

## CHAPTER 2011-174

### Committee Substitute for House Bill No. 1087

An act relating to insurance; amending s. 440.12, F.S.; authorizing payment of workers' compensation benefits on a prepaid card under certain circumstances; requiring the keeping and furnishing, upon request, of certain records; providing for the adoption of rules; amending s. 440.20, F.S.; specifying when an insurer's obligation to pay workers' compensation benefits is satisfied if payment is made on a prepaid card; amending s. 440.49, F.S.; revising the dates applicable to calculations of annual assessments upon certain workers' compensation insurers relating to the special disability trust fund; providing application to specified years and rate filings; amending s. 624.402, F.S.; providing an exemption from having to obtain a certificate of authority to insurers that cover only nonresidents of the United States under certain conditions; requiring such insurers to provide certain documentation to the Office of Insurance Regulation; requiring certificates, policies, or contracts issued by such insurers to include a disclaimer relating to the coverage provided; defining a "nonresident" for purposes of applying the exemption provided to such insurers from having to obtain a certificate of authority; providing penalties applicable to alien insurers who transact insurance without complying with certain provisions; deleting procedures and requirements relating to an exemption from obtaining a certificate of authority provided to alien insurers who issue life insurance policies and annuity contracts to certain nonresidents; amending s. 624.424, F.S.; revising the timeframes that limit how frequently an insurer may use the same accountant or partner to prepare an annual audited financial report; amending s. 626.207, F.S.; defining the term "financial services business"; precluding licensure under the Florida Insurance Code of specified persons who commit specified offenses; providing application to convictions and certain pleas, regardless of adjudication; establishing waiting periods relating to other specified offenses during which time an applicant is disqualified for licensure; granting rulemaking authority to the Department of Financial Services relating to specific penalties against licensees; clarifying rule-making authority relating to penalties against licensees; providing that specified statutory provisions prohibiting prior crimes from being a bar to employment are not applicable to applicants for licensure under the Florida Insurance Code; amending s. 626.7451, F.S.; requiring funds collected for an insurer to be held in a bank insured by the Federal Deposit Insurance Corporation; amending s. 626.8651, F.S.; revising requirements for a public adjuster apprentice license to include additional qualifying designations; amending s. 627.4133, F.S.; changing the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in situations involving the nonrenewal, renewal premium, cancellation, or termination of workers' compensation, employer liability, or certain property and casualty insurance coverage; specifying that the date of cancellation of a workers' compensation or employer's

liability policy is the date of the insured's written request to cancel; amending s. 627.4137, F.S.; requiring a claimant's request concerning insurance coverage to be served upon the disclosing entity in a specified manner; amending s. 627.7277, F.S.; making a conforming change that specifies the "first-named insured" as the person who is to receive notification of a renewal premium; amending s. 627.728, F.S.; changing the designated person or persons who must be notified by an insurer from the "insured" to the "first-named insured" in certain situations involving the cancellation or nonrenewal of motor vehicle insurance coverage; making a conforming change that specifies the "first-named insured's insurance agent" as a person who is to receive certain notifications relating to motor vehicle insurance coverage; amending s. 627.7281, F.S.; making a conforming change that specifies the "first-named insured" as the person who is to receive notification of cancellation of motor vehicle insurance coverage; amending s. 634.403, F.S.; exempting certain persons providing service warranties relating to consumer products from licensing requirements under certain circumstances; amending s. 627.442, F.S.; limiting the requirement for premium audits of workers' compensation coverage to specified instances; amending s. 627.7295, F.S.; providing application; requiring a certain amount of motor vehicle insurance premium to be paid before the effective date of a policy binder or policy in order to issue the binder or policy; authorizing an insurer to cancel certain motor vehicle insurance policies or binders for nonpayment of premium; removing a restriction requiring payment of the first policy payment of a motor vehicle insurance policy before issuance of a binder or policy when payments are being made in a specified manner; amending s. 626.916, F.S.; revising provisions relating to insurance coverage eligibility for export under the Surplus Lines Law; providing applicability; amending s. 817.234, F.S.; revising a cross-reference; providing civil penalties consisting of monetary fines relating to making false and fraudulent insurance claims for the purpose of receiving motor vehicle insurance proceeds; providing escalating monetary fines for repeat offenses; providing a mandatory minimum civil fine relating to certain international motor vehicle accident schemes; allocating fine revenues to a specified trust fund for specified purposes; authorizing certain agreements between a defendant and a state attorney relating to the payment of civil fines for making false and fraudulent insurance claims for the purpose of receiving motor vehicle insurance proceeds; providing effective dates.

