

# CHAPTER 97-214

## House Bill No. 743

An act relating to insurance; amending s. 624.424, F.S.; increasing the time limit on an insurer's use of certain accountants; amending s. 627.311, F.S.; providing civil immunity for certain persons associated with the Florida Joint Underwriting Association; providing an exception; amending s. 626.321, F.S.; authorizing certain entities that hold a limited license for credit life and disability insurance to sell credit property insurance; providing an effective date.

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

Section 1. Section 624.22, Florida Statutes, is created to read:

624.22 Purpose of chapter.—The purpose of this chapter is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public. It is the intent of the Legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature requires that upon the insolvency of a non-United States insurer or reinsurer which provides security to fund its United States obligations in accordance with this chapter, such security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in this chapter are fundamental to the business of insurance in accordance with 15 U.S.C. ss. 1011-1012.

Section 2. Paragraph (b) of subsection (2) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(2)

(b) Credit in accounting and financial statements on account of reinsurance ceded to a nonapproved reinsurer may be allowed only:

1. When it is demonstrated by the ceding insurer to the satisfaction of the department that such reinsurer maintains the standards and meets the financial requirements applicable to an authorized insurer;

2. To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or such deposits or funds are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from

the trust cannot be made without the consent of the ceding insurer. The funds withheld may be cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value equal to or greater than the credit taken; or

3. To the extent that the amount of a clean, unconditional, evergreen, and irrevocable letter of credit, issued for a term of not less than 1 year and in conformity with the requirements set forth in this subparagraph, equals or exceeds the liability of an unauthorized or unapproved reinsurer for unearned premiums, outstanding losses, and an adequate reserve for incurred but not reported losses under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit be issued under arrangements satisfactory to the department as constituting security to the ceding insurer substantially equal to that of a deposit under subparagraph 2. and that the letter be issued by a banking institution which is a member of the Federal Reserve System and which has financial standing satisfactory to the commissioner. The department may adopt rules requiring that the letter adhere in its wording to a format for letters of credit as the format has been or may be adopted or approved by the National Association of Insurance Commissioners.

4. When the reinsurance is ceded to a reinsurer which maintains a trust fund, in a bank or trust company that is subject to supervision by any state of the United States or that is a member of the Federal Reserve System, for the payment of the valid claims for business written in the United States. The trust shall consist of a trustee account in an amount not less than the reinsurer's liabilities attributable to reinsurance by ceding insurers for business written in the United States and, in addition, the reinsurer shall maintain a trustee surplus of not less than \$20 million. Such trust shall be established in a form approved, and any amendments to the trust approved, by the insurance commissioner where the trust is domiciled, or the insurance commissioner of another state who, pursuant to the terms of the trust agreement, has accepted principal regulatory oversight of the trust. The trust shall remain in effect for as long as the reinsurer has outstanding obligations due under the reinsurance agreements subject to the trust. The trust assets must be in cash or securities which are qualified as admitted assets under part II of chapter 625 and which have a market value of the required liabilities and trustee surplus. The reinsurer shall report quarterly to the insurance commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the insurance commissioner to determine the sufficiency of the trust fund. The trust and the reinsurer shall be subject to examination as determined by the commissioner.

5. The credit permitted by subparagraph 4. and the credit permitted by subparagraph 2. shall not be allowed unless the assuming insurer in substance agrees in the trust agreement to the following conditions:

a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by the department or, if the grantor of the trust has been declared

insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the superintendent with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the superintendent with regulatory oversight all of the assets of United States trust beneficiaries.

b. The assets shall be distributed by, and claims of United States trust beneficiaries shall be filed with and valued by, the superintendent with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

c. If the superintendent with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims for business written in the United States, the assets or any part thereof shall be returned by the superintendent with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

Section 3. Paragraph (d) of subsection (8) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(8)

(d) An insurer may not use the same accountant or partner of an accounting firm responsible for preparing the report required by this subsection for more than 7 5 consecutive years. Following this period, the insurer may not use such accountant or partner for a period of 2 years, but may use another accountant or partner of the same firm. An insurer may request the department to waive this prohibition based upon an unusual hardship to the insurer and a determination that the accountant is exercising independent judgment that is not unduly influenced by the insurer considering such factors as the number of partners, expertise of the partners or the number of insurance clients of the accounting firm; the premium volume of the insurer; and the number of jurisdictions in which the insurer transacts business.

