

HB 0557

2004

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A bill to be entitled
 An act relating to insurance; amending s. 20.121, F.S.;
 requiring the Division of Consumer Services of the
 Department of Financial Services to designate an employee
 as primary contact for consumers on issues involving
 sinkholes; amending s. 626.9541, F.S.; specifying
 additional circumstances as unfair methods of competition
 and unfair or deceptive acts or practices; creating s.
 626.9742, F.S.; requiring insurers to provide certain
 information to consumers upon refusing to insure due to
 adverse underwriting information; creating s. 626.9743,
 F.S.; specifying claim settlement practice requirements
 for motor vehicle insurance claims; authorizing the
 department to adopt certain rules; creating s. 626.9744,
 F.S.; specifying claims settlement practice requirements
 for property insurance claims; authorizing the department
 to adopt certain rules; amending s. 627.4133, F.S.;
 requiring insurers to notify a mortgage company for
 failure to timely pay a homeowner's premium pursuant to an
 escrow agreement; providing for mortgage company
 responsibility for certain costs relating to policy lapse
 or reinstatement and for losses to the insured property
 during the period of lapse; prohibiting cancellation or
 nonrenewal of property insurance as a result of certain
 claims for water damage under certain conditions;
 providing severability; providing an effective date.

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

HB 0557

2004

30 Section 1. Paragraph (h) of subsection (2) of section
 31 20.121, Florida Statutes, is amended to read:

32 20.121 Department of Financial Services.--There is created
 33 a Department of Financial Services.

34 (2) DIVISIONS.--The Department of Financial Services shall
 35 consist of the following divisions:

36 (h) The Division of Consumer Services, which shall include
 37 a Bureau of Funeral and Cemetery Services.

38 1. The Division of Consumer Services shall perform the
 39 following functions concerning products or services regulated by
 40 the Department of Financial Services or by either office of the
 41 Financial Services Commission:

42 a. Receive inquiries and complaints from consumers.~~+~~

43 b. Prepare and disseminate such information as the
 44 department deems appropriate to inform or assist consumers.~~+~~

45 c. Provide direct assistance and advocacy for consumers
 46 who request such assistance or advocacy.~~+~~

47 d. With respect to apparent or potential violations of law
 48 or applicable rules by a person or entity licensed by the
 49 department or by either office of the commission, report such
 50 apparent or potential violation to the appropriate division of
 51 the department or office of the commission, which may take such
 52 further action as it deems appropriate.

53 e. Designate an employee of the division as primary
 54 contact for consumers on issues relating to sinkholes.

55 2. Any person licensed or issued a certificate of
 56 authority by the department or by the Office of Insurance
 57 Regulation shall respond, in writing, to the Division of
 58 Consumer Services within 20 days after receipt of a written

HB 0557

2004

59 request for information from the division concerning a consumer
 60 complaint. The response must address the issues and allegations
 61 raised in this complaint. The division may, in its discretion,
 62 impose an administrative penalty for failure to comply with this
 63 subparagraph in an amount up to \$2,500 per violation upon any
 64 entity licensed by the department or the Office of Insurance
 65 Regulation and \$250 for the first violation, \$500 for the second
 66 violation and up to \$1,000 per violation thereafter upon any
 67 individual licensed by the department or the Office of Insurance
 68 Regulation.

69 3. The department may adopt rules to implement the
 70 provisions of this paragraph.

71 4. The powers, duties, and responsibilities expressed or
 72 granted in this paragraph shall not limit the powers, duties,
 73 and responsibilities of the Department of Financial Services,
 74 the Financial Services Commission, the Office of Insurance
 75 Regulation, or the Office of Financial Regulation set forth
 76 elsewhere in the Florida Statutes.

77 Section 2. Paragraphs (i) and (x) of subsection (1) of
 78 section 626.9541, Florida Statutes, are amended to read:

79 626.9541 Unfair methods of competition and unfair or
 80 deceptive acts or practices defined.--

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

84 (i) *Unfair claim settlement practices*.--

85 1. Attempting to settle claims on the basis of an
 86 application, when serving as a binder or intended to become a
 87 part of the policy, or any other material document which was

HB 0557

2004

88 altered without notice to, or knowledge or consent of, the
 89 insured;

90 2. A material misrepresentation made to an insured or any
 91 other person having an interest in the proceeds payable under
 92 such contract or policy, for the purpose and with the intent of
 93 effecting settlement of such claims, loss, or damage under such
 94 contract or policy on less favorable terms than those provided
 95 in, and contemplated by, such contract or policy; ~~or~~

96 3. Committing or performing with such frequency as to
 97 indicate a general business practice any of the following:

98 a. Failing to adopt and implement standards for the proper
 99 investigation of claims;

100 b. Misrepresenting pertinent facts or insurance policy
 101 provisions relating to coverages at issue;

102 c. Failing to acknowledge and act promptly upon
 103 communications with respect to claims;

104 d. Denying claims without conducting reasonable
 105 investigations based upon available information;

