

CHAMBER ACTION

1 The Committee on Insurance recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to workers' compensation; creating s.
7 624.4315, F.S.; requiring workers' compensation insurers
8 to notify the Office of Insurance Regulation of
9 significant underwriting changes; amending s. 627.171,
10 F.S.; providing that the 10-percent limit on the
11 percentage of commercial insurance policies that an
12 insurer may write at a rate in excess of the applicable
13 filed rate excludes workers' compensation policies written
14 for an employer in lieu of coverage from the joint
15 underwriting plan established under s. 627.311(5), F.S.;
16 amending s. 627.211, F.S.; revising the standards used by
17 the Office of Insurance Regulation in approving or
18 disapproving an insurer's deviation from the approved
19 workers' compensation rate filing; requiring the Office of
20 Insurance Regulation to submit an annual report to the
21 Legislature which evaluates competition in the workers'
22 compensation insurance market; amending s. 627.311, F.S.;
23 revising provisions governing the depopulation program of

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24 | the workers' compensation joint underwriting plan;
25 | providing an effective date.

26 |

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

28 |

29 | Section 1. Section 624.4315, Florida Statutes, is created
30 | to read:

31 | 624.4315 Workers' compensation insurers; notice of
32 | significant underwriting change.--Each workers' compensation
33 | insurer shall notify the office in writing or by electronic
34 | means of a significant underwriting change that materially
35 | limits or restricts the number of workers' compensation policies
36 | or premiums written in this state. The commission may adopt
37 | rules to administer this requirement.

38 | Section 2. Section 627.171, Florida Statutes, is amended
39 | to read:

40 | 627.171 Excess rates.--

41 | (1) With written consent of the insured signed prior to
42 | the policy inception date and filed with the insurer, the
43 | insurer may use a rate in excess of the otherwise applicable
44 | filed rate on any specific risk. The signed consent form must
45 | include the filed rate as well as the excess rate for the risk
46 | insured, and a copy of the form must be maintained by the
47 | insurer for 3 years and be available for review by the office.

48 | (2) An insurer may not use excess rates pursuant to this
49 | section for more than 10 percent of its commercial insurance
50 | policies written or renewed in each calendar year for any line
51 | of commercial insurance or for more than 5 percent of its

52 | personal lines insurance policies written or renewed in each
 53 | calendar year for any line of personal insurance. In determining
 54 | the 10-percent limitation for commercial insurance policies, the
 55 | insurer shall exclude any workers' compensation policy that was
 56 | written for an employer who had coverage in the joint
 57 | underwriting plan created by s. 627.311(5) immediately prior to
 58 | the writing of the policy by the insurer and any workers'
 59 | compensation policy that was written for an employer who had
 60 | been offered coverage in the joint underwriting plan but who had
 61 | a policy that was written by the insurer in lieu of accepting
 62 | the joint underwriting plan policy. These workers' compensation
 63 | policies shall be excluded from the 10-percent limitation for
 64 | the first 3 years of coverage.

65 | Section 3. Subsection (3) of section 627.211, Florida
 66 | Statutes, is amended, and subsection (6) is added to that
 67 | section, to read:

68 | 627.211 Deviations; workers' compensation and employer's
 69 | liability insurances.--

70 | (3) In considering an application for the deviation, the
 71 | office shall give consideration to the applicable principles for
 72 | ratemaking as set forth in ss. 627.062 and 627.072 and, the
 73 | financial condition of the insurer, ~~and the impact of the~~
 74 | ~~deviation on the current market conditions including the~~
 75 | ~~composition of the market, the stability of rates, and the level~~
 76 | ~~of competition in the market.~~ In evaluating the financial
 77 | condition of the insurer, the office may consider: (1) the
 78 | insurer's audited financial statements and whether the
 79 | statements provide unqualified opinions or contain significant

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80 | qualifications or "subject to" provisions; (2) any independent
 81 | or other actuarial certification of loss reserves; (3) whether
 82 | workers' compensation and employer's liability reserves are
 83 | above the midpoint or best estimate of the actuary's reserve
 84 | range estimate; (4) the adequacy of the proposed rate; (5)
 85 | historical experience demonstrating the profitability of the
 86 | insurer; (6) the existence of excess or other reinsurance that
 87 | contains a sufficiently low attachment point and maximums that
 88 | provide adequate protection to the insurer; and (7) other
 89 | factors considered relevant to the financial condition of the
 90 | insurer by the office. The office shall approve the deviation if
 91 | it finds it to be justified, it would not endanger the financial
 92 | condition of the insurer, ~~it would not adversely affect the~~
 93 | ~~current market conditions including the composition of the~~
 94 | ~~market, the stability of rates, and the level of competition in~~
 95 | ~~the market,~~ and it that the deviation would not constitute
 96 | predatory pricing. The office ~~it~~ shall disapprove the deviation
 97 | if it finds that the resulting premiums would be excessive,
 98 | inadequate, or unfairly discriminatory, would endanger the
 99 | financial condition of the insurer, ~~or would adversely affect~~
 100 | ~~current market conditions including the composition of the~~
 101 | ~~marketplace, the stability of rates, and the level of~~
 102 | ~~competition in the market,~~ or would result in predatory pricing.
 103 | The insurer may not use a deviation unless the deviation is
 104 | specifically approved by the office.

