

By the Committee on Banking and Insurance; and Senator  
Alexander

311-2518-03

1                                   A bill to be entitled  
2           An act relating to insurance ratemaking;  
3           amending ss. 627.062, 627.0651, F.S.; providing  
4           that filings providing rate increases and  
5           decreases for specified lines of  
6           property/casualty and motor vehicle insurance  
7           within a specified range shall not be subject  
8           to a determination by the Office of Insurance  
9           Regulation that the rate is excessive or  
10          unfairly discriminatory; specifying  
11          applicability; providing that nothing affects  
12          the authority of the office to disapprove a  
13          rate as inadequate; providing an exception if  
14          the office determines that a competitive market  
15          does not exist; requiring the Financial  
16          Services Commission to adopt related rules;  
17          providing inapplicability to rate filings for  
18          medical malpractice; deleting provisions  
19          relating to arbitration of certain decisions  
20          with respect to property/casualty insurance  
21          rate filings; amending s. 627.351, F.S.;  
22          requiring that personal lines residential  
23          wind-only rates for policies issued or renewed  
24          by the Citizens Property Insurance Corporation  
25          be no greater than 20 percent of premium;  
26          providing for a wind-only ratemaking  
27          methodology; requiring a report; requiring the  
28          Citizens Property Insurance Corporation to  
29          certify at certain intervals that its rates  
30          comply with requirements to be set a certain  
31          levels relative to other insurers; authorizing

1 the Office of Insurance Regulation to review  
2 and act upon such certification; requiring the  
3 corporation to appoint a rate methodology panel  
4 to make recommendations for the use of  
5 additional ratemaking methods, including the  
6 use of a rate equalization surcharge to assure  
7 that the cost of coverage is sufficient to  
8 comply with state law; requiring the  
9 corporation to provide a related report to the  
10 Legislature and a plan for implementing the  
11 additional ratemaking methods; specifying how  
12 the plan shall apply to agent commissions;  
13 requiring the corporation to develop a notice  
14 to policyholders; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 627.062, Florida Statutes, is  
19 amended to read:

20 627.062 Rate standards.--

21 (1) The rates for all classes of insurance to which  
22 the provisions of this part are applicable shall not be  
23 excessive, inadequate, or unfairly discriminatory.

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

25 (a) Insurers or rating organizations shall establish  
26 and use rates, rating schedules, or rating manuals to allow  
27 the insurer a reasonable rate of return on such classes of  
28 insurance written in this state. A copy of rates, rating  
29 schedules, rating manuals, premium credits or discount  
30 schedules, and surcharge schedules, and changes thereto, shall

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1 be filed with the department under one of the following  
2 procedures:

3           1. If the filing is made at least 90 days before the  
4 proposed effective date and the filing is not implemented  
5 during the department's review of the filing and any  
6 proceeding and judicial review, then such filing shall be  
7 considered a "file and use" filing. In such case, the  
8 department shall finalize its review by issuance of a notice  
9 of intent to approve or a notice of intent to disapprove  
10 within 90 days after receipt of the filing. The notice of  
11 intent to approve and the notice of intent to disapprove  
12 constitute agency action for purposes of the Administrative  
13 Procedure Act. Requests for supporting information, requests  
14 for mathematical or mechanical corrections, or notification to  
15 the insurer by the department of its preliminary findings  
16 shall not toll the 90-day period during any such proceedings  
17 and subsequent judicial review. The rate shall be deemed  
18 approved if the department does not issue a notice of intent  
19 to approve or a notice of intent to disapprove within 90 days  
20 after receipt of the filing.

21           2. If the filing is not made in accordance with the  
22 provisions of subparagraph 1., such filing shall be made as  
23 soon as practicable, but no later than 30 days after the  
24 effective date, and shall be considered a "use and file"  
25 filing. An insurer making a "use and file" filing is  
26 potentially subject to an order by the department to return to  
27 policyholders portions of rates found to be excessive, as  
28 provided in paragraph (h).

29           (b) Upon receiving a rate filing, the department shall  
30 review the rate filing to determine if a rate is excessive,  
31 inadequate, or unfairly discriminatory. In making that

1 determination, the department shall, in accordance with  
2 generally accepted and reasonable actuarial techniques,  
3 consider the following factors:

- 4 1. Past and prospective loss experience within and  
5 without this state.
- 6 2. Past and prospective expenses.
- 7 3. The degree of competition among insurers for the  
8 risk insured.
- 9 4. Investment income reasonably expected by the  
10 insurer, consistent with the insurer's investment practices,  
11 from investable premiums anticipated in the filing, plus any  
12 other expected income from currently invested assets  
13 representing the amount expected on unearned premium reserves  
14 and loss reserves. The department may promulgate rules  
15 utilizing reasonable techniques of actuarial science and  
16 economics to specify the manner in which insurers shall  
17 calculate investment income attributable to such classes of  
18 insurance written in this state and the manner in which such  
19 investment income shall be used in the calculation of  
20 insurance rates. Such manner shall contemplate allowances for  
21 an underwriting profit factor and full consideration of  
22 investment income which produce a reasonable rate of return;  
23 however, investment income from invested surplus shall not be  
24 considered. The profit and contingency factor as specified in  
25 the filing shall be utilized in computing excess profits in  
26 conjunction with s. 627.0625.
- 27 5. The reasonableness of the judgment reflected in the  
28 filing.
- 29 6. Dividends, savings, or unabsorbed premium deposits  
30 allowed or returned to Florida policyholders, members, or  
31 subscribers.

