

HB 1157

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1 A bill to be entitled
2 An act relating to insurance; amending s. 501.212, F.S.;
3 specifying that pt. II of ch. 501, F.S., the Deceptive and
4 Unfair Trade Practice Act, applies to the business of
5 insurance; creating s. 624.156, F.S.; providing
6 applicability of pt. II of ch. 501, F.S., to the business
7 of insurance; amending s. 627.062, F.S.; providing that
8 rate standards for medical malpractice insurance apply to
9 a separate affiliate of an insurer; revising provisions
10 relating to application of discounts or surcharges;
11 requiring a medical malpractice liability insurer to file
12 a surcharge or discount schedule with the Director of the
13 Office of Insurance Regulation before applying certain
14 rates or surcharges; requiring the office to consider
15 certain factors in determining an insurer's rate base;
16 requiring a medical malpractice insurer to provide
17 specified information when submitting a rate filing;
18 providing penalties; providing legislative findings and
19 intent with regard to medical malpractice rates; requiring
20 medical malpractice insurance rates to be approved by the
21 Director of the Office of Insurance Regulation after a
22 specified date; providing the Financial Services
23 Commission with rulemaking authority; amending s.
24 627.4147, F.S.; deleting provisions authorizing an insurer
25 covered by a medical malpractice insurance contract to
26 require an insured to be a member in good standing of
27 certain professional societies; creating s. 627.41491,
28 F.S.; requiring the office to publish a medical

29 malpractice insurance rate comparison chart and to post
 30 the chart on its Internet website; amending s. 627.41495,
 31 F.S.; requiring a medical malpractice insurer or self-
 32 insurance fund to provide notice to its policyholders or
 33 members and the consumer advocate of specified decreases
 34 in rates; granting the consumer advocate standing with
 35 regard to rate hearings; requiring the Director of the
 36 Office of Insurance Regulation to hold a rate hearing
 37 within a specified period of time after receiving a
 38 request for a hearing; amending s. 627.912, F.S.; revising
 39 requirements for reporting professional liability claims
 40 and actions; requiring fines to be imposed under certain
 41 circumstances; providing an effective date.

42

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

44

45 Section 1. Subsection (4) of section 501.212, Florida
 46 Statutes, is amended to read:

47 501.212 Application.—This part does not apply to:

48 (4) ~~Any person or activity regulated under laws~~
 49 ~~administered by:~~

50 ~~(a) The Office of Insurance Regulation of the Financial~~
 51 ~~Services Commission;~~

52 (a) ~~(b)~~ Banks and savings and loan associations regulated
 53 by the Office of Financial Regulation of the Financial Services
 54 Commission;

55 (b) ~~(c)~~ Banks or savings and loan associations regulated by
 56 federal agencies; or

57 (c)~~(d)~~ Any person or activity regulated under the laws
 58 administered by the former Department of Insurance which are now
 59 administered by the Department of Financial Services, other than
 60 laws relating to the regulation of the business of insurance.

61 Section 2. Section 624.156, Florida Statutes, is created
 62 to read:

63 624.156 Applicability of consumer protection laws to the
 64 business of insurance.—Notwithstanding any provision of law to
 65 the contrary, the business of insurance is subject to ss.
 66 501.201-501.213, the Florida Deceptive and Unfair Trade
 67 Practices Act, and the protections afforded consumers under that
 68 act apply to insurance consumers.

69 Section 3. Paragraphs (a) and (e) of subsection (7) of
 70 section 627.062, are amended, present paragraph (f) of that
 71 subsection is redesignated as paragraph (g) and amended, and new
 72 paragraphs (f), (h), (i), and (j) are added to that subsection
 73 to read:

74 627.062 Rate standards.—

75 (7) (a) ~~The provisions of~~ This subsection applies ~~apply~~
 76 only with respect to rates for medical malpractice insurance and
 77 shall control to the extent of any conflict with other
 78 provisions of this section. Any separate affiliate of an insurer
 79 is subject to this subsection.

