

CHAPTER 2017-132

Committee Substitute for House Bill No. 359

An act relating to the regulation of insurance companies; amending s. 177.041, F.S.; providing that a specified property information report, rather than a specified certification by an abstractor or a title company, may be submitted as part of certain information required in relation to the plat or replat of a subdivision; amending ss. 177.091 and 197.502, F.S.; conforming provisions to changes made by the act; amending s. 215.555, F.S.; deleting a future repeal of an exemption of medical malpractice insurance premiums from certain emergency assessments by the State Board of Administration relating to the Florida Hurricane Catastrophe Fund; amending ss. 624.407 and 624.408, F.S.; specifying the minimum surplus as to policyholders for insurers that only transact in specified forms of residential property insurance; amending s. 624.424, F.S.; revising a requirement for audit committees established by the boards of directors of insurers, relating to relationships that would interfere with the exercise of independent judgment of committee members; amending s. 625.012, F.S.; revising the allowable assets of insurers relating to specified levied assessments; amending s. 627.062, F.S.; revising requirements for certain rate filings by medical malpractice insurers; amending s. 627.0645, F.S.; adding certain medical malpractice insurance to casualty insurance excluded from an annual base rate filing requirement for rating organizations; amending s. 627.4035, F.S.; revising the methods of paying premiums for insurance contracts; authorizing an insurer to impose a specified insufficient funds fee if certain premium payment methods are returned, are declined, or cannot be processed; providing an exception; amending s. 627.421, F.S.; providing that an electronically delivered document in an insurance policy meets formatting requirements for printed documents under certain conditions; amending s. 627.7295, F.S.; conforming provisions to changes made by the act; amending s. 627.7843, F.S.; replacing provisions relating to ownership and encumbrance reports with provisions relating to property information reports; defining the term “property information report”; prohibiting property information reports from setting forth or implying certain assurances; providing construction; specifying a limitation on the contractual liability of issuers of property information reports; requiring a specified disclosure in property information reports; providing applicability; providing an effective date.

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

Section 1. Subsection (2) of section 177.041, Florida Statutes, is amended to read:

177.041 Boundary survey and title certification required.—Every plat or replat of a subdivision submitted to the approving agency of the local governing body must be accompanied by:

(2) A title opinion of an attorney at law licensed in Florida or a property information report certification by an abstractor or a title company showing that record title to the land as described and shown on the plat is in the name of the person, persons, corporation, or entity executing the dedication. The title opinion or property information report must certification shall also show all mortgages not satisfied or released of record nor otherwise terminated by law.

Section 2. Subsection (16) of section 177.091, Florida Statutes, is amended to read:

177.091 Plats made for recording.—Every plat of a subdivision offered for recording shall conform to the following:

(16) Location and width of proposed easements and existing easements identified in the title opinion or property information report certification required by s. 177.041(2) must shall be shown on the plat or in the notes or legend, and their intended use shall be clearly stated. Where easements are not coincident with property lines, they must be labeled with bearings and distances and tied to the principal lot, tract, or right-of-way.

Section 3. Paragraph (a) of subsection (5) of section 197.502, Florida Statutes, is amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(5)(a) The tax collector may contract with a title company or an abstract company to provide the minimum information required in subsection (4), consistent with rules adopted by the department. If additional information is required, the tax collector must make a written request to the title or abstract company stating the additional requirements. The tax collector may select any title or abstract company, regardless of its location, as long as the fee is reasonable, the minimum information is submitted, and the title or abstract company is authorized to do business in this state. The tax collector may advertise and accept bids for the title or abstract company if he or she considers it appropriate to do so.

1. The property information ownership and encumbrance report must include the letterhead of the person, firm, or company that makes the search, and the signature of the individual who makes the search or of an officer of the firm. The tax collector is not liable for payment to the firm unless these requirements are met. The report may be submitted to the tax collector in an electronic format.

2. The tax collector may not accept or pay for any title search or abstract if financial responsibility is not assumed for the search. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable. Notwithstanding s. 627.7843(3), the tax collector may contract for higher maximum liability limits.

3. In order to establish uniform prices for property information ownership and encumbrance reports within the county, the tax collector must ensure that the contract for property information ownership and encumbrance reports include all requests for title searches or abstracts for a given period of time.

