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A bill to be entitled
 An act relating to insurance; creating s. 624.156, F.S.;
 providing applicability of specified consumer protection
 laws to the business of insurance; providing construction
 relating to application; amending s. 627.062, F.S.;
 revising procedures, requirements, and limitations for
 filing and setting rates, rate schedules, and rating
 manuals; providing responsibilities of the Office of
 Insurance Regulation; excluding certain bad faith judgment
 amounts in certain rate bases; creating s. 627.351, F.S.;
 limiting rates for medical malpractice insurance; limiting
 rate increases to approvals by the Chief Financial
 Officer; creating s. 627.352, F.S.; prohibiting issuance
 of certain types of insurance policies without also
 issuing medical malpractice insurance policies;
 prohibiting denial of medical malpractice insurance to
 health care providers under certain circumstances;
 amending s. 505.212, F.S.; deleting an obsolete
 nonapplication provision relating to the Department of
 Insurance; providing an effective date.

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

Section 1. Section 624.156, Florida Statutes, is created
 to read:

624.156 Applicability of consumer protection laws to the
 business of insurance.--

(1) Notwithstanding any provision to the contrary, the
 business of insurance shall be subject to the laws of this state
 applicable to any other business, including, but not limited to,



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31 the Florida Civil Rights Act of 1992 set forth in part I of
32 chapter 760, the Florida Antitrust Act of 1980 set forth in
33 chapter 542, the Florida Deceptive and Unfair Trade Practices
34 Act set forth in part II of chapter 501, and the consumer
35 protection provisions contained in chapter 540. It is also the
36 intent of this provision that all such protections afforded by
37 chapters 501, 540, 542, and 760 apply to insurance consumers.

38 (2) Nothing in this section shall be construed to
39 prohibit:

40 (a) Any agreement to collect, compile, and disseminate
41 historical data on paid claims or reserves for reported claims,
42 provided such data is contemporaneously transmitted to the
43 Office of Insurance Regulation;

44 (b) Participation in any joint arrangement established by
45 law or the office to ensure availability of insurance;

46 (c) Any agent or broker, representing one or more
47 insurers, from obtaining from any insurer it represents
48 information relative to the premium for any policy or risk to be
49 underwritten by that insurer;

50 (d) Any agent or broker from disclosing to an insurer it
51 represents any quoted rate or charge offered by another insurer
52 represented by that agent or broker for the purpose of
53 negotiating a lower rate, charge, or term from the insurer to
54 whom the disclosure is made; or

55 (e) Any agent, broker, or insurer from utilizing or
56 participating with multiple insurers or reinsurers for
57 underwriting a single risk or group of risks.

58 Section 2. Section 627.062, Florida Statutes, is amended
59 to read:

60 627.062 Rate standards; prior approval of rates.--



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61 (1) The rates for all classes of insurance to which the
 62 provisions of this part are applicable shall be set by the
 63 director of the Office of Insurance Regulation and shall not be
 64 excessive, inadequate, or unfairly discriminatory.

65 (2) As to all such classes of insurance:

66 (a) Insurers or rating organizations shall apply for
 67 ~~establish~~ and use rates, rating schedules, or rating manuals to
 68 allow the insurer a reasonable rate of return on such classes of
 69 insurance written in this state. A copy of rates, rating
 70 schedules, rating manuals, premium credits or discount
 71 schedules, and surcharge schedules, and changes thereto, shall
 72 be filed with the Office of Insurance Regulation as follows
 73 ~~department under one of the following procedures:~~

