

By Senator Smith

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1 A bill to be entitled
2 An act relating to insurance; amending s. 501.212,
3 F.S.; removing an exemption from regulation under the
4 Florida Deceptive and Unfair Trade Practices Act
5 provided for persons or activities regulated by the
6 Office of Insurance Regulation of the Financial
7 Services Commission; creating s. 624.156, F.S.;
8 specifying that the business of insurance is subject
9 to the Florida Deceptive and Unfair Trade Practices
10 Act; amending s. 627.062, F.S.; clarifying that an
11 affiliate of a medical malpractice insurer is subject
12 to the provisions that govern rates for medical
13 malpractice insurance; requiring an insurer to apply a
14 discount or surcharge, exclusive of any other
15 discounts, credits, or rate differentials, based on
16 the health care provider's loss experience and
17 disciplinary action taken by the state or the Federal
18 Government, a health care facility, or a health care
19 plan; prohibiting a medical malpractice liability
20 insurer from using a rate or charging a premium unless
21 certain conditions are met; requiring the Office of
22 Insurance Regulation to consider, as part of the
23 insurer's rate base, the insurer's loss adjustment
24 expenses or defense and cost containment expenses;
25 providing that a rate or rate change may not be
26 justified by an insurer's loss adjustment expenses or
27 defense and cost containment expenses in excess of the
28 national average; deleting the requirement that a rate
29 filing be sworn to by executive officers of an

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30 insurer; requiring a chief executive officer or chief
31 financial officer of a medical malpractice insurer and
32 the chief actuary of a medical malpractice insurer to
33 certify specified information that must accompany a
34 rate filing; providing a penalty for a signing officer
35 who makes a false certification; providing for the
36 disapproval of a rate filing under certain conditions;
37 requiring the commission to adopt rules; providing
38 legislative intent and findings; prohibiting rates for
39 medical malpractice insurance filed with the Office of
40 Insurance Regulation before a specified date from
41 being based upon the loss and expense experience of
42 more than a specified number of years; authorizing
43 insurers to base rate filings on the loss and expense
44 experience of a specified year and thereafter;
45 requiring the director of the Office of Insurance
46 Regulation to approve the insurance rates for medical
47 malpractice before such rates are used; repealing s.
48 627.4147(2), F.S., relating to medical malpractice
49 insurance contracts; amending s. 627.912, F.S.;
50 revising the requirements for reports made to the
51 office for any written claim or action for damages for
52 personal injuries claimed to have been caused by
53 error, omission, or negligence in the performance of
54 certain insureds' professional services; requiring the
55 office to impose a fine against an insurer, commercial
56 self-insurance fund, medical malpractice self-
57 insurance fund, an insurer providing professional
58 liability insurance to a member of The Florida Bar, or

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59 a risk retention group that violates the requirements
60 of insurer reporting; creating s. 627.41491, F.S.;
61 requiring the Office of Insurance Regulation to
62 publish a comparison of the rates in effect for each
63 medical malpractice insurer, self-insurer, risk
64 retention group, and the Florida Medical Malpractice
65 Joint Underwriting Association; requiring the office
66 to make the rate comparison chart available to the
67 public on its website and to annually update the
68 chart; amending s. 627.41495, F.S.; requiring the
69 medical malpractice insurer or self-insurance fund to
70 mail notice of a filing of a proposed rate change to
71 its policyholders or members and the Office of the
72 Consumer Advocate; providing that the consumer
73 advocate has standing to request, intervene, or
74 participate in a rate hearing; requiring the office to
75 receive into evidence any materials, information, or
76 studies submitted by members of the public or the
77 consumer advocate; authorizing the consumer advocate
78 and any policyholders or members of the insurer or
79 self-insurance fund to request a rate hearing on a
80 proposed rate change; requiring the director of the
81 Office of Insurance Regulation to hold such hearing;
82 requiring the office to adopt rules to administer the
83 act; providing an effective date.

