

By Senator Geller

31-1148-03

1                                   A bill to be entitled  
 2           An act relating to insurance rate standards;  
 3           amending s. 627.062, F.S.; conforming  
 4           provisions relating to regulation by the Office  
 5           of Insurance Regulation; providing for the  
 6           director of that office to establish rates  
 7           prior to their taking effect; providing  
 8           procedures for such filings; deleting a  
 9           provision excepting motor vehicle insurance  
 10          from the provisions of s. 627.062, F.S.;  
 11          deleting an arbitration provision; prohibiting  
 12          certain judgments or settlements involving bad  
 13          faith actions or punitive damages from being  
 14          included in an insurer's rate base or used to  
 15          justify a rate change; requiring certain  
 16          underwriting rules to be filed; providing an  
 17          effective date.

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

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 21           Section 1. Section 627.062, Florida Statutes, is  
 22 amended to read:

23           627.062 Rate standards; prior rate approval.--

24           (1) The rates for all classes of insurance to which  
 25 the provisions of this part are applicable shall be set by the  
 26 director of the Office of Insurance Regulation and may not be  
 27 excessive, inadequate, or unfairly discriminatory.

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

29           (a) Insurers or rating organizations shall apply for  
 30 ~~establish and use~~ rates, rating schedules, or rating manuals  
 31 to allow the insurer a reasonable rate of return on such

1 classes of insurance written in this state. A copy of rates,  
2 rating schedules, rating manuals, premium credits or discount  
3 schedules, and surcharge schedules, and changes thereto, must  
4 ~~shall~~ be filed with the Office of Insurance Regulation  
5 ~~department under one of the following procedures:~~

6 1. ~~If the filing is made at least 180 90 days before~~  
7 ~~the proposed effective date, and The filing may is not be~~  
8 ~~implemented during the department's review of the filing and~~  
9 ~~any proceeding and judicial review., then such filing shall be~~  
10 ~~considered a "file and use" filing. In such case, the~~  
11 ~~department shall finalize its review by issuance of a notice~~  
12 ~~of intent to approve or a notice of intent to disapprove~~  
13 ~~within 90 days after receipt of the filing. The notice of~~  
14 ~~intent to approve and the notice of intent to disapprove~~  
15 ~~constitute agency action for purposes of the Administrative~~  
16 ~~Procedure Act. Requests for supporting information, requests~~  
17 ~~for mathematical or mechanical corrections, or notification to~~  
18 ~~the insurer by the department of its preliminary findings~~  
19 ~~shall not toll the 90-day period during any such proceedings~~  
20 ~~and subsequent judicial review. The rate shall be deemed~~  
21 ~~approved if the department does not issue a notice of intent~~  
22 ~~to approve or a notice of intent to disapprove within 90 days~~  
23 ~~after receipt of the filing.~~

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

1           (b) Within a reasonable time after ~~Upon~~ receiving a  
2 rate filing, the Office of Insurance Regulation ~~department~~  
3 shall review the rate filing and establish a rate or rate  
4 schedule that ~~to determine if a rate is not~~ excessive,  
5 inadequate, or unfairly discriminatory. In making that  
6 determination, the office ~~department~~ shall, in accordance with  
7 generally accepted and reasonable actuarial techniques,  
8 consider the following factors:

9           1. Past and prospective loss experience within and  
10 without this state.

11           2. Past and prospective expenses.

12           3. The degree of competition among insurers for the  
13 risk insured.

14           4. Investment income reasonably expected by the  
15 insurer, consistent with the insurer's investment practices,  
16 from investable premiums anticipated in the filing, plus any  
17 other expected income from currently invested assets  
18 representing the amount expected on unearned premium reserves  
19 and loss reserves. The office ~~department~~ may adopt ~~promulgate~~  
20 rules utilizing reasonable techniques of actuarial science and  
21 economics to specify the manner in which insurers shall  
22 calculate investment income attributable to such classes of  
23 insurance written in this state and the manner in which such  
24 investment income shall be used in the calculation of  
25 insurance rates. Such manner shall contemplate allowances for  
26 an underwriting profit factor and full consideration of  
27 investment income which produce a reasonable rate of return;  
28 however, investment income from invested surplus shall not be  
29 considered. The profit and contingency factor as specified in  
30 the filing shall be utilized in computing excess profits in  
31 conjunction with s. 627.0625.