74 ~~1.—If the filing must be ~~is~~ made at least 180 ~~90~~ days~~
 75 ~~before the proposed effective date and the filing shall ~~is~~ not~~
 76 ~~be implemented during the office's ~~department's~~ review of the~~
 77 ~~filing and any proceeding and judicial review, ~~then such filing~~~~
 78 ~~shall be considered a "file and use" filing. In such case, the~~
 79 ~~department shall finalize its review by issuance of a notice of~~
 80 ~~intent to approve or a notice of intent to disapprove within 90~~
 81 ~~days after receipt of the filing. The notice of intent to~~
 82 ~~approve and the notice of intent to disapprove constitute agency~~
 83 ~~action for purposes of the Administrative Procedure Act.~~
 84 ~~Requests for supporting information, requests for mathematical~~
 85 ~~or mechanical corrections, or notification to the insurer by the~~
 86 ~~department of its preliminary findings shall not toll the 90-day~~
 87 ~~period during any such proceedings and subsequent judicial~~
 88 ~~review. The rate shall be deemed approved if the department does~~
 89 ~~not issue a notice of intent to approve or a notice of intent to~~
 90 ~~disapprove within 90 days after receipt of the filing.~~



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91 ~~2. If the filing is not made in accordance with the~~
 92 ~~provisions of subparagraph 1., such filing shall be made as soon~~
 93 ~~as practicable, but no later than 30 days after the effective~~
 94 ~~date, and shall be considered a "use and file" filing. An~~
 95 ~~insurer making a "use and file" filing is potentially subject to~~
 96 ~~an order by the department to return to policyholders portions~~
 97 ~~of rates found to be excessive, as provided in paragraph (h).~~

98 (b) Upon receiving a rate filing and within a reasonable
 99 time, the office department shall review the rate filing and set
 100 a rate or rate schedule that is not ~~to determine if a rate is~~
 101 excessive, inadequate, or unfairly discriminatory. In making
 102 that determination, the office department shall, in accordance
 103 with generally accepted and reasonable actuarial techniques,
 104 consider the following factors:

105 1. Past and prospective loss experience within and without
 106 this state.

107 2. Past and prospective expenses.

108 3. The degree of competition among insurers for the risk
 109 insured.

110 4. Investment income reasonably expected by the insurer,
 111 consistent with the insurer's investment practices, from
 112 investable premiums anticipated in the filing, plus any other
 113 expected income from currently invested assets representing the
 114 amount expected on unearned premium reserves and loss reserves.
 115 The office department may adopt ~~promulgate~~ rules utilizing
 116 reasonable techniques of actuarial science and economics to
 117 specify the manner in which insurers shall calculate investment
 118 income attributable to such classes of insurance written in this
 119 state and the manner in which such investment income shall be
 120 used in the calculation of insurance rates. Such manner shall



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121 contemplate allowances for an underwriting profit factor and
122 full consideration of investment income which produce a
123 reasonable rate of return; however, investment income from
124 invested surplus shall not be considered. The profit and
125 contingency factor as specified in the filing shall be utilized
126 in computing excess profits in conjunction with s. 627.0625.

127 5. The reasonableness of the judgment reflected in the
128 filing.

129 6. Dividends, savings, or unabsorbed premium deposits
130 allowed or returned to Florida policyholders, members, or
131 subscribers.

132 7. The adequacy of loss reserves.

133 8. The cost of reinsurance.

134 9. Trend factors, including trends in actual losses per
135 insured unit for the insurer making the filing.

136 10. Conflagration and catastrophe hazards, if applicable.

137 11. A reasonable margin for underwriting profit and
138 contingencies.

139 12. The cost of medical services, if applicable.

140 13. Other relevant factors which impact upon the frequency
141 or severity of claims or upon expenses.

142 (c) In the case of fire insurance rates, consideration
143 shall be given to the availability of water supplies and the
144 experience of the fire insurance business during a period of not
145 less than the most recent 5-year period for which such
146 experience is available.

147 (d) If conflagration or catastrophe hazards are given
148 consideration by an insurer in its rates or rating plan,
149 including surcharges and discounts, the insurer shall establish
150 a reserve for that portion of the premium allocated to such



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151 hazard and shall maintain the premium in a catastrophe reserve.
152 Any removal of such premiums from the reserve for purposes other
153 than paying claims associated with a catastrophe or purchasing
154 reinsurance for catastrophes shall be subject to approval of the
155 department. Any ceding commission received by an insurer
156 purchasing reinsurance for catastrophes shall be placed in the
157 catastrophe reserve.