84
85 Be It Enacted by the Legislature of the State of Florida:

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87 Section 1. Subsection (4) of section 501.212, Florida

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88 Statutes, is amended to read:

89 501.212 Application.—This part does not apply to:

90 (4) Any person or activity regulated under laws
91 administered by:

92 ~~(a) The Office of Insurance Regulation of the Financial
93 Services Commission;~~

94 (a) ~~(b)~~ Banks and savings and loan associations regulated by
95 the Office of Financial Regulation of the Financial Services
96 Commission;

97 (b) ~~(e)~~ Banks or savings and loan associations regulated by
98 federal agencies; or

99 (c) ~~(d)~~ Any person or activity regulated under the laws
100 administered by the former Department of Insurance which are now
101 administered by the Department of Financial Services.

102 Section 2. Section 624.156, Florida Statutes, is created to
103 read:

104 624.156 Applicability of consumer protection laws to the
105 business of insurance.—Notwithstanding any provision of law to
106 the contrary, the business of insurance is subject to the
107 Florida Deceptive and Unfair Trade Practices Act, ss. 501.201-
108 501.213, and the protections afforded consumers in those
109 statutes apply to insurance consumers.

110 Section 3. Paragraphs (a) and (e) of subsection (7) of
111 section 627.062, Florida Statutes, are amended, present
112 paragraph (f) of that subsection is redesignated as paragraph
113 (g) and amended, and new paragraph (f) and paragraphs (h) and
114 (i) are added to that subsection, to read:

115 627.062 Rate standards.—

116 (7) (a) The provisions of this subsection apply only with

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117 respect to rates for medical malpractice insurance and shall
118 control to the extent of any conflict with other provisions of
119 this section. Any separate affiliate of an insurer is subject to
120 this subsection.

121 (e) The insurer must apply a discount or surcharge,
122 exclusive of any other discounts, credits, or rate
123 differentials, based on the health care provider's loss
124 experience and disciplinary action taken by the state or the
125 Federal Government, a health care facility, or a health care
126 plan, or shall establish an alternative method giving due
127 consideration to the provider's loss experience and disciplinary
128 record. The insurer must include in the filing a copy of the
129 surcharge or discount schedule or a description of the
130 alternative method used, and must provide a copy of such
131 schedule or description, as approved by the office, to
132 policyholders at the time of renewal and to prospective
133 policyholders at the time of application for coverage. A medical
134 malpractice liability insurer may not use any rate or charge any
135 premium unless the insurer has filed such schedule or
136 alternative method with the Office of Insurance Regulation and
137 the office has approved such schedule or alternative method.

138 (f) In reviewing any rate filing under this subsection, the
139 office shall consider as part of the insurer's rate base the
140 insurer's loss adjustment expenses or defense and cost
141 containment expenses only to the extent that the expenses are
142 below or do not exceed the national average for such expenses,
143 as determined by the office, for the prior calendar year. An
144 insurer's loss adjustment expenses or defense and cost
145 containment expenses in excess of the national average may not

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146 be used to justify a rate or rate change.

147 (g)~~(f)~~ Each medical malpractice insurer must make a rate
148 filing under this section, ~~sworn to by at least two executive~~
149 ~~officers of the insurer,~~ at least once each calendar year.

150 1. Effective July 1, 2011, the chief executive officer or
151 chief financial officer of a medical malpractice insurer and the
152 chief actuary of a medical malpractice insurer must certify
153 under oath and subject to the penalty of perjury, on a form
154 approved by the commission, the following information, which
155 must accompany a rate filing:

156 a. The signing officer and actuary have reviewed the rate
157 filing;

158 b. Based on the signing officer's and actuary's knowledge,
159 the rate filing does not contain any untrue statement of a
160 material fact or omit to state a material fact necessary in
161 order to make the statements made, in light of the circumstances
162 under which such statements were made, not misleading;

163 c. Based on the signing officer's and actuary's knowledge,
164 the information and other factors described in paragraph (2) (b),
165 including, but not limited to, investment income, fairly present
166 in all material respects the basis of the rate filing for the
167 periods presented in the filing; and

168 d. Based on the signing officer's and actuary's knowledge,
169 the rate filing reflects all premium savings that are reasonably
170 expected to result from legislative enactments, including, but
171 not limited to, chapters 2003-416 and 2006-6, Laws of Florida,
172 and are in accordance with generally accepted and reasonable
173 actuarial techniques.