80 (e) The insurer must apply a discount or surcharge,
 81 exclusive of any other discounts, credits, or rate
 82 differentials, based on the health care provider's loss
 83 experience and disciplinary action taken by the Federal
 84 Government, the state, a health care facility, or a health care

85 plan or must ~~shall~~ establish an alternative method giving due
 86 consideration to the provider's loss experience and disciplinary
 87 record. The insurer must include in the filing a copy of the
 88 surcharge or discount schedule or a description of the
 89 alternative method used, and must provide a copy of such
 90 schedule or description, as approved by the office, to
 91 policyholders at the time of renewal and to prospective
 92 policyholders at the time of application for coverage. A medical
 93 malpractice liability insurer may not use any rate or charge any
 94 premium unless the insurer has filed such schedule or
 95 alternative method with the Director of the Office of Insurance
 96 Regulation and the director has approved such schedule or
 97 alternative method.

98 (f) In reviewing any rate filing under this subsection,
 99 the office shall consider as part of the insurer's rate base the
 100 insurer's loss cost adjustment expenses or defense cost and
 101 containment expenses only to the extent that the expenses are at
 102 or below the national average for such expenses, as determined
 103 by the office, for the prior calendar year. An insurer's loss
 104 cost adjustment expenses or defense cost and containment
 105 expenses in excess of the national average may not be used to
 106 justify a rate or rate change.

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

110 1. Effective July 1, 2011, a rate filing must be
 111 accompanied by a certification by the chief executive officer or
 112 chief financial officer of a medical malpractice insurer and the

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113 chief actuary of a medical malpractice insurer, under oath and
114 subject to the penalty of perjury, on a form approved by the
115 commission, that the signing officer and actuary have reviewed
116 the rate filing and that, based on the signing officer's and
117 actuary's knowledge:

118 a. The rate filing does not contain any untrue statement
119 of a material fact or any omission to state a material fact
120 necessary in order to make the statements made, in light of the
121 circumstances under which such statements were made, not
122 misleading.

123 b. The factors described in paragraph (2) (b), including,
124 but not limited to, investment income, fairly present in all
125 material respects the basis of the rate filing for the periods
126 presented in the rate filing.

127 c. The rate filing reflects all premium savings that are
128 reasonably expected to result from legislative enactments,
129 including, but not limited to, chapters 2003-416 and 2006-6,
130 Laws of Florida, and is in accordance with generally accepted
131 and reasonable actuarial techniques.

132 2. A signing officer or actuary knowingly making a false
133 certification under this paragraph commits a violation of s.
134 626.9541(1)(e) and is subject to the penalties provided in s.
135 626.9521.

136 3. Failure by the signing officer and actuary to provide
137 such certification shall result in the rate filing being
138 disapproved without prejudice to be refiled.

139 (h) It is the intent of the Legislature that medical
140 malpractice rates be based upon projected losses and expenses

141 that reflect the current restrictions on the recovery of
 142 individuals in medical malpractice claims in this state,
 143 including, but not limited to, those provisions contained in
 144 chapters 2003-416 and 2006-6, Laws of Florida. The Legislature
 145 finds that there is no justification for basing rates on the
 146 prior 10 years of loss experience and expenses when in the
 147 intervening years significant restrictions on the legal rights
 148 and recoveries of patients and their families have been enacted.
 149 Accordingly, notwithstanding any law, rule, policy, or industry
 150 practice to the contrary, rates for medical malpractice
 151 insurance filed with the office after July 1, 2011, may not be
 152 based upon the loss and expense experience of more than 5 years
 153 prior to that date.

154 (i) Notwithstanding any law to the contrary, beginning
 155 July 1, 2011, insurance rates for medical malpractice subject to
 156 this chapter must be approved by the Director of the Office of
 157 Insurance Regulation prior to being used.

158 (j) The commission may adopt rules pursuant to ss.
 159 120.536(1) and 120.54 to administer this subsection.

