

By Senators Geller and Campbell

31-1192A-04

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

1 director of the office to establish rates
2 before they take effect; providing procedures
3 for such filings; deleting a provision
4 excepting motor vehicle insurance from the
5 provisions of s. 627.062, F.S.; deleting an
6 arbitration provision; requiring certain
7 underwriting rules to be filed; amending s.
8 627.0628, F.S.; limiting authority of insurers
9 to use findings of the Florida Commission on
10 Hurricane Loss Projection Methodology in a rate
11 filing under s. 627.062, F.S.; providing that
12 such findings are not admissible and relevant
13 in consideration of a rate filing unless the
14 office has access to all factors and
15 assumptions used in developing the standards or
16 models found by the commission to be reliable
17 or accurate; providing an effective date.

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

20
21 Section 1. Subsection (4) of section 501.212, Florida
22 Statutes, is amended to read:

23 501.212 Application.--This part does not apply to:

24 (4) ~~Any person or activity regulated under laws~~
25 ~~administered by the Department of Financial Services or the~~
26 ~~Office of Insurance Regulation of the Financial Services~~
27 ~~Commission or~~ Banks and savings and loan associations
28 regulated by the Office of Financial Regulation of the
29 Financial Services Commission or banks or savings and loan
30 associations regulated by federal agencies.

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

3 624.156 Applicability of consumer protection laws to
4 the business of insurance.--

5 (1) Notwithstanding any provision of law to the
6 contrary, the business of insurance shall be subject to the
7 laws of this state applicable to any other business,
8 including, but not limited to, the Florida Civil Rights Act of
9 1992 set forth in part I of chapter 760, the Florida Antitrust
10 Act of 1980 set forth in chapter 542, the Florida Deceptive
11 and Unfair Trade Practices Act set forth in part II of chapter
12 501, and the consumer protection provisions contained in
13 chapter 540. The protections afforded consumers by chapters
14 501, 540, 542, and 760 shall apply to insurance consumers.

15 (2) This section does not prohibit:

16 (a) Any agreement to collect, compile, and disseminate
17 historical data on paid claims or reserves for reported
18 claims, provided such data are contemporaneously transmitted
19 to the Office of Insurance Regulation and made available for
20 public inspection.

21 (b) Participation in any joint arrangement established
22 by law or the Office of Insurance Regulation to assure
23 availability of insurance.

24 (c) Any agent or broker, representing one or more
25 insurers, from obtaining from any insurer such agent or broker
26 represents information relative to the premium for any policy
27 or risk to be underwritten by that insurer.

28 (d) Any agent or broker from disclosing to an insurer
29 the agent or broker represents any quoted rate or charge
30 offered by another insurer represented by that agent or broker
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1 for the purpose of negotiating a lower rate, charge, or term
2 from the insurer to whom the disclosure is made.

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

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

8 627.041 Definitions.--As used in this part:

9 (3) "Rating organization" means every person, other
10 than an authorized insurer, whether located within or outside
11 this state, who has as his or her object or purpose the
12 collecting, compiling, and disseminating historical data on
13 paid claims or reserves for reported claims ~~making of rates,~~
14 ~~rating plans, or rating systems.~~ Two or more authorized
15 insurers that act in concert for the purpose of collecting,
16 compiling, and disseminating historical data on paid claims or
17 reserves for reported claims ~~making rates, rating plans, or~~
18 ~~rating systems,~~ and that do not operate within the specific
19 authorizations contained in ss. 627.311, 627.314(2), ~~(4),~~ and
20 627.351, shall be deemed to be a rating organization. No
21 single insurer shall be deemed to be a rating organization.

22 (4) "Advisory organization" means every group,
23 association, or other organization of insurers, whether
24 located within or outside this state, which prepares policy
25 forms ~~or makes underwriting rules incident to but not~~
26 ~~including the making of rates, rating plans, or rating systems~~
27 ~~or which collects and furnishes to authorized insurers or~~
28 ~~rating organizations loss or expense statistics or other~~
29 ~~statistical information and data and acts in an advisory, as~~
30 ~~distinguished from a ratemaking, capacity.~~

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1 Section 4. Section 627.314, Florida Statutes, is
2 amended to read:

3 627.314 Concerted action by two or more insurers.--

4 (1) Subject to and in compliance with the provisions
5 of this part authorizing insurers to be members or subscribers
6 of rating or advisory organizations or to engage in joint
7 underwriting or joint reinsurance, two or more insurers may
8 act in concert with each other and with others with respect to
9 any matters pertaining to:

10 (a) Collecting, compiling, and disseminating
11 historical data on paid claims or reserve for reported claims
12 ~~The making of rates or rating systems except for private~~
13 ~~passenger automobile insurance rates;~~

14 (b) The preparation or making of insurance policy or
15 bond forms, ~~underwriting rules,~~ surveys, inspections, and
16 investigations; or

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

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

20 (2) With respect to any matters pertaining to the
21 making of rates or rating systems; the preparation or making
22 of insurance policy or bond forms, underwriting rules,
23 surveys, inspections, and investigations; the furnishing of
24 loss or expense statistics or other information and data; or
25 the carrying on of research, two or more authorized insurers
26 having a common ownership or operating in the state under
27 common management or control are hereby authorized to act in
28 concert between or among themselves the same as if they
29 constituted a single insurer. To the extent that such matters
30 relate to cosurety bonds, two or more authorized insurers
31 executing such bonds are hereby authorized to act in concert

1 between or among themselves the same as if they constituted a
2 single insurer.

3 (3)(a) Members and subscribers of rating or advisory
4 organizations may use the ~~rates, rating systems, underwriting~~
5 ~~rules, or policy or bond forms~~ of such organizations, either
6 consistently or intermittently; ~~but, except as provided in~~
7 ~~subsection (2) and ss. 627.311 and 627.351, they shall not~~
8 ~~agree with each other or rating organizations or others to~~
9 ~~adhere thereto.~~

10 ~~(b) The fact that two or more authorized insurers,~~
11 ~~whether or not members or subscribers of a rating or advisory~~
12 ~~organization, use, either consistently or intermittently, the~~
13 ~~rates or rating systems made or adopted by a rating~~
14 ~~organization or the underwriting rules or policy or bond forms~~
15 ~~prepared by a rating or advisory organization shall not be~~
16 ~~sufficient in itself to support a finding that an agreement to~~
17 ~~so adhere exists, and may be used only for the purpose of~~
18 ~~supplementing or explaining direct evidence of the existence~~
19 ~~of any such agreement.~~

20 (b)(c) This subsection does not apply as to workers'
21 compensation and employer's liability insurances.

22 ~~(4) Licensed rating organizations and authorized~~
23 ~~insurers are authorized to exchange information and experience~~
24 ~~data with rating organizations and insurers in this and other~~
25 ~~states and may consult with them with respect to ratemaking~~
26 ~~and the application of rating systems.~~

27 (4)(5) Upon compliance with the provisions of this
28 part applicable thereto, any rating organization or advisory
29 organization, and any group, association, or other
30 organization of authorized insurers which engages in joint
31 underwriting or joint reinsurance through such organization or

1 by standing agreement among the members thereof, may conduct
2 operations in this state. As respects insurance risks or
3 operations in this state, no insurer shall be a member or
4 subscriber of any such organization, group, or association
5 that has not complied with the provisions of this part
6 applicable to it.

7 (5)~~(6)~~ Notwithstanding any other provisions of this
8 part, insurers shall not participate directly or indirectly in
9 the deliberations or decisions of rating organizations on
10 private passenger automobile insurance. However, such rating
11 organizations shall, upon request of individual insurers, be
12 required to furnish at reasonable cost the rate indications
13 resulting from the loss and expense statistics gathered by
14 them. Individual insurers may modify the indications to
15 reflect their individual experience in determining their own
16 rates. Such rates shall be filed with the office for public
17 inspection whenever requested and shall be available for
18 public announcement only by the press, office, or insurer.

19 Section 5. Section 627.0662, Florida Statutes, is
20 created to read:

21 627.0662 Excessive profits for residential property
22 insurance prohibited.--

23 (1) Personal lines or commercial residential property
24 insurance policy means a policy including, but not limited to,
25 any homeowner's, mobile homeowner's, farm owner's, condominium
26 association, condominium unit owner's apartment building, or
27 other policy covering a residential structure or its contents.

28 (2) Each residential property insurer shall file with
29 the Office of Insurance Regulation, prior to July 1 of each
30 year on forms adopted by the Financial Services Commission,
31 the following data for residential property insurance business

1 in this state. The data must include both voluntary and joint
2 underwriting association business, as follows:

3 (a) Calendar-year earned premium.

4 (b) Accident-year incurred losses and loss adjustment
5 expenses.

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

9 (d) Policyholder dividends incurred during the
10 applicable calendar year.

