

By the Committee on Banking and Insurance; and Senator Atwater

311-2127-04

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

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

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

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1           624.4315 Workers' compensation insurers; notice of  
2 significant underwriting change.--Each workers' compensation  
3 insurer shall notify the office in writing or by electronic  
4 means of a significant underwriting change that materially  
5 limits or restricts the number of workers' compensation  
6 policies or premiums written in this state. The commission may  
7 adopt rules to administer this requirement.

8           Section 2. Section 627.171, Florida Statutes, is  
9 amended to read:

10           627.171 Excess rates.--

11           (1) With written consent of the insured signed prior  
12 to the policy inception date and filed with the insurer, the  
13 insurer may use a rate in excess of the otherwise applicable  
14 filed rate on any specific risk. The signed consent form must  
15 include the filed rate as well as the excess rate for the risk  
16 insured, and a copy of the form must be maintained by the  
17 insurer for 3 years and be available for review by the office.

18           (2) An insurer may not use excess rates pursuant to  
19 this section for more than 10 percent of its commercial  
20 insurance policies written or renewed in each calendar year  
21 for any line of commercial insurance or for more than 5  
22 percent of its personal lines insurance policies written or  
23 renewed in each calendar year for any line of personal  
24 insurance. In determining the 10-percent limitation for  
25 commercial insurance policies, the insurer shall exclude any  
26 workers' compensation policy that was written for an employer  
27 who had coverage in the joint underwriting plan created by s.  
28 627.311(5) immediately prior to the writing of the policy by  
29 the insurer and any workers' compensation policy that was  
30 written for an employer who had been offered coverage in the  
31 joint underwriting plan but who was written a policy by the

1 insurer in lieu of accepting the joint underwriting plan  
2 policy. These workers' compensation policies shall be excluded  
3 from the 10-percent limitation for the first 3 years of  
4 coverage.

5 Section 3. Subsection (3) of section 627.211, Florida  
6 Statutes, is amended, and subsection (6) is added to that  
7 section, to read:

8 627.211 Deviations; workers' compensation and  
9 employer's liability insurances.--

10 (3) In considering an application for the deviation,  
11 the office shall give consideration to the applicable  
12 principles for ratemaking as set forth in ss. 627.062 and  
13 627.072 ~~and~~ the financial condition of the insurer, ~~and the~~  
14 ~~impact of the deviation on the current market conditions~~  
15 ~~including the composition of the market, the stability of~~  
16 ~~rates, and the level of competition in the market.~~ In  
17 evaluating the financial condition of the insurer, the office  
18 may consider: (1) the insurer's audited financial statements  
19 and whether the statements provide unqualified opinions or  
20 contain significant qualifications or "subject to" provisions;  
21 (2) any independent or other actuarial certification of loss  
22 reserves; (3) whether workers' compensation and employer's  
23 liability reserves are above the midpoint or best estimate of  
24 the actuary's reserve range estimate; (4) the adequacy of the  
25 proposed rate; (5) historical experience demonstrating the  
26 profitability of the insurer; (6) the existence of excess or  
27 other reinsurance that contains a sufficiently low attachment  
28 point and maximums that provide adequate protection to the  
29 insurer; and (7) other factors considered relevant to the  
30 financial condition of the insurer by the office. The office  
31 shall approve the deviation if it finds it to be justified, it

1 would not endanger the financial condition of the insurer, ~~it~~  
2 ~~would not adversely affect the current market conditions~~  
3 ~~including the composition of the market, the stability of~~  
4 ~~rates, and the level of competition in the market, and it that~~  
5 ~~the deviation~~ would not constitute predatory pricing. The  
6 office ~~It~~ shall disapprove the deviation if it finds that the  
7 resulting premiums would be excessive, inadequate, or unfairly  
8 discriminatory, would endanger the financial condition of the  
9 insurer, ~~or would adversely affect current market conditions~~  
10 ~~including the composition of the marketplace, the stability of~~  
11 ~~rates, and the level of competition in the market, or would~~  
12 result in predatory pricing. The insurer may not use a  
13 deviation unless the deviation is specifically approved by the  
14 office.