Section 4. Subsection (3) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers.—

(3) The department may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate

therein. The plan shall be subject to continuous review by the department which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the department shall be subject to the provisions of chapter 120. If adopted, the plan and the association created under the plan:

(a) Must be subject to all provisions of s. 627.351(1), except apportionment of applicants.

(b) May provide for one or more designated insurers, able and willing to provide policy and claims service, to act on behalf of all other insurers to provide insurance for applicants who are in good faith entitled to, but unable to, procure insurance through the voluntary insurance market at standard rates.

(c) Must provide that designated insurers will issue policies of insurance and provide policyholder and claims service on behalf of all insurers for the joint underwriting association.

(d) Must provide for the equitable apportionment among insurers of losses and expenses incurred.

(e) Must provide that the joint underwriting association will operate subject to the supervision and approval of a board of governors consisting of 11 individuals, including 1 who will be elected as chairman. Five members of the board must be appointed by the Insurance Commissioner. Two of the commissioner's appointees must be chosen from the insurance industry. Any board member appointed by the Insurance Commissioner may be removed and replaced by him at any time without cause. Six members of the board must be appointed by the participating insurers, two of whom must be from the insurance agents' associations. All board members, including the chairman, must be appointed to serve for 2-year terms beginning annually on a date designated by the plan.

(f) Must provide that an agent appointed to a servicing carrier must be a licensed general lines agent of an insurer which is authorized to write automobile liability and physical damage insurance in the state and which is actively writing such coverage in the county in which the agent is located, or the immediately adjoining counties, or an agent who places a volume of other property and casualty insurance in an amount equal to the premium volume placed with the Florida Joint Underwriting Association. The department may, however, determine that an agent may be appointed to a servicing carrier if, after public hearing, the department finds that consumers in the agent's operating area would not have adequate and reasonable access to the purchase of automobile insurance if the agent were not appointed to a servicing carrier.

(g) Must make available noncancelable coverage as provided in s. 627.7275(2).

(h) Must provide for the furnishing of a list of insureds and their mailing addresses upon the request of a member of the association or an insurance

agent licensed to place business with an association member. The list must indicate whether the insured is currently receiving a good driver discount from the association. The plan may charge a reasonable fee to cover the cost incurred in providing the list.

(i) Must not provide a renewal credit or discount or any other inducement designed to retain a risk.

(j) Must not provide any other good driver credit or discount that is not actuarially sound. In addition to other criteria that the plan may specify, to be eligible for a good driver credit, an insured must not have any criminal traffic violations within the most recent 36-month period preceding the date the discount is received.

(k) Shall have no liability, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of governors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for or arising out of breach of any contract or agreement pertaining to insurance, or any willful tort.

Section 5. Paragraph (e) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified individual, or a qualified individual or entity under paragraphs (d) and (e), a license as agent authorized to transact a limited class of business in any of the following categories:

(e) Credit life or disability insurance.—License covering only credit life or disability insurance. The license may be issued only to an individual employed by a life or health insurer as an officer or other salaried or commissioned representative, or to an individual employed by or associated with a lending or financing institution or creditor, and may authorize the sale of such insurance only with respect to borrowers or debtors of such lending or financing institution or creditor. However, only the individual or entity whose tax identification number is used in receiving or is credited with receiving the commission from the sale of such insurance shall be the licensed agent of the insurer. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of life or health insurance coverage. An entity other than a lending or financial institution defined in s. 626.988 holding a limited license under this paragraph shall also be authorized to sell credit property insurance.

Section 6. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.