

Committee Substitute for Senate Bill No. 1926

An act relating to workers' compensation; creating s. 624.4315, F.S.; requiring workers' compensation insurers to notify the Office of Insurance Regulation of significant underwriting changes; amending s. 627.171, F.S.; providing that the 10-percent limit on the percentage of commercial insurance policies that an insurer may write at a rate in excess of the applicable filed rate excludes workers' compensation policies written for an employer in lieu of coverage from the joint underwriting plan established under s. 627.311(5), F.S.; amending s. 627.211, F.S.; revising the standards used by the Office of Insurance Regulation in approving or disapproving an insurer's deviation from the approved workers' compensation rate filing; requiring the Office of Insurance Regulation to submit an annual report to the Legislature which evaluates competition in the workers' compensation insurance market; providing an effective date.

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

Section 1. Section 624.4315, Florida Statutes, is created to read:

624.4315 Workers' compensation insurers; notice of significant underwriting change.—Each workers' compensation insurer shall notify the office in writing or by electronic means of a significant underwriting change that materially limits or restricts the number of workers' compensation policies or premiums written in this state. The commission may adopt rules to administer this requirement.

Section 2. Section 627.171, Florida Statutes, is amended to read:

627.171 Excess rates.—

(1) With written consent of the insured signed prior to the policy inception date and filed with the insurer, the insurer may use a rate in excess of the otherwise applicable filed rate on any specific risk. The signed consent form must include the filed rate as well as the excess rate for the risk insured, and a copy of the form must be maintained by the insurer for 3 years and be available for review by the office.

(2) An insurer may not use excess rates pursuant to this section for more than 10 percent of its commercial insurance policies written or renewed in each calendar year for any line of commercial insurance or for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year for any line of personal insurance. In determining the 10-percent limitation for commercial insurance policies, the insurer shall exclude any workers' compensation policy that was written for an employer who had coverage in the joint underwriting plan created by s. 627.311(5) immediately prior to the writing of the policy by the insurer and any workers' compensation policy that was written for an employer who had been offered coverage in the joint underwriting plan but who was written a policy

by the insurer in lieu of accepting the joint underwriting plan policy. These workers' compensation policies shall be excluded from the 10-percent limitation for the first 3 years of coverage.

Section 3. Subsection (3) of section 627.211, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

627.211 Deviations; workers' compensation and employer's liability insurances.—

(3) In considering an application for the deviation, the office shall give consideration to the applicable principles for ratemaking as set forth in ss. 627.062 and 627.072 and, the financial condition of the insurer, ~~and the impact of the deviation on the current market conditions including the composition of the market, the stability of rates, and the level of competition in the market.~~ In evaluating the financial condition of the insurer, the office may consider: (1) the insurer's audited financial statements and whether the statements provide unqualified opinions or contain significant qualifications or "subject to" provisions; (2) any independent or other actuarial certification of loss reserves; (3) whether workers' compensation and employer's liability reserves are above the midpoint or best estimate of the actuary's reserve range estimate; (4) the adequacy of the proposed rate; (5) historical experience demonstrating the profitability of the insurer; (6) the existence of excess or other reinsurance that contains a sufficiently low attachment point and maximums that provide adequate protection to the insurer; and (7) other factors considered relevant to the financial condition of the insurer by the office. The office shall approve the deviation if it finds it to be justified, it would not endanger the financial condition of the insurer, ~~it would not adversely affect the current market conditions including the composition of the market, the stability of rates, and the level of competition in the market,~~ and it that the deviation would not constitute predatory pricing. ~~The office~~ It shall disapprove the deviation if it finds that the resulting premiums would be excessive, inadequate, or unfairly discriminatory, would endanger the financial condition of the insurer, ~~or would adversely affect current market conditions including the composition of the marketplace, the stability of rates, and the level of competition in the market,~~ or would result in predatory pricing. The insurer may not use a deviation unless the deviation is specifically approved by the office. An insurer may apply the premiums approved pursuant to s. 627.091 or its uniform deviation approved pursuant to this section to a particular insured according to underwriting guidelines filed with and approved by the office, such approval to be based on ss. 627.062 and 627.072.

(6) The office shall submit an annual report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year which evaluates competition in the workers' compensation insurance market in this state. The report must contain an analysis of the availability and affordability of workers' compensation coverage and whether the current market structure, conduct, and performance are conducive to competition, based upon economic analysis and tests. The purpose of this report is to aid the Legislature in determining whether changes to the workers' compensation rating laws are warranted. The report must also document that

the office has complied with the provisions of s. 627.096 which require the office to investigate and study all workers' compensation insurers in the state and to study the data, statistics, schedules, or other information as it finds necessary to assist in its review of workers' compensation rate filings.

Section 4. This act shall take effect July 1, 2004.

Approved by the Governor May 21, 2004.

Filed in Office Secretary of State May 21, 2004.