11 (3)(a) Excessive profit has been realized if there has
12 been an underwriting gain for the 3 most recent
13 calendar-accident years combined which is greater than the
14 anticipated underwriting profit plus 5 percent of earned
15 premiums for those calendar-accident years.

16 (b) As used in this subsection with respect to any
17 3-year period, the term "anticipated underwriting profit"
18 means the sum of the dollar amounts obtained by multiplying,
19 for each rate filing of the insurer group in effect during
20 such period, the earned premiums applicable to such rate
21 filing during such period by the percentage factor included in
22 such rate filing for profit and contingencies, such percentage
23 factor having been determined with due recognition to
24 investment income from funds generated by business in this
25 state. Separate calculations need not be made for consecutive
26 rate filings containing the same percentage factor for profits
27 and contingencies.

28 (4) Each property insurer shall also file a schedule
29 of residential property insurance loss in this state and loss
30 adjustment experience for each of the 3 most recent accident
31 years. The incurred losses and loss adjustment expenses shall

1 be valued as of March 31 of the year following the close of
2 the accident year, developed to an ultimate basis, and at nine
3 12-month intervals thereafter, each developed to an ultimate
4 basis, to the extent that a total of three evaluations is
5 provided for each accident year. The first year to be so
6 reported shall be accident year 2005, such that the reporting
7 of 3 accident years will not take place until accident years
8 2006 and 2007 have become available.

9 (5) Each insurer group's underwriting gain or loss for
10 each calendar-accident year shall be computed as follows: the
11 sum of the accident-year incurred losses and loss adjustment
12 expenses as of March 31 of the following year, developed to an
13 ultimate basis, plus the administrative and selling expenses
14 incurred in the calendar year, plus policyholder dividends
15 applicable to the calendar year, shall be subtracted from the
16 calendar-year earned premium to determine the underwriting
17 gain or loss.

18 (6) For the 3 most recent calendar-accident years, the
19 underwriting gain or loss shall be compared to the anticipated
20 underwriting profit.

21 (7) If the residential property insurer has realized
22 an excessive profit, the office shall order a return of the
23 excessive amounts to policyholders after affording the insurer
24 an opportunity for hearing and otherwise complying with the
25 requirements of chapter 120. Such excessive amounts shall be
26 refunded to policyholders in all instances unless the insurer
27 affirmatively demonstrates to the office that the refund of
28 the excessive amounts will render the insurer or a member of
29 the insurer group financially impaired or will render it
30 insolvent.

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1 (8) The excessive amount shall be refunded to
2 policyholders on a pro rata basis in relation to the final
3 compilation year earned premiums to the voluntary residential
4 property insurance policyholders of record of the insurer
5 group on December 31 of the final compilation year.

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

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

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

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

15 (11)(a) Refunds to policyholders shall be completed as
16 follows:

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

21 2. If the insurer elects to make refunds in the form
22 of a credit to renewal policies, such credits shall be applied
23 to policy renewal premium notices which are forwarded to
24 insureds more than 60 calendar days after entry of a final
25 order determining that excessive profits have been realized.
26 If an insurer has made this election but an insured thereafter
27 cancels his or her policy or otherwise allows the policy to
28 terminate, the insurer group shall make a cash refund not
29 later than 60 days after termination of such coverage.

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1 **(b) Upon completion of the renewal credits or refund**
2 **payments, the insurer shall immediately certify to the office**
3 **that the refunds have been made.**

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

8 Section 6. Section 627.41491, Florida Statutes, is
9 created to read:

10 **627.41491 Full disclosure of insurance**
11 **information.--The Office of Insurance Regulation shall provide**
12 **motor vehicle policyholders with a comparison on the rate in**
13 **effect for each motor vehicle insurer in this state. The**
14 **office shall also provide residential property policyholders**
15 **with a comparison on the rate in effect for each residential**
16 **property insurer in this state. Such rate comparison charts**
17 **shall be made available to the public through the Internet and**
18 **other commonly used means of distribution no later than July 1**
19 **of each year.**

20 Section 7. Section 627.41494, Florida Statutes, is
21 created to read:

22 **627.41494 Consumer participation in rate review.--**

23 **(1) Upon the filing of a proposed rate change by an**
24 **insurer under s. 627.062 or s. 627.0651, which filing would**
25 **result in an average statewide increase of 10 percent or more,**
26 **pursuant to standards determined by the office, the insurer**
27 **shall mail notice of such filing to each of its policyholders**
28 **or members.**

29 **(2) The rate filing shall be available for public**
30 **inspection. If the rate filing results in a statewide average**
31 **increase of 10 percent or more and any policyholder or member**

1 requests the director of the Office of Insurance Regulation to
2 hold a hearing within 30 days after the mailing of such
3 notification pursuant to subsection (1), the director shall
4 hold a hearing within 30 days after such request. Any consumer
5 advocacy group or the Public Counsel under chapter 350 may
6 participate in such hearing, and the office shall adopt rules
7 governing such participation.

