CHAPTER 2002-282

Council Substitute for House Bill No. 385

An act relating to insurance; amending s. 624.4072, F.S.; extending the term of the exemption from taxes and assessments on minority-owned property and casualty insurers; postponing the scheduled repeal of the law; amending s. 215.555, F.S.; redefining the term "covered policy"; amending ss. 324.031, 324.032, F.S.; revising the required amounts of insurance required for certain for-hire passenger transportation vehicles; amending s. 627.410, F.S.; exempting group health insurance policies insuring groups of a certain size from rate-filing requirements; amending s. 625.041, F.S.; revising the liabilities that a workers' compensation insurer must include on its financial statements; amending s. 627.7283, F.S.; revising criteria and procedures for cancellation of a motor vehicle insurance policy; providing for return of unearned premium under certain circumstances; providing for interest under certain circumstances; providing for civil action under certain circumstances; amending s. 627.9408, F.S.; authorizing the department to adopt by rule certain provisions of the Long-Term Care Insurance Model Regulation, as adopted by the National Association of Insurance Commissioners; amending s. 641.35, F.S.; providing for the investment of funds of a health maintenance organization in excess of certain reserves and surplus under certain circumstances; amending s. 631.904, F.S.; redefining the term "covered claim"; providing retroactivity; amending s. 627.351, F.S.; revising provisions governing financing arrangements and dissolutions; providing legislative intent; providing effective dates.

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

Section 1. Section 624.4072, Florida Statutes, is amended to read:

624.4072 Minority-owned property and casualty insurers; limited exemption for taxation and assessments.—

(1) A minority business that is at least 51 percent owned by minority persons, as defined in s. 288.703(3), initially issued a certificate of authority in this state as an authorized insurer after May 1, 1998, and before January 1, 2002, to write property and casualty insurance shall be exempt, for a period not to exceed 10 ~~5~~ years from the date of receiving its certificate of authority, from the following taxes and assessments:

(a) Taxes imposed under ss. 175.101, 185.08, and 624.509;

(b) Assessments by the Florida Residential Property and Casualty Joint Underwriting Association or by the Florida Windstorm Underwriting Association, as provided under s. 627.351, except for emergency assessments collected from policyholders pursuant to s. 627.351(2)(b)2.d.(III) and (6)(b)3.d. Any such insurer shall be a member insurer of the Florida Windstorm Underwriting Association and the Florida Residential Property and

Casualty Joint Underwriting Association. The premiums of such insurer shall be included in determining, for the Florida Windstorm Underwriting Association, the aggregate statewide direct written premium for property insurance and in determining, for the Florida Residential Property and Casualty Joint Underwriting Association, the aggregate statewide direct written premium for the subject lines of business for all member insurers.

(2) Subsection (1) applies only to personal lines and commercial lines residential property insurance policies as defined in s. 627.4025, and applies only to an insurer that has employees in this state and has a home office or a regional office in this state. With respect to any tax year or assessment year, the exemptions provided by subsection (1) apply only if during the year an average of at least 10 percent of the insurer's Florida residential property policies in force covered properties located in enterprise zones designated pursuant to s. 290.0065.

(3) The provision of the definition of "minority person" in s. 288.703(3) that requires residency in Florida shall not apply to the term "minority person" as used in this section or s. 627.3511.

(4) This section is repealed effective December 31, 2010 ~~July 1, 2003~~, and the tax and assessment exemptions authorized by this section shall terminate on such date.

Section 2. Paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including any joint underwriting association or similar entity created pursuant to law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association, created pursuant to s. 627.351(6), or from the Florida Windstorm Underwriting Association, created pursuant to s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and either such association. Each assumption agreement between either association and such authorized insurer must be approved by the Florida Department of Insurance prior to the effective date of the assumption, and the Department of Insurance must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes

wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer.

Section 3. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association. The operator or owner of any other vehicle may prove his or her financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151;

(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7);

(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161; or

(4) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2) or subsection (3) shall post a bond or deposit equal to the number of vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/250,000/50,000 ~~$50,000/100,000/50,000~~ or $300,000 ~~$150,000~~ combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).

Section 4. Subsection (1) of section 324.032, Florida Statutes, is amended to read:

324.032 Manner of proving financial responsibility; for-hire passenger transportation vehicles.—

(1) Notwithstanding the provisions of s. 324.031, a person who is either the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may prove financial responsibility by satisfying the following:

(a) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.031; or

(b) Complying with the provisions of s. 324.171, such compliance to be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by the Department of Insurance, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant must provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 ~~$100,000~~ and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Department of Insurance. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with paragraph (a) is obtained.

