costs of the deferred
12 compensation plan shall be wholly or partially self-funded.
13 Fees for self-funding of the plan shall be paid by investment
14 providers and may be recouped from their respective plan
15 participants. The fees shall be deposited in the Deferred
16 Compensation Trust Fund.

17 Section 2. Subsection (6) is added to section
18 624.3161, Florida Statutes, to read:

19 624.3161 Market conduct examinations.--

20 (6) The department shall adopt rules to effectuate the
21 market conduct examination process, including, but not limited
22 to, rules that enable the department to ascertain compliance
23 by the person examined with the applicable provisions of
24 chapters 624, 626, 627, 634, 635, 642 and 651.

25 Section 3. Subsection (8) is added to section 626.171,
26 Florida Statutes, to read:

27 626.171 Application for license.--

28 (8) The department shall adopt rules to effectuate the
29 license application process, including photo identification,
30 character and credit reports, prelicensing courses, the impact
31 of criminal and law enforcement history, and other relevant

1 information in an effort to determine an applicant's fitness
2 and trustworthiness to engage in the business of insurance.

3 Section 4. Section 626.748, Florida Statutes, is
4 amended to read:

5 626.748 Agent's records.--

6 (1) Every agent transacting any insurance policy must
7 maintain in his or her office, or have readily accessible by
8 electronic or photographic means, such records of policies
9 transacted by him or her as to enable the policyholders and
10 department to obtain all necessary information, including
11 daily reports, applications, change endorsements, or documents
12 signed or initialed by the insured concerning such policies.

13 (2) Complete records of all policies issued, including
14 the names and addresses of all insureds and beneficiaries and
15 the type or scope of coverage provided must be maintained at
16 all times by the transacting agent. The transacting agent
17 shall report and promptly send to the insurer and issuing or
18 countersigning agent all applications for insurance. If the
19 policies are issued in the home or regional office of the
20 company, a copy of the policy must be sent to the
21 countersigning agent for his file. If a policy covering
22 personal property is issued by a mutual insurer or a
23 participating stock insurer, the policyholder is entitled to
24 the benefit of any dividend paid under an individual policy or
25 certificate.

26 Section 5. Paragraph (o) of subsection (1) of section
27 626.9541, Florida Statutes, is amended to read:

28 626.9541 Unfair methods of competition and unfair or
29 deceptive acts or practices defined.--

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1 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
2 DECEPTIVE ACTS.--The following are defined as unfair methods
3 of competition and unfair or deceptive acts or practices:

4 (o) Illegal dealings in premiums; excess or reduced
5 charges for insurance.--

6 1. Knowingly collecting any sum as a premium or charge
7 for insurance, which is not then provided, or is not in due
8 course to be provided, subject to acceptance of the risk by
9 the insurer, by an insurance policy issued by an insurer as
10 permitted by this code.

11 2. Knowingly collecting as a premium or charge for
12 insurance any sum in excess of or less than the premium or
13 charge applicable to such insurance, in accordance with the
14 applicable classifications and rates as filed with and
15 approved by the department, and as specified in the policy;
16 or, in cases when classifications, premiums, or rates are not
17 required by this code to be so filed and approved, premiums
18 and charges in excess of or less than those specified in the
19 policy and as fixed by the insurer. This provision shall not
20 be deemed to prohibit the charging and collection, by surplus
21 lines agents licensed under part VIII of this chapter, of the
22 amount of applicable state and federal taxes, or fees as
23 authorized by s. 626.916(4), in addition to the premium
24 required by the insurer or the charging and collection, by
25 licensed agents, of the exact amount of any discount or other
26 such fee charged by a credit card facility in connection with
27 the use of a credit card, as authorized by subparagraph (q)3.,
28 in addition to the premium required by the insurer. This
29 subparagraph shall not be construed to prohibit collection of
30 a premium for a universal life or a variable or indeterminate
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1 value insurance policy made in accordance with the terms of
2 the contract.

