

CHAPTER 2013-66

Committee Substitute for Committee Substitute for Senate Bill No. 468

An act relating to property and casualty insurance rates, fees, and forms; amending s. 215.555, F.S.; postponing the date that repeals the Florida Hurricane Catastrophe Fund emergency assessment exemption for medical malpractice insurance premiums; amending s. 627.062, F.S.; exempting medical malpractice insurance that covers certain providers and practitioners from specified rate filing requirements; revising provisions relating to notification of rate changes to codify the amendments made to s. 627.062(3)(d)3., F.S., by s. 1, ch. 2011-160, Laws of Florida, in lieu of the amendments made by s. 12, ch. 2011-39, Laws of Florida, and making editorial changes; amending s. 627.410, F.S.; conforming provisions to changes made by the act; creating s. 627.4102, F.S.; providing for an informational filing of certain forms that are exempt from the Office of Insurance Regulation's approval process; requiring an informational filing to include a notarized certification from the insurer and providing a statement that must be included in the certification; authorizing the office to require prior review and approval of a form that is not in compliance; requiring a Notice of Change In Policy Terms form to be filed with a changed renewal policy; providing for construction and applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (6) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(6) REVENUE BONDS.—

(b) *Emergency assessments*—

1. If the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, including property and casualty business of surplus lines insurers regulated under part VIII of chapter 626, but not including any workers' compensation premiums or medical malpractice premiums. As used in this subsection, the term "property and casualty business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers by s. 624.424 and any rule adopted under this section, except for those lines identified as accident

and health insurance and except for policies written under the National Flood Insurance Program. The assessment shall be specified as a percentage of direct written premium and is subject to annual adjustments by the board in order to meet debt obligations. The same percentage applies ~~shall apply~~ to all policies in lines of business subject to the assessment issued or renewed during the 12-month period beginning on the effective date of the assessment.

2. A premium is not subject to an annual assessment under this paragraph in excess of 6 percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this paragraph in excess of 10 percent of premium. An annual assessment under this paragraph continues ~~shall continue~~ as long as the revenue bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the revenue bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds.

3. Emergency assessments shall be collected from policyholders. Emergency assessments shall be remitted by insurers as a percentage of direct written premium for the preceding calendar quarter as specified in the order from the Office of Insurance Regulation. The office shall verify the accurate and timely collection and remittance of emergency assessments and shall report the information to the board in a form and at a time specified by the board. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the office to enable the office to monitor and verify compliance with this paragraph.

4. With respect to assessments of surplus lines premiums, each surplus lines agent shall collect the assessment at the same time as the agent collects the surplus lines tax required by s. 626.932, and the surplus lines agent shall remit the assessment to the Florida Surplus Lines Service Office created by s. 626.921 at the same time as the agent remits the surplus lines tax to the Florida Surplus Lines Service Office. The emergency assessment on each insured procuring coverage and filing under s. 626.938 shall be remitted by the insured to the Florida Surplus Lines Service Office at the time the insured pays the surplus lines tax to the Florida Surplus Lines Service Office. The Florida Surplus Lines Service Office shall remit the collected assessments to the fund or corporation as provided in the order levied by the Office of Insurance Regulation. The Florida Surplus Lines Service Office shall verify the proper application of such emergency assessments and shall assist the board in ensuring the accurate and timely collection and remittance of assessments as required by the board. The Florida Surplus Lines Service Office shall annually calculate the aggregate written premium on property and casualty business, other than workers' compensation and medical malpractice, procured through surplus lines agents and insureds procuring coverage and filing under s. 626.938 and shall report the information to the board in a form and at a time specified by the board.

5. Any assessment authority not used for a particular contract year may be used for a subsequent contract year. If, for a subsequent contract year, the board determines that the amount of revenue produced under subsection (5) is insufficient to fund the obligations, costs, and expenses of the fund and the corporation, including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement premiums, the board shall direct the Office of Insurance Regulation to levy an emergency assessment up to an amount not exceeding the amount of unused assessment authority from a previous contract year or years, plus an additional 4 percent provided that the assessments in the aggregate do not exceed the limits specified in subparagraph 2.

6. The assessments otherwise payable to the corporation under this paragraph shall be paid to the fund unless ~~and until~~ the Office of Insurance Regulation and the Florida Surplus Lines Service Office have received a notice from the corporation and the fund ~~a notice~~, which shall be conclusive and upon which they may rely without further inquiry, that the corporation has issued bonds and the fund has no agreements in effect with local governments under paragraph (c). On or after the date of the notice and until the date the corporation has no bonds outstanding, the fund shall have no right, title, or interest in or to the assessments, except as provided in the fund's agreement with the corporation.

7. Emergency assessments are not premium and are not subject to the premium tax, to the surplus lines tax, to any fees, or to any commissions. An insurer is liable for all assessments that it collects and must treat the failure of an insured to pay an assessment as a failure to pay the premium. An insurer is not liable for uncollectible assessments.

8. ~~If When~~ an insurer is required to return an unearned premium, it shall also return any collected assessment attributable to the unearned premium. A credit adjustment to the collected assessment may be made by the insurer with regard to future remittances that are payable to the fund or corporation, but the insurer is not entitled to a refund.

9. ~~If When~~ a surplus lines insured or an insured who has procured coverage and filed under s. 626.938 is entitled to the return of an unearned premium, the Florida Surplus Lines Service Office shall provide a credit or refund to the agent or such insured for the collected assessment attributable to the unearned premium before ~~prior to~~ remitting the emergency assessment collected to the fund or corporation.