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

Section 1. Subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) ~~No Compensation is not shall be~~ allowed for the first 7 days of the disability, except for benefits provided under ~~for in~~ s. 440.13. However, if the

injury results in disability of more than 21 days, compensation shall be allowed from the commencement of the disability.

(a) All weekly compensation payments, except for the first payment, shall be paid by check or, if authorized by the employee, on a prepaid card pursuant to paragraph (b) or deposited directly into the employee’s account at a financial institution. As used in this subsection, the term “financial institution” means a financial institution as defined in s. 655.005(1)(h).

(b) Upon receipt of authorization by the employee as provided in paragraph (a), a carrier may use a prepaid card to deliver the payment of compensation to an employee if the employee is:

1. Provided with at least one means of accessing his or her entire compensation payment once per week without incurring fees;

2. Provided with the ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and

3. Provided with the terms and conditions of the prepaid card program, including a description of any fees that may be assessed.

(c) Each carrier shall keep a record of all payments made under this subsection, including the time and manner of such payments, and shall furnish these records or a report based on these records to the Division of Insurance Fraud and the Division of Workers’ Compensation, upon request.

(d) The department may adopt rules to administer this section.

Section 2. Paragraph (a) of subsection (1) of section 440.20, Florida Statutes, is amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(1)(a) Unless it denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as required by ss. 440.14, 440.15, and 440.16, in accordance with the obligations set forth in those such sections. Upon receipt of the employee’s authorization as provided for in s. 440.12(1)(a) If authorized by the employee, the carrier’s obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee’s account at a financial institution or onto a prepaid card in accordance with s. 440.12(1). As used in this paragraph, the term “financial institution” means a financial institution as defined in s. 655.005(1)(h). Compensation by direct deposit or through the use of a prepaid card is considered paid on the date the funds become available for withdrawal by the employee.

Section 3. Paragraph (b) of subsection (9) of section 440.49, Florida Statutes, is amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(9) SPECIAL DISABILITY TRUST FUND.—

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals as defined in s. 628.6011, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. The department shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided.

2. The annual assessment shall be calculated to produce during the next calendar ensuing fiscal year an amount which, when combined with that part of the balance anticipated to be in the fund on December 31 ~~June 30~~ of the current calendar fiscal year which is in excess of \$100,000, is equal to the average of:

a. The sum of disbursements from the fund during the immediate past 3 calendar years, and

b. Two times the disbursements of the most recent calendar year.

c. Such assessment rate shall first apply on a calendar year basis for the period beginning January 1, 2012, and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1, 2012. The assessment rate effective January 1, 2011, shall also apply to the interim period from July 1, 2011, through December 31, 2011, and shall be included in workers' compensation rate filings, whether regular or amended, approved by the office which become effective on or after July 1, 2011. Thereafter, the annual assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.

Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers. Provided however, for those carriers that have excluded ceded reinsurance premiums from their assessments on or before January 1, 2000, no assessments on ceded reinsurance premiums shall be paid by those carriers until such time as the former Division of Workers' Compensation of the Department of Labor and Employment Security or the department advises each of those carriers of the impact that the inclusion of ceded reinsurance premiums has on their assessment. The department may not recover any past underpayments of assessments levied against any carrier that on or before January 1, 2000, excluded ceded reinsurance premiums from their assessment prior to the

point that the former Division of Workers' Compensation of the Department of Labor and Employment Security or the department advises of the appropriate assessment that should have been paid.