8 (3) For purposes of this section, the term "consumer
9 advocacy group" means an organization with a membership of at
10 least 1,000 individuals, the purpose of which is to represent
11 the best interests of the public in matters relating, but not
12 limited, to insurance rate filings before the Office of
13 Insurance Regulation. The consumer advocacy group may:

14 (a) Appear in any proceeding or action before the
15 department or office or appear in any proceeding before the
16 Division of Administrative Hearings relating to rate filings
17 under the jurisdiction of the office.

18 (b) Have access to and use of all files, records, and
19 data of the office relating to rate filings.

20 (c) Examine rate and form filings submitted to the
21 office.

22 (d) Recommend to the office any position deemed by the
23 group to be in the best interest of the public in matters
24 relating to rate filings.

25 Section 8. Section 627.747, Florida Statutes, is
26 created to read:

27 627.747 Good driver discount plan.--

28 (1) Any rate, rating schedule, or rating manual for
29 the liability, personal injury protection, and collision
30 coverages of a motor vehicle insurance policy filed with the
31 office must provide for an appropriate reduction in premium

1 charges as to such coverages based on the following factors in
2 decreasing order of importance:

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

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

5 (c) The number of years of driving experience the
6 insured has had.

7 (d) Other factors that the office adopts by rule and
8 that have a substantial relationship to the risk of loss. The
9 rules shall set forth the respective weight to be given each
10 factor in determining automobile rates and premiums.

11 Notwithstanding any other law, the use of any criterion
12 without approval constitutes unfair discrimination.

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

18 (3) Any discount of 10 percent or less used by an
19 insurer is presumed appropriate unless credible data
20 demonstrate otherwise.

21 Section 9. 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 ~~under~~
5 ~~one of the following procedures:~~

6 1. ~~If the filing is made at least 90 days before the~~
7 ~~proposed effective date, and The filing may ~~is not~~ be~~
8 ~~implemented during the office's review of the filing and any~~
9 ~~proceeding and judicial review., then such filing shall be~~
10 ~~considered a "file and use" filing. In such case, the office~~
11 ~~shall finalize its review by issuance of a notice of intent to~~
12 ~~approve or a notice of intent to disapprove within 90 days~~
13 ~~after receipt of the filing. The notice of intent to approve~~
14 ~~and the notice of intent to disapprove constitute agency~~
15 ~~action for purposes of the Administrative Procedure Act.~~
16 ~~Requests for supporting information, requests for mathematical~~
17 ~~or mechanical corrections, or notification to the insurer by~~
18 ~~the office of its preliminary findings shall not toll the~~
19 ~~90-day period during any such proceedings and subsequent~~
20 ~~judicial review. The rate shall be deemed approved if the~~
21 ~~office does not issue a notice of intent to approve or a~~
22 ~~notice of intent to disapprove within 90 days after receipt of~~
23 ~~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 office 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 shall review
3 the rate filing and establish a rate or rate schedule that to
4 ~~determine if a rate is not~~ excessive, inadequate, or unfairly
5 discriminatory. In making that determination, the office
6 shall, in accordance with generally accepted and reasonable
7 actuarial techniques, consider the following factors:

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

10 2. Past and prospective expenses.

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

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

29 5. The reasonableness of the judgment reflected in the
30 filing.

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1 6. Dividends, savings, or unabsorbed premium deposits
2 allowed or returned to Florida policyholders, members, or
3 subscribers.

4 7. The adequacy of loss reserves.

5 8. The cost of reinsurance.

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

8 10. Conflagration and catastrophe hazards, if
9 applicable.

10 11. A reasonable margin for underwriting profit and
11 contingencies.

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

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

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

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

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

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

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

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

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

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

29 6. A rate shall be deemed unfairly discriminatory as
30 to a risk or group of risks if the application of premium
31 discounts, credits, or surcharges among such risks does not

1 bear a reasonable relationship to the expected loss and
2 expense experience among the various risks.