1           7. The adequacy of loss reserves.

2           8. The cost of reinsurance.

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

5           10. Conflagration and catastrophe hazards, if  
6 applicable.

7           11. A reasonable margin for underwriting profit and  
8 contingencies.

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

10           13. Other relevant factors which impact upon the  
11 frequency or severity of claims or upon expenses.

12           (c) In the case of fire insurance rates, consideration  
13 shall be given to the availability of water supplies and the  
14 experience of the fire insurance business during a period of  
15 not less than the most recent 5-year period for which such  
16 experience is available.

17           (d) If conflagration or catastrophe hazards are given  
18 consideration by an insurer in its rates or rating plan,  
19 including surcharges and discounts, the insurer shall  
20 establish a reserve for that portion of the premium allocated  
21 to such hazard and shall maintain the premium in a catastrophe  
22 reserve. Any removal of such premiums from the reserve for  
23 purposes other than paying claims associated with a  
24 catastrophe or purchasing reinsurance for catastrophes shall  
25 be subject to approval of the department. Any ceding  
26 commission received by an insurer purchasing reinsurance for  
27 catastrophes shall be placed in the catastrophe reserve.

28           (e) After consideration of the rate factors provided  
29 in paragraphs (b), (c), and (d), a rate may be found by the  
30 department to be excessive, inadequate, or unfairly  
31 discriminatory based upon the following standards:

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

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

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

14          4. A rating plan, including discounts, credits, or  
15 surcharges, shall be deemed unfairly discriminatory if it  
16 fails to clearly and equitably reflect consideration of the  
17 policyholder's participation in a risk management program  
18 adopted pursuant to s. 627.0625.

19          5. A rate shall be deemed inadequate as to the premium  
20 charged to a risk or group of risks if discounts or credits  
21 are allowed which exceed a reasonable reflection of expense  
22 savings and reasonably expected loss experience from the risk  
23 or group of risks.

24          6. A rate shall be deemed unfairly discriminatory as  
25 to a risk or group of risks if the application of premium  
26 discounts, credits, or surcharges among such risks does not  
27 bear a reasonable relationship to the expected loss and  
28 expense experience among the various risks.

29          (f) In reviewing a rate filing, the department may  
30 require the insurer to provide at the insurer's expense all  
31 information necessary to evaluate the condition of the company

1 and the reasonableness of the filing according to the criteria  
2 enumerated in this section.

3 (g) The department may at any time review a rate,  
4 rating schedule, rating manual, or rate change; the pertinent  
5 records of the insurer; and market conditions. If the  
6 department finds on a preliminary basis that a rate may be  
7 excessive, inadequate, or unfairly discriminatory, the  
8 department shall initiate proceedings to disapprove the rate  
9 and shall so notify the insurer. However, the department may  
10 not disapprove as excessive any rate for which it has given  
11 final approval or which has been deemed approved for a period  
12 of 1 year after the effective date of the filing unless the  
13 department finds that a material misrepresentation or material  
14 error was made by the insurer or was contained in the filing.  
15 Upon being so notified, the insurer or rating organization  
16 shall, within 60 days, file with the department all  
17 information which, in the belief of the insurer or  
18 organization, proves the reasonableness, adequacy, and  
19 fairness of the rate or rate change. The department shall  
20 issue a notice of intent to approve or a notice of intent to  
21 disapprove pursuant to the procedures of paragraph (a) within  
22 90 days after receipt of the insurer's initial response. In  
23 such instances and in any administrative proceeding relating  
24 to the legality of the rate, the insurer or rating  
25 organization shall carry the burden of proof by a  
26 preponderance of the evidence to show that the rate is not  
27 excessive, inadequate, or unfairly discriminatory. After the  
28 department notifies an insurer that a rate may be excessive,  
29 inadequate, or unfairly discriminatory, unless the department  
30 withdraws the notification, the insurer shall not alter the  
31 rate except to conform with the department's notice until the

1 earlier of 120 days after the date the notification was  
2 provided or 180 days after the date of the implementation of  
3 the rate. The department may, subject to chapter 120,  
4 disapprove without the 60-day notification any rate increase  
5 filed by an insurer within the prohibited time period or  
6 during the time that the legality of the increased rate is  
7 being contested.