3. The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.

4. The Chief Financial Officer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

Section 4. Subsection (8) of section 624.402, Florida Statutes, is amended to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8)(a) An insurer domiciled outside the United States covering only persons who, at the time of issuance or renewal, are nonresidents of the United States if:

1. The insurer or any affiliated person as defined in s. 624.04 under common ownership or control with the insurer does not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued for delivery to any person in any state;

2. The insurer registers with the office via a letter of notification upon commencing business from this state;

3. The insurer provides the following information, in English, to the office annually by March 1:

a. The name of the insurer, the country of domicile, the address of the insurer's principal office and office in this state, the names of the owners of the insurer and their percentage of ownership, the names of the officers and directors of the insurer, the name, e-mail, and telephone number of a contact person for the insurer, and the number of individuals who are employed by the insurer or its affiliates in this state;

b. The lines of insurance and types of products offered by the insurer;

c. A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered for those lines of insurance and types of products in that domicile; and

d. A copy of the filings required by the applicable regulatory body of the insurer's country of domicile in that country's official language or in English, if available;

4. All certificates, policies, or contracts issued in this state showing coverage under the insurer's policy include the following statement in a contrasting color and at least 10-point type: "The policy providing your coverage and the insurer providing this policy have not been approved by the Florida Office of Insurance Regulation"; and

5. In the event the insurer ceases to do business from this state, the insurer will provide written notification to the office within 30 days after cessation.

(b) For purposes of this subsection, "nonresident" means a person who resides in and maintains a physical place of domicile in a country other than the United States, which he or she recognizes as and intends to maintain as his or her permanent home. A nonresident does not include an unauthorized immigrant present in the United States. Notwithstanding any other provision of law, it is conclusively presumed, for purposes of this subsection, that a person is a resident of the United States if such person has:

1. Had his or her principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;

2. Registered to vote in any state;

3. Made a statement of domicile in any state; or

4. Filed for homestead tax exemption on property in any state.

(c) Subject to the limitations provided in this subsection, services, including those listed in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

(d) An alien insurer transacting insurance in this state without complying with this subsection shall be in violation of this chapter and subject to the penalties provided in s. 624.15.

~~-(a) Life insurance policies or annuity contracts issued by an insurer domiciled outside the United States covering only persons who, at the time of issuance, are not residents of the United States and are not nonresidents illegally residing in the United States, provided:~~

~~1. The insurer must currently be an authorized insurer in its country of domicile as to the kind or kinds of insurance proposed to be offered and must have been such an insurer for not fewer than the immediately preceding 3 years, or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible authorized insurer as to the kind or kinds of insurance proposed for a period of not fewer~~

than the immediately preceding 3 years. However, the office may waive the 3-year requirement if the insurer has operated successfully for a period of at least the immediately preceding year and has capital and surplus of not less than \$25 million.

~~2. Before the office may grant eligibility, the requesting insurer shall furnish the office with a duly authenticated copy of its current annual financial statement, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.~~

~~3. The insurer must have and maintain surplus as to policyholders of not less than \$15 million. Any such surplus as to policyholders shall be represented by investments consisting of eligible investments for like funds of like domestic insurers under part II of chapter 625; however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625.~~

~~4. The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.~~

~~5. To maintain eligibility, the insurer shall furnish the office within the time period specified in s. 624.424(1)(a) a duly authenticated copy of its current annual and quarterly financial statements, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.~~

~~6. An insurer receiving eligibility under this subsection shall agree to make its books and records pertaining to its operations in this state available for inspection during normal business hours upon request of the office.~~

~~7. The insurer shall provide to the applicant for the policy or contract a copy of the most recent quarterly financial statements of the insurer providing, in clear and conspicuous language:~~

~~a. The date of organization of the insurer.~~

~~b. The identity of and rating assigned by each recognized insurance company rating organization that has rated the insurer or, if applicable, that the insurer is unrated.~~

~~c. That the insurer does not hold a certificate of authority issued in this state and that the office does not exercise regulatory oversight over the insurer.~~

~~d. The identity and address of the regulatory authority exercising oversight of the insurer.~~

~~This paragraph does not impose upon the office any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer, and the status of eligibility, if granted by the office, indicates only that the insurer appears to be financially sound and to have satisfactory claims practices and that the office has no credible evidence to the contrary.~~

~~(b) If at any time the office has reason to believe that an insurer issuing policies or contracts pursuant to this subsection is insolvent or is in unsound financial condition, does not make reasonable prompt payment of benefits, or is no longer eligible under the conditions specified in this subsection, the office may conduct an examination or investigation in accordance with s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of such examination or investigation warrant, may withdraw the eligibility of the insurer to issue policies or contracts pursuant to this subsection without having a certificate of authority issued by the office.~~

