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1 A bill to be entitled

2 An act relating to insurance; amending s. 501.212, F.S.;
3 deleting an exclusion from application of deceptive and
4 unfair trade practices provisions pertaining to the
5 Department of Financial Services or the Office of
6 Insurance Regulation; creating s. 624.156, F.S.; providing
7 that certain consumer protection laws apply to the
8 business of insurance; amending s. 627.041, F.S.; revising
9 definitions; amending s. 627.314, F.S.; revising certain
10 authorized actions multiple insurers may engage in
11 together; prohibiting certain conduct on the part of
12 insurers; creating s. 627.0662, F.S.; providing a
13 definition; requiring each residential property insurer to
14 report certain information to the office; providing for
15 determination of whether excessive profit has been
16 realized; requiring return of excessive amounts; creating
17 s. 627.41491, F.S.; requiring the office to provide health
18 care providers with a full disclosure of certain rate
19 comparison information each year; creating s. 627.41493,
20 F.S.; requiring a motor vehicle insurance and residential
21 property insurance rate rollback; providing for subsequent
22 increases under certain circumstances; creating s.
23 627.41494, F.S.; providing for consumer participation in
24 review of insurance rate changes; providing for public
25 inspection; providing for adoption of rules by the office;
26 creating s. 627.747, F.S.; requiring motor vehicle
27 insurers to offer good driver discount plans for a
28 discounted premium; amending s. 627.062, F.S.; providing
29 for the director of the office to establish rates before

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30 they take effect; providing procedures for such filings;
 31 deleting a provision excepting motor vehicle insurance
 32 from application; deleting an arbitration provision;
 33 requiring certain underwriting rules to be filed; amending
 34 s. 627.0628, F.S.; limiting authority of insurers to use
 35 findings of the Florida Commission on Hurricane Loss
 36 Projection Methodology in certain rate filings; providing
 37 that such findings are not admissible and relevant in
 38 consideration of a rate filing unless the office has
 39 access to all factors and assumptions used in developing
 40 the standards or models found by the commission to be
 41 reliable or accurate; providing an effective date.

42

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

44

45 Section 1. Subsection (4) of section 501.212, Florida
 46 Statutes, is amended to read:

47 501.212 Application.--This part does not apply to:

48 (4) ~~Any person or activity regulated under laws~~
 49 ~~administered by the Department of Financial Services or the~~
 50 ~~Office of Insurance Regulation of the Financial Services~~
 51 ~~Commission or~~ Banks and savings and loan associations regulated
 52 by the Office of Financial Regulation of the Financial Services
 53 Commission or banks or savings and loan associations regulated
 54 by federal agencies.

55 Section 2. Section 624.156, Florida Statutes, is created
 56 to read:

57 624.156 Applicability of consumer protection laws to the
 58 business of insurance.--

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59 (1) Notwithstanding any provision of law to the contrary,
 60 the business of insurance shall be subject to the laws of this
 61 state applicable to any other business, including, but not
 62 limited to, the Florida Civil Rights Act of 1992 set forth in
 63 part I of chapter 760, the Florida Antitrust Act of 1980 set
 64 forth in chapter 542, the Florida Deceptive and Unfair Trade
 65 Practices Act set forth in part II of chapter 501, and the
 66 consumer protection provisions contained in chapter 540. The
 67 protections afforded consumers by chapters 501, 540, 542, and
 68 760 shall apply to insurance consumers.

69 (2) This section does not prohibit:

70 (a) Any agreement to collect, compile, and disseminate
 71 historical data on paid claims or reserves for reported claims,
 72 provided such data are contemporaneously transmitted to the
 73 Office of Insurance Regulation and made available for public
 74 inspection.

75 (b) Participation in any joint arrangement established by
 76 law or the Office of Insurance Regulation to ensure availability
 77 of insurance.

78 (c) Any agent or broker, representing one or more
 79 insurers, from obtaining from any insurer such agent or broker
 80 represents information relative to the premium for any policy or
 81 risk to be underwritten by that insurer.

82 (d) Any agent or broker from disclosing to an insurer the
 83 agent or broker represents any quoted rate or charge offered by
 84 another insurer represented by that agent or broker for the
 85 purpose of negotiating a lower rate, charge, or term from the
 86 insurer to whom the disclosure is made.

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87 (e) Any agents, brokers, or insurers from using, or
 88 participating with multiple insurers or reinsurers for
 89 underwriting, a single risk or group of risks.

90 Section 3. Subsections (3) and (4) of section 627.041,
 91 Florida Statutes, are amended to read:

92 627.041 Definitions.--As used in this part:

93 (3) "Rating organization" means every person, other than
 94 an authorized insurer, whether located within or outside this
 95 state, who has as his or her object or purpose the collecting,
 96 compiling, and disseminating of historical data on paid claims
 97 or reserves for reported claims ~~making of rates, rating plans,~~
 98 ~~or rating systems~~. Two or more authorized insurers that act in
 99 concert for the purpose of collecting, compiling, and
 100 disseminating historical data on paid claims or reserves for
 101 reported claims ~~making rates, rating plans, or rating systems,~~
 102 and that do not operate within the specific authorizations
 103 contained in ss. 627.311, 627.314(2), ~~(4),~~ and 627.351, shall be
 104 deemed to be a rating organization. No single insurer shall be
 105 deemed to be a rating organization.