160 Section 4. Subsection (3) of section 627.4147, Florida
 161 Statutes, is renumbered as subsection (2), and present
 162 subsection (2) of that section is amended to read:

163 627.4147 Medical malpractice insurance contracts.—

164 ~~(2) Each insurer covered by this section may require the~~
 165 ~~insured to be a member in good standing, i.e., not subject to~~
 166 ~~expulsion or suspension, of a duly recognized state or local~~
 167 ~~professional society of health care providers which maintains a~~
 168 ~~medical review committee. No professional society shall expel or~~

169 ~~suspend a member solely because he or she participates in a~~
 170 ~~health maintenance organization licensed under part I of chapter~~
 171 ~~641.~~

172 Section 5. Section 627.41491, Florida Statutes, is created
 173 to read:

174 627.41491 Public rate comparison information.—The office
 175 shall publish a chart comparing the rates in effect for the
 176 Florida Medical Malpractice Joint Underwriting Association and
 177 each medical malpractice insurer, self-insurer, and risk
 178 retention group. The chart shall include comparisons of the
 179 rates of a variety of specialties and shall reflect the
 180 differing rates by geographic region, years in practice, and
 181 discounts and surcharges available, including those required
 182 under s. 627.062(7)(e) for the loss and disciplinary record of
 183 the potential insured. Such rate comparison chart shall be made
 184 available to the public on the office website and shall be
 185 updated at least annually beginning January 1, 2013.

186 Section 6. Section 627.41495, Florida Statutes, is amended
 187 to read:

188 627.41495 Public notice of medical malpractice rate
 189 filings; consumer advocate participation in rate review.—

190 (1) Upon the filing of a proposed rate change by a medical
 191 malpractice insurer or self-insurance fund, which filing would
 192 result in an average statewide increase or decrease of 10 ~~25~~
 193 percent or more, pursuant to standards determined by the office,
 194 the insurer or self-insurance fund shall mail notice of such
 195 filing to each of its policyholders or members and the consumer
 196 advocate appointed pursuant to s. 627.0613.

197 (2) The consumer advocate shall have standing to request
 198 or intervene and to participate in a rate hearing in accordance
 199 with the requirements of this section. The office shall receive
 200 into evidence as part of the record any materials, information,
 201 or studies submitted by the members of the public or the
 202 consumer advocate.

203 (3) The consumer advocate and any policyholder or member
 204 of the insurer or self-insurer may request a rate hearing on the
 205 proposed rate change within 30 days after the mailing of the
 206 notification of the proposed rate change. The Director of the
 207 Office of Insurance Regulation shall hold the hearing within 30
 208 days after receiving a request for a hearing.

209 ~~(4)-(2)~~ The rate filing shall be available for public
 210 inspection.

211 Section 7. Paragraphs (h) and (i) of subsection (2) and
 212 subsection (4) of section 627.912, Florida Statutes, are amended
 213 to read:

214 627.912 Professional liability claims and actions; reports
 215 by insurers and health care providers; annual report by office.—

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

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

221 (i) The date and amount of judgment or settlement, if any,
 222 including the itemization of the verdict from the jury verdict
 223 form.

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

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225 cause of action of any nature shall arise against, any person or
226 entity reporting hereunder or its agents or employees or the
227 office or its employees for any action taken by them under this
228 section. The office shall ~~may~~ impose a fine of up to \$250 per
229 day per case, but not to exceed a total of \$10,000 per case,
230 against an insurer, commercial self-insurance fund, medical
231 malpractice self-insurance fund, or risk retention group that
232 violates the requirements of this section, except that the
233 office shall ~~may~~ impose a fine of \$250 per day per case, not to
234 exceed a total of \$1,000 per case, against an insurer providing
235 professional liability insurance to a member of The Florida Bar,
236 which insurer violates the provisions of this section. If a
237 health care practitioner or health care facility violates the
238 requirements of this section, it shall be considered a violation
239 of the chapter or act under which the practitioner or facility
240 is licensed and shall be grounds for a fine or disciplinary
241 action as such other violations of the chapter or act. The
242 office may adjust a fine imposed under this subsection by
243 considering the financial condition of the licensee, premium
244 volume written, ratio of violations to compliancy, and other
245 mitigating factors as determined by the office.

246 Section 8. This act shall take effect July 1, 2011.