

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: \_\_\_\_\_

Subject: Property and Casualty Insurance

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The committee substitute amends the property and casualty insurance rating law to prohibit the Department of Insurance from requiring insurers to file reports on the application of filed and approved discounts, credits or surcharges for its commercial property and casualty insurance policies, subject to certain exceptions. The department would be prohibited from adopting rules limiting the amount of discounts, credits, or surcharges for such policies. Currently a department rule is in effect that imposes such requirements, for the purpose of establishing guidelines and procedures for determining whether discounts, credits, or surcharges applied under a rating plan are producing rates that are not excessive, inadequate, or unfairly discriminatory. The bill requires that insurers maintain certain data for analysis of subjective discounts, credits, or surcharges and each insurer must consider its analysis of this experience in each base rate filing made with the department.

Also, the committee substitute increases from 10 percent to 20 percent, the percentage of an insurer's commercial policies written each year for which the insurer would be permitted to charge a rate in excess of the otherwise applicable filed rate, with the written consent of the insured. However, the bill prohibits an insurer from using an excess rate unless the rate is based on underwriting considerations and is not based on arbitrary or unfairly discriminatory considerations.

The committee substitute lowers the continuing education requirements for insurance agents, by extending from two years to 3 years, the time within which an agent must complete the currently required number of hours of continuing education (CE). The general requirement would be that an agent complete 28 hours of CE every 3 years, rather than every 2 years.

This committee substitute substantially amends the following sections of the Florida Statutes: 626.2815, 627.062, and 627.171.

## II. Present Situation:

### **Property and Casualty Rating Law; Generally**

Premium rates for policies of property, casualty, or surety insurance issued in Florida are subject to regulation by the Department of Insurance, pursuant to s. 627.062, F.S., (the “rating law.”) This includes, for example, policies of property insurance, general liability, business owners policies, commercial automobile, medical malpractice, professional liability, and surety bonds. This section does not apply to private passenger motor vehicle insurance or workers’ compensation insurance, which are subject to regulation under separate sections of the Insurance Code. This section does apply to residential property insurance (homeowners, etc.), but such policies are subject to additional rating requirements contained in other statutory sections.

The department must disapprove rates for property and casualty policies that are excessive, inadequate, or unfairly discriminatory, as defined. Insurers must file proposed rate changes with the department at least 90 days prior to the proposed effective date (“file and use”) or, alternatively, must file rates within 30 days after their effective date (“use and file”), subject to a potential order by the department to refund that portion of a rate determined to be excessive.

### **Department Rule on Discounts, Credits and Surcharges (4-170.004, F.A.C.)**

The rating law provides that a rate shall be deemed unfairly discriminatory if the application of *premium discounts, credits, or surcharges* does not bear a reasonable relationship to the expected loss and expense experience. The law further provides that a rate shall be deemed inadequate if *discounts or credits* are allowed which exceed a reasonable reflection of expense savings and reasonable expected loss experience from the risk or group of risks.

Based primarily on these statutory standards, in 1988 the Department of Insurance (DOI) adopted Rule 4-170.004, F.A.C., relating to discounts, credits, and surcharges, which applies to all commercial property and casualty insurance. (This rule does not apply to private passenger motor vehicle insurance, workers’ compensation, or to any personal lines policy, such as homeowners insurance.) The expressed purpose of the DOI rule is to establish guidelines and procedures for determining whether discounts, credits, or surcharges applied under a rating plan are producing rates that are not excessive, inadequate or unfairly discriminatory. The rule deals primarily with “subjective discounts, credits, or surcharges,” defined as those applied at the discretion of the insurer, use non-quantifiable standards, or do not specify the exact amount of the modification.

The rule limits the maximum credit or surcharge to 25 percent, and requires that any amount must be based on informed judgment which is documented in the file, such as a loss control report, financial analysis, or inspection reports.

The rule requires insurers to report annually to the department on a form that accounts for all of the subjective discount, credits, and surcharges applied by the insurer each year. If the combined effect of the rate modifications for any line of insurance departs from the regular manual rate by more than 5 percent, the rule prohibits the insurer from using a credit or surcharge of more than 15 percent on any policy beginning 120 days after notice is sent to the insurer by the department. For the next full annual reporting period, if the departure from the manual rates continues to exceed 5 percent, the insurer may not apply a credit or surcharge on any policy for that line of insurance that exceeds 5 percent until the departure from the manual rates stays within 5 percent for one full reporting period. (Exceptions are provided for an insurer with an insignificant number of policies, as specified in the rule, or to policies issued under the excess rate statute, s. 627.171, F.S., described below.)

The rule further requires insurers to file adequate supporting information which is acceptable to the department with every annual base rate filing required under s. 627.0645, F.S., substantiating that the relationship between the subjective credit or surcharge and the expected loss experience is such that they do not result in excessive, inadequate, or unfairly discriminatory rates.

#### **Excess Rates (Consent to Rate Law)**

Section 627.171, F.S., provides that with the written consent of the insured, filed with the insurer, the insurer may use a rate in excess of the otherwise applicable filed rate on any specific risk. The signed consent form must include the filed rate as well as the excess rate. However, an insurer may not use excess rates pursuant to this section for more than 10 percent of any line of commercial insurance policies written each year by the insurer, or for more than 5 percent of any of its personal lines insurance policies written each year.