3 (f) In reviewing a rate filing, the office may require
4 the insurer to provide at the insurer's expense all
5 information necessary to evaluate the condition of the company
6 and the reasonableness of the filing according to the criteria
7 enumerated in this section.

8 (g) The office may at any time review a rate, rating
9 schedule, rating manual, or rate change; the pertinent records
10 of the insurer; and market conditions. If the office finds on
11 a preliminary basis that a rate may be excessive, inadequate,
12 or unfairly discriminatory, the office shall initiate
13 proceedings to establish a new ~~disapprove the~~ rate and shall
14 ~~so~~ notify the insurer. However, the office may not disapprove
15 as excessive any rate that it has established ~~for which it has~~
16 ~~given final approval or which has been deemed approved~~ for a
17 period of 1 year after the effective date of the filing unless
18 the office finds that a material misrepresentation or material
19 error was made by the insurer or was contained in the filing.
20 Upon being so notified, the insurer or rating organization
21 shall, within 60 days, file with the office all information
22 which, in the belief of the insurer or organization, proves
23 the reasonableness, adequacy, and fairness of the rate or rate
24 change. The office shall establish an appropriate rate within
25 a reasonable time after receiving an ~~issue a notice of intent~~
26 ~~to approve or a notice of intent to disapprove pursuant to the~~
27 ~~procedures of paragraph (a) within 90 days after receipt of~~
28 ~~the insurer's initial response.~~ In such instances and in any
29 administrative proceeding relating to the legality of any ~~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 office notifies an insurer that a~~
3 ~~rate may be excessive, inadequate, or unfairly discriminatory,~~
4 ~~unless the office withdraws the notification, the insurer~~
5 ~~shall not alter the rate except to conform with the office's~~
6 ~~notice until the earlier of 120 days after the date the~~
7 ~~notification was provided or 180 days after the date of the~~
8 ~~implementation of the rate. The office may, subject to~~
9 ~~chapter 120, disapprove without the 60-day notification any~~
10 ~~rate increase filed by an insurer within the prohibited time~~
11 ~~period or during the time that the legality of the increased~~
12 ~~rate is being contested.~~

13 (h) After setting a new rate or rate schedule ~~In the~~
14 ~~event the office finds that a rate or rate change is~~
15 ~~excessive, inadequate, or unfairly discriminatory, the office~~
16 ~~shall issue an order of disapproval specifying the that a new~~
17 ~~rate or rate schedule and which responds to the findings of~~
18 ~~the office be filed by the insurer. The order constitutes~~
19 final agency action for purposes of chapter 120. ~~The office~~
20 ~~shall further order, for any "use and file" filing made in~~
21 ~~accordance with subparagraph (a)2., that premiums charged each~~
22 ~~policyholder constituting the portion of the rate above that~~
23 ~~which was actuarially justified be returned to such~~
24 ~~policyholder in the form of a credit or refund. If the office~~
25 ~~finds that an insurer's rate or rate change is inadequate, the~~
26 ~~new rate or rate schedule filed with the office in response to~~
27 ~~such a finding shall be applicable only to new or renewal~~
28 ~~business of the insurer written on or after the effective date~~
29 ~~of the responsive filing.~~

30 (i) Except as otherwise specifically provided in this
31 chapter, the office may ~~shall~~ not prohibit any insurer,

1 including any residual market plan or joint underwriting
2 association, from paying acquisition costs based on the full
3 amount of premium, as defined in s. 627.403, applicable to any
4 policy, or prohibit any such insurer from including the full
5 amount of acquisition costs in a rate filing.

6

7 ~~The provisions of~~ This subsection does ~~shall~~ not apply to
8 workers' compensation and employer's liability insurance ~~and~~
9 ~~to motor vehicle insurance.~~

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

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

30 (c) This subsection does not apply to private
31 passenger motor vehicle insurance.

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

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

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

17 (b) The submission of rates, rating schedules, or
18 rating manuals to the Office of Insurance Regulation by a
19 licensed rating organization of which an insurer is a member
20 or subscriber is sufficient compliance with this subsection
21 for such insurer to the extent that the insurer uses these
22 rates, rating schedules, and rating manuals. All such filed
23 information shall be available for public inspection at the
24 office during usual business hours.