106 e. Failing to affirm or deny full or partial coverage of
 107 claims, and, as to partial coverage, the dollar amount or extent
 108 of coverage, or failing to provide a written statement that the
 109 claim is being investigated, upon the written request of the
 110 insured within 30 days after proof-of-loss statements have been
 111 completed;

112 f. Failing to promptly provide a reasonable explanation in
 113 writing to the insured of the basis in the insurance policy, in
 114 relation to the facts or applicable law, for denial of a claim
 115 or for the offer of a compromise settlement;

HB 0557

2004

116 g. Failing to promptly notify the insured of any
 117 additional information necessary for the processing of a claim;
 118 or

119 h. Failing to clearly explain the nature of the requested
 120 information and the reasons why such information is necessary;
 121 or

122 4. Mandating arbitration in an insurance contract or
 123 policy with the intent of effecting settlement of claims,
 124 losses, or damages under such contract, unless the company
 125 offers the consumer the ability to enter into a contract without
 126 this provision.

127 (x) *Refusal to insure.*--In addition to other provisions of
 128 this code, the refusal to insure, or continue to insure, any
 129 individual or risk solely because of:

130 1. Race, color, creed, marital status, sex, or national
 131 origin;

132 2. The residence, age, or lawful occupation of the
 133 individual or the location of the risk, unless there is a
 134 reasonable relationship between the residence, age, or lawful
 135 occupation of the individual or the location of the risk and the
 136 coverage issued or to be issued;

137 3. The insured's or applicant's failure to agree to place
 138 collateral business with any insurer, unless the coverage
 139 applied for would provide liability coverage which is excess
 140 over that provided in policies maintained on property or motor
 141 vehicles;

142 4. The insured's or applicant's failure to purchase
 143 noninsurance services or commodities, including automobile
 144 services as defined in s. 624.124;

HB 0557

2004

145 5. The fact that the insured or applicant is a public
 146 official; ~~or~~

147 6. The fact that the insured or applicant had been
 148 previously refused insurance coverage by any insurer, when such
 149 refusal to insure or continue to insure for this reason occurs
 150 with such frequency as to indicate a general business practice;

151 7. The existence of any water damage loss that occurred
 152 prior to the current or prospective ownership of a private
 153 residence and was subsequently repaired at the property prior to
 154 the current or prospective ownership of the property; or

155 8. Prior claims resulting from an act of God.

156 Section 3. Section 626.9742, Florida Statutes, is created
 157 to read:

158 626.9742 Reporting by insurers related to loss
 159 underwriting.--When an insurer refuses to provide coverage to an
 160 applicant due to adverse underwriting information, the insurer
 161 shall:

162 (1) Provide to the applicant specific information
 163 regarding the reasons for the refusal to insure.

164 (2) If the reason for the refusal to insure is based on a
 165 loss underwriting history or report, upon request by the
 166 applicant, provide the applicant with a copy of the loss
 167 underwriting history or report at no cost to the applicant.

168 Section 4. Section 626.9743, Florida Statutes, is created
 169 to read:

170 626.9743 Claim settlement practices relating to motor
 171 vehicle insurance.--

HB 0557

2004

172 (1) This section applies to the adjustment and settlement
 173 of both first-party and third-party personal and commercial
 174 motor vehicle insurance claims.

175 (2) If liability and damages owed under a policy are
 176 reasonably clear, an insurer may not recommend that a third-
 177 party claimant make a claim under his or her own policy solely
 178 to avoid paying the claim under the policy issued by that
 179 insurer.

180 (3) Each insurer that elects to repair a motor vehicle and
 181 designates a specific repair shop for such repairs shall cause
 182 the damaged vehicle to be restored to its physical condition
 183 prior to the loss at no additional cost to the insured or third-
 184 party claimant other than as stated in the policy.

185 (4) No insurer shall require the use of replacement parts
 186 in the repair of a motor vehicle unless the parts are at least
 187 equal in kind and quality to the original parts in terms of fit,
 188 quality, and performance.

189 (5) The department may adopt rules establishing
 190 requirements applicable to the adjustment and settlement of
 191 motor vehicle insurance claims. The rules may include, but need
 192 not be limited to:

193 (a) Descriptions of methods that may be used by insurers
 194 to adjust and settle motor vehicle total losses, including cash
 195 settlements or replacement motor vehicles.

196 (b) Standards to require that replacement motor vehicles
 197 be comparable to the damaged motor vehicle, including, but not
 198 limited to, such factors as manufacturer, model type, model
 199 year, options, mileage, and availability.

HB 0557

2004

200 (c) Descriptions of methods that may be used by insurers
 201 to derive the cost of cash settlements for purposes of adjusting
 202 and settling motor vehicle total losses, including, but not
 203 limited to, the consideration of cost of comparable motor
 204 vehicles in the applicable area, the cost as determined by an
 205 applicable source for motor vehicle valuation, and the cost as
 206 determined by licensed dealer quotes in the applicable area.