105 | (6) The office shall submit an annual report to the
 106 | President of the Senate and the Speaker of the House of
 107 | Representatives by January 1 of each year which evaluates

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108 competition in the workers' compensation insurance market in
 109 this state. The report must contain an analysis of the
 110 availability and affordability of workers' compensation coverage
 111 and whether the current market structure, conduct, and
 112 performance are conducive to competition, based upon economic
 113 analysis and tests. The purpose of this report is to aid the
 114 Legislature in determining whether changes to the workers'
 115 compensation rating laws are warranted. The report must also
 116 document that the office has complied with the provisions of s.
 117 627.096 which require the office to investigate and study all
 118 workers' compensation insurers in the state and to study the
 119 data, statistics, schedules, or other information as it finds
 120 necessary to assist in its review of workers' compensation rate
 121 filings.

122 Section 4. Paragraph (c) of subsection (5) of section
 123 627.311, Florida Statutes, is amended to read:

124 627.311 Joint underwriters and joint reinsurers; public
 125 records and public meetings exemptions.--

126 (5)

127 (c) The operation of the plan shall be governed by a plan
 128 of operation that is prepared at the direction of the board of
 129 governors. The plan of operation may be changed at any time by
 130 the board of governors or upon request of the office. The plan
 131 of operation and all changes thereto are subject to the approval
 132 of the office. The plan of operation shall:

133 1. Authorize the board to engage in the activities
 134 necessary to implement this subsection, including, but not
 135 limited to, borrowing money.

136 2. Develop criteria for eligibility for coverage by the
 137 plan, including, but not limited to, documented rejection by at
 138 least two insurers which reasonably assures that insureds
 139 covered under the plan are unable to acquire coverage in the
 140 voluntary market. Any insured may voluntarily elect to accept
 141 coverage from an insurer for a premium equal to or greater than
 142 the plan premium if the insurer writing the coverage adheres to
 143 the provisions of s. 627.171.

144 3. Require notice from the agent to the insured at the
 145 time of the application for coverage that the application is for
 146 coverage with the plan and that coverage may be available
 147 through an insurer, group self-insurers' fund, commercial self-
 148 insurance fund, or assessable mutual insurer through another
 149 agent at a lower cost.

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

153 a. Establishing procedures for an insurer to use in
 154 notifying the plan of the insurer's desire to provide coverage
 155 to applicants to the plan or existing insureds of the plan and
 156 in describing the types of risks in which the insurer is
 157 interested. The description of the desired risks must be on a
 158 form developed by the plan.

159 b. Developing forms and procedures that provide an insurer
 160 with the information necessary to determine whether the insurer
 161 wants to write particular applicants to the plan or insureds of
 162 the plan.

163 c. Developing procedures for notice to the plan and the
 164 applicant to the plan or insured of the plan that an insurer
 165 will insure the applicant or the insured of the plan, and notice
 166 of the cost of the coverage offered; and developing procedures
 167 for the selection of an insuring entity by the applicant or
 168 insured of the plan.

169 d. Provide for a market-assistance plan to assist in the
 170 placement of employers. All applications for coverage in the
 171 plan received 45 days before the effective date for coverage
 172 shall be processed through the market-assistance plan. A market-
 173 assistance plan specifically designed to serve the needs of
 174 small, good policyholders as defined by the board must be
 175 finalized by January 1, 1994.

176 5. Provide for policy and claims services to the insureds
 177 of the plan of the nature and quality provided for insureds in
 178 the voluntary market.

179 6. Provide for the review of applications for coverage
 180 with the plan for reasonableness and accuracy, using any
 181 available historic information regarding the insured.

182 7. Provide for procedures for auditing insureds of the
 183 plan which are based on reasonable business judgment and are
 184 designed to maximize the likelihood that the plan will collect
 185 the appropriate premiums.

186 8. Authorize the plan to terminate the coverage of and
 187 refuse future coverage for any insured that submits a fraudulent
 188 application to the plan or provides fraudulent or grossly
 189 erroneous records to the plan or to any service provider of the
 190 plan in conjunction with the activities of the plan.

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191 9. Establish service standards for agents who submit
192 business to the plan.

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

197 11. Provide for the establishment of reasonable safety
198 programs for all insureds in the plan. All insureds of the plan
199 must participate in the safety program.