158 (e) After consideration of the rate factors provided in
159 paragraphs (b), (c), and (d), the office shall determine and set
160 the appropriate rate, as long as the ~~a rate is not~~ ~~may be found~~
161 ~~by the department to be~~ excessive, inadequate, or unfairly
162 discriminatory, based upon the following standards:

163 1. Rates shall be deemed excessive if they are likely to
164 produce a profit from Florida business that is unreasonably high
165 in relation to the risk involved in the class of business or if
166 expenses are unreasonably high in relation to services rendered.

167 2. Rates shall be deemed excessive if, among other things,
168 the rate structure established by a stock insurance company
169 provides for replenishment of surpluses from premiums, when the
170 replenishment is attributable to investment losses.

171 3. Rates shall be deemed inadequate if they are clearly
172 insufficient, together with the investment income attributable
173 to them, to sustain projected losses and expenses in the class
174 of business to which they apply.

175 4. A rating plan, including discounts, credits, or
176 surcharges, shall be deemed unfairly discriminatory if it fails
177 to clearly and equitably reflect consideration of the
178 policyholder's participation in a risk management program
179 adopted pursuant to s. 627.0625.



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180 5. A rate shall be deemed inadequate as to the premium
181 charged to a risk or group of risks if discounts or credits are
182 allowed which exceed a reasonable reflection of expense savings
183 and reasonably expected loss experience from the risk or group
184 of risks.

185 6. A rate shall be deemed unfairly discriminatory as to a
186 risk or group of risks if the application of premium discounts,
187 credits, or surcharges among such risks does not bear a
188 reasonable relationship to the expected loss and expense
189 experience among the various risks.

190 (f) In reviewing a rate filing, the department may require
191 the insurer to provide at the insurer's expense all information
192 necessary to evaluate the condition of the company and the
193 reasonableness of the filing according to the criteria
194 enumerated in this section.

195 (g) The office ~~department~~ may at any time review a rate,
196 rating schedule, rating manual, or rate change; the pertinent
197 records of the insurer; and market conditions. If the office
198 ~~department~~ finds on a preliminary basis that a rate may be
199 excessive, inadequate, or unfairly discriminatory, the office
200 ~~department~~ shall initiate proceedings to set a new ~~disapprove~~
201 ~~the~~ rate and shall so notify the insurer. However, the
202 department may not disapprove as excessive any rate the office
203 has set ~~for which it has given final approval or which has been~~
204 ~~deemed approved~~ for a period of 1 year after the effective date
205 of the filing unless the office ~~department~~ finds that a material
206 misrepresentation or material error was made by the insurer or
207 was contained in the filing. Upon being so notified, the insurer
208 or rating organization shall, within 60 days, file with the
209 office ~~department~~ all information which, in the belief of the



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210 insurer or organization, proves the reasonableness, adequacy,
 211 and fairness of the rate or rate change. The office ~~department~~
 212 shall determine and set an appropriate rate within a reasonable
 213 time ~~issue a notice of intent to approve or a notice of intent~~
 214 ~~to disapprove pursuant to the procedures of paragraph (a) within~~
 215 ~~90 days~~ after receipt of the insurer's initial response,
 216 pursuant to paragraphs (b)-(f). In such instances and in any
 217 administrative proceeding relating to the legality of any ~~the~~
 218 rate, the insurer or rating organization shall carry the burden
 219 of proof by a preponderance of the evidence to show that the
 220 rate is not excessive, inadequate, or unfairly discriminatory.
 221 ~~After the department notifies an insurer that a rate may be~~
 222 ~~excessive, inadequate, or unfairly discriminatory, unless the~~
 223 ~~department withdraws the notification, the insurer shall not~~
 224 ~~alter the rate except to conform with the department's notice~~
 225 ~~until the earlier of 120 days after the date the notification~~
 226 ~~was provided or 180 days after the date of the implementation of~~
 227 ~~the rate. The department may, subject to chapter 120, disapprove~~
 228 ~~without the 60-day notification any rate increase filed by an~~
 229 ~~insurer within the prohibited time period or during the time~~
 230 ~~that the legality of the increased rate is being contested.~~