10. The exemption of medical malpractice insurance premiums from emergency assessments under this paragraph is repealed May 31, 2016 ~~2013~~, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2016 ~~2013~~.

Section 2. Paragraph (d) of subsection (3) and paragraph (e) of subsection (7) of section 627.062, Florida Statutes, are amended to read:

627.062 Rate standards.—

(3)

(d)1. The following categories or kinds of insurance and types of commercial lines risks are not subject to paragraph (2)(a) or paragraph (2)(f):

- a. Excess or umbrella.
- b. Surety and fidelity.
- c. Boiler and machinery and leakage and fire extinguishing equipment.
- d. Errors and omissions.
- e. Directors and officers, employment practices, fiduciary liability, and management liability.
- f. Intellectual property and patent infringement liability.
- g. Advertising injury and Internet liability insurance.
- h. Property risks rated under a highly protected risks rating plan.
- i. General liability.
- j. Nonresidential property, except for collateral protection insurance as defined in s. 624.6085.
- k. Nonresidential multiperil.
- l. Excess property.
- m. Burglary and theft.
- n. Medical malpractice for a facility that is not a hospital licensed under chapter 395, a nursing home licensed under part II of chapter 400, or an assisted living facility licensed under part I of chapter 429.
- o. Medical malpractice for a health care practitioner who is not a dentist licensed under chapter 466, a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, a pharmacist licensed under chapter 465, or a pharmacy technician registered under chapter 465.

~~p.n.~~ Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

2. Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on insurance and risks described in subparagraph 1. which are written in this state.

3. An insurer shall ~~must~~ notify the office of any changes to rates for insurance and risks described in subparagraph 1. within 30 days after the effective date of the change. The notice must include the name of the insurer, the type or kind of insurance subject to rate change, ~~total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change,~~ and the average statewide percentage change in rates. Actuarial data ~~Underwriting files, premiums, losses, and expense statistics with regard to rates for such insurance and risks written by an insurer~~ must be maintained by the insurer for 2 years after the effective date of changes to those rates and are ~~subject to examination by the office.~~ The office may require the insurer to incur the costs associated with an examination. Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in paragraphs (2)(b), (c), and (d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

4. A rating organization shall ~~must~~ notify the office of any changes to loss cost for insurance and risks described in subparagraph 1. within 30 days after the effective date of the change. The notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Actuarial data with regard to changes to loss cost for risks not subject to paragraph (2)(a) or paragraph (2)(f) must be maintained by the rating organization for 2 years after the effective date of the change and are subject to examination by the office. The office may require the rating organization to incur the costs associated with an examination. Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in paragraphs (2)(b)-(d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(7) The provisions of this subsection apply only to rates for medical malpractice insurance and control to the extent of any conflict with other provisions of this section.

(e) For medical malpractice rates subject to paragraph (2)(a), the each ~~medical malpractice insurer shall~~ must make a rate filing under this section, sworn to by at least two executive officers of the insurer, at least once each calendar year.

Section 3. Subsection (1) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(1) ~~A No~~ basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, ~~or~~ group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, ~~may not~~ shall be delivered or issued for delivery in this state; unless the form has been filed with the office by or on ~~in~~ behalf of the insurer ~~that which~~ proposes to use such form and has been approved by the office ~~or filed pursuant to s. 627.4102~~. This provision does not apply to surety bonds or to policies, riders, endorsements, or forms of unique character ~~that which~~ are designed for and used with ~~relation to~~ insurance on ~~upon~~ a particular subject, (other than as to health insurance), or ~~that which~~ relate to the manner of distributing ~~distribution of~~ benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificateholder. For ~~As to~~ group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the office for information purposes only.

Section 4. Section 627.4102, Florida Statutes, is created to read:

627.4102 Informational filing of forms.—

(1) Property and casualty forms, except workers' compensation and personal lines forms, are exempt from the approval process required under s. 627.410 if:

(a) The form has been electronically submitted to the office in an informational filing made through I-File 30 days before the delivery or issuance for delivery of the form within this state; and

(b) At the time the informational filing is made, a notarized certification is attached to the filing that certifies that each form within the filing is in compliance with all applicable state laws and rules. The certification must be on the insurer's letterhead and signed and dated by the insurer's president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The certification must contain the following statement, and no other language: "I, ...[name]..., as ... [title]... of ...[insurer name]..., do hereby certify that this form filing has been thoroughly and diligently reviewed by me and by all appropriate company personnel, as well as company consultants, if applicable, and certify that each form contained within the filing is in compliance with all applicable Florida laws and rules. Should a form be found not to be in compliance with Florida laws and rules, I acknowledge that the Office of Insurance Regulation shall disapprove the form."

(2) If the filing contains a form that is not in compliance with state laws and rules, the form filing, at the discretion of the office, is subject to prior review and approval pursuant to s. 627.410, and the period for review and

approval established under s. 627.410(2) begins to run on the date the office notifies the insurer of the discovery of the noncompliant form.

(3) A Notice of Change in Policy Terms form required under s. 627.43141(2) shall be filed as a part of the informational filing for a renewal policy that contains a change. If a renewal policy that was certified requires such form, the insurer must provide a sample copy of the form to the named insured's agent before or upon providing the form to the named insured.

(4) This section does not preclude an insurer from electing to file any form for approval under s. 627.410 that would otherwise be exempt under this section.

(5) The provisions of this section supersede and replace the existing order issued by the office exempting specified property and casualty forms from the requirements of s. 627.410.

Section 5. This act shall take effect July 1, 2013.

Approved by the Governor May 30, 2013.

Filed in Office Secretary of State May 30, 2013.