106 (4) "Advisory organization" means every group,
 107 association, or other organization of insurers, whether located
 108 within or outside this state, which prepares policy forms ~~or~~
 109 ~~makes underwriting rules incident to but not including the~~
 110 ~~making of rates, rating plans, or rating systems or which~~
 111 ~~collects and furnishes to authorized insurers or rating~~
 112 ~~organizations loss or expense statistics or other statistical~~
 113 ~~information and data and acts in an advisory, as distinguished~~
 114 ~~from a ratemaking, capacity.~~

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115 Section 4. Section 627.314, Florida Statutes, is amended
 116 to read:

117 627.314 Concerted action by two or more insurers.--

118 (1) Subject to and in compliance with the provisions of
 119 this part authorizing insurers to be members or subscribers of
 120 rating or advisory organizations or to engage in joint
 121 underwriting or joint reinsurance, two or more insurers may act
 122 in concert with each other and with others with respect to any
 123 matters pertaining to:

124 (a) Collecting, compiling, and disseminating historical
 125 data on paid claims or reserve for reported claims ~~The making of~~
 126 ~~rates or rating systems except for private passenger automobile~~
 127 ~~insurance rates;~~

128 (b) The preparation or making of insurance policy or bond
 129 forms, ~~underwriting rules,~~ surveys, inspections, and
 130 investigations; or

131 ~~(c) The furnishing of loss or expense statistics or other~~
 132 ~~information and data; or~~

133 ~~(c)(d)~~ (c) The carrying on of research.

134 (2) With respect to any matters pertaining to the making
 135 of rates or rating systems; the preparation or making of
 136 insurance policy or bond forms, underwriting rules, surveys,
 137 inspections, and investigations; the furnishing of loss or
 138 expense statistics or other information and data; or the
 139 carrying on of research, two or more authorized insurers having
 140 a common ownership or operating in the state under common
 141 management or control are hereby authorized to act in concert
 142 between or among themselves the same as if they constituted a
 143 single insurer. To the extent that such matters relate to

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144 cosurety bonds, two or more authorized insurers executing such
 145 bonds are hereby authorized to act in concert between or among
 146 themselves the same as if they constituted a single insurer.

147 (3)(a) Members and subscribers of rating or advisory
 148 organizations may use the ~~rates, rating systems, underwriting~~
 149 ~~rules, or~~ policy or bond forms of such organizations, either
 150 consistently or intermittently; ~~but, except as provided in~~
 151 ~~subsection (2) and ss. 627.311 and 627.351, they shall not agree~~
 152 ~~with each other or rating organizations or others to adhere~~
 153 ~~thereto.~~

154 ~~(b) The fact that two or more authorized insurers, whether~~
 155 ~~or not members or subscribers of a rating or advisory~~
 156 ~~organization, use, either consistently or intermittently, the~~
 157 ~~rates or rating systems made or adopted by a rating organization~~
 158 ~~or the underwriting rules or policy or bond forms prepared by a~~
 159 ~~rating or advisory organization shall not be sufficient in~~
 160 ~~itself to support a finding that an agreement to so adhere~~
 161 ~~exists, and may be used only for the purpose of supplementing or~~
 162 ~~explaining direct evidence of the existence of any such~~
 163 ~~agreement.~~

164 (b)(e) This subsection does not apply as to workers'
 165 compensation and employer's liability insurances.

166 ~~(4) Licensed rating organizations and authorized insurers~~
 167 ~~are authorized to exchange information and experience data with~~
 168 ~~rating organizations and insurers in this and other states and~~
 169 ~~may consult with them with respect to ratemaking and the~~
 170 ~~application of rating systems.~~

171 (4)(5) Upon compliance with the provisions of this part
 172 applicable thereto, any rating organization or advisory

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173 organization, and any group, association, or other organization
 174 of authorized insurers which engages in joint underwriting or
 175 joint reinsurance through such organization or by standing
 176 agreement among the members thereof, may conduct operations in
 177 this state. As respects insurance risks or operations in this
 178 state, no insurer shall be a member or subscriber of any such
 179 organization, group, or association that has not complied with
 180 the provisions of this part applicable to it.

181 ~~(5)(6)~~ Notwithstanding any other provisions of this part,
 182 insurers shall not participate directly or indirectly in the
 183 deliberations or decisions of rating organizations on private
 184 passenger automobile insurance. However, such rating
 185 organizations shall, upon request of individual insurers, be
 186 required to furnish at reasonable cost the rate indications
 187 resulting from the loss and expense statistics gathered by them.
 188 Individual insurers may modify the indications to reflect their
 189 individual experience in determining their own rates. Such
 190 rates shall be filed with the office for public inspection
 191 whenever requested and shall be available for public
 192 announcement only by the press, office, or insurer.