174 2. A signing officer or actuary knowingly making a false

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175 certification under this subsection commits a violation of s.
176 626.9541(1)(e) and is subject to the penalties under s.
177 626.9521.

178 3. Failure by the officer or actuary to provide such
179 certification shall result in the rate filing being disapproved
180 without prejudice to be refiled.

181 4. The commission may adopt rules and forms pursuant to ss.
182 120.536(1) and 120.54 to administer this paragraph.

183 (h) It is the intent of the Legislature that medical
184 malpractice rates be based upon projected losses and expenses
185 that reflect the current restrictions on the recovery of
186 individuals in medical malpractice claims in this state,
187 including, but not limited to, those provisions contained in
188 chapters 2003-416 and 2006-6, Laws of Florida. The Legislature
189 finds that there is no justification for basing rates on the
190 prior 10 years of loss experience and expenses when in the
191 intervening years significant restrictions on the legal rights
192 and recoveries of patients and their families have been enacted.
193 Accordingly, notwithstanding any law, rule, policy, or industry
194 practice to the contrary, rates for medical malpractice
195 insurance filed with the Office of Insurance Regulation before
196 September 15, 2009, may not be based upon the loss and expense
197 experience of more than 5 years before that date. For rates
198 filed with the Office of Insurance Regulation on or after
199 September 15, 2011, insurers may base such filings on the loss
200 and expense experience of 2006 and thereafter, but may not base
201 rates on loss and expense experience before that year.

202 (i) Notwithstanding any law to the contrary, commencing
203 July 1, 2011, the director of the Office of Insurance Regulation

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204 must approve the rates for medical malpractice insurance which
205 are subject to this chapter before such rates are used.

206 Section 4. Subsection (2) of section 627.4147, Florida
207 Statutes, is repealed.

208 Section 5. Subsections (2) and (4) of section 627.912,
209 Florida Statutes, are amended to read:

210 627.912 Professional liability claims and actions; reports
211 by insurers and health care providers; annual report by office.-

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

213 (a) The name, address, health care provider professional
214 license number, and specialty coverage of the insured.

215 (b) The insured's policy number.

216 (c) The date of the occurrence which created the claim.

217 (d) The date the claim was reported to the insurer or self-
218 insurer.

219 (e) The name and address of the injured person. This
220 information is confidential and exempt from the provisions of s.
221 119.07(1), and must not be disclosed by the office without the
222 injured person's consent, except for disclosure by the office to
223 the Department of Health. This information may be used by the
224 office for purposes of identifying multiple or duplicate claims
225 arising out of the same occurrence.

226 (f) The date of suit, if filed.

227 (g) The injured person's age and sex.

228 (h) The total number, names, and health care provider
229 professional license numbers of all defendants involved in the
230 claim and any nonparty health care provider who appeared on the
231 jury verdict form in any case.

232 (i) The date and amount of judgment or settlement, if any,

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233 including the itemization of the verdict from the jury verdict
234 form.

235 (j) In the case of a settlement, such information as the
236 office may require with regard to the injured person's incurred
237 and anticipated medical expense, wage loss, and other expenses.

238 (k) The loss adjustment expense paid to defense counsel,
239 and all other allocated loss adjustment expense paid.

240 (l) The date and reason for final disposition, if no
241 judgment or settlement.

242 (m) A summary of the occurrence which created the claim,
243 which shall include:

244 1. The name of the institution, if any, and the location
245 within the institution at which the injury occurred.