Section 5. Paragraph (a) of subsection (6) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(6)(a) An insurer shall not deliver or issue for delivery or renew in this state any health insurance policy form until it has filed with the department a copy of every applicable rating manual, rating schedule, change in rating manual, and change in rating schedule; if rating manuals and rating schedules are not applicable, the insurer must file with the department applicable premium rates and any change in applicable premium rates. This paragraph does not apply to group health insurance policies, effectuated and delivered in this state, insuring groups of 51 or more persons, except for Medicare supplement insurance, long-term care insurance, and any coverage under which the increase in claim costs over the lifetime of the contract due to advancing age or duration is prefunded in the premium.

Section 6. Effective retroactively to January 1, 2002, subsection (5) is added to section 625.041, Florida Statutes, to read:

625.041 Liabilities, in general.—In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(5) Any insurer in this state which writes workers' compensation insurance shall accrue a liability on its financial statements for all Special Disability Trust Fund assessments that are due within the current calendar year. In addition, such insurers shall also disclose in the notes to the financial statements required to be filed pursuant to s. 624.424 an estimate of

future Special Disability Trust Fund assessments, if such assessments are likely to occur and can be estimated with reasonable certainty.

Section 7. Section 627.7283, Florida Statutes, is amended to read:

627.7283 Cancellation; return of premium.—

(1) If the insured ~~or insurer~~ cancels a policy of motor vehicle insurance, the insurer must mail ~~return~~ the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation, whichever is later. This requirement applies to a cancellation initiated by an insured for any reason. ~~issuance or receipt by the insurer of notice of cancellation. If the unearned premium is not returned within the 30-day period, the insurer must pay 8 percent interest on the amount due. If the unearned premium is not returned within 45 days after receipt of the notice, the insured may bring an action against the insurer pursuant to s. 624.155.~~

(2) If an insurer cancels a policy of motor vehicle insurance, the insurer must mail the unearned premium portion of any premium within 15 days after the effective date of the policy cancellation.

(3) If the unearned premium is not mailed within the applicable period, the insurer must pay to the insured 8 percent interest on the amount due. If the unearned premium is not mailed within 45 days after the applicable period, the insured may bring an action against the insurer pursuant to s. 624.155.

(4)~~(2)~~ If the insured cancels, the insurer may retain up to 10 percent of the unearned premium and must refund at least 90 percent of the unearned premium. If the insurer cancels, the insurer must refund 100 percent of the unearned premium. Cancellation is without prejudice to any claim originating prior to the effective date of the cancellation. For purposes of this section, unearned premiums must be computed on a pro rata basis.

Section 8. Section 627.9408, Florida Statutes, is amended to read:

627.9408 Rules.—

(1) The department may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement the provisions of~~ this part.

(2) The department may adopt by rule the provisions of the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners in the second quarter of the year 2000 which are not in conflict with the Florida Insurance Code.

Section 9. Subsection (15) of section 641.35, Florida Statutes, is amended to read:

641.35 Assets, liabilities, and investments.—

(15) ~~SPECIAL CONSENT~~ INVESTMENT OF EXCESS FUNDS.—

(a) After satisfying the requirements of this part, any funds of a health maintenance organization in excess of its statutorily required reserves and surplus may be invested:

1. Without limitation in any investments otherwise authorized by this part; or

2. In such other investments not specifically authorized by this part provided such investments do not exceed the lesser 5 percent of the health maintenance organization's admitted assets or 25 percent of the amount by which a health maintenance organization's surplus exceeds its statutorily required minimum surplus. A health maintenance organization may exceed the limitations of this subparagraph only with the prior written approval of the department.

(b) Nothing in this section authorizes a health maintenance organization to:

1. Invest any funds in excess of the amount by which its actual surplus exceeds its statutorily required minimum surplus; or

2. Make any investment prohibited by this code ~~Any investment of the health maintenance organization's funds not enumerated in this part requires the prior approval of the department~~.

Section 10. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision shall be applied retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the Department of Insurance filed a petition in circuit court alleging insolvency and the date the court entered an order appointing a receiver.

Section 11. Effective July 1, 2002, and contingent upon SB 1418 becoming a law, paragraph (k) of subsection (6) of section 627.351, Florida Statutes, is amended and paragraph (p) is added to that subsection, to read:

(6) CITIZENS ~~RESIDENTIAL~~ PROPERTY INSURANCE CORPORATION ~~AND CASUALTY JOINT UNDERWRITING ASSOCIATION~~.—

(k) Upon a determination by the department ~~board of governors~~ that the conditions giving rise to the establishment and activation of the corporation ~~association~~ no longer exist, ~~and upon the consent thereto by order of the department,~~ the corporation ~~association~~ is dissolved. Upon dissolution, the assets of the association shall be applied first to pay all debts, liabilities, and obligations of the corporation ~~association~~, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation ~~association~~ shall become property of the state and deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

(p) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the applicable account of the corporation. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and subsection (6), respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or subsection (6), respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

Section 12. The amendments to section 627.351, Florida Statutes, in this act prevail over any conflicting amendments to that section contained in SB 1418.

Section 13. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2002.

Became a law without the Governor's approval May 29, 2002.

Filed in Office Secretary of State May 28, 2002.