

1 A bill to be entitled
2 An act relating to insurance; creating s. 624.156, F.S.;
3 providing for application of certain provisions of law to
4 the business of insurance; amending s. 627.062, F.S.;
5 revising requirements for rate standards; providing
6 additional filing requirements for medical malpractice
7 liability insurers; amending s. 627.4147, F.S.; deleting
8 an authorization for medical malpractice insurers to
9 require insureds to be members of certain professional
10 societies; creating s. 627.41491, F.S.; requiring the
11 Office of Insurance to provide detailed insurer rate
12 comparisons to health care providers; creating s.
13 627.41493, F.S.; requiring medical malpractice insurers to
14 reduce rates; requiring office approval of medical
15 malpractice insurance rates; providing for application to
16 affiliates; amending s. 627.41495, F.S.; revising
17 requirements for public notice of medical malpractice rate
18 filings; providing for public hearings; providing standing
19 for the Public Counsel; creating s. 627.41496, F.S.;
20 providing legislative intent and findings; limiting the
21 loss and expense experience period as the basis for
22 medical malpractice insurance rates; amending s. 627.912,
23 F.S.; revising requirements for professional liability
24 claims and actions; requiring certain entities to provide
25 the office with certain financial information; authorizing
26 the director of the office to levy administrative fines
27 under certain circumstances; authorizing the office to
28 adopt rules; providing an effective date.

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

Section 1. Section 624.156, Florida Statutes, is created to read:

624.156 Applicability of consumer protection laws to the business of insurance.--Notwithstanding any other provision of law, the business of insurance shall be subject to the Florida Civil Rights Act of 1992 set forth in part I of chapter 760 and the Florida Deceptive and Unfair Trade Practices Act set forth in part II of chapter 501 and the protections afforded consumers under those acts shall apply to insurance consumers.

Section 2. Paragraph (e) of subsection (7) of section 627.062, Florida Statutes, as amended by section 18 of chapter 2007-1, Laws of Florida, is amended, paragraph (f) of that subsection is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

627.062 Rate standards.--

(7)

(e) The insurer must apply a discount or surcharge, exclusive of any other discounts, credits, or rate differentials, based on the health care provider's loss experience and disciplinary action taken by the federal or state government or health care facility or health care plan, or shall establish an alternative method giving due consideration to the provider's loss experience and disciplinary record. The insurer must include in the filing a copy of the surcharge or discount schedule or a description of the alternative method used, and

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57 must provide a copy of such schedule or description, as approved
58 by the office, to policyholders at the time of renewal and to
59 prospective policyholders at the time of application for
60 coverage. A medical malpractice liability insurer may not use
61 any rate or charge any premium unless the insurer has filed such
62 schedule or alternative method with the director and the
63 director has approved such schedule or alternative method. The
64 office shall adopt a schedule of appropriate ranges for such
65 credits, discounts, or alternative methods of rate reductions
66 that will bring premium relief to providers who have experienced
67 no closed claims or limited indemnity and expense payments over
68 a specified period of time as determined by the office.

69 (f) In reviewing any rate filing under this subsection,
70 the office shall consider as part of the insurer's rate base the
71 insurer's loss cost adjustment expenses or defense cost and
72 containment expenses only to the extent that the expenses do not
73 exceed the national average for such expenses, as determined by
74 the office, for the prior calendar year. An insurer's loss cost
75 adjustment expenses or defense cost and containment expenses in
76 excess of the national average may not be used to justify a rate
77 or rate change.

78 Section 3. Subsections (2) and (3) of section 627.4147,
79 Florida Statutes, are amended to read:

80 627.4147 Medical malpractice insurance contracts.--

81 ~~(2) Each insurer covered by this section may require the~~
82 ~~insured to be a member in good standing, i.e., not subject to~~
83 ~~expulsion or suspension, of a duly recognized state or local~~
84 ~~professional society of health care providers which maintains a~~

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85 ~~medical review committee. No professional society shall expel or~~
 86 ~~suspend a member solely because he or she participates in a~~
 87 ~~health maintenance organization licensed under part I of chapter~~
 88 ~~641.~~

89 (2)(3) This section shall apply to all policies issued or
 90 renewed after October 1, 2003.

