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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

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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

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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~~

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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.