193 Section 5. Section 627.0662, Florida Statutes, is created
 194 to read:

195 627.0662 Excessive profits for residential property
 196 insurance prohibited.--

197 (1) As used in this section, the term "residential
 198 property insurance" means coverage under s. 627.4025.

199 (2) Each residential property insurer shall file with the
 200 Office of Insurance Regulation, prior to July 1 of each year on
 201 forms adopted by the Financial Services Commission, the

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202 following data for residential property insurance business in
 203 this state. The data must include both voluntary and joint
 204 underwriting association business, as follows:

205 (a) Calendar-year earned premium.

206 (b) Accident-year incurred losses and loss adjustment
 207 expenses.

208 (c) The administrative and selling expenses incurred in
 209 this state or allocated to this state for the calendar year.

210 (d) Policyholder dividends incurred during the applicable
 211 calendar year.

212 (3)(a) Excessive profit has been realized if there has
 213 been an underwriting gain for the 10 most recent calendar-
 214 accident years combined which is greater than the anticipated
 215 underwriting profit plus 5 percent of earned premiums for those
 216 calendar-accident years.

217 (b) As used in this subsection with respect to any 10-year
 218 period, the term "anticipated underwriting profit" means the sum
 219 of the dollar amounts obtained by multiplying, for each rate
 220 filing of the insurer group in effect during such period, the
 221 earned premiums applicable to such rate filing during such
 222 period by the percentage factor included in such rate filing for
 223 profit and contingencies, such percentage factor having been
 224 determined with due recognition to investment income from funds
 225 generated by business in this state. Separate calculations need
 226 not be made for consecutive rate filings containing the same
 227 percentage factor for profits and contingencies.

228 (4) Each property insurer shall also file a schedule of
 229 residential property insurance loss in this state and loss
 230 adjustment experience for each of the 10 most recent accident

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231 years. The incurred losses and loss adjustment expenses shall be
 232 valued as of March 31 of the year following the close of the
 233 accident year, developed to an ultimate basis, and at nine 12-
 234 month intervals thereafter, each developed to an ultimate basis,
 235 to the extent that a total of three evaluations is provided for
 236 each accident year. The first year to be so reported shall be
 237 accident year 2005, such that the reporting of 10 accident years
 238 will not take place until accident years 2013 and 2014 have
 239 become available.

240 (5) Each insurer group's underwriting gain or loss for
 241 each calendar-accident year shall be computed as follows: the
 242 sum of the accident-year incurred losses and loss adjustment
 243 expenses as of March 31 of the following year, developed to an
 244 ultimate basis, plus the administrative and selling expenses
 245 incurred in the calendar year, plus policyholder dividends
 246 applicable to the calendar year, shall be subtracted from the
 247 calendar-year earned premium to determine the underwriting gain
 248 or loss.

249 (6) For the 10 most recent calendar-accident years, the
 250 underwriting gain or loss shall be compared to the anticipated
 251 underwriting profit.

252 (7) If the residential property insurer has realized an
 253 excessive profit, the office shall order a return of the
 254 excessive amounts to policyholders after affording the insurer
 255 an opportunity for hearing and otherwise complying with the
 256 requirements of chapter 120. Such excessive amounts shall be
 257 refunded to policyholders in all instances unless the insurer
 258 affirmatively demonstrates to the office that the refund of the

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259 excessive amounts will render the insurer or a member of the
 260 insurer group financially impaired or will render it insolvent.

261 (8) The excessive amount shall be refunded to
 262 policyholders on a pro rata basis in relation to the final
 263 compilation year earned premiums to the voluntary residential
 264 property insurance policyholders of record of the insurer group
 265 on December 31 of the final compilation year.

266 (9) Any return of excessive profits to policyholders under
 267 this section shall be provided in the form of a cash refund or a
 268 credit towards the future purchase of insurance.

269 (10)(a) Cash refunds to policyholders may be rounded to
 270 the nearest dollar.

271 (b) Data in required reports to the office may be rounded
 272 to the nearest dollar.

273 (c) Rounding, if elected by the insurer group, shall be
 274 applied consistently.

275 (11)(a) Refunds to policyholders shall be completed as
 276 follows:

277 1. If the insurer elects to make a cash refund, the refund
 278 shall be completed within 60 days after entry of a final order
 279 determining that excessive profits have been realized; or

280 2. If the insurer elects to make refunds in the form of a
 281 credit to renewal policies, such credits shall be applied to
 282 policy renewal premium notices which are forwarded to insureds
 283 more than 60 calendar days after entry of a final order
 284 determining that excessive profits have been realized. If an
 285 insurer has made this election but an insured thereafter cancels
 286 his or her policy or otherwise allows the policy to terminate,

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287 the insurer group shall make a cash refund not later than 60
 288 days after termination of such coverage.

289 (b) Upon completion of the renewal credits or refund
 290 payments, the insurer shall immediately certify to the office
 291 that the refunds have been made.