15 (6) The office shall submit an annual report to the  
16 President of the Senate and the Speaker of the House of  
17 Representatives by January 1 of each year which evaluates  
18 competition in the workers' compensation insurance market in  
19 this state. The report must contain an analysis of the  
20 availability and affordability of workers' compensation  
21 coverage and whether the current market structure, conduct,  
22 and performance are conducive to competition, based upon  
23 economic analysis and tests. The purpose of this report is to  
24 aid the Legislature in determining whether changes to the  
25 workers' compensation rating laws are warranted. The report  
26 must also document that the office has complied with the  
27 provisions of s. 627.096 which require the office to  
28 investigate and study all workers' compensation insurers in  
29 the state and to study the data, statistics, schedules, or  
30 other information as it finds necessary to assist in its  
31 review of workers' compensation rate filings.

1           Section 4. Paragraph (c) of subsection (5) of section  
2 627.311, Florida Statutes, is amended to read:

3           627.311 Joint underwriters and joint reinsurers;  
4 public records and public meetings exemptions.--

5           (5)

6           (c) The operation of the plan shall be governed by a  
7 plan of operation that is prepared at the direction of the  
8 board of governors. The plan of operation may be changed at  
9 any time by the board of governors or upon request of the  
10 office. The plan of operation and all changes thereto are  
11 subject to the approval of the office. The plan of operation  
12 shall:

13           1. Authorize the board to engage in the activities  
14 necessary to implement this subsection, including, but not  
15 limited to, borrowing money.

16           2. Develop criteria for eligibility for coverage by  
17 the plan, including, but not limited to, documented rejection  
18 by at least two insurers which reasonably assures that  
19 insureds covered under the plan are unable to acquire coverage  
20 in the voluntary market. Any insured may voluntarily elect to  
21 accept coverage from an insurer for a premium equal to or  
22 greater than the plan premium if the insurer writing the  
23 coverage adheres to the provisions of s. 627.171.

24           3. Require notice from the agent to the insured at the  
25 time of the application for coverage that the application is  
26 for coverage with the plan and that coverage may be available  
27 through an insurer, group self-insurers' fund, commercial  
28 self-insurance fund, or assessable mutual insurer through  
29 another agent at a lower cost.

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

4           a. Establishing procedures for an insurer to use in  
5 notifying the plan of the insurer's desire to provide coverage  
6 to applicants to the plan or existing insureds of the plan and  
7 in describing the types of risks in which the insurer is  
8 interested. The description of the desired risks must be on a  
9 form developed by the plan.

10           b. Developing forms and procedures that provide an  
11 insurer with the information necessary to determine whether  
12 the insurer wants to write particular applicants to the plan  
13 or insureds of the plan.

14           c. Developing procedures for notice to the plan and  
15 the applicant to the plan or insured of the plan that an  
16 insurer will insure the applicant or the insured of the plan,  
17 and notice of the cost of the coverage offered; and developing  
18 procedures for the selection of an insuring entity by the  
19 applicant or insured of the plan.

20           d. Provide for a market-assistance plan to assist in  
21 the placement of employers. All applications for coverage in  
22 the plan received 45 days before the effective date for  
23 coverage shall be processed through the market-assistance  
24 plan. A market-assistance plan specifically designed to serve  
25 the needs of small, good policyholders as defined by the board  
26 must be finalized by January 1, 1994.

27           5. Provide for policy and claims services to the  
28 insureds of the plan of the nature and quality provided for  
29 insureds in the voluntary market.

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1           6. Provide for the review of applications for coverage  
2 with the plan for reasonableness and accuracy, using any  
3 available historic information regarding the insured.

4           7. Provide for procedures for auditing insureds of the  
5 plan which are based on reasonable business judgment and are  
6 designed to maximize the likelihood that the plan will collect  
7 the appropriate premiums.

8           8. Authorize the plan to terminate the coverage of and  
9 refuse future coverage for any insured that submits a  
10 fraudulent application to the plan or provides fraudulent or  
11 grossly erroneous records to the plan or to any service  
12 provider of the plan in conjunction with the activities of the  
13 plan.

14           9. Establish service standards for agents who submit  
15 business to the plan.

16           10. Establish criteria and procedures to prohibit any  
17 agent who does not adhere to the established service standards  
18 from placing business with the plan or receiving, directly or  
19 indirectly, any commissions for business placed with the plan.

20           11. Provide for the establishment of reasonable safety  
21 programs for all insureds in the plan. All insureds of the  
22 plan must participate in the safety program.