3 3.a. Imposing or requesting an additional premium for
4 a policy of motor vehicle liability, personal injury
5 protection, medical payment, or collision insurance or any
6 combination thereof or refusing to renew the policy solely
7 because the insured was involved in a motor vehicle accident
8 unless the insurer's file contains information from which the
9 insurer in good faith determines that the insured was
10 substantially at fault in the accident.

11 b. An insurer which imposes and collects such a
12 surcharge or which refuses to renew such policy shall, in
13 conjunction with the notice of premium due or notice of
14 nonrenewal, notify the named insured that he or she is
15 entitled to reimbursement of such amount or renewal of the
16 policy under the conditions listed below and will subsequently
17 reimburse him or her or renew the policy, if the named insured
18 demonstrates that the operator involved in the accident was:

19 (I) Lawfully parked;

20 (II) Reimbursed by, or on behalf of, a person
21 responsible for the accident or has a judgment against such
22 person;

23 (III) Struck in the rear by another vehicle headed in
24 the same direction and was not convicted of a moving traffic
25 violation in connection with the accident;

26 (IV) Hit by a "hit-and-run" driver, if the accident
27 was reported to the proper authorities within 24 hours after
28 discovering the accident;

29 (V) Not convicted of a moving traffic violation in
30 connection with the accident, but the operator of the other
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1 automobile involved in such accident was convicted of a moving
2 traffic violation;

3 (VI) Finally adjudicated not to be liable by a court
4 of competent jurisdiction;

5 (VII) In receipt of a traffic citation which was
6 dismissed or nolle prossed; or

7 (VIII) Not at fault as evidenced by a written
8 statement from the insured establishing facts demonstrating
9 lack of fault which are not rebutted by information in the
10 insurer's file from which the insurer in good faith determines
11 that the insured was substantially at fault.

12 c. In addition to the other provisions of this
13 subparagraph, an insurer may not fail to renew a policy if the
14 insured has had only one accident in which he or she was at
15 fault within the current 3-year period. However, an insurer
16 may nonrenew a policy for reasons other than accidents in
17 accordance with s. 627.728. This subparagraph does not
18 prohibit nonrenewal of a policy under which the insured has
19 had three or more accidents, regardless of fault, during the
20 most recent 3-year period.

21 4. Imposing or requesting an additional premium for,
22 or refusing to renew, a policy for motor vehicle insurance
23 solely because the insured committed a noncriminal traffic
24 infraction as described in s. 318.14 unless the infraction is:

25 a. A second infraction committed within an 18-month
26 period, or a third or subsequent infraction committed within a
27 36-month period.

28 b. A violation of s. 316.183, when such violation is a
29 result of exceeding the lawful speed limit by more than 15
30 miles per hour.

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1 5. Upon the request of the insured, the insurer and
2 licensed agent shall supply to the insured the complete proof
3 of fault or other criteria which justifies the additional
4 charge or cancellation.

5 6. No insurer shall impose or request an additional
6 premium for motor vehicle insurance, cancel or refuse to issue
7 a policy, or refuse to renew a policy because the insured or
8 the applicant is a handicapped or physically disabled person,
9 so long as such handicap or physical disability does not
10 substantially impair such person's mechanically assisted
11 driving ability.

12 7. No insurer may cancel or otherwise terminate any
13 insurance contract or coverage, or require execution of a
14 consent to rate endorsement, during the stated policy term for
15 the purpose of offering to issue, or issuing, a similar or
16 identical contract or coverage to the same insured with the
17 same exposure at a higher premium rate or continuing an
18 existing contract or coverage with the same exposure at an
19 increased premium.

20 8. No insurer may issue a nonrenewal notice on any
21 insurance contract or coverage, or require execution of a
22 consent to rate endorsement, for the purpose of offering to
23 issue, or issuing, a similar or identical contract or coverage
24 to the same insured at a higher premium rate or continuing an
25 existing contract or coverage at an increased premium without
26 meeting any applicable notice requirements.

27 9. No insurer shall, with respect to premiums charged
28 for motor vehicle insurance, unfairly discriminate solely on
29 the basis of age, sex, marital status, type of vehicle,
30 location of the risk, accidents more than 3 years old, or
31 scholastic achievement.