~~(c) This subsection does not provide an exception to the agent licensure requirements of chapter 626. Any insurer issuing policies or contracts pursuant to this subsection shall appoint the agents that the insurer uses to sell such policies or contracts as provided in chapter 626.~~

~~(d) An insurer issuing policies or contracts pursuant to this subsection is subject to part IX of chapter 626, Unfair Insurance Trade Practices, and the office may take such actions against the insurer for a violation as are provided in that part.~~

~~(e) Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509.~~

~~(f) Applications for life insurance coverage offered under this subsection must contain, in contrasting color and not less than 12-point type, the following statement on the same page as the applicant's signature:~~

~~This policy is primarily governed by the laws of a foreign country. As a result, all of the rating and underwriting laws applicable to policies filed in this state do not apply to this coverage, which may result in your premiums being higher than would be permissible under a Florida-approved policy. Any purchase of individual life insurance should be considered carefully, as future medical conditions may make it impossible to qualify for another individual life policy. If the insurer issuing your policy becomes insolvent, this policy is not covered by the Florida Life and Health Insurance Guaranty Association. For information concerning individual life coverage under a Florida-approved policy, consult your agent or the Florida Department of Financial Services.~~



~~-(g) All life insurance policies and annuity contracts issued pursuant to this subsection must contain on the first page of the policy or contract, in contrasting color and not less than 10-point type, the following statement:~~

~~The benefits of the policy providing your coverage are governed primarily by the law of a country other than the United States.~~

~~-(h) All single premium life insurance policies and single premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States pursuant to this subsection shall be subject to the provisions of chapter 896.~~

Section 5. 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 5 ~~7~~ consecutive years. Following this period, the insurer may not use such accountant or partner for a period of 5 ~~2~~ years, but may use another accountant or partner of the same firm. An insurer may request the office 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 6. Effective upon this act becoming a law, section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority ~~Department rulemaking authority; waiting periods for applicants; penalties against licensees.~~—

(1) For purposes of this section, the term “financial services business” means any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation. ~~The department shall adopt rules establishing specific waiting periods for applicants to become eligible for licensure following denial, suspension, or revocation pursuant to s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of the waiting periods is to provide sufficient time to demonstrate reformation of character and rehabilitation. The waiting periods shall vary based on the type of conduct and the length of time since the conduct occurred and shall also be based on~~

~~the probability that the propensity to commit illegal conduct has been overcome. The waiting periods may be adjusted based on aggravating and mitigating factors established by rule and consistent with this purpose.~~

(2) For purposes of this section, the terms “felony of the first degree” and “capital felony” include all felonies designated as such by the Florida Statutes, as well as any felony so designated in the jurisdiction in which the plea is entered or judgment is rendered.

(3) An applicant who commits a felony of the first degree, a capital felony, a felony involving money laundering, fraud, or embezzlement, or a felony directly related to the financial services business is permanently barred from applying for a license under this part. This bar applies to convictions, guilty pleas, or nolo contendere pleas, regardless of adjudication, by any applicant, officer, director, majority owner, partner, manager, or other person who manages or controls any applicant.

(4) For all other crimes not included in subsection (3), the department shall adopt rules establishing the process and application of disqualifying periods that include:

(a) A 15-year disqualifying period for all felonies involving moral turpitude that are not specifically included in the permanent bar contained in subsection (3).

(b) A 7-year disqualifying period for all felonies to which neither the permanent bar in subsection (3) nor the 15-year disqualifying period in paragraph (a) applies.

(c) A 7-year disqualifying period for all misdemeanors directly related to the financial services business.

(5) The department shall adopt rules providing for additional disqualifying periods due to the commitment of multiple crimes and other factors reasonably related to the applicant’s criminal history. The rules shall provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 7 years and may not mitigate the disqualifying periods in paragraphs (4)(b) and (c).

(6) For purposes of this section, the disqualifying periods begin upon the applicant’s final release from supervision or upon completion of the applicant’s criminal sentence, including payment of fines, restitution, and court costs for the crime for which the disqualifying period applies.

(7) After the disqualifying period has been met, the burden is on the applicant to demonstrate that the applicant has been rehabilitated, does not pose a risk to the insurance-buying public, is fit and trustworthy to engage in the business of insurance pursuant to s. 626.611(7), and is otherwise qualified for licensure.

