

## CHAPTER 2014-103

### Committee Substitute for Committee Substitute for Senate Bill No. 1344

An act relating to insurance; amending s. 626.8805, F.S.; revising insurance administrator application requirements; amending s. 626.8817, F.S.; authorizing an insurer's designee to provide certain coverage information to an insurance administrator; authorizing an insurer to contract a third party to conduct a review of the operations of an insurance administrator under certain circumstances; amending s. 626.882, F.S.; prohibiting a person from acting as an insurance administrator without a specific written agreement; amending s. 626.883, F.S.; requiring an insurance administrator to furnish fiduciary account records to an insurer or its designee; requiring administrator withdrawals from a fiduciary account to be made according to a specific written agreement; providing that an insurer's designee may authorize payment of claims; amending s. 626.884, F.S.; revising an insurer's right of access to certain administrator records; amending s. 626.89, F.S.; revising the deadline for filing certain financial statements; amending s. 626.9541, F.S.; revising provisions for unfair methods of competition and unfair or deceptive acts relating to conducting certain insurance transactions through credit card facilities; amending s. 627.351, F.S.; revising the entities that make recommendations to the Chief Financial Officer for appointment to the board of governors of the Joint Underwriting Association; amending s. 627.7283, F.S.; allowing the electronic transfer of unearned premiums under specified circumstances; amending s. 631.912, F.S.; revising the appointment process for members of the board of directors of the Florida Workers' Compensation Insurance Guaranty Association; amending s. 766.315, F.S.; revising the entities that make recommendations to the Chief Financial Officer for appointment to the board of directors of the Florida Birth-Related Neurological Injury Compensation Association; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) and subsection (3) of section 626.8805, Florida Statutes, are amended to read:

626.8805 Certificate of authority to act as administrator.—

(2) The administrator shall file with the office an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office, which application shall include or have attached the following information and documents:

(c) The names, addresses, official positions, and professional qualifications of the individuals employed or retained by the administrator who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or

other governing board or committee, and the principal officers in the case of a corporation or; the partners or members in the case of a partnership or association, ~~and any other person who exercises control or influence over the affairs of the administrator.~~

(3) The applicant shall make available for inspection by the office copies of all contracts relating to services provided by the administrator to with insurers or other persons using ~~utilizing~~ the services of the administrator.

Section 2. Subsections (1) and (3) of section 626.8817, Florida Statutes, are amended to read:

626.8817 Responsibilities of insurance company with respect to administration of coverage insured.—

(1) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer or its designee to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in a ~~the~~ written agreement binding upon ~~between~~ the administrator and the insurer.

(3) ~~If In cases in which~~ an administrator administers benefits for more than 100 certificateholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review must be an onsite audit of the operations of the administrator. The insurer may contract with a qualified third party to conduct such review.

Section 3. Subsections (1) and (4) of section 626.882, Florida Statutes, are amended to read:

626.882 Agreement between administrator and insurer; required provisions; maintenance of records.—

(1) A ~~No~~ person may not act as an administrator without a written agreement, as required under s. 626.8817, which specifies the rights, duties, and obligations of the ~~between such person as~~ administrator and ~~an~~ insurer.

(4) If a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments to that agreement shall be furnished to the insurer or its designee by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

Section 4. Subsections (3), (4), and (5) of section 626.883, Florida Statutes, are amended to read:

626.883 Administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.—

(3) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for more than one insurer, the administrator shall keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall, upon request of an insurer or its designee, furnish such insurer or designee with copies of records pertaining to deposits and withdrawals on behalf of or for such insurer.

(4) The administrator may not pay any claim by withdrawals from a fiduciary account. Withdrawals from such account shall be made as provided in the written agreement required under ss. 626.8817 and 626.882 ~~between the administrator and the insurer~~ for any of the following:

- (a) Remittance to an insurer entitled to such remittance.
- (b) Deposit in an account maintained in the name of such insurer.
- (c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided by such insurer.
- (d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.
- (e) Payment to the administrator of the commission, fees, or charges of the administrator.
- (f) Remittance of return premium to the person or persons entitled to such ~~return~~ premium.

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of, and as authorized by, such insurer or its designee.

Section 5. Subsection (3) of section 626.884, Florida Statutes, is amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to ~~between the insurer and the administrator~~ on the proprietary rights of the parties in such books and records.

Section 6. Subsections (1) and (2) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall annually file with the office a full and true statement of its financial condition, transactions, and affairs within 3 months after the end of the administrator's fiscal year. ~~The statement shall be filed annually on or before March 1 or within such extension of time therefor as the office for good cause may have granted. The statement must and shall be for the preceding fiscal calendar year and must. The statement shall be in such form and contain such matters as the commission prescribes and must shall be verified by at least two officers of the such administrator. An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self insurance program, or an administrator that is a university may submit the preceding fiscal year's statement within 2 months after its fiscal year end.~~

(2) Each authorized administrator shall also file an audited financial statement performed by an independent certified public accountant. The audited financial statement shall be filed with the office within 5 months after the end of the administrator's fiscal year and be on or before June 1 for the preceding fiscal calendar year ending December 31. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self insurance program, or an administrator that is a university may submit the preceding fiscal year's audited financial statement within 5 months after the end of its fiscal year. An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the statement and must comply with the following:~~

(a) Amounts shown on the consolidated audited financial statement must be shown on the worksheet;

(b) Amounts for each entity must be stated separately; and

(c) Explanations of consolidating and eliminating entries must be included.