1 10. Imposing or requesting an additional premium for
2 motor vehicle comprehensive or uninsured motorist coverage
3 solely because the insured was involved in a motor vehicle
4 accident or was convicted of a moving traffic violation.

5 11. No insurer shall cancel or issue a nonrenewal
6 notice on any insurance policy or contract without complying
7 with any applicable cancellation or nonrenewal provision
8 required under the Florida Insurance Code.

9 12. No insurer shall impose or request an additional
10 premium, cancel a policy, or issue a nonrenewal notice on any
11 insurance policy or contract because of any traffic infraction
12 when adjudication has been withheld and no points have been
13 assessed pursuant to s. 318.14(9) and (10). However, this
14 subparagraph does not apply to traffic infractions involving
15 accidents in which the insurer has incurred a loss due to the
16 fault of the insured.

17 Section 6. Paragraph (a) of subsection (2) of section
18 627.062, Florida Statutes, is amended to read:

19 627.062 Rate standards.--

20 (2) As to all such classes of insurance:

21 (a) Insurers or rating organizations shall establish
22 and use rates, rating schedules, or rating manuals to allow
23 the insurer a reasonable rate of return on such classes of
24 insurance written in this state. ~~A copy of Rates, rating~~
25 ~~schedules, rating manuals, premium credits or discount~~
26 ~~schedules, and surcharge schedules, and changes thereto, shall~~
27 ~~be filed with the department in a manner and on forms~~
28 prescribed by the department under one of the following
29 procedures:

30 1. If the filing is made at least 90 days before the
31 proposed effective date and the filing is not implemented

1 during the department's review of the filing and any
2 proceeding and judicial review, then such filing shall be
3 considered a "file and use" filing. In such case, the
4 department shall finalize its review by issuance of a notice
5 of intent to approve or a notice of intent to disapprove
6 within 90 days after receipt of the filing. The notice of
7 intent to approve and the notice of intent to disapprove
8 constitute agency action for purposes of the Administrative
9 Procedure Act. Requests for supporting information, requests
10 for mathematical or mechanical corrections, or notification to
11 the insurer by the department of its preliminary findings
12 shall not toll the 90-day period during any such proceedings
13 and subsequent judicial review. The rate shall be deemed
14 approved if the department does not issue a notice of intent
15 to approve or a notice of intent to disapprove within 90 days
16 after receipt of the filing.

17 2. If the filing is not made in accordance with the
18 provisions of subparagraph 1., such filing shall be made as
19 soon as practicable, but no later than 30 days after the
20 effective date, and shall be considered a "use and file"
21 filing. An insurer making a "use and file" filing is
22 potentially subject to an order by the department to return to
23 policyholders portions of rates found to be excessive, as
24 provided in paragraph (h).

25 Section 7. Subsection (4) is added to Section
26 627.0625, Florida Statutes, to read:

27 627.0625 Commercial property and casualty risk
28 management plans.--

29 (4) Commercial motor vehicle policies that are issued
30 to satisfy mandatory financial responsibility requirements of
31 a state or local government must provide first dollar coverage

1 to third-party claimants without a deductible. The department
2 may adopt rules necessary to assure the proper administration
3 of claims and protection of third-party claimants from unfair
4 policy defenses not attributable to the third-party claimant.

5 Section 8. Section 627.385, Florida Statutes, is
6 created to read:

7 627.385 Conduct of residual market board members.--

8 (1)(a) For various insurance coverages, a residual
9 market has been created by legislation to provide a market of
10 last resort for individuals unable to secure coverage in the
11 voluntary market. As such, the coverage provided is not
12 subject to competitive market forces and must be provided and
13 administered in a manner which fairly balances the needs of
14 the consumer and the member insurers obligated to provide
15 coverage for the residual market.