#### **Continuing Education Requirements for Insurance Agents**

Section 626.2815, F.S., establishes a general requirement that all insurance agents complete 28 hours of continuing education (CE) every 2 years, but allows several exceptions to the general rule:

- (1) For agents licensed for 6 or more years, 20 hours of CE is required every 2 years, but the courses must be designated as intermediate or advanced level course work.
- (2) For compliance periods beginning January 1, 1998, 10 hours of CE is required every 2 years for persons who have been licensed for 25 or more years and are designated as a CLU or CPCU and for persons who have a bachelor of science degree with at least 18 semester hours of insurance or risk management classes.
- (3) For compliance periods beginning January 1, 1998, 10 hours of CE is required every 2 years for persons designated as customer representatives, limited customer representatives, administrative agents, solicitors, title insurance agents, and insurance agents who hold limited licenses to sell the following types of insurance: motor vehicle

physical damage, mechanical breakdown, crop, hail, multiple-peril crop, industrial fire, or burglary insurance.

- (4) Agents who hold dual licenses as life and health agents and property and casualty agents must take one-half of their required CE course work in the life and health area and the other half in the property and casualty area. However, agents who hold a life and health license and an industrial fire or burglary license must complete 4 hours of industrial fire or burglary course work every 2 years and the remainder of the required hours in life and health course work.

The current CE requirements were substantially revised and, in general, reduced pursuant to legislation enacted in 1996 (ch. 96-377, L.O.F.)

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 627.2815, F.S., to extend from 2 years to 3 years the time within which insurance agents must complete the current continuing education (CE) requirements. Specifically, the general requirement would be revised to provide that all insurance agents complete 28 hours of continuing education (CE) every 3 years, rather than every 2 years, subject to the following exceptions:

- (1) For agents licensed for 6 or more years, 20 hours of CE would be required every 3 years (rather than every 2 years), but the courses must be designated as intermediate or advanced level course work.
- (2) For compliance periods beginning January 1, 1998, 10 hours of CE would be required every 3 years (rather than every 2 years) for persons who have been licensed for 25 or more years and are designated as a CLU or CPCU and for persons who have a bachelor of science degree with at least 18 semester hours of insurance or risk management classes.
- (3) For compliance periods beginning January 1, 1998, 10 hours of CE would be required every 3 years (rather than every 2 years) for persons designated as customer representatives, limited customer representatives, administrative agents, solicitors, title insurance agents, and insurance agents who hold limited licenses to sell the following types of insurance: motor vehicle physical damage, mechanical breakdown, crop, hail, multiple-peril crop, industrial fire, or burglary insurance.
- (4) Agents who hold dual licenses as life and health agents and property and casualty agents must take one-half of their required CE course work in the life and health area and the other half in the property and casualty area. However, agents who hold a life and health license and an industrial fire or burglary license would be required to complete 4 hours of industrial fire or burglary course work every 3 years (rather than every 2 years) and the remainder of the required hours in life and health course work.

The bill also specifies that for insurance agents who are also members of The Florida Bar, CE requirements may be met by any insurance-related course that is approved by the department and approved by the Florida Bar for continuing education credit for attorneys.

**Section 2.** Amends s. 627.062, F.S., relating to the property and casualty insurance rating law, to prohibit the department from requiring insurers to file reports on the application of filed and approved discounts, credits, or surcharges for its commercial property and casualty insurance policies, other than workers' compensation and residential property insurance. The department would be prohibited from adopting rules that limit the amount of discounts, credits, or surcharges for such policies. This would have the effect of nullifying the current department rule described above as applied to such policies.

The bill requires, with respect to commercial property and casualty policies, that insurers maintain certain information, including premiums, paid losses, and other specified data, for analysis of subjective discounts, credits, or surcharges and the expected loss and expense experience for the exposures. Each insurer must consider its analysis of this experience in each base rate filing made with the department. The bill provides that the prohibitions on requiring insurers to file reports on the application of discounts or limiting the amount of discounts does not prohibit the department from requiring an insurer to file the required analysis in a base rate filing.

**Section 3.** Amends s. 627.171, F.S., relating to excess rates. The bill would increase from 10 percent to 20 percent, the percentage of an insurer's commercial policies written each year for which the insurer would be permitted to charge a rate in excess of the otherwise applicable filed rate, with the written consent of the insured.

The bill also limits the authority of an insurer to use any excess rate under s. 627.171, F.S., by prohibiting an insurer from using an excess rate unless the rate is based on underwriting considerations and is not based on arbitrary or unfairly discriminatory considerations.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill provides greater flexibility to an insurer to use credits and surcharge for its commercial policies, prohibiting any department rule limiting such credits. Insurers would also be relieved of the costs of submitting annual reports to the department that account for all credits and surcharges applied by the insurer each year.

Commercial policyholders may be subject to an increased use or wider range of credits or surcharges on policies. In a “soft market” policyholders are likely to obtain lower rates through greater discounts or credits, particularly from major carriers seeking to gain market share. The Department of Insurance warns that in future years as rates are adjusted upwards, to more accurately reflect the risk which was discounted, policyholders will have fewer alternatives for competitively priced coverage.

Insurers would have the economic benefit of charging rates in excess of the filed rate on an increased percentage of its commercial policies, subject to the consent of the insured. Presumably, a policyholder would consent to such a rate only as an alternative to even higher rates from other insurers. An example offered by the Florida Association of Insurance Agents is an employer applying for a workers’ compensation policy that may otherwise have to be obtained from the Workers’ Compensation Joint Underwriting Association (WCJUA) which imposes significant 99 percent surcharges, unless the employer consents to a (lower) rate in excess of another insurer’s filed rate.

Insurance agents would be relieved of some of the costs of meeting continuing education requirements due to the bill’s extension of time to meet the CE requirements. No estimate is available at this time.

**C. Government Sector Impact:**

The Department of Insurance would no longer be reviewing annual reports by insurers of their use of discounts, credits, and surcharges. The amount of such savings has not been estimated at this time.

The Department of Insurance would be subject to increased administrative costs to reprogram computers and other data processing to account for the change in the CE requirements for insurance agents. No estimate is available at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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