25 ~~(6)(a) After any action with respect to a rate filing~~
26 ~~that constitutes agency action for purposes of the~~
27 ~~Administrative Procedure Act, except for a rate filing for~~
28 ~~medical malpractice, an insurer may, in lieu of demanding a~~
29 ~~hearing under s. 120.57, require arbitration of the rate~~
30 ~~filing. Arbitration shall be conducted by a board of~~
31 ~~arbitrators consisting of an arbitrator selected by the~~

1 ~~office, an arbitrator selected by the insurer, and an~~
2 ~~arbitrator selected jointly by the other two arbitrators. Each~~
3 ~~arbitrator must be certified by the American Arbitration~~
4 ~~Association. A decision is valid only upon the affirmative~~
5 ~~vote of at least two of the arbitrators. No arbitrator may be~~
6 ~~an employee of any insurance regulator or regulatory body or~~
7 ~~of any insurer, regardless of whether or not the employing~~
8 ~~insurer does business in this state. The office and the~~
9 ~~insurer must treat the decision of the arbitrators as the~~
10 ~~final approval of a rate filing. Costs of arbitration shall be~~
11 ~~paid by the insurer.~~

12 ~~(b) Arbitration under this subsection shall be~~
13 ~~conducted pursuant to the procedures specified in ss.~~
14 ~~682.06-682.10. Either party may apply to the circuit court to~~
15 ~~vacate or modify the decision pursuant to s. 682.13 or s.~~
16 ~~682.14. The commission shall adopt rules for arbitration under~~
17 ~~this subsection, which rules may not be inconsistent with the~~
18 ~~arbitration rules of the American Arbitration Association as~~
19 ~~of January 1, 1996.~~

20 ~~(c) Upon initiation of the arbitration process, the~~
21 ~~insurer waives all rights to challenge the action of the~~
22 ~~office under the Administrative Procedure Act or any other~~
23 ~~provision of law; however, such rights are restored to the~~
24 ~~insurer if the arbitrators fail to render a decision within 90~~
25 ~~days after initiation of the arbitration process.~~

26 (7)(a) The provisions of this subsection apply only
27 with respect to rates for medical malpractice insurance and
28 shall control to the extent of any conflict with other
29 provisions of this section.

30 (b) Any portion of a judgment entered or settlement
31 paid as a result of a statutory or common-law bad faith action

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

14 (c) Upon reviewing a rate filing and determining
15 whether the rate is excessive, inadequate, or unfairly
16 discriminatory, the office shall consider, in accordance with
17 generally accepted and reasonable actuarial techniques, past
18 and present prospective loss experience, either using loss
19 experience solely for this state or giving greater credibility
20 to this state's loss data after applying actuarially sound
21 methods of assigning credibility to such data.

22 (d) Rates shall be deemed excessive if, among other
23 standards established by this section, the rate structure
24 provides for replenishment of reserves or surpluses from
25 premiums when the replenishment is attributable to investment
26 losses.

27 (e) The insurer must apply a discount or surcharge
28 based on the health care provider's loss experience or shall
29 establish an alternative method giving due consideration to
30 the provider's loss experience. The insurer must include in
31 the filing a copy of the surcharge or discount schedule or a

1 description of the alternative method used, and must provide a
2 copy of such schedule or description, as approved by the
3 office, to policyholders at the time of renewal and to
4 prospective policyholders at the time of application for
5 coverage.

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

9 (8)(a)1. No later than 60 days after the effective
10 date of medical malpractice legislation enacted during the
11 2003 Special Session D of the Florida Legislature, the office
12 shall calculate a presumed factor that reflects the impact
13 that the changes contained in such legislation will have on
14 rates for medical malpractice insurance and shall issue a
15 notice informing all insurers writing medical malpractice
16 coverage of such presumed factor. In determining the presumed
17 factor, the office shall use generally accepted actuarial
18 techniques and standards provided in this section in
19 determining the expected impact on losses, expenses, and
20 investment income of the insurer. To the extent that the
21 operation of a provision of medical malpractice legislation
22 enacted during the 2003 Special Session D of the Florida
23 Legislature is stayed pending a constitutional challenge, the
24 impact of that provision shall not be included in the
25 calculation of a presumed factor under this subparagraph.

26 2. No later than 60 days after the office issues its
27 notice of the presumed rate change factor under subparagraph
28 1., each insurer writing medical malpractice coverage in this
29 state shall submit to the office a rate filing for medical
30 malpractice insurance, which will take effect no later than
31 January 1, 2004, and apply retroactively to policies issued or

1 renewed on or after the effective date of medical malpractice
2 legislation enacted during the 2003 Special Session D of the
3 Florida Legislature. Except as authorized under paragraph (b),
4 the filing shall reflect an overall rate reduction at least as
5 great as the presumed factor determined under subparagraph 1.
6 With respect to policies issued on or after the effective date
7 of such legislation and prior to the effective date of the
8 rate filing required by this subsection, the office shall
9 order the insurer to make a refund of the amount that was
10 charged in excess of the rate that is approved.