16 (b) Each residual market's enabling legislation calls
17 for the establishment of a board of governors or directors
18 that operates subject to a plan of operation. The board, in
19 carrying out its obligations, must engage in business
20 transactions in order to provide and administer the required
21 coverage and maintain adequate funds to support the plan. In
22 order for the board to fully execute its responsibilities
23 required by law, conflict of interest or inappropriate
24 activity by board members, or the appearance thereof, with
25 regard to member insurers or policyholders of the residual
26 market mechanism must be avoided. The Legislature has
27 determined that the provisions set forth in subsection (2) are
28 necessary to protect the public interest by ensuring fair,
29 reasonable, and beneficial board practice and activity.

30 (c) This section applies to the Florida Medical
31 Malpractice Joint Underwriting Association, the Florida Joint

1 Underwriting Association, the Florida Comprehensive Health
2 Association, the Florida Windstorm Underwriting Association,
3 the Florida Property and Casualty Joint Underwriting
4 Association, the Florida Residential Property and Casualty
5 Joint Underwriting Association, and the board members thereof.

6 (2) To ensure that the board is free from potential
7 conflict or inappropriate behavior the following are adopted
8 in the plan of operation of the subject residual market in
9 this state.

10 (a) A board member may not act as a servicing carrier
11 or administering entity for the subject plan, other than a
12 claim adjustment contract open to all members of the plan.

13 (b) A board member or board member representative may
14 not use his or her position to foster or facilitate any
15 pecuniary gain for himself or herself, his or her member
16 company, or any other entity in which the board member or
17 board member representative or the member company has a
18 substantial financial interest, except as otherwise provided
19 in paragraph (a).

20 (c) A board member or board member representative may
21 not use his or her position on the board to secure or promote
22 any business relationship from which he or she may derive a
23 financial gain.

24 (d) A board member or designee may not receive any
25 gift or gratuity, other than meals, in his or her capacity as
26 a board member.

27 (3) Board members and board member representatives
28 shall maintain reasonable board expenses based on state travel
29 policy as set forth in s. 112.061. The board shall develop a
30 detailed policy regarding board member travel, which policy
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1 must be based on s. 112.061 and is subject to the approval of
2 the department.

3 Section 9. Section 627.4065, Florida Statutes, is
4 created to read:

5 627.4065 Insured's right to return policy; notice.--A
6 health insurance policy issued or issued for delivery in this
7 state must have printed or stamped thereon or attached thereto
8 a notice in a prominent place stating in substance that the
9 policyholder may return the policy within 10 days after its
10 delivery to the insurer and may have the premium paid refunded
11 if, after examination of the policy or contract, the
12 policyholder is not satisfied with it for any reason. The
13 notice must provide that if the policyholder pursuant to such
14 notice returns the policy or contract to the insurer at its
15 home office or branch office or to the agent through whom it
16 was purchased, it is considered void from the beginning and
17 the parties are in the same position as if no policy or
18 contract had been issued. This section does not apply to
19 either single premium nonrenewable policies or travel accident
20 policies.

21 Section 10. Section 627.7276, Florida Statutes, is
22 amended to read:

23 627.7276 Notice of limited coverage.--

24 (1) The following notice of limited coverage ~~An~~
25 ~~automobile policy that does not contain coverage for bodily~~
26 ~~injury and property damage~~ must be clearly stamped or printed
27 on any automobile insurance policy that provides coverage only
28 for first-party damage to the insured vehicle, but does not
29 provide coverage for physical bodily injury liability,
30 property damage liability, or personal injury protection to
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1 ~~the effect that such coverage is not included in the policy in~~
2 ~~the following manner:~~

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4 "THIS POLICY DOES NOT PROVIDE BODILY INJURY
5 LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR
6 PERSONAL INJURY PROTECTION INSURANCE OR ANY
7 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM
8 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH
9 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE
10 FLORIDA MOTOR VEHICLE NO-FAULT LAW."

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12 (2) This legend must appear on the policy declaration
13 page ~~and on the filing back of the policy~~ and be printed in a
14 contrasting color from that used on the policy and in type
15 larger than the largest type used in the text thereof, as an
16 overprint or by a rubber stamp impression.