8 (h) In the event the department finds that a rate or  
9 rate change is excessive, inadequate, or unfairly  
10 discriminatory, the department shall issue an order of  
11 disapproval specifying that a new rate or rate schedule which  
12 responds to the findings of the department be filed by the  
13 insurer. The department shall further order, for any "use and  
14 file" filing made in accordance with subparagraph (a)2., that  
15 premiums charged each policyholder constituting the portion of  
16 the rate above that which was actuarially justified be  
17 returned to such policyholder in the form of a credit or  
18 refund. If the department finds that an insurer's rate or rate  
19 change is inadequate, the new rate or rate schedule filed with  
20 the department in response to such a finding shall be  
21 applicable only to new or renewal business of the insurer  
22 written on or after the effective date of the responsive  
23 filing.

24 (i) Except as otherwise specifically provided in this  
25 chapter, the department shall not prohibit any insurer,  
26 including any residual market plan or joint underwriting  
27 association, from paying acquisition costs based on the full  
28 amount of premium, as defined in s. 627.403, applicable to any  
29 policy, or prohibit any such insurer from including the full  
30 amount of acquisition costs in a rate filing.

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1           (j) Any provisions of this section to the contrary  
2 notwithstanding:

3           1. With respect to any class of insurance subject to  
4 regulation under this section, a base rate filing reflecting  
5 an overall statewide average increase or decrease in the rate  
6 level of no more than 15 percent, above or below the insurer's  
7 rates then in effect, shall not be subject to a determination  
8 by the office that the rate is excessive or unfairly  
9 discriminatory, if the filing does not result in a premium  
10 increase of more than 40 percent to any policyholder as a  
11 result of the rate filing alone, before taking into account  
12 changes in coverage or insured value. As used in this  
13 subparagraph, the term "insurer's rates then in effect"  
14 includes only rates that have been approved under this section  
15 or rates that have been determined to be lawful through  
16 administrative proceedings or judicial proceedings, or, prior  
17 to July 1, 2003, through arbitration.

18           2. An insurer may not make more than one filing under  
19 this paragraph with respect to any one class of insurance in  
20 any calendar year. A filing under this paragraph must be made  
21 electronically.

22           3. This paragraph does not affect the authority of the  
23 office to disapprove a rate as inadequate.

24           4. This paragraph does not apply to rate filings for  
25 medical malpractice.

26           5. This paragraph does not apply to a rate filing for  
27 a type or line of insurance for which the Office of Insurance  
28 Regulation determines that a competitive market does not  
29 exist. The Financial Services Commission shall adopt rules  
30 establishing standards for determining whether or not a  
31 competitive market exists for a particular type or line of

1 insurance. It is presumed that a competitive market exists  
2 unless the office establishes that a competitive market does  
3 not exist.

4  
5 The provisions of this subsection shall not apply to workers'  
6 compensation and employer's liability insurance and to motor  
7 vehicle insurance.

8 (3)(a) For individual risks that are not rated in  
9 accordance with the insurer's rates, rating schedules, rating  
10 manuals, and underwriting rules filed with the department and  
11 which have been submitted to the insurer for individual  
12 rating, the insurer must maintain documentation on each risk  
13 subject to individual risk rating. The documentation must  
14 identify the named insured and specify the characteristics and  
15 classification of the risk supporting the reason for the risk  
16 being individually risk rated, including any modifications to  
17 existing approved forms to be used on the risk. The insurer  
18 must maintain these records for a period of at least 5 years  
19 after the effective date of the policy.

20 (b) Individual risk rates and modifications to  
21 existing approved forms are not subject to this part or part  
22 II, except for paragraph (a) and ss. 627.402, 627.403,  
23 627.4035, 627.404, 627.405, 627.406, 627.407, 627.4085,  
24 627.409, 627.4132, 627.4133, 627.415, 627.416, 627.417,  
25 627.419, 627.425, 627.426, 627.4265, 627.427, and 627.428, but  
26 are subject to all other applicable provisions of this code  
27 and rules adopted thereunder.

28 (c) This subsection does not apply to private  
29 passenger motor vehicle insurance.

30 (4) The establishment of any rate, rating  
31 classification, rating plan or schedule, or variation thereof

1 in violation of part IX of chapter 626 is also in violation of  
2 this section.

3 (5) With respect to a rate filing involving coverage  
4 of the type for which the insurer is required to pay a  
5 reimbursement premium to the Florida Hurricane Catastrophe  
6 Fund, the insurer may fully recoup in its property insurance  
7 premiums any reimbursement premiums paid to the Florida  
8 Hurricane Catastrophe Fund, together with reasonable costs of  
9 other reinsurance, but may not recoup reinsurance costs that  
10 duplicate coverage provided by the Florida Hurricane  
11 Catastrophe Fund.