23           12. Authorize the plan to terminate the coverage of  
24 and refuse future coverage to any insured who fails to pay  
25 premiums or surcharges when due; who, at the time of  
26 application, is delinquent in payments of workers'  
27 compensation or employer's liability insurance premiums or  
28 surcharges owed to an insurer, group self-insurers' fund,  
29 commercial self-insurance fund, or assessable mutual insurer  
30 licensed to write such coverage in this state; or who refuses  
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1 to substantially comply with any safety programs recommended  
2 by the plan.

3 13. Authorize the board of governors to provide the  
4 services required by the plan through staff employed by the  
5 plan, through reasonably compensated service providers who  
6 contract with the plan to provide services as specified by the  
7 board of governors, or through a combination of employees and  
8 service providers.

9 14. Provide for service standards for service  
10 providers, methods of determining adherence to those service  
11 standards, incentives and disincentives for service, and  
12 procedures for terminating contracts for service providers  
13 that fail to adhere to service standards.

14 15. Provide procedures for selecting service providers  
15 and standards for qualification as a service provider that  
16 reasonably assure that any service provider selected will  
17 continue to operate as an ongoing concern and is capable of  
18 providing the specified services in the manner required.

19 16. Provide for reasonable accounting and  
20 data-reporting practices.

21 17. Provide for annual review of costs associated with  
22 the administration and servicing of the policies issued by the  
23 plan to determine alternatives by which costs can be reduced.

24 18. Authorize the acquisition of such excess insurance  
25 or reinsurance as is consistent with the purposes of the plan.

26 19. Provide for an annual report to the office on a  
27 date specified by the office and containing such information  
28 as the office reasonably requires.

29 20. Establish multiple rating plans for various  
30 classifications of risk which reflect risk of loss, hazard  
31 grade, actual losses, size of premium, and compliance with



2 preferred-rating plan to accommodate small-premium  
3 policyholders with good experience as defined in

5 21. Establish agent commission schedules.

6 22. Establish four subplans as follows:

8 annual premium does not exceed \$2,500 and who have neither  
9 incurred any lost-time claims nor incurred medical-only claims

11 years.

12 b. Subplan "B" must include insureds that are

14 employers due solely to the nature of the operations being  
15 performed by those insureds and for whom no market exists in

17 less than 1.00.

18 c. Subplan "C" must include all insureds within the

20 subplan "D."

21 d. Subplan "D" must include any employer, regardless

23 operations, which has an experience modification factor of  
24 1.10 or less and either employs 15 or fewer employees or is an

26 to s. 501(c)(3) of the Internal Revenue Code and receives more  
27 than 50 percent of its funding from gifts, grants, endowments,

29 shall be the same rate plan as the plan approved under ss.

30 627.091-627.151, and each participant in subplan "D" shall pay

1 determined by the board to be sufficient to ensure that the  
2 plan does not compete with the voluntary market rate for any  
3 participant, but not to exceed 25 percent. However, the  
4 surcharge shall not exceed 10 percent for an organization that  
5 is exempt from federal income tax pursuant to s. 501(c)(3) of  
6 the Internal Revenue Code.

7           23. Provide for a depopulation program to reduce the  
8 number of insureds in subplan "D." If an employer insured  
9 through subplan "D" is offered coverage from a voluntary  
10 market carrier:

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

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

14           c. By issuance of a policy upon expiration or  
15 cancellation of the policy under the subplan; or

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

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

26           24. Require that policies issued under subplan "D" and  
27 applications for such policies must include a notice that the  
28 policy issued under subplan "D" could be replaced by a policy  
29 issued from a voluntary market carrier and that, if an offer  
30 of coverage is obtained from a voluntary market carrier, the  
31 policyholder is no longer eligible for coverage through

1 subplan "D." The notice must also specify that acceptance of  
2 coverage under subplan "D" creates a conclusive presumption  
3 that the applicant or policyholder is aware of this potential.

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

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 Senate Bill 1926

9 Makes a conforming change to s. s. 627.311, F.S., by deleting  
10 the provision of current law that allows premiums for risks  
11 assumed by a carrier from the Florida Workers' Compensation  
12 Joint Underwriting Association (JUA) to be at the JUA rate and  
13 not be considered an excess premium for purposes of s.  
14 6217.171, since broader authority is provided by the bill in  
15 Section 2.

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