292 (12) Any refund or renewal credit made pursuant to this
 293 section shall be treated as a policyholder dividend applicable
 294 to the year in which it is incurred, for purposes of reporting
 295 under this section for subsequent years.

296 Section 6. Section 627.41491, Florida Statutes, is created
 297 to read:

298 627.41491 Full disclosure of insurance information.--The
 299 Office of Insurance Regulation shall provide health care
 300 providers with a comparison of the rate in effect for each motor
 301 vehicle insurer and residential property insurer. Such rate
 302 comparison chart shall be made available to the public through
 303 the Internet and other commonly used means of distribution no
 304 later than July 1 of each year.

305 Section 7. Section 627.41493, Florida Statutes, is created
 306 to read:

307 627.41493 Insurance rate rollback.--

308 (1) For any coverage for motor vehicle or residential
 309 property insurance subject to this chapter issued or renewed on
 310 or after July 1, 2004, every insurer shall reduce its charges to
 311 levels that are at least 20 percent less than the charges for
 312 the same coverage that were in effect on January 1, 2002.

313 (2) Between July 1, 2004, and July 1, 2005, rates and
 314 premiums reduced pursuant to subsection (1) may only be
 315 increased if the director of the Office of Insurance Regulation

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316 finds, after a hearing, that a motor vehicle insurer or
 317 residential property insurer is unable to earn a fair rate of
 318 return.

319 (3) Any separate affiliate of an insurer is subject to the
 320 provisions of this section.

321 Section 8. Section 627.41494, Florida Statutes, is created
 322 to read:

323 627.41494 Consumer participation in rate review.--

324 (1) Upon the filing of a proposed rate change by an
 325 insurer under s. 627.062 or s. 627.0651, the director of the
 326 Office of Insurance Regulation shall require the insurer to give
 327 notice to the public and to the insureds or associations of
 328 insureds making the filing.

329 (2) The office shall make the rate filing available for
 330 public inspection. If the rate filing results in a statewide
 331 average increase of 10 percent or greater and any insureds or
 332 associations of insureds filing the proposed rate change request
 333 the director of the Office of Insurance Regulation to hold a
 334 hearing within 30 days after the mailing of the notification of
 335 the proposed rate changes to the insureds, the director shall
 336 hold a hearing within 30 days after such request. Any consumer
 337 advocacy group or the Public Counsel under chapter 350 may
 338 participate in such hearing, and the office shall adopt rules
 339 governing such participation.

340 Section 9. Section 627.747, Florida Statutes, is created
 341 to read:

342 627.747 Good driver discount plan.--

343 (1) Any rate, rating schedule, or rating manual for the
 344 liability, personal injury protection, and collision coverages

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345 of a motor vehicle insurance policy filed with the office must
 346 provide for an appropriate reduction in premium charges as to
 347 such coverages based on the following factors in decreasing
 348 order of importance:

349 (a) The insured's driving safety record.

350 (b) The number of miles he or she drives annually.

351 (c) The number of years of driving experience the insured
 352 has had.

353 (d) Other factors that the office adopts by rule and that
 354 have a substantial relationship to the risk of loss. The rules
 355 shall set forth the respective weight to be given each factor in
 356 determining automobile rates and premiums. Notwithstanding any
 357 other law, the use of any criterion without approval constitutes
 358 unfair discrimination.

359 (2) Each person who meets the criteria in subsection (1)
 360 shall be qualified to purchase a good driver discount policy
 361 from the insurer of his or her choice. An insurer may not refuse
 362 to offer and sell a good driver discount policy to any person
 363 who meets the standards of this section.

364 (3) Any discount of 10 percent or less used by an insurer
 365 is presumed appropriate unless credible data demonstrate
 366 otherwise.

367 Section 10. Section 627.062, Florida Statutes, is amended
 368 to read:

369 627.062 Rate standards; prior rate approval.--

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

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

375 (a) Insurers or rating organizations shall apply for
 376 ~~establish and use~~ rates, rating schedules, or rating manuals to
 377 allow the insurer a reasonable rate of return on such classes of
 378 insurance written in this state. A copy of rates, rating
 379 schedules, rating manuals, premium credits or discount
 380 schedules, and surcharge schedules, and changes thereto, must
 381 ~~shall~~ be filed with the Office of Insurance Regulation ~~under one~~
 382 ~~of the following procedures:~~

383 1. ~~If the filing is made~~ at least 90 days before the
 384 proposed effective date. ~~and The filing may is not be~~
 385 implemented during the ~~office's~~ review ~~of the filing~~ and any
 386 proceeding and judicial review, ~~then such filing shall be~~
 387 ~~considered a "file and use" filing. In such case, the office~~
 388 ~~shall finalize its review by issuance of a notice of intent to~~
 389 ~~approve or a notice of intent to disapprove within 90 days after~~
 390 ~~receipt of the filing. The notice of intent to approve and the~~
 391 ~~notice of intent to disapprove constitute agency action for~~
 392 ~~purposes of the Administrative Procedure Act. Requests for~~
 393 ~~supporting information, requests for mathematical or mechanical~~
 394 ~~corrections, or notification to the insurer by the office of its~~
 395 ~~preliminary findings shall not toll the 90-day period during any~~
 396 ~~such proceedings and subsequent judicial review. The rate shall~~
 397 ~~be deemed approved if the office does not issue a notice of~~
 398 ~~intent to approve or a notice of intent to disapprove within 90~~
 399 ~~days after receipt of the filing.~~