12 ~~(6)(a) After any action with respect to a rate filing~~  
13 ~~that constitutes agency action for purposes of the~~  
14 ~~Administrative Procedure Act, an insurer may, in lieu of~~  
15 ~~demanding a hearing under s. 120.57, require arbitration of~~  
16 ~~the rate filing. Arbitration shall be conducted by a board of~~  
17 ~~arbitrators consisting of an arbitrator selected by the~~  
18 ~~department, an arbitrator selected by the insurer, and an~~  
19 ~~arbitrator selected jointly by the other two arbitrators. Each~~  
20 ~~arbitrator must be certified by the American Arbitration~~  
21 ~~Association. A decision is valid only upon the affirmative~~  
22 ~~vote of at least two of the arbitrators. No arbitrator may be~~  
23 ~~an employee of any insurance regulator or regulatory body or~~  
24 ~~of any insurer, regardless of whether or not the employing~~  
25 ~~insurer does business in this state. The department and the~~  
26 ~~insurer must treat the decision of the arbitrators as the~~  
27 ~~final approval of a rate filing. Costs of arbitration shall be~~  
28 ~~paid by the insurer.~~

29 ~~(b) Arbitration under this subsection shall be~~  
30 ~~conducted pursuant to the procedures specified in ss.~~  
31 ~~682.06-682.10. Either party may apply to the circuit court to~~

1 ~~vacate or modify the decision pursuant to s. 682.13 or s.~~  
2 ~~682.14. The department shall adopt rules for arbitration under~~  
3 ~~this subsection, which rules may not be inconsistent with the~~  
4 ~~arbitration rules of the American Arbitration Association as~~  
5 ~~of January 1, 1996.~~

6 ~~(c) Upon initiation of the arbitration process, the~~  
7 ~~insurer waives all rights to challenge the action of the~~  
8 ~~department under the Administrative Procedure Act or any other~~  
9 ~~provision of law; however, such rights are restored to the~~  
10 ~~insurer if the arbitrators fail to render a decision within 90~~  
11 ~~days after initiation of the arbitration process.~~

12 Section 2. Section 627.0651, Florida Statutes, is  
13 amended to read:

14 627.0651 Making and use of rates for motor vehicle  
15 insurance.--

16 (1) Insurers shall establish and use rates, rating  
17 schedules, or rating manuals to allow the insurer a reasonable  
18 rate of return on motor vehicle insurance written in this  
19 state. A copy of rates, rating schedules, and rating manuals,  
20 and changes therein, shall be filed with the department under  
21 one of the following procedures:

22 (a) If the filing is made at least 60 days before the  
23 proposed effective date and the filing is not implemented  
24 during the department's review of the filing and any  
25 proceeding and judicial review, such filing shall be  
26 considered a "file and use" filing. In such case, the  
27 department shall initiate proceedings to disapprove the rate  
28 and so notify the insurer or shall finalize its review within  
29 60 days after receipt of the filing. Notification to the  
30 insurer by the department of its preliminary findings shall  
31 toll the 60-day period during any such proceedings and

1 subsequent judicial review. The rate shall be deemed approved  
2 if the department does not issue notice to the insurer of its  
3 preliminary findings within 60 days after the filing.

4 (b) If the filing is not made in accordance with the  
5 provisions of paragraph (a), such filing shall be made as soon  
6 as practicable, but no later than 30 days after the effective  
7 date, and shall be considered a "use and file" filing. An  
8 insurer making a "use and file" filing is potentially subject  
9 to an order by the department to return to policyholders  
10 portions of rates found to be excessive, as provided in  
11 subsection (11).

12 (2) Upon receiving notice of a rate filing or rate  
13 change, the department shall review the rate or rate change to  
14 determine if the rate is excessive, inadequate, or unfairly  
15 discriminatory. In making that determination, the department  
16 shall in accordance with generally accepted and reasonable  
17 actuarial techniques consider the following factors:

18 (a) Past and prospective loss experience within and  
19 outside this state.

20 (b) The past and prospective expenses.

21 (c) The degree of competition among insurers for the  
22 risk insured.

23 (d) Investment income reasonably expected by the  
24 insurer, consistent with the insurer's investment practices,  
25 from investable premiums anticipated in the filing, plus any  
26 other expected income from currently invested assets  
27 representing the amount expected on unearned premium reserves  
28 and loss reserves. Such investment income shall not include  
29 income from invested surplus. The department may promulgate  
30 rules utilizing reasonable techniques of actuarial science and  
31 economics to specify the manner in which insurers shall

1 calculate investment income attributable to motor vehicle  
2 insurance policies written in this state and the manner in  
3 which such investment income is used in the calculation of  
4 insurance rates. Such manner shall contemplate the use of a  
5 positive underwriting profit allowance in the rates that will  
6 be compatible with a reasonable rate of return plus provisions  
7 for contingencies. The total of the profit and contingency  
8 factor as specified in the filing shall be utilized in  
9 computing excess profits in conjunction with s. 627.066. In  
10 promulgating such rules, the department shall in all instances  
11 adhere to and implement the provisions of this paragraph.

