

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

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**BILL:** CS/SB 2036

**INTRODUCER:** Banking and Insurance Committee and Senator Bennett

**SUBJECT:** Residential Property Insurance

**DATE:** April 13, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Frederick</u>	<u>Kelly</u>	<u>WPSC</u>	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill permits certain insurers to sell a residential property insurance option that uses a rate in excess of the otherwise applicable filed rate. This rate is not subject to a determination by the Office of Insurance Regulation (office) that it is excessive or actuarially unfairly discriminatory pursuant to s. 627.062, F.S. The bill requires notice to the consumer, in the application for nonassessable residential property insurance and on the declarations page of the policy, that the policy is subject to limited rate regulation and may contain a rate higher than the rate approved by the office.

This bill substantially amends the following sections of the Florida Statutes: 627.062. The bill creates the following section of the Florida Statutes: 627.7031.

**II. Present Situation:**

**Ratemaking Regulation for Property, Casualty, and Surety Insurance**

The rating law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the Rating Law is to ensure that insurance rates are not excessive, inadequate, or unfairly discriminatory. Every insurance rate regulated by

this part is held to this standard and must be submitted by the insurer to the Office of Insurance Regulation, which reviews the rate and either approves or disapproves the rate. Generally, insurers may either choose to submit their rate to the office via a “file and use” method or “use and file” method. In a “file and use” filing, the insurer submits to the OIR their proposed rate at least 90 days before the rate’s effective date and chooses not to implement the rate until it is approved. In a “use and file” filing, the insurer files with the department within 30 days of the rate’s effective date, and if the rate is disapproved may have to refund to policyholders the portion of the rate that is excessive. Currently, all proposed rate increases for residential property insurance must be submitted via a “file and use” filing.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

### **Excess Rates**

The Rating Law in s. 627.717, F.S., permits an insurer to use a rate in excess of the otherwise applicable filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year for any line of personal insurance.

### **III. Effect of Proposed Changes:**

**Section 1.** Creates a new paragraph (k) in s. 627.062(2), F.S., allowing insurers that meet the requirements of s. 627.7031, F.S., to use a rate in excess of its filed rate. Such rates must be filed with the office, which retains authority to disapprove a rate as inadequate or to disapprove a rate filing for using a rating factor that is an unfair method of competition or unfair or deceptive act pursuant to s. 626.9541, F.S. Policies using an excess rate as authorized by this bill do not count towards the excess rate calculation in s. 627.171, F.S., which allows an insurer to use excess rates for only up to 5 percent of its personal lines insurance policies.

**Section 2.** Creates s. 627.7031, F.S., permitting property insurers to offer residential property insurance policies covering the perils of windstorm or hurricane that use a rate in excess of the insurer's filed rate if all of the following apply:

- The insurer is authorized to write property insurance in Florida;
- The insurer has, at the time of policy issuance or first renewal, a surplus as to policyholders equal or greater than \$500 million or a ratio of the insurer's net written premium to its surplus to policyholders does not exceed two to one. In calculating net written premium, consideration is only given for reinsurance placed with reinsurers that have a financial strength rating of "A" or better from A.M. Best, or have a comparable rating by another accurate or acceptable rating agency.
- The insurer does not purchase Temporary Increase in Coverage Limit (TICL) coverage pursuant to s. 215.555(17), F.S., from the Florida Hurricane Catastrophe Fund.
- The applicant or insured is provided with printed notice in 12 point boldfaced type that, "the rate for this policy is not regulated by the Florida Office of Insurance Regulation and may be higher than the rate approved by that office. A residential property policy subject to full rate regulation requirements may be available from this insurer, another insurer, or Citizens Property Insurance Corporation. Please discuss your policy options with your insurance agent." The notice must be furnished in writing at the same time as the renewal notice on a separate document, but may be contained within the same mailing as the renewal notice.
- The applicant is given, before issuance of a policy or before first renewal of a policy at such rate, a premium quote for a policy from Citizens reflecting comparable coverages, limits, and deductibles.
- The applicant signs a form acknowledging that he or she has reviewed the required disclosures and premium quote from Citizens, understands that the rate for the policy is not regulated by the OIR and may be higher than rates approved by the office, and understands that a residential property insurance policy subject to full rate regulation may be available elsewhere.

**Section 3.** The act is effective upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The Office of Insurance Regulation indicates that there are 44 insurers who have a surplus as to policyholders of \$500 million or greater and thus could qualify to offer policies with rates in excess of the insurer's filed rate.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance Committee on April 6, 2009:**

The CS permits certain insurers to sell a residential property insurance option that uses a rate in excess of the otherwise applicable filed rate and is not subject to a determination by the OIR that the rate is excessive or actuarially unfairly discriminatory pursuant to s. 627.062, F.S. The CS eliminates the provisions of the bill that created a “nonassessable residential property insurance” product.

**B. Amendments:**

None.