(8)(2) The department shall adopt rules establishing specific penalties against licensees in accordance with ss. 626.641 and 626.651 for violations of s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of the revocation or suspension is to provide a sufficient penalty to deter future violations of the Florida Insurance Code. The imposition of a revocation or the length of suspension shall be based on the type of conduct and the probability that the propensity to commit further illegal conduct has been overcome at the time of eligibility for relicensure. ~~The revocation or the length of suspension may be adjusted based on aggravating or mitigating factors, established by rule and consistent with this purpose.~~

(9) Section 112.011 does not apply to any applicants for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, customer representatives, or managing general agents.

Section 7. Subsection (3) of section 626.7451, Florida Statutes, is amended to read:

626.7451 Managing general agents; required contract provisions.—No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibility for a particular function, specifies the division of responsibilities, and contains the following minimum provisions:

(3) All funds collected for the account of the insurer shall be held by the managing general agent in a fiduciary capacity in a bank which is insured by the Federal Deposit Insurance Corporation a member of the Federal Reserve System. ~~This~~ This account shall be used for all payment as directed by the insurer. The managing general agent may retain up to no more than 60 days of estimated claims payments and allocated loss adjustment expenses.

For the purposes of this section and ss. 626.7453 and 626.7454, the term “controlling person” or “controlling” has the meaning set forth in s. 625.012(5)(b)1., and the term “controlled person” or “controlled” has the meaning set forth in s. 625.012(5)(b)2.

Section 8. Subsection (4) of section 626.8651, Florida Statutes, is amended to read:

626.8651 Public adjuster apprentice license; qualifications.—

(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting

damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.

Section 9. Paragraphs (a) and (b) of subsection (1), paragraphs (a) and (b) of subsection (2), and subsection (4) of section 627.4133, Florida Statutes, are amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(1) Except as provided in subsection (2):

(a) An insurer issuing a policy providing coverage for workers' compensation and employer's liability insurance, property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728, shall give the first-named ~~named~~ insured at least 45 days' advance written notice of nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice shall state the reason or reasons as to why the policy is not to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium prior to the expiration date of the policy to be renewed.

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the first-named ~~named~~ insured written notice of cancellation or termination other than nonrenewal at least 45 days prior to the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph and s. 440.42(3), the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

2. When such cancellation or termination occurs during the first 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

After the policy has been in effect for 90 days, no such policy shall be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. This subsection does not apply to individually rated risks having a policy term of less than 90 days.

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(a) The insurer shall give the first-named ~~named~~ insured at least 45 days' advance written notice of the renewal premium.

(b) The insurer shall give the first-named ~~named~~ insured written notice of nonrenewal, cancellation, or termination at least 100 days prior to the effective date of the nonrenewal, cancellation, or termination. However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30. The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

1. The insurer shall give the first-named ~~named~~ insured written notice of nonrenewal, cancellation, or termination at least 180 days prior to the effective date of the nonrenewal, cancellation, or termination for a first-named ~~named~~ insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.

2. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if

such membership is a condition precedent to insurance coverage. “Nonpayment of premium” also means the failure of a financial institution to honor an insurance applicant’s check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full.

3. When such cancellation or termination occurs during the first 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days’ written notice of cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

4. The requirement for providing written notice of nonrenewal by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days prior to the effective date of nonrenewal:

a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida.

b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement or renewal coverage to the policyholder.

After the policy has been in effect for 90 days, the policy shall not be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.

(4) Notwithstanding ~~the provisions of s. 440.42(3)~~, if cancellation of a policy providing coverage for workers’ compensation and employer’s liability insurance is requested in writing by the insured, such cancellation shall be effective on the date requested by the insured or, if no date is specified by the insured, cancellation shall be effective on the date of the written request. ~~The carrier is not required to send notice of cancellation to the insured if the~~

~~cancellation is requested in writing by the insured the carrier sends the notice of cancellation to the insured.~~ Any retroactive assumption of coverage and liabilities under a policy providing workers' compensation and employer's liability insurance may not exceed 21 days.