231 (h) When the office sets a new rate or rate schedule, the
 232 office ~~In the event the department finds that a rate or rate~~
 233 ~~change is excessive, inadequate, or unfairly discriminatory, the~~
 234 ~~department shall issue an order of disapproval specifying the~~
 235 ~~that a new rate or rate schedule and which responds to the~~
 236 ~~findings of the office department be filed by the insurer. The~~
 237 order shall constitute agency action for purposes of the
 238 Administrative Procedure Act. The department shall further
 239 order, for any "use and file" filing made in accordance with



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240 ~~subparagraph (a)2., that premiums charged each policyholder~~
241 ~~constituting the portion of the rate above that which was~~
242 ~~actuarially justified be returned to such policyholder in the~~
243 ~~form of a credit or refund. If the department finds that an~~
244 ~~insurer's rate or rate change is inadequate, the new rate or~~
245 ~~rate schedule filed with the department in response to such a~~
246 ~~finding shall be applicable only to new or renewal business of~~
247 ~~the insurer written on or after the effective date of the~~
248 ~~responsive filing.~~

249 (i) Except as otherwise specifically provided in this
250 chapter, the office ~~department~~ shall not prohibit any insurer,
251 including any residual market plan or joint underwriting
252 association, from paying acquisition costs based on the full
253 amount of premium, as defined in s. 627.403, applicable to any
254 policy, or prohibit any such insurer from including the full
255 amount of acquisition costs in a rate filing.

256
257 The provisions of this subsection shall not apply to workers'
258 compensation and employer's liability insurance ~~and to motor~~
259 ~~vehicle insurance.~~

260 (3)(a) For individual risks that are not rated in
261 accordance with the insurer's rates, rating schedules, rating
262 manuals, and underwriting rules filed with the office ~~department~~
263 and which have been submitted to the insurer for individual
264 rating, the insurer must maintain documentation on each risk
265 subject to individual risk rating. The documentation must
266 identify the named insured and specify the characteristics and
267 classification of the risk supporting the reason for the risk
268 being individually risk rated, including any modifications to
269 existing approved forms to be used on the risk. The insurer must



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270 maintain these records for a period of at least 5 years after
271 the effective date of the policy.

272 (b) Individual risk rates and modifications to existing
273 approved forms are not subject to this part or part II, except
274 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
275 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
276 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
277 627.4265, 627.427, and 627.428, but are subject to all other
278 applicable provisions of this code and rules adopted thereunder.

279 (c) This subsection does not apply to private passenger
280 motor vehicle insurance.

281 (4) The establishment of any rate, rating classification,
282 rating plan or schedule, or variation thereof in violation of
283 part IX of chapter 626 is also in violation of this section.

284 (5) With respect to a rate filing involving coverage of
285 the type for which the insurer is required to pay a
286 reimbursement premium to the Florida Hurricane Catastrophe Fund,
287 the insurer may fully recoup in its property insurance premiums
288 any reimbursement premiums paid to the Florida Hurricane
289 Catastrophe Fund, together with reasonable costs of other
290 reinsurance, but may not recoup reinsurance costs that duplicate
291 coverage provided by the Florida Hurricane Catastrophe Fund.

292 (6)(a) Any portion of a judgment entered as a result of a
293 bad faith action under law or the common law and any portion of
294 a judgment entered that which awards punitive damages against an
295 insurer shall not be included in the insurer's rate base and
296 shall not be used to justify a rate or rate change. Any portion
297 of a settlement entered as a result of a bad faith action under
298 law or the common law identified as such and any portion of a
299 settlement wherein an insurer agrees to pay specific punitive



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300 damages shall not be used to justify a rate or rate change. The
 301 portion of the taxable costs and attorney's fees that which is
 302 identified as being related to the bad faith and punitive
 303 damages in these judgments and settlements shall not be included
 304 in the insurer's rate base and shall not be used to justify a
 305 rate or rate change. After any action with respect to a rate
 306 filing that constitutes agency action for purposes of the
 307 Administrative Procedure Act, an insurer may, in lieu of
 308 demanding a hearing under s. 120.57, require arbitration of the
 309 rate filing. Arbitration shall be conducted by a board of
 310 arbitrators consisting of an arbitrator selected by the
 311 department, an arbitrator selected by the insurer, and an
 312 arbitrator selected jointly by the other two arbitrators. Each
 313 arbitrator must be certified by the American Arbitration
 314 Association. A decision is valid only upon the affirmative vote
 315 of at least two of the arbitrators. No arbitrator may be an
 316 employee of any insurance regulator or regulatory body or of any
 317 insurer, regardless of whether or not the employing insurer does
 318 business in this state. The department and the insurer must
 319 treat the decision of the arbitrators as the final approval of a
 320 rate filing. Costs of arbitration shall be paid by the insurer.