91 Section 4. Section 627.41491, Florida Statutes, is created
 92 to read:

93 627.41491 Full disclosure of insurance information.--The
 94 Office of Insurance Regulation shall provide health care
 95 providers with a comparison of the rates in effect for each
 96 medical malpractice insurer and self-insurer risk retention
 97 group and the Florida Medical Malpractice Joint Underwriting
 98 Association. The chart shall include comparisons of the rates of
 99 a variety of specialties and shall reflect the differing rates
 100 by geographic region, years in practice, and the discounts and
 101 surcharges available, including those required under s.
 102 627.4147(2) for the loss and disciplinary record of the
 103 potential insured. Such rate comparison chart shall be made
 104 available to the public through the Internet no later than
 105 January 1 of each year.

106 Section 5. Section 627.41493, Florida Statutes, is created
 107 to read:

108 627.41493 Medical malpractice insurance rate rollback.--
 109 (1) For any coverage for medical malpractice insurance
 110 subject to this chapter issued or renewed on or after October 1,
 111 2007, each insurer shall reduce its rates to levels that are at

112 least 25 percent less than the rates for the same coverage that
 113 were in effect on September 15, 2003.

114 (2) Notwithstanding any other provision of law, commencing
 115 October 1, 2007, insurance rates for medical malpractice subject
 116 to this chapter shall be approved by the director of the Office
 117 of Insurance Regulation prior to being used.

118 (3) Any separate affiliate of an insurer is subject to the
 119 provisions of this section.

120 Section 6. Section 627.41495, Florida Statutes, is amended
 121 to read:

122 (Substantial rewording of section. See s.
 123 627.41495, Florida Statutes, for present text.)
 124 627.41495 Consumer participation in rate review.--

125 (1) Upon the filing of a proposed rate change by a medical
 126 malpractice insurer, self-insurer, or risk retention group, the
 127 director of the Office of Insurance Regulation shall require the
 128 insurer, self-insurer, or risk retention group to give notice to
 129 the public and to the insureds or associations of insureds of
 130 the insurer, self-insurer, or risk retention group making the
 131 filing.

132 (2) The rate filing shall be available for public
 133 inspection. If any insureds or associations of insureds of the
 134 insurer, self-insurer, or risk retention group filing the
 135 proposed rate change requests the director of the office to hold
 136 a hearing within 30 days after the mailing of the notification
 137 of the proposed rate changes to the insureds, the director shall
 138 hold a hearing within 30 days after such request. Any consumer

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139 may participate in such hearing, and the office shall adopt
140 rules governing such participation.

141 (3) The Public Counsel shall have standing to request a
142 hearing in according with this section.

143 Section 7. Section 627.41496, Florida Statutes, is created
144 to read:

145 627.41496 Legislative intent; findings; limitation.--

146 (1) It is the intent of the Legislature that medical
147 malpractice rates be based upon projected losses and expenses
148 that reflect the current state of the law in this state
149 regarding medical malpractice claims. The Legislature finds that
150 there is no justification for basing rates on the prior 5 to 10
151 years of loss experience and expenses when significant
152 restrictions on the rights of patients and their families were
153 enacted in 2003 that have significantly impacted both the
154 frequency and severity of medical malpractice claims, including,
155 but not limited to, caps on noneconomic damages, expert witness
156 restrictions, and other barriers to full recovery for victims of
157 medical malpractice and their families.

158 (2) Notwithstanding any provision of law, rule, policy, or
159 industry standard, rates for medical malpractice insurance filed
160 with the Office of Insurance Regulation prior to September 15,
161 2009, shall not be based upon the loss and expense experience of
162 more than 5 years prior to such date. For rates filed with the
163 Office of Insurance Regulation on or after September 15, 2009,
164 insurers may base such filings on the loss and expense
165 experience of 2004 and thereafter but may not base rates on loss
166 and expense experience prior to that year.