400 2. ~~If the filing is not made in accordance with the~~
 401 ~~provisions of subparagraph 1., such filing shall be made as soon~~
 402 ~~as practicable, but no later than 30 days after the effective~~

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403 ~~date, and shall be considered a "use and file" filing. An~~
 404 ~~insurer making a "use and file" filing is potentially subject to~~
 405 ~~an order by the office to return to policyholders portions of~~
 406 ~~rates found to be excessive, as provided in paragraph (h).~~

407 (b) Within a reasonable time after ~~Upon~~ receiving a rate
 408 filing, the Office of Insurance Regulation shall review the rate
 409 filing and establish a rate or rate schedule that ~~to determine~~
 410 ~~if a rate is~~ not excessive, inadequate, or unfairly
 411 discriminatory. In making that determination, the office shall,
 412 in accordance with generally accepted and reasonable actuarial
 413 techniques, consider the following factors:

414 1. Past and prospective loss experience within and without
 415 this state.

416 2. Past and prospective expenses.

417 3. The degree of competition among insurers for the risk
 418 insured.

419 4. Investment income reasonably expected by the insurer,
 420 consistent with the insurer's investment practices, from
 421 investable premiums anticipated in the filing, plus any other
 422 expected income from currently invested assets representing the
 423 amount expected on unearned premium reserves and loss reserves.

424 The office ~~commission~~ may adopt rules utilizing reasonable
 425 techniques of actuarial science and economics to specify the
 426 manner in which insurers shall calculate investment income
 427 attributable to such classes of insurance written in this state
 428 and the manner in which such investment income shall be used in
 429 the calculation of insurance rates. Such manner shall
 430 contemplate allowances for an underwriting profit factor and
 431 full consideration of investment income which produce a

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432 reasonable rate of return; however, investment income from
 433 invested surplus shall not be considered.

434 5. The reasonableness of the judgment reflected in the
 435 filing.

436 6. Dividends, savings, or unabsorbed premium deposits
 437 allowed or returned to Florida policyholders, members, or
 438 subscribers.

439 7. The adequacy of loss reserves.

440 8. The cost of reinsurance.

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

443 10. Conflagration and catastrophe hazards, if applicable.

444 11. A reasonable margin for underwriting profit and
 445 contingencies.

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

447 13. Other relevant factors which impact upon the frequency
 448 or severity of claims or upon expenses.

449 (c) In the case of fire insurance rates, consideration
 450 shall be given to the availability of water supplies and the
 451 experience of the fire insurance business during a period of not
 452 less than the most recent 5-year period for which such
 453 experience is available.

454 (d) If conflagration or catastrophe hazards are given
 455 consideration by an insurer in its rates or rating plan,
 456 including surcharges and discounts, the insurer shall establish
 457 a reserve for that portion of the premium allocated to such
 458 hazard and shall maintain the premium in a catastrophe reserve.

459 Any removal of such premiums from the reserve for purposes
 460 other than paying claims associated with a catastrophe or

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461 purchasing reinsurance for catastrophes shall be subject to
 462 approval of the office. Any ceding commission received by an
 463 insurer purchasing reinsurance for catastrophes shall be placed
 464 in the catastrophe reserve.

465 (e) After consideration of the rate factors provided in
 466 paragraphs (b), (c), and (d), the Office of Insurance Regulation
 467 shall set an appropriate rate that is not ~~a rate may be found by~~
 468 ~~the office to be~~ excessive, inadequate, or unfairly
 469 discriminatory based upon the following standards:

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

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

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

482 4. A rating plan, including discounts, credits, or
 483 surcharges, shall be deemed unfairly discriminatory if it fails
 484 to clearly and equitably reflect consideration of the
 485 policyholder's participation in a risk management program
 486 adopted pursuant to s. 627.0625.

487 5. A rate shall be deemed inadequate as to the premium
 488 charged to a risk or group of risks if discounts or credits are
 489 allowed which exceed a reasonable reflection of expense savings

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490 and reasonably expected loss experience from the risk or group
 491 of risks.

492 6. A rate shall be deemed unfairly discriminatory as to a
 493 risk or group of risks if the application of premium discounts,
 494 credits, or surcharges among such risks does not bear a
 495 reasonable relationship to the expected loss and expense
 496 experience among the various risks.

497 (f) In reviewing a rate filing, the office may require the
 498 insurer to provide at the insurer's expense all information
 499 necessary to evaluate the condition of the company and the
 500 reasonableness of the filing according to the criteria
 501 enumerated in this section.