Section 7. Paragraph (q) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(q) *Certain insurance transactions through credit card facilities prohibited.*—

1. Except as provided in subparagraph 3., no person shall knowingly solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders. The term “credit card holder” as used in this paragraph means a ~~any~~ person who may pay the charge for purchases or other transactions through the credit card facility or organization, whose credit with such facility or organization is evidenced by a credit card identifying such person as being one whose charges the credit card facility or organization will pay, and who is identified as such upon the credit card ~~either~~ by name, account number, symbol, insignia, or ~~any~~ other method or device of identification. This subparagraph does not apply as to health insurance or to credit life, credit disability, or credit property insurance.

2. ~~If~~ Whenever any person does or performs in this state any of the acts in violation of subparagraph 1. for or on behalf of an ~~any~~ insurer or credit card facility, such insurer or credit card facility shall be deemed held to be doing business in this state and, if an insurer, shall be subject to the same state, county, and municipal taxes as insurers that have been legally qualified and admitted to do business in this state by agents or otherwise are subject, the same to be assessed and collected against such insurers; and such person so doing or performing any of such acts is ~~shall be~~ personally liable for all such taxes.

3. A licensed agent or insurer may solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders if:

a. The insurance or policy which is the subject of the transaction is noncancelable by any person other than the named insured, the policyholder, or the insurer;

b. Any refund of unearned premium is made ~~directly~~ to the credit card holder by mail or electronic transfer; and

c. The credit card transaction is authorized by the signature of the credit card holder or other person authorized to sign on the credit card account.

The conditions enumerated in sub-subparagraphs a.-c. do not apply to health insurance or to credit life, credit disability, or credit property insurance; and sub-subparagraph c. does not apply to property and casualty insurance if so long as the transaction is authorized by the insured.

4. No person may use or disclose information resulting from the use of a credit card in conjunction with the purchase of insurance ~~if, when~~ such information is to the advantage of ~~the such~~ credit card facility or an insurance agent, or is to the detriment of the insured or any other insurance agent; except that this provision does not prohibit a credit card facility from using or disclosing such information in a ~~any~~ judicial proceeding or consistent with applicable law on credit reporting.

5. No Such insurance ~~may not shall~~ be sold through a credit card facility in conjunction with membership in any automobile club. The term “automobile club” means a legal entity ~~that which~~, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, the ~~term definition of automobile clubs~~ does not include persons, associations, or corporations ~~that which~~ are organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon race courses established and marked as such for the duration of such particular event. The words “motor vehicle” used herein shall be the same as defined in chapter 320.

Section 8. Paragraph (c) of subsection (4) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(c) The Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of representatives of five of the insurers participating in the Joint Underwriting Association, an attorney ~~to be named by~~ The Florida Bar, a physician ~~to be named by~~ the Florida Medical Association, a dentist ~~to be named by~~ the Florida Dental Association, and a hospital representative ~~to be named by~~ the Florida Hospital Association. The Chief Financial Officer shall select the representatives of the five insurers. One insurer representative shall be selected from recommendations of the American Insurance Association. One insurer representative shall be selected from recommendations of the Property Casualty Insurers Association of America Alliance of American Insurers. One insurer representative shall be selected from recommendations of the Florida Insurance Council National Association of Independent Insurers. Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations. ~~The board of governors shall choose,~~ During the first meeting of the board after June 30 of each year, the board shall choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. There is shall be no liability on the part of, and no cause of action of ~~any nature~~ shall arise against, any member insurer, self-insurer, or its agents or employees, the Joint Underwriting Association or its agents or employees, members of the

board of governors, or the office or its representatives for any action taken by them in the performance of their powers and duties under this subsection.

Section 9. Subsections (1), (2), and (3) of section 627.7283, Florida Statutes, are amended to read:

627.7283 Cancellation; return of premium.—

(1) If the insured cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer 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.

(2) If an insurer cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer 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 or electronically transferred 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 or electronically transferred within 45 days after the applicable period, the insured may bring an action against the insurer pursuant to s. 624.155.

Section 10. Subsection (1) of section 631.912, Florida Statutes, is amended to read:

631.912 Board of directors.—

(1) The board of directors of the corporation shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613 or designee and 1 of whom is designated by the Chief Financial Officer. The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department, and 2 ~~3~~ persons selected by the self-insurance funds. The Governor shall appoint 1 person who has commercial insurance experience. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The Chief Financial Officer may remove any board member for cause. Each board member shall be appointed to serve for a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

Section 11. Paragraph (a) of subsection (2) of section 766.315, Florida Statutes, is amended to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names ~~to be recommended~~ by the American Congress of Obstetricians and Gynecologists, District XII Florida Obstetric and Gynecologic Society; the representative of hospitals from a list of at least three names ~~to be recommended~~ by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the Florida Insurance Council Alliance of American Insurers, and one of which is recommended by the Property Casualty Insurers Association of America National Association of Independent Insurers; and the representative of physicians, other than participating physicians, from a list of three names ~~to be recommended~~ by the Florida Medical Association and a list of three names ~~to be recommended~~ by the Florida Osteopathic Medical Association. However, In no case shall the Chief Financial Officer is not required be bound to make an any appointment from among the nominees of the such respective associations.

Section 12. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.