321 ~~(b) Arbitration under this subsection shall be conducted~~
 322 ~~pursuant to the procedures specified in ss. 682.06-682.10.~~
 323 ~~Either party may apply to the circuit court to vacate or modify~~
 324 ~~the decision pursuant to s. 682.13 or s. 682.14. The department~~
 325 ~~shall adopt rules for arbitration under this subsection, which~~
 326 ~~rules may not be inconsistent with the arbitration rules of the~~
 327 ~~American Arbitration Association as of January 1, 1996.~~

328 ~~(c) Upon initiation of the arbitration process, the~~
 329 ~~insurer waives all rights to challenge the action of the~~



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330 ~~department under the Administrative Procedure Act or any other~~
331 ~~provision of law; however, such rights are restored to the~~
332 ~~insurer if the arbitrators fail to render a decision within 90~~
333 ~~days after initiation of the arbitration process.~~

334 (7)(a) Underwriting rules not contained in rating manuals
335 shall be filed for private passenger automobile insurance and
336 homeowners' insurance.

337 (b) The submission of rates, rating schedules, and rating
338 manuals to the Office of Insurance Regulation by a licensed
339 rating organization of which an insurer is a member or
340 subscriber will be sufficient compliance with this subsection
341 for any insurer maintaining membership or subscribership in such
342 organization, to the extent the insurer uses the rates, rating
343 schedules, and rating manuals of such organization. All such
344 information shall be available for public inspection, upon
345 receipt by the office, during usual business hours.

346 Section 3. Section 627.351, Florida Statutes, is created
347 to read:

348 627.351 Rates for medical malpractice insurance.--

349 (1) No insurer issuing policies of medical malpractice
350 insurance in this state may use a rate in excess of the rate
351 such insurer used in this state on January 1, 2001. Insurers
352 issuing policies of medical malpractice insurance if such insurer
353 had no rates in effect in this state on January 1, 2001, may not
354 use rates that exceed the rates used by the insurer with the
355 most policies of medical malpractice insurance in effect in this
356 state on January 1, 2001.

357 (2) Each insurer's rates for medical malpractice insurance
358 may be increased only if the Chief Financial Officer determines,
359 after a hearing, that the insurer is substantially threatened



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360 with insolvency unless its rates for medical malpractice
361 insurance are increased. In such cases, the Chief Financial
362 Officer shall set the medical malpractice insurance rates for
363 such insurer. Rates set by the Chief Financial Officer may not
364 be excessive, inadequate, or unfairly discriminatory.

365 Section 4. Section 627.352, Florida Statutes, is created
366 to read:

367 327.352 Medical malpractice insurance; issuance required
368 of certain insurers.--No insurer may issue policies of motor
369 vehicle insurance, commercial property insurance, or residential
370 property insurance in this state unless such insurer also issues
371 policies of medical malpractice insurance in this state. No
372 insurer issuing policies of medical malpractice insurance may
373 deny issuance of a policy of medical malpractice insurance to
374 any health care provider unless such denial is based on
375 underwriting standards approved by the Chief Financial Officer.

376 Section 5. Subsection (4) of section 501.212, Florida
377 Statutes, is amended to read:

378 501.212 Application.--This part does not apply to:

379 (4) ~~Any person or activity regulated under laws~~
380 ~~administered by the Department of Insurance or~~ Banks and savings
381 and loan associations regulated by the Department of Banking and
382 Finance or banks or savings and loan associations regulated by
383 federal agencies.

384 Section 6. This act shall take effect upon becoming a law.