502 (g) The office may at any time review a rate, rating
 503 schedule, rating manual, or rate change; the pertinent records
 504 of the insurer; and market conditions. If the office finds on a
 505 preliminary basis that a rate may be excessive, inadequate, or
 506 unfairly discriminatory, the office shall initiate proceedings
 507 to establish a new ~~disapprove the~~ rate and shall ~~so~~ notify the
 508 insurer. However, the office may not disapprove as excessive any
 509 rate that ~~for which~~ it has established ~~given final approval or~~
 510 ~~which has been deemed approved~~ for a period of 1 year after the
 511 effective date of the filing unless the office finds that a
 512 material misrepresentation or material error was made by the
 513 insurer or was contained in the filing. Upon being so notified,
 514 the insurer or rating organization shall, within 60 days, file
 515 with the office all information which, in the belief of the
 516 insurer or organization, proves the reasonableness, adequacy,
 517 and fairness of the rate or rate change. The office shall
 518 establish an appropriate rate within a reasonable time after

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519 ~~receiving an issue a notice of intent to approve or a notice of~~
 520 ~~intent to disapprove pursuant to the procedures of paragraph (a)~~
 521 ~~within 90 days after receipt of the insurer's initial response.~~

522 In such instances and in any administrative proceeding relating
 523 to the legality of any ~~the~~ rate, the insurer or rating
 524 organization shall carry the burden of proof by a preponderance
 525 of the evidence to show that the rate is not excessive,
 526 inadequate, or unfairly discriminatory. ~~After the office~~
 527 ~~notifies an insurer that a rate may be excessive, inadequate, or~~
 528 ~~unfairly discriminatory, unless the office withdraws the~~
 529 ~~notification, the insurer shall not alter the rate except to~~
 530 ~~conform with the office's notice until the earlier of 120 days~~
 531 ~~after the date the notification was provided or 180 days after~~
 532 ~~the date of the implementation of the rate. The office may,~~
 533 ~~subject to chapter 120, disapprove without the 60-day~~
 534 ~~notification any rate increase filed by an insurer within the~~
 535 ~~prohibited time period or during the time that the legality of~~
 536 ~~the increased rate is being contested.~~

537 (h) ~~After setting~~ In the event the office finds that a new
 538 rate or rate schedule change is excessive, inadequate, or
 539 unfairly discriminatory, the office shall issue an order of
 540 ~~disapproval~~ specifying the that a new rate or rate schedule and
 541 which responds to the findings of the office be filed by the
 542 insurer. The order constitutes final agency action for purposes
 543 of chapter 120. The office shall further order, for any "use and
 544 file" filing made in accordance with subparagraph (a)2., that
 545 premiums charged each policyholder constituting the portion of
 546 the rate above that which was actuarially justified be returned
 547 to such policyholder in the form of a credit or refund. If the

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548 ~~office finds that an insurer's rate or rate change is~~
 549 ~~inadequate, the new rate or rate schedule filed with the office~~
 550 ~~in response to such a finding shall be applicable only to new or~~
 551 ~~renewal business of the insurer written on or after the~~
 552 ~~effective date of the responsive filing.~~

553 (i) Except as otherwise specifically provided in this
 554 chapter, the office may ~~shall~~ not prohibit any insurer,
 555 including any residual market plan or joint underwriting
 556 association, from paying acquisition costs based on the full
 557 amount of premium, as defined in s. 627.403, applicable to any
 558 policy, or prohibit any such insurer from including the full
 559 amount of acquisition costs in a rate filing.

560
 561 ~~The provisions of~~ This subsection does ~~shall~~ not apply to
 562 workers' compensation and employer's liability insurance ~~and to~~
 563 ~~motor vehicle insurance.~~

564 (3)(a) For individual risks that are not rated in
 565 accordance with the insurer's rates, rating schedules, rating
 566 manuals, and underwriting rules filed with the office and which
 567 have been submitted to the insurer for individual rating, the
 568 insurer must maintain documentation on each risk subject to
 569 individual risk rating. The documentation must identify the
 570 named insured and specify the characteristics and classification
 571 of the risk supporting the reason for the risk being
 572 individually risk rated, including any modifications to existing
 573 approved forms to be used on the risk. The insurer must
 574 maintain these records for a period of at least 5 years after
 575 the effective date of the policy.

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576 (b) Individual risk rates and modifications to existing
577 approved forms are not subject to this part or part II, except
578 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
579 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
580 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
581 627.4265, 627.427, and 627.428, but are subject to all other
582 applicable provisions of this code and rules adopted thereunder.

583 (c) This subsection does not apply to private passenger
584 motor vehicle insurance.

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

588 (5) With respect to a rate filing involving coverage of
589 the type for which the insurer is required to pay a
590 reimbursement premium to the Florida Hurricane Catastrophe Fund,
591 the insurer may fully recoup in its property insurance premiums
592 any reimbursement premiums paid to the Florida Hurricane
593 Catastrophe Fund, together with reasonable costs of other
594 reinsurance, but may not recoup reinsurance costs that duplicate
595 coverage provided by the Florida Hurricane Catastrophe Fund.