- 1           5. The reasonableness of the judgment reflected in the  
2 filing.
- 3           6. Dividends, savings, or unabsorbed premium deposits  
4 allowed or returned to Florida policyholders, members, or  
5 subscribers.
- 6           7. The adequacy of loss reserves.
- 7           8. The cost of reinsurance.
- 8           9. Trend factors, including trends in actual losses  
9 per insured unit for the insurer making the filing.
- 10          10. Conflagration and catastrophe hazards, if  
11 applicable.
- 12          11. A reasonable margin for underwriting profit and  
13 contingencies.
- 14          12. The cost of medical services, if applicable.
- 15          13. Other relevant factors which impact upon the  
16 frequency or severity of claims or upon expenses.
- 17          (c) In the case of fire insurance rates, consideration  
18 shall be given to the availability of water supplies and the  
19 experience of the fire insurance business during a period of  
20 not less than the most recent 5-year period for which such  
21 experience is available.
- 22          (d) If conflagration or catastrophe hazards are given  
23 consideration by an insurer in its rates or rating plan,  
24 including surcharges and discounts, the insurer shall  
25 establish a reserve for that portion of the premium allocated  
26 to such hazard and shall maintain the premium in a catastrophe  
27 reserve. Any removal of such premiums from the reserve for  
28 purposes other than paying claims associated with a  
29 catastrophe or purchasing reinsurance for catastrophes shall  
30 be subject to approval of the department. Any ceding  
31

1 commission received by an insurer purchasing reinsurance for  
2 catastrophes shall be placed in the catastrophe reserve.

3 (e) After consideration of the rate factors provided  
4 in paragraphs (b), (c), and (d), the Office of Insurance  
5 Regulation shall set an appropriate rate that is not a rate  
6 ~~may be found by the department to be~~ excessive, inadequate, or  
7 unfairly discriminatory based upon the following standards:

8 1. Rates shall be deemed excessive if they are likely  
9 to produce a profit from Florida business that is unreasonably  
10 high in relation to the risk involved in the class of business  
11 or if expenses are unreasonably high in relation to services  
12 rendered.

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

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

21 4. A rating plan, including discounts, credits, or  
22 surcharges, shall be deemed unfairly discriminatory if it  
23 fails to clearly and equitably reflect consideration of the  
24 policyholder's participation in a risk management program  
25 adopted pursuant to s. 627.0625.

26 5. A rate shall be deemed inadequate as to the premium  
27 charged to a risk or group of risks if discounts or credits  
28 are allowed which exceed a reasonable reflection of expense  
29 savings and reasonably expected loss experience from the risk  
30 or group of risks.

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1           6. A rate shall be deemed unfairly discriminatory as  
2 to a risk or group of risks if the application of premium  
3 discounts, credits, or surcharges among such risks does not  
4 bear a reasonable relationship to the expected loss and  
5 expense experience among the various risks.

6           (f) In reviewing a rate filing, the Office of  
7 Insurance Regulation ~~department~~ may require the insurer to  
8 provide at the insurer's expense all information necessary to  
9 evaluate the condition of the company and the reasonableness  
10 of the filing according to the criteria enumerated in this  
11 section.