12 (e) The reasonableness of the judgment reflected in  
13 the filing.

14 (f) Dividends, savings, or unabsorbed premium deposits  
15 allowed or returned to Florida policyholders, members, or  
16 subscribers.

17 (g) The cost of repairs to motor vehicles.

18 (h) The cost of medical services, if applicable.

19 (i) The adequacy of loss reserves.

20 (j) The cost of reinsurance.

21 (k) Trend factors, including trends in actual losses  
22 per insured unit for the insurer making the filing.

23 (l) Other relevant factors which impact upon the  
24 frequency or severity of claims or upon expenses.

25 (3) Rates shall be deemed excessive if they are likely  
26 to produce a profit from Florida business that is unreasonably  
27 high in relation to the risk involved in the class of business  
28 or if expenses are unreasonably high in relation to services  
29 rendered.

30 (4) Rates shall be deemed excessive if, among other  
31 things, the rate structure established by a stock insurance

1 company provides for replenishment of surpluses from premiums,  
2 when such replenishment is attributable to investment losses.

3 (5)(a) Rates shall be deemed inadequate if they are  
4 clearly insufficient, together with the investment income  
5 attributable to them, to sustain projected losses and expenses  
6 in the class of business to which they apply.

7 (b) The Insurance Commissioner shall have the  
8 responsibility to ensure that rates for private passenger  
9 vehicle insurance are adequate. To that end, the department  
10 shall promulgate rules and regulations establishing standards  
11 defining inadequate rates on private passenger vehicle  
12 insurance as defined in s. 627.041(8). In the event that the  
13 department finds that a rate or rate change is inadequate, the  
14 department shall order that a new rate or rate schedule be  
15 thereafter filed by the insurer and shall further provide  
16 information as to the manner in which noncompliance of the  
17 standards may be corrected. When a violation of this  
18 provision occurs, the department shall impose an  
19 administrative fine pursuant to s. 624.4211.

20 (6) One rate shall be deemed unfairly discriminatory  
21 in relation to another in the same class if it clearly fails  
22 to reflect equitably the difference in expected losses and  
23 expenses.

24 (7) Rates are not unfairly discriminatory because  
25 different premiums result for policyholders with like loss  
26 exposures but different expense factors, or like expense  
27 factors but different loss exposures, so long as rates reflect  
28 the differences with reasonable accuracy.

29 (8) Rates are not unfairly discriminatory if averaged  
30 broadly among members of a group; nor are rates unfairly  
31 discriminatory even though they are lower than rates for

1 nonmembers of the group. However, such rates are unfairly  
2 discriminatory if they are not actuarially measurable and  
3 credible and sufficiently related to actual or expected loss  
4 and expense experience of the group so as to assure that  
5 nonmembers of the group are not unfairly discriminated  
6 against. Use of a single United States Postal Service zip code  
7 as a rating territory shall be deemed unfairly discriminatory.

8 (9) In reviewing the rate or rate change filed, the  
9 department may require the insurer to provide at the insurer's  
10 expense all information necessary to evaluate the condition of  
11 the company and the reasonableness of the filing according to  
12 the criteria enumerated herein.

13 (10) The department may, at any time, review a rate or  
14 rate change, the pertinent records of the insurer, and market  
15 conditions; and, if the department finds on a preliminary  
16 basis that the rate or rate change may be excessive,  
17 inadequate, or unfairly discriminatory, the department shall  
18 so notify the insurer. However, the department may not  
19 disapprove as excessive any rate for which it has given final  
20 approval or which has been deemed approved for a period of 1  
21 year after the effective date of the filing unless the  
22 department finds that a material misrepresentation or material  
23 error was made by the insurer or was contained in the filing.  
24 Upon being so notified, the insurer or rating organization  
25 shall, within 60 days, file with the department all  
26 information which, in the belief of the insurer or  
27 organization, proves the reasonableness, adequacy, and  
28 fairness of the rate or rate change. In such instances and in  
29 any administrative proceeding relating to the legality of the  
30 rate, the insurer or rating organization shall carry the  
31 burden of proof by a preponderance of the evidence to show



1 that the rate is not excessive, inadequate, or unfairly  
2 discriminatory. After the department notifies an insurer that  
3 a rate may be excessive, inadequate, or unfairly  
4 discriminatory, unless the department withdraws the  
5 notification, the insurer shall not increase the rate until  
6 the earlier of 120 days after the date the notification was  
7 provided or 180 days after the date of the implementation of  
8 the rate. The department may, subject to chapter 120,  
9 disapprove without the 60-day notification any rate increase  
10 filed by an insurer within the prohibited time period or  
11 during the time that the legality of the increased rate is  
12 being contested.