596 (6)(a) Underwriting rules not contained in rating manuals
597 shall be filed for private passenger automobile insurance and
598 homeowners' insurance. ~~After any action with respect to a rate~~
599 ~~filing that constitutes agency action for purposes of the~~
600 ~~Administrative Procedure Act, except for a rate filing for~~
601 ~~medical malpractice, an insurer may, in lieu of demanding a~~
602 ~~hearing under s. 120.57, require arbitration of the rate filing.~~
603 ~~Arbitration shall be conducted by a board of arbitrators~~
604 ~~consisting of an arbitrator selected by the office, an~~

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605 ~~arbitrator selected by the insurer, and an arbitrator selected~~
 606 ~~jointly by the other two arbitrators. Each arbitrator must be~~
 607 ~~certified by the American Arbitration Association. A decision is~~
 608 ~~valid only upon the affirmative vote of at least two of the~~
 609 ~~arbitrators. No arbitrator may be an employee of any insurance~~
 610 ~~regulator or regulatory body or of any insurer, regardless of~~
 611 ~~whether or not the employing insurer does business in this~~
 612 ~~state. The office and the insurer must treat the decision of the~~
 613 ~~arbitrators as the final approval of a rate filing. Costs of~~
 614 ~~arbitration shall be paid by the insurer.~~

615 (b) The submission of rates, rating schedules, or rating
 616 manuals to the Office of Insurance Regulation by a licensed
 617 rating organization of which an insurer is a member or
 618 subscriber is sufficient compliance with this subsection for
 619 such insurer to the extent that the insurer uses these rates,
 620 rating schedules, and rating manuals. All such filed information
 621 shall be available for public inspection at the office during
 622 usual business hours. ~~Arbitration under this subsection shall be~~
 623 ~~conducted pursuant to the procedures specified in ss. 682.06-~~
 624 ~~682.10. Either party may apply to the circuit court to vacate or~~
 625 ~~modify the decision pursuant to s. 682.13 or s. 682.14. The~~
 626 ~~commission shall adopt rules for arbitration under this~~
 627 ~~subsection, which rules may not be inconsistent with the~~
 628 ~~arbitration rules of the American Arbitration Association as of~~
 629 ~~January 1, 1996.~~

630 (c) ~~Upon initiation of the arbitration process, the~~
 631 ~~insurer waives all rights to challenge the action of the office~~
 632 ~~under the Administrative Procedure Act or any other provision of~~
 633 ~~law; however, such rights are restored to the insurer if the~~

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634 ~~arbitrators fail to render a decision within 90 days after~~
 635 ~~initiation of the arbitration process.~~

636 (7)(a) The provisions of this subsection apply only with
 637 respect to rates for medical malpractice insurance and shall
 638 control to the extent of any conflict with other provisions of
 639 this section.

640 (b) Any portion of a judgment entered or settlement paid
 641 as a result of a statutory or common-law bad faith action and
 642 any portion of a judgment entered which awards punitive damages
 643 against an insurer may not be included in the insurer's rate
 644 base, and shall not be used to justify a rate or rate change.
 645 Any common-law bad faith action identified as such, any portion
 646 of a settlement entered as a result of a statutory or common-law
 647 action, or any portion of a settlement wherein an insurer agrees
 648 to pay specific punitive damages may not be used to justify a
 649 rate or rate change. The portion of the taxable costs and
 650 attorney's fees which is identified as being related to the bad
 651 faith and punitive damages in these judgments and settlements
 652 may not be included in the insurer's rate base and may not be
 653 utilized to justify a rate or rate change.

654 (c) Upon reviewing a rate filing and determining whether
 655 the rate is excessive, inadequate, or unfairly discriminatory,
 656 the office shall consider, in accordance with generally accepted
 657 and reasonable actuarial techniques, past and present
 658 prospective loss experience, either using loss experience solely
 659 for this state or giving greater credibility to this state's
 660 loss data after applying actuarially sound methods of assigning
 661 credibility to such data.

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662 (d) Rates shall be deemed excessive if, among other
 663 standards established by this section, the rate structure
 664 provides for replenishment of reserves or surpluses from
 665 premiums when the replenishment is attributable to investment
 666 losses.

667 (e) The insurer must apply a discount or surcharge based
 668 on the health care provider's loss experience or shall establish
 669 an alternative method giving due consideration to the provider's
 670 loss experience. The insurer must include in the filing a copy
 671 of the surcharge or discount schedule or a description of the
 672 alternative method used, and must provide a copy of such
 673 schedule or description, as approved by the office, to
 674 policyholders at the time of renewal and to prospective
 675 policyholders at the time of application for coverage.

676 (f) Each medical malpractice insurer must make a rate
 677 filing under this section, sworn to by at least two executive
 678 officers of the insurer, at least once each calendar year.