Section 4. 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 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 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 the Office of Insurance Regulation and the Florida Surplus Lines Service Office received a notice from the corporation and the fund, 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 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 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 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, 2019, and medical malpractice insurance premiums shall be subject to emergency assessments attributable to loss events occurring in the contract years commencing on June 1, 2019.~~

Section 5. Subsection (1) of section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required; new insurers.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of authority in this state shall possess surplus as to policyholders at least the greater of:

- (a) For a property and casualty insurer, \$5 million, or \$2.5 million for any other insurer;
- (b) For life insurers, 4 percent of the insurer’s total liabilities;
- (c) For life and health insurers, 4 percent of the insurer’s total liabilities, plus 6 percent of the insurer’s liabilities relative to health insurance;
- (d) For all insurers other than life insurers and life and health insurers, 10 percent of the insurer’s total liabilities;
- (e) Notwithstanding paragraph (a) or paragraph (d), for a domestic insurer that transacts residential property insurance and is:

1. Not a wholly owned subsidiary of an insurer domiciled in any other state, \$15 million.

2. A wholly owned subsidiary of an insurer domiciled in any other state, \$50 million; or

(f) Notwithstanding paragraphs (a), (d), and (e), for a domestic insurer that only transacts limited sinkhole coverage insurance for personal lines residential property pursuant to s. 627.7151, \$7.5 million; or

(g) Notwithstanding paragraphs (a), (d), and (e), for an insurer that only transacts residential property insurance in the form of renter's insurance, tenant's coverage, cooperative unit owner insurance, or any combination thereof, \$10 million.

Section 6. Subsection (1) of section 624.408, Florida Statutes, is amended to read:

624.408 Surplus required; current insurers.—

(1) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state must at all times maintain surplus as to policyholders at least the greater of:

(a) Except as provided in paragraphs (e), (f), and (g), \$1.5 million.

(b) For life insurers, 4 percent of the insurer's total liabilities.

(c) For life and health insurers, 4 percent of the insurer's total liabilities plus 6 percent of the insurer's liabilities relative to health insurance.

(d) For all insurers other than mortgage guaranty insurers, life insurers, and life and health insurers, 10 percent of the insurer's total liabilities.

(e) For property and casualty insurers, \$4 million, except for property and casualty insurers authorized to underwrite any line of residential property insurance.

(f) For residential property insurers not holding a certificate of authority before July 1, 2011, \$15 million.

(g) For residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016, \$5 million; on or after July 1, 2016, and until June 30, 2021, \$10 million; on or after July 1, 2021, \$15 million.

(h) Notwithstanding paragraphs (e), (f), and (g), for a domestic insurer that only transacts limited sinkhole coverage insurance for personal lines residential property pursuant to s. 627.7151, \$7.5 million.

(i) Notwithstanding paragraphs (a), (d), and (e), for an insurer that only transacts residential property insurance in the form of renter's insurance, tenant's coverage, cooperative unit owner insurance, or any combination thereof, \$10 million.

The office may reduce the surplus requirement in paragraphs (f) and (g) if the insurer is not writing new business, has premiums in force of less than \$1 million per year in residential property insurance, or is a mutual insurance company.

Section 7. Paragraph (c) of subsection (8) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(8)

(c) The board of directors of an insurer shall hire the certified public accountant that prepares the audit required by this subsection and the board shall establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee shall be responsible for discussing audit findings and interacting with the certified public accountant with regard to her or his findings. The audit committee shall be comprised solely of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit committee shall report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request the office to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.

Section 8. Subsection (15) of section 625.012, Florida Statutes, is amended to read:

625.012 “Assets” defined.—In any determination of the financial condition of an insurer, there shall be allowed as “assets” only such assets as are owned by the insurer and which consist of:

(15)(a) Assessments levied pursuant to s. 631.57(3)(a) and (e) or s. 631.914 ~~which that~~ are paid before policy surcharges are collected and result in a receivable for policy surcharges to be collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners’ Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

(b) Assessments levied as monthly installments pursuant to s. 631.57(3)(e)3. or s. 631.914 ~~which that~~ are paid after policy surcharges are collected so that the recognition of assets is based on actual premium

written offset by the obligation to the Florida Insurance Guaranty Association or the Florida Workers' Compensation Insurance Guaranty Association, Incorporated.

Section 9. Paragraph (e) of subsection (7) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(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 medical malpractice insurer shall make an annual base a rate filing in accordance with s. 627.0645 ~~under this section~~, sworn to by at least two executive officers of the insurer, ~~at least once each calendar year~~.

Section 10. Subsection (1) of section 627.0645, Florida Statutes, is amended to read:

627.0645 Annual filings.—

(1) Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance to which this part applies, except:

- (a) Workers' compensation and employer's liability insurance;
- (b) Insurance as defined in ss. 624.604 and 624.605, limited to coverage of commercial risks other than commercial residential multiperil and medical malpractice insurance that is subject to s. 627.062(2)(a) and (f); or
- (c) Travel insurance, if issued as a master group policy with a situs in another state where each certificateholder pays less than \$30 in premium for each covered trip and where the insurer has written less than \$1 million in annual written premiums in the travel insurance product in this state during the most recent calendar year,

shall make an annual base rate filing for each such line with the office no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

Section 11. Section 627.4035, Florida Statutes, is amended to read:

627.4035 Cash Payment of premiums; claims.—

(1)(a) The premiums for insurance contracts issued in this state or covering risk located in this state must ~~shall~~ be paid in cash consisting of coins, currency, checks, electronic checks, drafts, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan. ~~By July 1, 2007~~, Insurers issuing personal lines residential and commercial property policies shall provide a premium payment plan

option to their policyholders which allows for a minimum of quarterly and semiannual payment of premiums. Insurers may, but are not required to, offer monthly payment plans. Insurers issuing such policies must submit their premium payment plan option to the office for approval before use.

