

By Representative Lee

1 A bill to be entitled
 2 An act relating to property and casualty
 3 insurance risk apportionment; amending s.
 4 627.351, F.S.; providing that nursing homes and
 5 assisted living facilities are immediately
 6 eligible for coverage in the Florida Property
 7 and Casualty Joint Underwriting Association;
 8 providing that rates used by the association
 9 are subject to s. 627.062, F.S.; eliminating
 10 provisions tying the initial rates of the
 11 association to rates contained in the Insurance
 12 Services Office filing with the Department of
 13 Insurance; providing an effective date.

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

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 17 Section 1. Paragraphs (a) and (b) of subsection (5) of
 18 section 627.351, Florida Statutes, are amended to read:

19 627.351 Insurance risk apportionment plans.--
 20 (5) PROPERTY AND CASUALTY INSURANCE RISK
 21 APPORTIONMENT.--The department shall adopt by rule a joint
 22 underwriting plan to equitably apportion among insurers
 23 authorized in this state to write property insurance as
 24 defined in s. 624.604 or casualty insurance as defined in s.
 25 624.605, the underwriting of one or more classes of property
 26 insurance or casualty insurance, except for the types of
 27 insurance that are included within property insurance or
 28 casualty insurance for which an equitable apportionment plan,
 29 assigned risk plan, or joint underwriting plan is authorized
 30 under s. 627.311 or subsection (1), subsection (2), subsection
 31 (3), subsection (4), or subsection (6) and except for risks

1 eligible for flood insurance written through the federal flood
2 insurance program to persons with risks eligible under
3 subparagraph (a)1. and who are in good faith entitled to, but
4 are unable to, obtain such property or casualty insurance
5 coverage, including excess coverage, through the voluntary
6 market. For purposes of this subsection, an adequate level of
7 coverage means that coverage which is required by state law or
8 by responsible or prudent business practices. The Joint
9 Underwriting Association shall not be required to provide
10 coverage for any type of risk for which there are no insurers
11 providing similar coverage in this state. The department may
12 designate one or more participating insurers who agree to
13 provide policyholder and claims service, including the
14 issuance of policies, on behalf of the participating insurers.

15 (a) The plan shall provide:

16 1. A means of establishing eligibility of a risk for
17 obtaining insurance through the plan, which provides that:

18 a. A risk shall be eligible for such property
19 insurance or casualty insurance as is required by Florida law
20 if the insurance is unavailable in the voluntary market,
21 including the market assistance program and the surplus lines
22 market.

23 b. A commercial risk not eligible under
24 sub-subparagraph a. shall be eligible for property or casualty
25 insurance if:

26 (I) The insurance is unavailable in the voluntary
27 market, including the market assistance plan and the surplus
28 lines market;

29 (II) Failure to secure the insurance would
30 substantially impair the ability of the entity to conduct its
31 affairs; and

1 (III) The risk is not determined by the Risk
2 Underwriting Committee to be uninsurable.

3 c. In the event the Federal Government terminates the
4 Federal Crime Insurance Program established under 44 C.F.R.
5 ss. 80-83, Florida commercial and residential risks previously
6 insured under the federal program shall be eligible under the
7 plan.

8 d.(I) In the event a risk is eligible under this
9 paragraph and in the event the market assistance plan receives
10 a minimum of 100 applications for coverage within a 3-month
11 period, or 200 applications for coverage within a 1-year
12 period or less, for a given class of risk contained in the
13 classification system defined in the plan of operation of the
14 Joint Underwriting Association, and unless the market
15 assistance plan provides a quotation for at least 80 percent
16 of such applicants, such classification shall immediately be
17 eligible for coverage in the Joint Underwriting Association.

18 (II) Any market assistance plan application which is
19 rejected because an individual risk is so hazardous as to be
20 practically uninsurable, considering whether the likelihood of
21 a loss for such a risk is substantially higher than for other
22 risks of the same class due to individual risk
23 characteristics, prior loss experience, unwillingness to
24 cooperate with a prior insurer, physical characteristics and
25 physical location shall not be included in the minimum
26 percentage calculation provided above. In the event that there
27 is any legal or administrative challenge to a determination by
28 the department that the conditions of this subparagraph have
29 been met for eligibility for coverage in the Joint
30 Underwriting Association for a given classification, any

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1 eligible risk may obtain coverage during the pendency of any
2 such challenge.

3 e. In order to qualify as a quotation for the purpose
4 of meeting the minimum percentage calculation in this
5 subparagraph, the quoted premium must meet the following
6 criteria:

7 (I) In the case of an admitted carrier, the quoted
8 premium must not exceed the premium available for a given
9 classification currently in use by the Joint Underwriting
10 Association or the premium developed by using the rates and
11 rating plans on file with the department by the quoting
12 insurer, whichever is greater.

13 (II) In the case of an authorized surplus lines
14 insurer, the quoted premium must not exceed the premium
15 available for a given classification currently in use by the
16 Joint Underwriting Association by more than 25 percent, after
17 consideration of any individual risk surcharge or credit.

18 f. Any agent who falsely certifies the unavailability
19 of coverage as provided by sub-subparagraphs a. and b., is
20 subject to the penalties provided in s. 626.611.

21 g. Notwithstanding sub-subparagraph d., nursing homes
22 licensed under part II of chapter 400 and assisted living
23 facilities licensed under part III of chapter 400 are
24 immediately eligible for coverage in the Joint Underwriting
25 Association.