11 (b) Any insurer or rating organization that contends
12 that the rate provided for in paragraph (a) is excessive,
13 inadequate, or unfairly discriminatory shall separately state
14 in its filing the rate it contends is appropriate and shall
15 state with specificity the factors or data that it contends
16 should be considered in order to produce such appropriate
17 rate. The insurer or rating organization shall be permitted to
18 use all of the generally accepted actuarial techniques
19 provided in this section in making any filing pursuant to this
20 subsection. The office shall review each such exception and
21 approve or disapprove it prior to use. It shall be the
22 insurer's burden to actuarially justify any deviations from
23 the rates required to be filed under paragraph (a). The
24 insurer making a filing under this paragraph shall include in
25 the filing the expected impact of medical malpractice
26 legislation enacted during the 2003 Special Session D of the
27 Florida Legislature on losses, expenses, and rates.

28 (c) If any provision of medical malpractice
29 legislation enacted during the 2003 Special Session D of the
30 Florida Legislature is held invalid by a court of competent
31 jurisdiction, the office shall permit an adjustment of all

1 medical malpractice rates filed under this section to reflect
2 the impact of such holding on such rates so as to ensure that
3 the rates are not excessive, inadequate, or unfairly
4 discriminatory.

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

9 (e) The calculation and notice by the office of the
10 presumed factor pursuant to paragraph (a) is not an order or
11 rule that is subject to chapter 120. If the office enters into
12 a contract with an independent consultant to assist the office
13 in calculating the presumed factor, such contract shall not be
14 subject to the competitive solicitation requirements of s.
15 287.057.

16 Section 10. Section 627.0628, Florida Statutes, is
17 amended to read:

18 627.0628 Florida Commission on Hurricane Loss
19 Projection Methodology.--

20 (1) LEGISLATIVE FINDINGS AND INTENT.--

21 (a) Reliable projections of hurricane losses are
22 necessary in order to assure that rates for residential
23 property insurance meet the statutory requirement that rates
24 be neither excessive nor inadequate. The ability to
25 accurately project hurricane losses has been enhanced greatly
26 in recent years through the use of computer modeling. It is
27 the public policy of this state to encourage the use of the
28 most sophisticated actuarial methods to assure that consumers
29 are charged lawful rates for residential property insurance
30 coverage.

31

1 (b) The Legislature recognizes the need for expert
2 evaluation of computer models and other recently developed or
3 improved actuarial methodologies for projecting hurricane
4 losses, in order to resolve conflicts among actuarial
5 professionals, and in order to provide both immediate and
6 continuing improvement in the sophistication of actuarial
7 methods used to set rates charged to consumers.

8 (c) It is the intent of the Legislature to create the
9 Florida Commission on Hurricane Loss Projection Methodology as
10 a panel of experts to provide the most actuarially
11 sophisticated guidelines and standards for projection of
12 hurricane losses possible, given the current state of
13 actuarial science. It is the further intent of the
14 Legislature that such standards and guidelines must be used by
15 the State Board of Administration in developing reimbursement
16 premium rates for the Florida Hurricane Catastrophe Fund, and,
17 subject to paragraph (3)(c), may be used by insurers in rate
18 filings under s. 627.062 unless the way in which such
19 standards and guidelines were applied by the insurer was
20 erroneous, as shown by a preponderance of the evidence.

21 (d) It is the intent of the Legislature that such
22 standards and guidelines be employed as soon as possible, and
23 that they be subject to continuing review thereafter.

24 (2) COMMISSION CREATED.--

25 (a) There is created the Florida Commission on
26 Hurricane Loss Projection Methodology, which is assigned to
27 the State Board of Administration. For the purposes of this
28 section, the term "commission" means the Florida Commission on
29 Hurricane Loss Projection Methodology. The commission shall be
30 administratively housed within the State Board of
31

1 Administration, but it shall independently exercise the powers
2 and duties specified in this section.

3 (b) The commission shall consist of the following 11
4 members:

5 1. The insurance consumer advocate.