200 12. Authorize the plan to terminate the coverage of and
201 refuse future coverage to any insured who fails to pay premiums
202 or surcharges when due; who, at the time of application, is
203 delinquent in payments of workers' compensation or employer's
204 liability insurance premiums or surcharges owed to an insurer,
205 group self-insurers' fund, commercial self-insurance fund, or
206 assessable mutual insurer licensed to write such coverage in
207 this state; or who refuses to substantially comply with any
208 safety programs recommended by the plan.

209 13. Authorize the board of governors to provide the
210 services required by the plan through staff employed by the
211 plan, through reasonably compensated service providers who
212 contract with the plan to provide services as specified by the
213 board of governors, or through a combination of employees and
214 service providers.

215 14. Provide for service standards for service providers,
216 methods of determining adherence to those service standards,
217 incentives and disincentives for service, and procedures for

218 | terminating contracts for service providers that fail to adhere
219 | to service standards.

220 | 15. Provide procedures for selecting service providers and
221 | standards for qualification as a service provider that
222 | reasonably assure that any service provider selected will
223 | continue to operate as an ongoing concern and is capable of
224 | providing the specified services in the manner required.

225 | 16. Provide for reasonable accounting and data-reporting
226 | practices.

227 | 17. Provide for annual review of costs associated with the
228 | administration and servicing of the policies issued by the plan
229 | to determine alternatives by which costs can be reduced.

230 | 18. Authorize the acquisition of such excess insurance or
231 | reinsurance as is consistent with the purposes of the plan.

232 | 19. Provide for an annual report to the office on a date
233 | specified by the office and containing such information as the
234 | office reasonably requires.

235 | 20. Establish multiple rating plans for various
236 | classifications of risk which reflect risk of loss, hazard
237 | grade, actual losses, size of premium, and compliance with loss
238 | control. At least one of such plans must be a preferred-rating
239 | plan to accommodate small-premium policyholders with good
240 | experience as defined in sub-subparagraph 22.a.

241 | 21. Establish agent commission schedules.

242 | 22. Establish four subplans as follows:

243 | a. Subplan "A" must include those insureds whose annual
244 | premium does not exceed \$2,500 and who have neither incurred any

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245 | lost-time claims nor incurred medical-only claims exceeding 50
246 | percent of their premium for the immediate 2 years.

247 | b. Subplan "B" must include insureds that are employers
248 | identified by the board of governors as high-risk employers due
249 | solely to the nature of the operations being performed by those
250 | insureds and for whom no market exists in the voluntary market,
251 | and whose experience modifications are less than 1.00.

252 | c. Subplan "C" must include all insureds within the plan
253 | that are not eligible for subplan "A," subplan "B," or subplan
254 | "D."

255 | d. Subplan "D" must include any employer, regardless of
256 | the length of time for which it has conducted business
257 | operations, which has an experience modification factor of 1.10
258 | or less and either employs 15 or fewer employees or is an
259 | organization that is exempt from federal income tax pursuant to
260 | s. 501(c)(3) of the Internal Revenue Code and receives more than
261 | 50 percent of its funding from gifts, grants, endowments, or
262 | federal or state contracts. The rate plan for subplan "D" shall
263 | be the same rate plan as the plan approved under ss. 627.091-
264 | 627.151, and each participant in subplan "D" shall pay the
265 | premium determined under such rate plan, plus a surcharge
266 | determined by the board to be sufficient to ensure that the plan
267 | does not compete with the voluntary market rate for any
268 | participant, but not to exceed 25 percent. However, the
269 | surcharge shall not exceed 10 percent for an organization that
270 | is exempt from federal income tax pursuant to s. 501(c)(3) of
271 | the Internal Revenue Code.

272 23. Provide for a depopulation program to reduce the
273 number of insureds in subplan "D." If an employer insured
274 through subplan "D" is offered coverage from a voluntary market
275 carrier:

276 a. During the first 30 days of coverage under the subplan;

277 b. Before a policy is issued under the subplan;

278 c. By issuance of a policy upon expiration or cancellation
279 of the policy under the subplan; or

280 d. By assumption of the subplan's obligation with respect
281 to an in-force policy,

282

283 that employer is no longer eligible for coverage through the
284 plan. ~~The premium for risks assumed by the voluntary market~~
285 ~~carrier must be the same premium plus, for the first 2 years,~~
286 ~~the surcharge as determined in sub-subparagraph 22.d. A premium~~
287 ~~under this subparagraph, including surcharge, is deemed approved~~
288 ~~and is not an excess premium for purposes of s. 627.171.~~

289 24. Require that policies issued under subplan "D" and
290 applications for such policies must include a notice that the
291 policy issued under subplan "D" could be replaced by a policy
292 issued from a voluntary market carrier and that, if an offer of
293 coverage is obtained from a voluntary market carrier, the
294 policyholder is no longer eligible for coverage through subplan
295 "D." The notice must also specify that acceptance of coverage
296 under subplan "D" creates a conclusive presumption that the
297 applicant or policyholder is aware of this potential.

298 Section 5. This act shall take effect July 1, 2004.