12           (g) The Office of Insurance Regulation ~~department~~ may  
13 at any time review a rate, rating schedule, rating manual, or  
14 rate change; the pertinent records of the insurer; and market  
15 conditions. If the office ~~department~~ finds on a preliminary  
16 basis that a rate may be excessive, inadequate, or unfairly  
17 discriminatory, it ~~the department~~ shall initiate proceedings  
18 to establish a new ~~disapprove the~~ rate and shall ~~so~~ notify the  
19 insurer. However, the office ~~department~~ may not disapprove as  
20 excessive any rate that it has established ~~for which it has~~  
21 ~~given final approval or which has been deemed approved~~ for a  
22 period of 1 year after the effective date of the filing unless  
23 it ~~the department~~ finds that a material misrepresentation or  
24 material error was made by the insurer or was contained in the  
25 filing. Upon being so notified, the insurer or rating  
26 organization shall, within 60 days, file with the office  
27 ~~department~~ all information which, in the belief of the insurer  
28 or organization, proves the reasonableness, adequacy, and  
29 fairness of the rate or rate change. The office shall  
30 establish an appropriate rate within a reasonable time after  
31 receiving an insurer's initial response. ~~The department shall~~

1 ~~issue a notice of intent to approve or a notice of intent to~~  
2 ~~disapprove pursuant to the procedures of paragraph (a) within~~  
3 ~~90 days after receipt of the insurer's initial response. In~~  
4 ~~such instances and in any administrative proceeding relating~~  
5 ~~to the legality of any the rate, the insurer or rating~~  
6 ~~organization shall carry the burden of proof by a~~  
7 ~~preponderance of the evidence to show that the rate is not~~  
8 ~~excessive, inadequate, or unfairly discriminatory. After the~~  
9 ~~department notifies an insurer that a rate may be excessive,~~  
10 ~~inadequate, or unfairly discriminatory, unless the department~~  
11 ~~withdraws the notification, the insurer shall not alter the~~  
12 ~~rate except to conform with the department's notice until the~~  
13 ~~earlier of 120 days after the date the notification was~~  
14 ~~provided or 180 days after the date of the implementation of~~  
15 ~~the rate. The department may, subject to chapter 120,~~  
16 ~~disapprove without the 60-day notification any rate increase~~  
17 ~~filed by an insurer within the prohibited time period or~~  
18 ~~during the time that the legality of the increased rate is~~  
19 ~~being contested.~~

20 (h) After setting a new rate or rate schedule, the  
21 Office of Insurance Regulation ~~In the event the department~~  
22 ~~finds that a rate or rate change is excessive, inadequate, or~~  
23 ~~unfairly discriminatory, the department shall issue an order~~  
24 ~~of disapproval specifying the that a new rate or rate schedule~~  
25 ~~and which responds to the findings of the office. The order~~  
26 ~~constitutes final agency action for purposes of chapter 120~~  
27 ~~department be filed by the insurer. The department shall~~  
28 ~~further order, for any "use and file" filing made in~~  
29 ~~accordance with subparagraph (a)2., that premiums charged each~~  
30 ~~policyholder constituting the portion of the rate above that~~  
31 ~~which was actuarially justified be returned to such~~

1 ~~policyholder in the form of a credit or refund. If the~~  
2 ~~department finds that an insurer's rate or rate change is~~  
3 ~~inadequate, the new rate or rate schedule filed with the~~  
4 ~~department in response to such a finding shall be applicable~~  
5 ~~only to new or renewal business of the insurer written on or~~  
6 ~~after the effective date of the responsive filing.~~

7 (i) Except as otherwise specifically provided in this  
8 chapter, the Office of Insurance Regulation may ~~department~~  
9 ~~shall~~ not prohibit any insurer, including any residual market  
10 plan or joint underwriting association, from paying  
11 acquisition costs based on the full amount of premium, as  
12 defined in s. 627.403, applicable to any policy, or prohibit  
13 any such insurer from including the full amount of acquisition  
14 costs in a rate filing.

15  
16 ~~The provisions of This subsection does shall~~ not apply to  
17 workers' compensation and employer's liability insurance ~~and~~  
18 ~~to motor vehicle insurance.~~

19 (3)(a) For individual risks that are not rated in  
20 accordance with the insurer's rates, rating schedules, rating  
21 manuals, and underwriting rules filed with the Office of  
22 Insurance Regulation ~~department~~ and which have been submitted  
23 to the insurer for individual rating, the insurer must  
24 maintain documentation on each risk subject to individual risk  
25 rating. The documentation must identify the named insured and  
26 specify the characteristics and classification of the risk  
27 supporting the reason for the risk being individually risk  
28 rated, including any modifications to existing approved forms  
29 to be used on the risk. The insurer must maintain these  
30 records for a period of at least 5 years after the effective  
31 date of the policy.