Section 10. Subsection (3) is added to section 627.4137, Florida Statutes, to read:

627.4137 Disclosure of certain information required.—

(3) Any request made to a self-insured corporation pursuant to this section shall be sent by certified mail to the registered agent of the disclosing entity.

Section 11. Subsection (2) of section 627.7277, Florida Statutes, is amended to read:

627.7277 Notice of renewal premium.—

(2) An insurer shall mail or deliver to the first-named insured ~~its policyholder~~ at least 30 days' advance written notice of the renewal premium for the policy.

Section 12. Paragraph (a) of subsection (3), paragraphs (a) and (d) of subsection (4), and subsections (5) and (6) of section 627.728, Florida Statutes, are amended to read:

627.728 Cancellations; nonrenewals.—

(3)(a) No notice of cancellation of a policy to which this section applies shall be effective unless mailed or delivered by the insurer to the first-named named insured and to the first-named named insured's insurance agent at least 45 days prior to the effective date of cancellation, except that, when cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. No notice of cancellation of a policy to which this section applies shall be effective unless the reason or reasons for cancellation accompany the notice of cancellation.

(4)(a) No insurer shall fail to renew a policy unless it mails or delivers to the first-named named insured, at the address shown in the policy, and to the first-named named insured's insurance agent at her or his business address, at least 45 days' advance notice of its intention not to renew; and the reasons for refusal to renew must accompany such notice. This subsection does not apply:

1. If the insurer has manifested its willingness to renew; or
2. In case of nonpayment of premium.

Notwithstanding the failure of an insurer to comply with this subsection, the policy shall terminate on the effective date of any other automobile liability

insurance policy procured by the insured with respect to any automobile designated in both policies. Unless a written explanation for refusal to renew accompanies the notice of intention not to renew, the policy shall remain in full force and effect.

(d) Instead of canceling or nonrenewing a policy, an insurer may, upon expiration of the policy term, transfer a policy to another insurer under the same ownership or management as the transferring insurer, by giving the first-named ~~named~~ insured at least 45 days' advance notice of its intent to transfer the policy and of the premium and the specific reasons for any increase in the premium.

(5) United States postal proof of mailing or certified or registered mailing of notice of cancellation, of intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management, to the first-named ~~named~~ insured at the address shown in the policy shall be sufficient proof of notice.

(6) When a policy is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy to which subsection (4) applies, the insurer shall notify the first-named ~~named~~ insured of her or his possible eligibility for insurance through the Automobile Joint Underwriting Association. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew and shall state that such notice of availability of the Automobile Joint Underwriting Association is given pursuant to this section.

Section 13. Section 627.7281, Florida Statutes, is amended to read:

627.7281 Cancellation notice.—An insurer issuing a policy of motor vehicle insurance not covered under the cancellation provisions of s. 627.728 shall give the first-named ~~named~~ insured notice of cancellation at least 45 days prior to the effective date of cancellation, except that, when cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. As used in this section, "policy" does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

Section 14. Section 634.403, Florida Statutes, is amended to read:

634.403 License required; exemptions.—

(1) No person in this state shall provide or offer to provide service warranties to residents of this state unless authorized therefor under a subsisting license issued by the office. The service warranty association shall pay to the office a license fee of \$200 for such license for each license year, or part thereof, the license is in force.

(2) An insurer, while authorized to transact property or casualty insurance in this state, may also transact a service warranty business



without additional qualifications or authority, but shall be otherwise subject to the applicable provisions of this part.

(3) The office may, pursuant to s. 120.569, in its discretion and without advance notice and hearing, issue an immediate final order to cease and desist to any person or entity which violates this section. The Legislature finds that a violation of this section constitutes an imminent and immediate threat to the public health, safety, and welfare of the residents of this state.

(4) Any person that is an affiliate of a domestic insurer as defined in chapter 624 is exempt from application of this part if the person does not issue, or market or cause to be marketed, service warranties to residents of this state and does not administer service warranties that were originally issued to residents of this state. The domestic insurer or its wholly owned Florida licensed insurer must be the direct obligor of all service warranties issued by such affiliate or must issue a contractual liability insurance policy to such affiliate that meets the conditions described in s. 634.406(3). If the Office of Insurance Regulation determines, after notice and opportunity for a hearing, that a person's intentional business practices do not comply with any of the exemption requirements of this subsection, the person shall be subject to this part.