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167 Section 8. Paragraphs (h) and (i) of subsection (2) and
168 subsection (5) of section 627.912, Florida Statutes, are
169 amended, subsection (6) is renumbered as subsection (8),
170 subsection (7) is renumbered as subsection (9) and amended, and
171 new subsections (6) and (7) are added to that section, to read:

172 627.912 Professional liability claims and actions; reports
173 by insurers and health care providers; annual report by
174 office.--

175 (2) The reports required by subsection (1) shall contain:

176 (h) The total number, names, and health care provider
177 professional license numbers of all defendants involved in the
178 claim, and any non-party health care provider who appeared on
179 the jury verdict form in any case.

180 (i) The date and amount of judgment or settlement, if any,
181 including the itemization of the verdict from the jury verdict
182 form.

183 (5) Any self-insurance program established under s.
184 1004.24 shall report to the office any claim or action for
185 damages for personal injuries claimed to have been caused by
186 error, omission, or negligence in the performance of
187 professional services provided by the state university board of
188 trustees through an employee or agent of the state university
189 board of trustees, including practitioners of medicine licensed
190 under chapter 458, practitioners of osteopathic medicine
191 licensed under chapter 459, podiatric physicians licensed under
192 chapter 461, and dentists licensed under chapter 466, or based
193 on a claimed performance of professional services without
194 consent if the claim resulted in a final judgment in any amount,

195 or a settlement in any amount. The reports required by this
 196 subsection shall contain the information required by subsection
 197 (3) and the name, address, and specialty of the employee or
 198 agent of the state university board of trustees whose
 199 performance or professional services is alleged in the claim or
 200 action to have caused personal injury. Such employee or agent
 201 shall report such claim to the Department of Health to be
 202 included on that employee's or agent's practitioner profile.

203 (6) Each entity required to report closed claims for the
 204 classification of insurance set forth in subsection (1) shall
 205 also provide to the office the following financial information,
 206 specific to this state and countrywide, if applicable, for the
 207 prior calendar year:

208 (a) Direct premiums written.

209 (b) Direct premiums earned.

210 (c) Incurred loss and loss expense developed according to
 211 the formula $A + B - C + D - E + F + G - H$, for which A equals
 212 the dollar amount of losses paid, B equals the reserves for
 213 reported claims at the end of the current year, C equals the
 214 reserves for reported claims at the end of the previous year, D
 215 equals the reserves for incurred but not reported claims at the
 216 end of the current year, E equals the reserves for incurred but
 217 not reported claims at the end of the previous year, F equals
 218 loss adjustment expenses paid, G equals the reserves for loss
 219 adjustment expenses at the end of the current year, and H equals
 220 the reserves for loss adjustment expenses at the end of the
 221 previous year.

222 (d) Incurred expenses allocated separately to commissions,
 223 other acquisition costs, general expenses, taxes, licenses, and
 224 fees, using appropriate estimates when necessary.

225 (e) Policyholder dividends.

226 (f) Underwriting gain or loss.

227 (g) Net investment income, including net realized capital
 228 gains and losses, using appropriate estimates where necessary.

229 (h) Federal income taxes.

230 (i) Net income.

231 (7) The director of the office may levy an administrative
 232 fine of \$1,000 per day against any insurer failing to comply
 233 with the reporting requirements of this section.

234 (9)-(7)- The office ~~commission~~ may adopt rules requiring
 235 persons and entities required to report pursuant to this section
 236 to also report data related to the frequency and severity of
 237 open claims for the reporting period, amounts reserved for
 238 incurred claims, changes in reserves from the previous reporting
 239 period, and other information considered relevant to the ability
 240 of the office to monitor losses and claims development in the
 241 Florida medical malpractice insurance market.

242 Section 9. The Office of Insurance Regulation may adopt
 243 rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes,
 244 to administer this act.

245 Section 10. This act shall take effect July 1, 2007.