(b) If, due to insufficient funds, a payment of premium under this subsection by debit card, credit card, electronic funds transfer, or electronic check is returned, is declined, or cannot be processed, the insurer may impose an insufficient funds fee of up to \$15 per occurrence pursuant to the policy terms. However, the insurer may not charge the policyholder an insufficient funds fee if the failure in payment resulted from fraud or misuse on the policyholder’s account from which the payment was made and such fraud or misuse was not attributed to the policyholder.

(2) Subsection (1) is not applicable to:

(a) Reinsurance agreements;

(b) Pension plans;

(c) Premium loans, whether or not subject to an automatic provision;

(d) Dividends, whether to purchase additional paid-up insurance or to shorten the dividend payment period;

(e) Salary deduction plans;

(f) Preauthorized check plans;

(g) Waivers of premiums on disability;

(h) Nonforfeiture provisions affording benefits under supplementary contracts; or

(i) Such other methods of paying for life insurance as may be permitted by the commission pursuant to rule or regulation.

(3) All payments of claims made in this state under any contract of insurance shall be paid:

(a) In cash consisting of coins, currency, checks, drafts, or money orders and, if by check or draft, shall be in such form as will comply with the standards for cash items adopted by the Federal Reserve System to facilitate the sorting, routing, and mechanized processing of such items; or

(b) If authorized in writing by the recipient or the recipient’s representative, by debit card or any other form of electronic transfer. Any fees or costs to be charged against the recipient must be disclosed in writing to the recipient or the recipient’s representative at the time of written authorization. However, the written authorization requirement may be waived by the recipient or the recipient’s representative if the insurer verifies the identity of the insured or the insured’s recipient and does not charge a fee for the

transaction. If the funds are misdirected, the insurer remains liable for the payment of the claim.

Section 12. Subsection (5) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(5) An electronically delivered document satisfies any font, size, color, spacing, or other formatting requirement for printed documents if the format in the electronically delivered document has reasonably similar proportions or emphasis of the characters relative to the rest of the electronic document or is otherwise displayed in a reasonably conspicuous manner.

Section 13. Subsection (9) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

~~(9)(a) In addition to the methods provided in s. 627.4035(1), premium for motor vehicle insurance contracts issued in this state or covering risk located in this state may be paid in cash in the form of a draft or drafts.~~

~~(b) If, due to insufficient funds, payment of premium under this subsection by debit card, credit card, electronic funds transfer, or electronic check is returned, is declined, or cannot be processed, the insurer may impose an insufficient funds fee of up to \$15 per occurrence pursuant to the policy terms.~~

Section 14. Section 627.7843, Florida Statutes, is amended to read:

627.7843 Property information reports ~~Ownership and encumbrance reports.~~—

(1) As used in this section, the term “property information report” means any report that contains the limitations of this section and discloses documents or information appearing in the Official Records as described in s. 28.222, in the records of a county tax collector pertaining to ad valorem real property taxes and special assessments imposed by a governmental authority against real property, in the Secretary of State filing office, or in another governmental filing office pertaining to real or personal property. A property information report may be issued by any person, including a Florida-licensed title insurer, title agent, or title agency “ownership and encumbrance report” means a report that discloses certain defined documents imparting constructive notice and appearing in the official records relating to specified real property.

(2) A property information ~~An ownership and encumbrance report may not directly or indirectly set forth or imply any opinion, warranty, guarantee, insurance, or other similar assurance and does not constitute title insurance as defined in s. 624.608 as to the status of title to real property.~~

(3) The contractual liability of the issuer of a property information report is limited to the person or persons expressly identified by name in the property information report as the recipient or recipients of the property information report and may not exceed the amount paid for the property information report. Only contractual remedies are available for an error or omission that arises from a property information report. A property information report must contain the following language:

“This report is not title insurance. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipient(s) of the property information report.” Any ownership and encumbrance report or similar report that is relied on or intended to be relied on by a consumer must be on forms approved by the office, and must provide for a maximum liability for incorrect information of not more than \$1,000.

(4) This section is not applicable to an opinion of title issued by an attorney.

Section 15. This act shall take effect upon becoming a law.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.