(5) A person is exempt from the license requirement in this section if the person complies with the following:

(a) The service warranties are only sold to nonresidents of this state and the person does not issue, market, or cause to be marketed service warranties to residents of this state.

(b) The person submits a letter of notification that provides the following information to the office upon the start of business from this state and annually thereafter by March 1:

1. The type of products offered and a statement certifying that the products are not regulated in the state in which the person is transacting business or that the person is licensed in the state in which the person is transacting business.

2. The name of the person, the state of domicile, the home address and address in this state of the person, the names of the owners and their percentage of ownership, the names of the officers and directors, the name, e-mail, and telephone number of a contact person, the states in which the person is transacting business, and how many individuals are employed in this state.

(c) If the person ceases to do business from this state, the person shall provide written notification to the office within 30 days after cessation of business.

~~(6)~~<sup>(5)</sup> Any person who provides, offers to provide, or holds oneself out as providing or offering to provide a service warranty to residents of ~~in~~ this state

~~or from this state~~ without holding a subsisting license commits, in addition to any other violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Section 627.442, Florida Statutes, is amended to read:

627.442 Insurance contracts.—

(1) A person who requires a workers' compensation insurance policy pursuant to a construction contract may not reject a workers' compensation insurance policy issued by a self-insurance fund that is subject to part V of chapter 631 based upon the self-insurance fund not being rated by a nationally recognized insurance rating service.

(2) Notwithstanding s. 440.381(3), premium audits are not required for workers' compensation coverage, other than an audit required by the insurance policy or an order of the office, or at least once each policy period, if requested by the insured.

Section 16. Subsections (4) and (7) of section 627.7295, Florida Statutes, are amended to read:

627.7295 Motor vehicle insurance contracts.—

~~(4) If subsection (7) does not apply, the insurer may cancel the policy in accordance with this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason.~~

(7) A policy of private passenger motor vehicle insurance or a binder for such a policy may be initially issued in this state only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to 2 months' premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action resulting in the insured having paid from the insured's own funds an amount less than the 2 months' premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent. This subsection does not apply if an insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group. This subsection does not apply to an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. This subsection does not apply if all policy payments are paid pursuant to a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder, ~~provided that the first policy payment is made by cash, cashier's check, check, or a money order.~~ This subsection and subsection (4) do not apply if all policy payments

to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, personal injury protection pursuant to ss. 627.730-627.7405; motor vehicle property damage liability pursuant to s. 627.7275; and bodily injury liability in at least the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident and in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in any one accident. This subsection and subsection (4) do not apply if an insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

Section 17. Subsection (3) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks which are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer." If the notice is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 18. The amendments to s. 626.207, Florida Statutes, made by this act do not apply retroactively and apply only to applicants whose applications are pending or submitted on or after the date that the amendments to s. 626.207, Florida Statutes, made by this act become law. This section shall take effect upon this act becoming a law.

Section 19. Paragraph (c) of subsection (7) of section 817.234, Florida Statutes, is amended, present subsection (12) of that section is renumbered as subsection (13), and a new subsection (12) is added to that section, to read:

817.234 False and fraudulent insurance claims.—

(7)

(c) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under s. 627.736(8)(7) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) In addition to any criminal liability, a person convicted of violating any provision of this section for the purpose of receiving insurance proceeds from a motor vehicle insurance contract is subject to a civil penalty.

(a) Except for a violation of subsection (9), the civil penalty shall be:

1. A fine up to \$5,000 for a first offense.

2. A fine greater than \$5,000, but not to exceed \$10,000, for a second offense.

3. A fine greater than \$10,000, but not to exceed \$15,000, for a third or subsequent offense.

(b) The civil penalty for a violation of subsection (9) must be at least \$15,000 but may not exceed \$50,000.

(c) The civil penalty shall be paid to the Insurance Regulatory Trust Fund within the Department of Financial Services and used by the department for the investigation and prosecution of insurance fraud.

(d) This subsection does not prohibit a state attorney from entering into a written agreement in which the person charged with the violation does not admit to or deny the charges but consents to payment of the civil penalty.

Section 20. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2011.

Approved by the Governor June 17, 2011.

Filed in Office Secretary of State June 17, 2011.