13 (11) In the event the department finds that a rate or  
14 rate change is excessive, inadequate, or unfairly  
15 discriminatory, the department shall issue an order of  
16 disapproval specifying that a new rate or rate schedule which  
17 responds to the findings of the department be filed by the  
18 insurer. The department shall further order for any "use and  
19 file" filing made in accordance with paragraph (1)(b), that  
20 premiums charged each policyholder constituting the portion of  
21 the rate above that which was actuarially justified be  
22 returned to such policyholder in the form of a credit or  
23 refund. If the department finds that an insurer's rate or rate  
24 change is inadequate, the new rate or rate schedule filed with  
25 the department in response to such a finding shall be  
26 applicable only to new or renewal business of the insurer  
27 written on or after the effective date of the responsive  
28 filing.

29 (12) Any portion of a judgment entered as a result of  
30 a statutory or common-law bad faith action and any portion of  
31 a judgment entered which awards punitive damages against an

1 insurer shall not be included in the insurer's rate base, and  
2 shall not be used to justify a rate or rate change. Any  
3 portion of a settlement entered as a result of a statutory or  
4 common-law bad faith action identified as such and any portion  
5 of a settlement wherein an insurer agrees to pay specific  
6 punitive damages shall not be used to justify a rate or rate  
7 change. The portion of the taxable costs and attorney's fees  
8 which is identified as being related to the bad faith and  
9 punitive damages in these judgments and settlements shall not  
10 be included in the insurer's rate base and shall not be  
11 utilized to justify a rate or rate change.

12 (13)(a) Underwriting rules not contained in rating  
13 manuals shall be filed for private passenger automobile  
14 insurance and homeowners' insurance.

15 (b) The submission of rates, rating schedules, and  
16 rating manuals to the department by a licensed rating  
17 organization of which an insurer is a member or subscriber  
18 will be sufficient compliance with this subsection for any  
19 insurer maintaining membership or subscribership in such  
20 organization, to the extent that the insurer uses the rates,  
21 rating schedules, and rating manuals of such organization.  
22 All such information shall be available for public inspection,  
23 upon receipt by the department, during usual business hours.

24 (14) Any provisions of this section to the contrary  
25 notwithstanding:

26 (a) A base rate filing for private passenger motor  
27 vehicle insurance reflecting an overall statewide average  
28 increase or decrease in the rate level of no more than 15  
29 percent, above or below the insurer's rates then in effect,  
30 shall not be subject to a determination by the office that the  
31 rate is excessive or unfairly discriminatory, if the filing

1 does not result in a premium increase of more than 40 percent  
2 to any policyholder as a result of the rate filing alone,  
3 before taking into account changes in coverage or insured  
4 value. As used in this subparagraph, the term "insurer's rates  
5 then in effect" includes only rates that have been approved  
6 under this section or rates that have been determined to be  
7 lawful through administrative proceedings or judicial  
8 proceedings, or, prior to July 1, 2003, through arbitration.

9 (b)1. An insurer may not make more than one filing  
10 under this subsection with respect to private passenger motor  
11 vehicle insurance in any calendar year. A filing under this  
12 paragraph must be made electronically.

13 2. This paragraph does not affect the authority of the  
14 office to disapprove a rate as inadequate.

15 3. This subsection does not apply to a rate filing for  
16 a type or line of insurance for which the Office of Insurance  
17 Regulation determines that a competitive market does not  
18 exist. The Financial Services Commission shall adopt rules  
19 establishing standards for determining whether or not a  
20 competitive market exists for a particular type or line of  
21 insurance. It is presumed that a competitive market exists  
22 unless the office establishes that a competitive market does  
23 not exist.

24 Section 3. Paragraph (d) of subsection (6) of section  
25 627.351, Florida Statutes, is amended to read:

26 627.351 Insurance risk apportionment plans.--

27 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

28 (d)1. It is the intent of the Legislature that the  
29 rates for coverage provided by the corporation be actuarially  
30 sound and not competitive with approved rates charged in the  
31 admitted voluntary market, so that the corporation functions

1 as a residual market mechanism to provide insurance only when  
2 the insurance cannot be procured in the voluntary market.  
3 Rates shall include an appropriate catastrophe loading factor  
4 that reflects the actual catastrophic exposure of the  
5 corporation.

6         2. For each county, the average rates of the  
7 corporation for each line of business for personal lines  
8 residential policies excluding rates for wind-only policies  
9 shall be no lower than the average rates charged by the  
10 insurer that had the highest average rate in that county among  
11 the 20 insurers with the greatest total direct written premium  
12 in the state for that line of business in the preceding year,  
13 except that with respect to mobile home coverages, the average  
14 rates of the corporation shall be no lower than the average  
15 rates charged by the insurer that had the highest average rate  
16 in that county among the 5 insurers with the greatest total  
17 written premium for mobile home owner's policies in the state  
18 in the preceding year.