17 Section 11. Section 627.795, Florida Statutes, is
18 created to read:

19 627.795 Policy exceptions.--

20 (1) A title insurance commitment must be issued on all
21 real estate closing transactions when a title insurance policy
22 is to be issued, except for multiple conveyances on the same
23 property such as timesharing.

24 (2) A gap exception may not be deleted on a commitment
25 until the time of closing.

26 Section 12. Section 626.9552, Florida Statutes, is
27 created to read:

28 626.9552 Single interest insurance.--

29 (1) When single interest insurance is written at the
30 expense of the purchaser or borrower in connection with a
31 finance or loan transaction, a clear and concise statement

1 must be furnished the purchaser or borrower advising the
2 purchaser or borrower that the insurance effected is solely
3 for the interest of the finance factor (finance company, bank,
4 or other lending institution), and that no protection
5 thereunder exists for the benefit of the purchaser or
6 borrower. When single interest insurance is written, no effort
7 may be made by the insurer to recover the amount of any
8 payment from the borrower. Single interest insurance policies
9 must be clearly stamped or printed on the declarations page,
10 "Single Interest Only---No Subrogation." Single interest
11 insurance is to be placed only after it has been determined
12 that no other kind of insurance can be placed on the risk,
13 except with the consent of the purchaser or borrower. Single
14 interest may be written in cases of inland marine installment
15 sales floater policies. If insurance cannot be obtained for
16 the dual protection of the purchaser or borrower, and the
17 seller or lender or finance factor (finance company, bank, or
18 other lending institution) for all the coverages contemplated,
19 or if obtained, is canceled by the insurer before expiration,
20 the seller or lender or finance factor (finance company, bank,
21 or other lending institution) may obtain insurance to protect
22 his or her interest in the motor vehicle or other personal
23 property, and the purchaser or borrower may be required to pay
24 the cost thereof. In such event the seller or lender or
25 finance factor (finance company, bank, and other lending
26 institution) shall promptly notify the purchaser or borrower
27 that such insurance cannot be obtained, or has been canceled,
28 and credit to the purchaser or borrower the difference between
29 the amount charged for dual protection insurance and the
30 actual cost of such single interest insurance, less, in the
31 event of cancellation, the earned premium on the dual interest

1 insurance for the period it was in force. If the purchaser or
2 borrower procures acceptable dual interest insurance within 30
3 days after the date of such notice and provides the seller or
4 lender, or finance factor (finance company, bank, and other
5 lending institution) with evidence that the premium therefore
6 has been paid, there is no charge to him or her for the single
7 interest coverage. However, those lenders licensed under the
8 Small Loan Business Law, chapter 516, must provide coverage
9 issued in the name of the borrower containing the customary
10 mortgagee or loss payee clause.

11 (2) If a certificate is issued under a master policy,
12 the same coverage as provided in an individual policy will
13 apply.

14 Section 13. Subsection (1) of section 627.918, Florida
15 Statutes, is amended to read:

16 627.918 Reporting formats.--

17 (1) The department shall require that the reporting
18 provided for in this part be made on forms approved
19 ~~established~~ by the department or in a format compatible with
20 its electronic data processing equipment. The department shall
21 adopt by rule standards for such approval.

22 Section 14. Section 627.9408, Florida Statutes, is
23 amended to read:

24 627.9408 Rules.--

25 (1) The department has authority to adopt rules
26 pursuant to ss. 120.536(1) and 120.54 to implement the
27 provisions of this part.

28 (2) The department may adopt by rule the model
29 regulation for the long-term care insurance regulation as
30 approved by the National Association of Insurance
31 Commissioners in June 2000, including provisions to protect

1 applicants for long-term care and comparison of long-term care
2 insurance coverage, and to facilitate flexibility and
3 innovation in the development of long-term care insurance that
4 is not in conflict with the insurance code.

5 Section 15. This act shall take effect upon becoming a
6 law.

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SENATE SUMMARY

10 Revises various provisions relating to the regulatory
11 authority of the Department of Insurance. (See bill for
12 details.)

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