

Bill No. SB 4-A

Barcode 650864

CHAMBER ACTION

Senate

House

1	Comm: FAV	.
2	01/17/2007 11:09 AM	.
3	Floor: 7/AD/2R	.
4	01/17/2007 02:29 PM	.

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11 The Committee on Banking and Insurance (Deutch) recommended  
12 the following amendment:

13  
14 **Senate Amendment (with title amendment)**

15 On page 91, line 11,through  
16 page 97, line 15, delete those lines

17  
18 and insert:

19 Section 20. Section 627.062, Florida Statutes, is  
20 amended to read:

21 627.062 Rate standards.--

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

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

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

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

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

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

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

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

4           1. Past and prospective loss experience within and  
5 without this state.

6           2. Past and prospective expenses.

7           3. The degree of competition among insurers for the  
8 risk insured.

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

24           5. The reasonableness of the judgment reflected in the  
25 filing.

26           6. Dividends, savings, or unabsorbed premium deposits  
27 allowed or returned to Florida policyholders, members, or  
28 subscribers.

29           7. The adequacy of loss reserves.

30           8. The cost of reinsurance.

31           9. Trend factors, including trends in actual losses

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1 per insured unit for the insurer making the filing.

2 10. Conflagration and catastrophe hazards, if  
3 applicable.

4 11. A reasonable margin for underwriting profit and  
5 contingencies. For that portion of the rate covering the risk  
6 of hurricanes and other catastrophic losses for which the  
7 insurer has not purchased reinsurance and has exposed its  
8 capital and surplus to such risk, the office must approve a  
9 rating factor that provides the insurer a reasonable rate of  
10 return that is commensurate with such risk.

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

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

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

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

30 (e) After consideration of the rate factors provided  
31 in paragraphs (b), (c), and (d), a rate may be found by the

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1 office to be excessive, inadequate, or unfairly discriminatory  
2 based upon the following standards:

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

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

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

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

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

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

31           (f) In reviewing a rate filing, the office may require

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1 the insurer to provide at the insurer's expense all  
 2 information necessary to evaluate the condition of the company  
 3 and the reasonableness of the filing according to the criteria  
 4 enumerated in this section.

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

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

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

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25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 On page 6, line 7, after the second semicolon,  
 28  
 29 insert:

30 deleting provisions allowing property and  
 31 casualty insurers to use and file rates;