19         3. Rates for personal lines residential wind-only  
20 policies must be actuarially sound and not competitive with  
21 approved rates charged by authorized insurers. However, for  
22 personal lines residential wind-only policies issued or  
23 renewed between July 1, 2002, and June 30, 2003, the maximum  
24 premium increase must be no greater than 10 percent of the  
25 Florida Windstorm Underwriting Association premium for that  
26 policy in effect on June 30, 2002, as adjusted for coverage  
27 changes and seasonal occupancy surcharges. The personal lines  
28 residential wind-only rates for policies issued or renewed by  
29 the corporation effective July 1, 2003, must be no greater  
30 than 20 percent of the premium for that policy in effect on  
31 June 30, 2003, as adjusted for coverage charges and seasonal

1 ~~occupancy surcharges based on a rate filing by the corporation~~  
2 ~~which establishes rates which are actuarially sound and not~~  
3 ~~competitive with approved rates charged by authorized~~  
4 ~~insurers. Corporation rate manuals shall include a rate~~  
5 ~~surcharge for seasonal occupancy. To ensure that personal~~  
6 ~~lines residential wind-only rates effective on or after July~~  
7 ~~1, 2003, are not competitive with approved rates charged by~~  
8 ~~authorized insurers, the corporation, in conjunction with the~~  
9 ~~office, shall develop a wind-only ratemaking methodology,~~  
10 ~~which methodology shall be used by the corporation in a rate~~  
11 ~~filing made with the office prior to January 1, 2004. If the~~  
12 ~~office thereafter determines that the wind-only rates and~~  
13 ~~rating factors filed by the corporation fail to comply with~~  
14 ~~the wind-only ratemaking methodology provided for in this~~  
15 ~~subsection, it shall notify the corporation and require the~~  
16 ~~corporation to amend its rates or rating factors in its next~~  
17 ~~rate filing. The office must report to the President of the~~  
18 ~~Senate and Speaker of the House of Representatives by March 1,~~  
19 ~~2004, on the provisions of the new wind-only ratemaking~~  
20 ~~methodology.~~~~the department, by March 1 of each year, shall~~  
21 ~~provide the corporation, for each county in which there are~~  
22 ~~geographical areas in which personal lines residential~~  
23 ~~wind-only policies may be issued, the average rates charged by~~  
24 ~~the insurer that had the highest average rate in that county~~  
25 ~~for wind coverage in that insurer's rating territories which~~  
26 ~~most closely approximate the geographical area in that county~~  
27 ~~in which personal lines residential wind-only policies may be~~  
28 ~~written by the corporation. The average rates provided must~~  
29 ~~be from an insurer among the 20 insurers with the greatest~~  
30 ~~total direct written premium in the state for personal lines~~  
31 ~~residential property insurance for the preceding year. With~~

1 ~~respect to mobile homes, the five insurers with the greatest~~  
2 ~~total written premium for that line of business in the~~  
3 ~~preceding year shall be used. The corporation shall certify~~  
4 ~~to the department that its average personal lines residential~~  
5 ~~wind-only rates are no lower in each county than the average~~  
6 ~~rates provided by the department. The department is~~  
7 ~~authorized to adopt rules to establish reporting requirements~~  
8 ~~to obtain the necessary wind-only rate information from~~  
9 ~~insurers to implement this provision.~~

10           4. Rates for commercial lines coverage shall not be  
11 subject to the requirements of subparagraph 2., but shall be  
12 subject to all other requirements of this paragraph and s.  
13 627.062.

14           5. Nothing in this paragraph shall require or allow  
15 the corporation to adopt a rate that is inadequate under s.  
16 627.062.

17           6. The corporation shall certify to the office at  
18 least twice annually that its personal lines rates comply with  
19 the requirements of subparagraphs 1. and 2. If any adjustment  
20 in the rates or rating factors of the corporation is necessary  
21 to ensure such compliance, the corporation shall make and  
22 implement such adjustments and file its revised rates and  
23 rating factors with the office. If the office thereafter  
24 determines that the revised rates and rating factors fail to  
25 comply with the provisions of subparagraphs 1. and 2, it shall  
26 notify the corporation and require the corporation to amend  
27 its rates or rating factors in conjunction with its next rate  
28 filing. The office must notify the corporation by electronic  
29 means of any rate filing it approves for any insurer among the  
30 insurers referred to in subparagraph 2.~~make a rate filing at~~  
31 ~~least once a year, but no more often than quarterly.~~

1           7. In addition to the rates otherwise determined  
2 pursuant to this paragraph, the corporation shall impose and  
3 collect an amount equal to the premium tax provided for in s.  
4 624.509 to augment the financial resources of the corporation.