246 2. The final diagnosis for which treatment was sought or
247 rendered, including the patient's actual condition.

248 3. A description of the misdiagnosis made, if any, of the
249 patient's actual condition.

250 4. The operation, diagnostic, or treatment procedure
251 causing the injury.

252 5. A description of the principal injury giving rise to the
253 claim.

254 6. The safety management steps that have been taken by the
255 insured to make similar occurrences or injuries less likely in
256 the future.

257 (n) Any other information required by the commission, by
258 rule, to assist the office in its analysis and evaluation of the
259 nature, causes, location, cost, and damages involved in
260 professional liability cases.

261 (4) There shall be no liability on the part of, and no

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262 cause of action of any nature shall arise against, any person or
263 entity reporting hereunder or its agents or employees or the
264 office or its employees for any action taken by them under this
265 section. The office shall ~~may~~ impose a fine of up to \$250 per
266 day per case, but not to exceed a total of \$10,000 per case,
267 against an insurer, commercial self-insurance fund, medical
268 malpractice self-insurance fund, or risk retention group that
269 violates the requirements of this section, except that the
270 office shall ~~may~~ impose a fine of \$250 per day per case, not to
271 exceed a total of \$1,000 per case, against an insurer providing
272 professional liability insurance to a member of The Florida Bar,
273 which insurer violates the provisions of this section. If a
274 health care practitioner or health care facility violates the
275 requirements of this section, it shall be considered a violation
276 of the chapter or act under which the practitioner or facility
277 is licensed and shall be grounds for a fine or disciplinary
278 action as such other violations of the chapter or act. The
279 office may adjust a fine imposed under this subsection by
280 considering the financial condition of the licensee, premium
281 volume written, ratio of violations to compliancy, and other
282 mitigating factors as determined by the office.

283 Section 6. Section 627.41491, Florida Statutes, is created
284 to read:

285 627.41491 Public rate comparison information.—The Office of
286 Insurance Regulation shall publish, in the form of a chart, a
287 comparison of the rates in effect for each medical malpractice
288 insurer, self-insurer, risk retention group, and the Florida
289 Medical Malpractice Joint Underwriting Association. The chart
290 shall include comparison of the rates of a variety of

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291 specialties and shall reflect the differing rates by geographic
292 region, years in practice, and the discounts and surcharges
293 available, including an insured's disciplinary record and loss
294 experience as provided in s. 627.062(7)(e). The rate comparison
295 chart shall be made available to the public on the Office of
296 Insurance Regulation's website and shall be updated at least
297 annually beginning January 1, 2012.

298 Section 7. Section 627.41495, Florida Statutes, is amended
299 to read:

300 627.41495 Public notice of medical malpractice rate
301 filings; consumer advocate participation in rate review.-

302 (1) Upon the filing of a proposed rate change by a medical
303 malpractice insurer or self-insurance fund, which filing would
304 result in an average statewide increase or decrease of 10 ~~25~~
305 percent or more, pursuant to standards determined by the office,
306 the insurer or self-insurance fund shall mail notice of such
307 filing to each of its policyholders or members and the Office of
308 the Consumer Advocate.

309 (2) The consumer advocate has standing to request,
310 intervene, or participate in a rate hearing in accordance with
311 the requirements of this section. The office shall receive into
312 evidence as part of the record any materials, information, or
313 studies submitted by the members of the public or the consumer
314 advocate.

315 (3) The consumer advocate and any policyholders or members
316 of the insurer or self-insurance fund may request a rate hearing
317 on the proposed rate change within 30 days after the mailing of
318 the notification of the proposed rate change. The director of
319 the Office of Insurance Regulation shall hold such hearing

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320 within 30 days after receiving a request for a hearing.

321 (4)~~(2)~~ The rate filing shall be available for public
322 inspection.

323 Section 8. The Office of Insurance Regulation shall adopt
324 rules to administer the provisions of this act.

325 Section 9. This act shall take effect July 1, 2011.