207 (d) Requirements which must be met by any source for motor
 208 vehicle valuation used by insurers for purposes of adjusting and
 209 settling motor vehicle total losses, including, but not limited
 210 to, the relative weight given to vehicle values determined by
 211 geographic area, the number or percentage of vehicles and model
 212 years included in the source, and the validity of values
 213 determined by comparison to actual local vehicle values.

214 (e) Standards for claim reductions based on charges for
 215 betterment or depreciation or other charges.

216 (f) Standards for the settlement of partial losses based
 217 on written estimates obtained by insurers and claimants,
 218 including, but not limited to, options for cash settlements and
 219 agreements with repair shops.

220 Section 5. Section 626.9744, Florida Statutes, is created
 221 to read:

222 626.9744 Claim settlement practices relating to property
 223 insurance.--Unless otherwise provided by policy, when a
 224 homeowner's insurance policy provides for the adjustment and
 225 settlement of first-party losses based on repair or replacement
 226 cost, the following requirements apply:

227 (1) When a loss requires repair or replacement of an item
 228 or part, any consequential physical damage incurred in making

HB 0557

2004

229 such repair or replacement that is covered and not otherwise
 230 excluded by the policy shall be included in the loss. The
 231 insured shall not have to pay for betterment required by
 232 ordinance or code or for any other cost except for the
 233 applicable deductible, unless specifically excluded by the
 234 policy.

235 (2) When a loss requires repair or replacement of portions
 236 of a home, the repair or replacement shall include adjoining
 237 areas to the extent necessary to achieve a reasonably uniform
 238 appearance. The department may adopt rules governing the
 239 determination of the area to which the uniform appearance
 240 requirement applies.

241 Section 6. Paragraph (b) of subsection (2) of section
 242 627.4133, Florida Statutes, is amended, and subsection (4) is
 243 added to said section, to read:

244 627.4133 Notice of cancellation, nonrenewal, or renewal
 245 premium.--

246 (2) With respect to any personal lines or commercial
 247 residential property insurance policy, including, but not
 248 limited to, any homeowner's, mobile home owner's, farmowner's,
 249 condominium association, condominium unit owner's, apartment
 250 building, or other policy covering a residential structure or
 251 its contents:

252 (b) The insurer shall give the named insured written
 253 notice of nonrenewal, cancellation, or termination at least 90
 254 days prior to the effective date of the nonrenewal,
 255 cancellation, or termination. The notice must include the reason
 256 or reasons for the nonrenewal, cancellation, or termination,
 257 except that:

HB 0557

2004

258 1.a. When cancellation is for nonpayment of premium, at
259 least 10 days' written notice of cancellation accompanied by the
260 reason therefor shall be given.

261 b. When a mortgage company is responsible for making a
262 residential property insurance premium payment pursuant to an
263 escrow agreement and fails to pay the premium in a timely
264 manner, the insurer shall mail the written notice required by
265 sub-subparagraph a. to the mortgage company, with a copy to the
266 insured, notifying the mortgage company that the policy will
267 lapse. Upon receiving such notice, the mortgage company shall
268 make the required premium payment and the insurer shall
269 reinstate the policy upon receipt of the required premium.
270 During any period of time in which property insurance coverage
271 has lapsed due to the failure of a mortgage company to remit
272 such escrowed premium payments, the mortgage company is
273 responsible for any loss to the insured property. All additional
274 costs or fees to reinstate insurance coverage as the result of a
275 failure of a mortgage company to remit such escrowed premium
276 payments shall be the sole responsibility of the mortgage
277 company and shall not be passed on to the insured mortgagee.

278 2. When such cancellation or termination occurs during the
279 first 90 days during which the insurance is in force and the
280 insurance is canceled or terminated for reasons other than
281 nonpayment of premium, at least 20 days' written notice of
282 cancellation or termination accompanied by the reason therefor
283 shall be given except where there has been a material
284 misstatement or misrepresentation or failure to comply with the
285 underwriting requirements established by the insurer.

286

HB 0557

2004

287 After the policy has been in effect for 90 days, the policy
288 shall not be canceled by the insurer except when there has been
289 a material misstatement, a nonpayment of premium, a failure to
290 comply with underwriting requirements established by the insurer
291 within 90 days of the date of effectuation of coverage, or a
292 substantial change in the risk covered by the policy or when the
293 cancellation is for all insureds under such policies for a given
294 class of insureds. This paragraph does not apply to individually
295 rated risks having a policy term of less than 90 days.

296 (4) Claims on property insurance policies that are the
297 result of water damage may not be used as a cause for
298 cancellation or nonrenewal unless the insurer can demonstrate,
299 by claims frequency or otherwise, that the insured has failed to
300 take action reasonably necessary as requested by the insurer to
301 prevent recurrence of damage to the insured property.

302 Section 7. If any provision of this act or the application
303 thereof to any person or circumstance is held invalid, the
304 invalidity does not affect other provisions or applications of
305 the act which can be given effect without the invalid provision
306 or application, and to this end the provisions of this act are
307 declared severable.

308 Section 8. This act shall take effect July 1, 2004.