5           8.a. To assist the corporation in developing  
6 additional ratemaking methods to assure compliance with  
7 subparagraphs 1. and 4., the corporation shall appoint a rate  
8 methodology panel consisting of one person recommended by the  
9 Florida Association of Insurance Agents, one person  
10 recommended by the Professional Insurance Agents of Florida,  
11 one person recommended by the Florida Association of Insurance  
12 and Financial Advisors, one person recommended by the insurer  
13 with the highest voluntary market share of residential  
14 property insurance business in the state, one person  
15 recommended by the insurer with the second-highest voluntary  
16 market share of residential property insurance business in the  
17 state, one person recommended by an insurer writing commercial  
18 residential property insurance in this state, one person  
19 recommended by the Office of Insurance Regulation, and one  
20 board member designated by the board chairman, who shall serve  
21 as chairman of the panel.

22           b. By January 1, 2004, the rate methodology panel  
23 shall provide a report to the corporation of its findings and  
24 recommendations for the use of additional ratemaking methods  
25 and procedures, including the use of a rate-equalization  
26 surcharge in an amount sufficient to assure that the total  
27 cost of coverage for policyholders or applicants to the  
28 corporation is sufficient to comply with subparagraph 1.

29           c. Within 30 days after such report, the corporation  
30 shall present to the President of the Senate, the Speaker of  
31 the House of Representatives, the minority party leaders of

1 each house of the Legislature, and the chairs of the standing  
2 committees of each house of the Legislature having  
3 jurisdiction of insurance issues, a plan for implementing the  
4 additional ratemaking methods and an outline of any  
5 legislation needed to facilitate use of the new methods.

6 d. The plan must include a provision that producer  
7 commissions paid by the corporation shall not be calculated in  
8 such a manner as to include any rate-equalization surcharge.  
9 However, without regard to the plan to be developed or its  
10 implementation, producer commissions paid by the corporation  
11 for each account, other than the quota share primary insurance  
12 program, shall remain fixed as to percentage, effective rate,  
13 calculation, and payment method, as these were in effect on  
14 January 1, 2003.

15 9. By January 1, 2004, the corporation shall develop a  
16 notice to policyholders or applicants that the rates of  
17 Citizens Property Insurance Corporation are intended to be  
18 higher than the rates of any admitted carrier and providing  
19 other information the corporation deems necessary to assist  
20 consumers in finding other voluntary admitted insurers willing  
21 to insure their property.

22 Section 4. This act shall take effect July 1, 2003.  
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 1308

4 The committee substitute does the following:

- 5 - Provides an exception to the current requirements for  
6 insurance rate filings for property and casualty insurers  
7 (homeowners, commercial property, commercial multiperil,  
8 and commercial and professional liability coverages) and  
9 private passenger motor vehicle insurers to make a base  
10 rate filing reflecting an overall statewide average  
11 increase or decrease of no more than 15 percent, above or  
12 below the insurer's rates then in effect, which would not  
13 be subject to approval by the Office of Insurance  
14 Regulation (OIR), provided that the filing does not  
15 result in a premium increase to any policyholder of more  
16 than 40 percent.
- 17 - Provides that insurers could not make more than one rate  
18 filing under the above provision with respect to any one  
19 class of insurance in any calendar year. Excludes medical  
20 malpractice rate filings.
- 21 - Repeals the current provision that allows property and  
22 casualty insurers to submit a rate filing that has been  
23 disapproved by the OIR to an arbitration panel.
- 24 - Requires that personal lines residential wind-only rates  
25 for the Citizens Property Insurance Corporation  
26 (Citizens) must be no greater than 20 percent of the  
27 premium for that policy in effect on June, 30, 2003, as  
28 adjusted for coverage changes and seasonal occupancy  
29 surcharges.
- 30 - Provides that Citizens shall develop, in conjunction with  
31 the OIR, a wind-only ratemaking methodology which must be  
used in the Citizen's rate filing prior to January 1,  
2004. Requires Citizens to revise its rates to comply  
with the wind-only ratemaking methodologies if determined  
by OIR. Requires the OIR to report to the Legislature by  
March 1, 2004, of the new wind-only ratemaking  
methodology. Require Citizens to certify to OIR twice  
annually that its rates for homeowners policies and  
similar coverages are not competitive with approved rates  
charged by insurers (in the admitted voluntary market)  
and that its rates in a particular county be no less than  
the average rate of an insurer with the highest average  
rates in that county, from among the 20 insurers with the  
greatest statewide market share.
- Requires citizens to appoint a Rate Methodology Panel to  
develop additional ratemaking methods to comply with the  
rate comparison standard; specifies appointments;  
requires that by January 1, 2004, the Panel provide a  
report to Citizens of its findings and recommendations.  
Requires Citizens to present a plan for implementing the  
additional ratemaking methods to the Legislature, and  
other specified parties, within 30 days of the Panel's  
report.

1 - Provides that the plan include a provision that producer  
2 commissions paid by Citizens must not be calculated to  
3 include any rate equalization surcharges, and makes  
4 permanent the amount and method of producer compensation  
5 in effect on January 1, 2003. Provides for a notice to be  
6 attached to all Citizens' policies, applications, and  
7 renewal premiums.  
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