679 (8)(a)1. No later than 60 days after the effective date of
 680 medical malpractice legislation enacted during the 2003 Special
 681 Session D of the Florida Legislature, the office shall calculate
 682 a presumed factor that reflects the impact that the changes
 683 contained in such legislation will have on rates for medical
 684 malpractice insurance and shall issue a notice informing all
 685 insurers writing medical malpractice coverage of such presumed
 686 factor. In determining the presumed factor, the office shall use
 687 generally accepted actuarial techniques and standards provided
 688 in this section in determining the expected impact on losses,
 689 expenses, and investment income of the insurer. To the extent
 690 that the operation of a provision of medical malpractice

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691 legislation enacted during the 2003 Special Session D of the
 692 Florida Legislature is stayed pending a constitutional
 693 challenge, the impact of that provision shall not be included in
 694 the calculation of a presumed factor under this subparagraph.

695 2. No later than 60 days after the office issues its
 696 notice of the presumed rate change factor under subparagraph 1.,
 697 each insurer writing medical malpractice coverage in this state
 698 shall submit to the office a rate filing for medical malpractice
 699 insurance, which will take effect no later than January 1, 2004,
 700 and apply retroactively to policies issued or renewed on or
 701 after the effective date of medical malpractice legislation
 702 enacted during the 2003 Special Session D of the Florida
 703 Legislature. Except as authorized under paragraph (b), the
 704 filing shall reflect an overall rate reduction at least as great
 705 as the presumed factor determined under subparagraph 1. With
 706 respect to policies issued on or after the effective date of
 707 such legislation and prior to the effective date of the rate
 708 filing required by this subsection, the office shall order the
 709 insurer to make a refund of the amount that was charged in
 710 excess of the rate that is approved.

711 (b) Any insurer or rating organization that contends that
 712 the rate provided for in paragraph (a) is excessive, inadequate,
 713 or unfairly discriminatory shall separately state in its filing
 714 the rate it contends is appropriate and shall state with
 715 specificity the factors or data that it contends should be
 716 considered in order to produce such appropriate rate. The
 717 insurer or rating organization shall be permitted to use all of
 718 the generally accepted actuarial techniques provided in this
 719 section in making any filing pursuant to this subsection. The

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720 office shall review each such exception and approve or
 721 disapprove it prior to use. It shall be the insurer's burden to
 722 actuarially justify any deviations from the rates required to be
 723 filed under paragraph (a). The insurer making a filing under
 724 this paragraph shall include in the filing the expected impact
 725 of medical malpractice legislation enacted during the 2003
 726 Special Session D of the Florida Legislature on losses,
 727 expenses, and rates.

728 (c) If any provision of medical malpractice legislation
 729 enacted during the 2003 Special Session D of the Florida
 730 Legislature is held invalid by a court of competent
 731 jurisdiction, the office shall permit an adjustment of all
 732 medical malpractice rates filed under this section to reflect
 733 the impact of such holding on such rates so as to ensure that
 734 the rates are not excessive, inadequate, or unfairly
 735 discriminatory.

736 (d) Rates approved on or before July 1, 2003, for medical
 737 malpractice insurance shall remain in effect until the effective
 738 date of a new rate filing approved under this subsection.

739 (e) The calculation and notice by the office of the
 740 presumed factor pursuant to paragraph (a) is not an order or
 741 rule that is subject to chapter 120. If the office enters into a
 742 contract with an independent consultant to assist the office in
 743 calculating the presumed factor, such contract shall not be
 744 subject to the competitive solicitation requirements of s.
 745 287.057.

746 Section 11. Paragraph (c) of subsection (1) and paragraph
 747 (c) of subsection (3) of section 627.0628, Florida Statutes, are
 748 amended to read:

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749 627.0628 Florida Commission on Hurricane Loss Projection
 750 Methodology.--

751 (1) LEGISLATIVE FINDINGS AND INTENT.--

752 (c) It is the intent of the Legislature to create the
 753 Florida Commission on Hurricane Loss Projection Methodology as a
 754 panel of experts to provide the most actuarially sophisticated
 755 guidelines and standards for projection of hurricane losses
 756 possible, given the current state of actuarial science. It is
 757 the further intent of the Legislature that such standards and
 758 guidelines must be used by the State Board of Administration in
 759 developing reimbursement premium rates for the Florida Hurricane
 760 Catastrophe Fund, and, subject to paragraph (3)(c), may be used
 761 by insurers in rate filings under s. 627.062 unless the way in
 762 which such standards and guidelines were applied by the insurer
 763 was erroneous, as shown by a preponderance of the evidence.

764 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

765 (c) With respect to a rate filing under s. 627.062, an
 766 insurer may employ actuarial methods, principles, standards,
 767 models, or output ranges found by the commission to be accurate
 768 or reliable to determine hurricane loss factors for use in a
 769 rate filing under s. 627.062, which findings and factors are
 770 admissible and relevant in consideration of a rate filing by the
 771 office or in any arbitration or administrative or judicial
 772 review. However, such findings and factors are not admissible
 773 and relevant in consideration of a rate filing unless the office
 774 has access to all factors and assumptions that were used in
 775 developing the actuarial methods, principles, standards, models,
 776 or output ranges found by the commission to be accurate or

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777 reliable, and the office is not precluded from disclosing such
778 information in a rate proceeding.

779 Section 12. This act shall take effect October 1, 2004.