26 2. A means for the equitable apportionment of profits
27 or losses and expenses among participating insurers.

28 3. Rules for the classification of risks and rates
29 which reflect the past and prospective loss experience.

30 4. A rating plan which reasonably reflects the prior
31 claims experience of the insureds. Such rating plan shall

1 include at least two levels of rates for risks that have
2 favorable loss experience and risks that have unfavorable loss
3 experience, as established by the plan.

4 5. Reasonable limits to available amounts of
5 insurance. Such limits may not be less than the amounts of
6 insurance required of eligible risks by Florida law.

7 6. Risk management requirements for insurance where
8 such requirements are reasonable and are expected to reduce
9 losses.

10 7. Deductibles as may be necessary to meet the needs
11 of insureds.

12 8. Policy forms which are consistent with the forms in
13 use by the majority of the insurers providing coverage in the
14 voluntary market for the coverage requested by the applicant.

15 9. A means to remove risks from the plan once such
16 risks no longer meet the eligibility requirements of this
17 paragraph. For this purpose, the plan shall include the
18 following requirements: At each 6-month interval after the
19 activation of any class of insureds, the board of governors or
20 its designated committee shall review the number of
21 applications to the market assistance plan for that class. If,
22 based on these latest numbers, at least 90 percent of such
23 applications have been provided a quotation, the Joint
24 Underwriting Association shall cease underwriting new
25 applications for such class within 30 days, and notification
26 of this decision shall be sent to the Insurance Commissioner,
27 the major agents' associations, and the board of directors of
28 the market assistance plan. A quotation for the purpose of
29 this subparagraph shall meet the same criteria for a quotation
30 as provided in sub-subparagraph d. All policies which were
31 previously written for that class shall continue in force

1 until their normal expiration date, at which time, subject to
2 the required timely notification of nonrenewal by the Joint
3 Underwriting Association, the insured may then elect to
4 reapply to the Joint Underwriting Association according to the
5 requirements of eligibility. If, upon reapplication, those
6 previously insured Joint Underwriting Association risks meet
7 the eligibility requirements, the Joint Underwriting
8 Association shall provide the coverage requested.

9 10. A means for providing credits to insurers against
10 any deficit assessment levied pursuant to paragraph (c), for
11 risks voluntarily written through the market assistance plan
12 by such insurers.

13 11. That the Joint Underwriting Association shall
14 operate subject to the supervision and approval of a board of
15 governors consisting of 13 individuals appointed by the
16 Insurance Commissioner, and shall have an executive or
17 underwriting committee. At least four of the members shall be
18 representatives of insurance trade associations as follows:
19 one member from the American Insurance Association, one member
20 from the Alliance of American Insurers, one member from the
21 National Association of Independent Insurers, and one member
22 from an unaffiliated insurer writing coverage on a national
23 basis. Two representatives shall be from two of the statewide
24 agents' associations. Each board member shall be appointed to
25 serve for 2-year terms beginning on a date designated by the
26 plan and shall serve at the pleasure of the commissioner.
27 Members may be reappointed for subsequent terms.

28 (b) Rates used by the Joint Underwriting Association
29 shall be actuarially sound and are subject to s. 627.062. ~~To~~
30 ~~the extent applicable, the rate standards set forth in s.~~
31 ~~627.062 shall be considered by the department in establishing~~

1 ~~rates to be used by the joint underwriting plan. The initial~~
2 ~~rate level shall be determined using the rates, rules, rating~~
3 ~~plans, and classifications contained in the most current~~
4 ~~Insurance Services Office (ISO) filing with the department or~~
5 ~~the filing of other licensed rating organizations with an~~
6 ~~additional increment of 25 percent of premium. For any type of~~
7 ~~coverage or classification which lends itself to manual rating~~
8 ~~for which the Insurance Services Office or another licensed~~
9 ~~rating organization does not file or publish a rate, the Joint~~
10 ~~Underwriting Association shall file and use an initial rate~~
11 ~~based on the average current market rate. The initial rate~~
12 ~~level for the rate plan shall also be subject to an experience~~
13 ~~and schedule rating plan which may produce a maximum of 25~~
14 ~~percent debits or credits. For any risk which does not lend~~
15 ~~itself to manual rating and for which no rate has been~~
16 ~~promulgated under the rate plan, the board shall develop and~~
17 ~~file with the commissioner, subject to his or her approval,~~
18 ~~appropriate criteria and factors for rating the individual~~
19 ~~risk. Such criteria and factors shall include, but not be~~
20 ~~limited to, loss rating plans, composite rating plans, and~~
21 ~~unique and unusual risk rating plans. The initial rates~~
22 ~~required under this paragraph shall be adjusted in conformity~~
23 ~~with future filings by the Insurance Services Office with the~~
24 ~~department and shall remain in effect until such time as the~~
25 ~~Joint Underwriting Association has sufficient data as to~~
26 ~~independently justify an actuarially sound change in such~~
27 ~~rates.~~

28 Section 2. This act shall take effect October 1, 2002.
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HOUSE SUMMARY

Revises provisions relating to insurance coverage for nursing homes and assisted living facilities. Provides that such facilities are immediately eligible for coverage in the Florida Property and Casualty Joint Underwriting Association. Provides that the rates used by the association are subject to certain rate standards. Eliminates requirements that the initial rates of the association be tied to certain Insurance Services Office filings.