6 2. The senior employee of the State Board of
7 Administration responsible for operations of the Florida
8 Hurricane Catastrophe Fund.

9 3. The Executive Director of the Citizens Property
10 Insurance Corporation.

11 4. The Director of the Division of Emergency
12 Management of the Department of Community Affairs.

13 5. The actuary member of the Florida Hurricane
14 Catastrophe Fund Advisory Council.

15 6. Six members appointed by the Chief Financial
16 Officer, as follows:

17 a. An employee of the office who is an actuary
18 responsible for property insurance rate filings.

19 b. An actuary who is employed full time by a property
20 and casualty insurer which was responsible for at least 1
21 percent of the aggregate statewide direct written premium for
22 homeowner's insurance in the calendar year preceding the
23 member's appointment to the commission.

24 c. An expert in insurance finance who is a full time
25 member of the faculty of the State University System and who
26 has a background in actuarial science.

27 d. An expert in statistics who is a full time member
28 of the faculty of the State University System and who has a
29 background in insurance.

30 e. An expert in computer system design who is a full
31 time member of the faculty of the State University System.

1 f. An expert in meteorology who is a full time member
2 of the faculty of the State University System and who
3 specializes in hurricanes.

4 (c) Members designated under subparagraphs (b)1.-5.
5 shall serve on the commission as long as they maintain the
6 respective offices designated in subparagraphs (b)1.-5.

7 Members appointed by the Chief Financial Officer under
8 subparagraph (b)6. shall serve on the commission until the end
9 of the term of office of the Chief Financial Officer who
10 appointed them, unless earlier removed by the Chief Financial
11 Officer for cause. Vacancies on the commission shall be
12 filled in the same manner as the original appointment.

13 (d) The State Board of Administration shall annually
14 appoint one of the members of the commission to serve as
15 chair.

16 (e) Members of the commission shall serve without
17 compensation, but shall be reimbursed for per diem and travel
18 expenses pursuant to s. 112.061.

19 (f) The State Board of Administration shall, as a cost
20 of administration of the Florida Hurricane Catastrophe Fund,
21 provide for travel, expenses, and staff support for the
22 commission.

23 (g) There shall be no liability on the part of, and no
24 cause of action of any nature shall arise against, any member
25 of the commission, any member of the State Board of
26 Administration, or any employee of the State Board of
27 Administration for any action taken in the performance of
28 their duties under this section. In addition, the commission
29 may, in writing, waive any potential cause of action for
30 negligence of a consultant, contractor, or contract employee
31 engaged to assist the commission.

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

2 (a) The commission shall consider any actuarial
3 methods, principles, standards, models, or output ranges that
4 have the potential for improving the accuracy of or
5 reliability of the hurricane loss projections used in
6 residential property insurance rate filings. The commission
7 shall, from time to time, adopt findings as to the accuracy or
8 reliability of particular methods, principles, standards,
9 models, or output ranges.

10 (b) In establishing reimbursement premiums for the
11 Florida Hurricane Catastrophe Fund, the State Board of
12 Administration must, to the extent feasible, employ actuarial
13 methods, principles, standards, models, or output ranges found
14 by the commission to be accurate or reliable.

15 (c) With respect to a rate filing under s. 627.062, an
16 insurer may employ actuarial methods, principles, standards,
17 models, or output ranges found by the commission to be
18 accurate or reliable to determine hurricane loss factors for
19 use in a rate filing under s. 627.062, which findings and
20 factors are admissible and relevant in consideration of a rate
21 filing by the office or in any arbitration or administrative
22 or judicial review. However, such findings and factors are not
23 admissible and relevant in consideration of a rate filing
24 unless the office has access to all factors and assumptions
25 that were used in developing the actuarial methods,
26 principles, standards, models, or output ranges found by the
27 commission to be accurate or reliable, and the office is not
28 precluded from disclosing such information in a rate
29 proceeding.

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1 (d) The commission shall adopt revisions to previously
2 adopted actuarial methods, principles, standards, models, or
3 output ranges at least annually.

4 Section 11. This act shall take effect October 1,
5 2004.

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8 SENATE SUMMARY

9 Revises and creates a variety of provisions relating to
10 insurance, including provisions relating to applicability
11 of laws regarding deceptive and unfair trade practices
12 and consumer protection, excessive profit on residential
13 property insurance, rate rollbacks for residential
property insurance and motor vehicle insurance, consumer
participation in rate review, good driver discounts, and
rate proceedings with respect to hurricane losses. (See
bill for details.)

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