1           (b) Individual risk rates and modifications to  
2 existing approved forms are not subject to this part or part  
3 II, except for paragraph (a) and ss. 627.402, 627.403,  
4 627.4035, 627.404, 627.405, 627.406, 627.407, 627.4085,  
5 627.409, 627.4132, 627.4133, 627.415, 627.416, 627.417,  
6 627.419, 627.425, 627.426, 627.4265, 627.427, and 627.428, but  
7 are subject to all other applicable provisions of this code  
8 and rules adopted thereunder.

9           (c) This subsection does not apply to private  
10 passenger motor vehicle insurance.

11           (4) The establishment of any rate, rating  
12 classification, rating plan or schedule, or variation thereof  
13 in violation of part IX of chapter 626 is also in violation of  
14 this section.

15           (5) With respect to a rate filing involving coverage  
16 of the type for which the insurer is required to pay a  
17 reimbursement premium to the Florida Hurricane Catastrophe  
18 Fund, the insurer may fully recoup in its property insurance  
19 premiums any reimbursement premiums paid to the Florida  
20 Hurricane Catastrophe Fund, together with reasonable costs of  
21 other reinsurance, but may not recoup reinsurance costs that  
22 duplicate coverage provided by the Florida Hurricane  
23 Catastrophe Fund.

24           (6) Any portion of a judgment entered as a result of a  
25 statutory or common-law bad faith action and any portion of a  
26 judgment that awards punitive damages against an insurer may  
27 not be included in the insurer's rate base or used to justify  
28 a rate or rate change. Any portion of a settlement entered as  
29 a result of a statutory or common-law bad faith action  
30 identified as such and any portion of a settlement wherein an  
31 insurer agrees to pay specific punitive damages may not be

1 used to justify a rate or rate change. The portion of the  
2 taxable costs and attorney's fees which is identified as being  
3 related to the bad faith and punitive damages in these  
4 judgments and settlements may not be included in the insurer's  
5 rate base or used to justify a rate or rate change.

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

9 (b) The submission of rates, rating schedules, or  
10 rating manuals to the Office of Insurance Regulation by a  
11 licensed rating organization of which an insurer is a member  
12 or subscriber is sufficient compliance with this subsection  
13 for such insurer to the extent that the insurer uses these  
14 rates, rating schedules, and rating manuals. All such filed  
15 information shall be available for public inspection at the  
16 Office of Insurance Regulation during usual business hours.

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

1 ~~final approval of a rate filing. Costs of arbitration shall be~~  
2 ~~paid by the insurer.~~

3 ~~(b) Arbitration under this subsection shall be~~  
4 ~~conducted pursuant to the procedures specified in ss.~~  
5 ~~682.06-682.10. Either party may apply to the circuit court to~~  
6 ~~vacate or modify the decision pursuant to s. 682.13 or s.~~  
7 ~~682.14. The department shall adopt rules for arbitration under~~  
8 ~~this subsection, which rules may not be inconsistent with the~~  
9 ~~arbitration rules of the American Arbitration Association as~~  
10 ~~of January 1, 1996.~~

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

17 Section 2. This act shall take effect upon becoming a  
18 law.

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21 SENATE SUMMARY

22 Revises insurance rate standards provisions. Conforms  
23 provisions relating to regulation by the Office of  
24 Insurance Regulation instead of the Department of  
25 Insurance. Provides for insurers to file rate requests  
26 for approval with the office and provides procedures for  
27 such filings. Deletes a provision excepting motor vehicle  
28 insurers from such regulation. Deletes an arbitration  
29 provision. Prohibits bad faith or punitive damages  
30 judgments or settlements from being included in an  
31 insurer's rate base or being used to justify a rate  
change. Requires that certain underwriting rules be filed  
with the office (see bill for details.)