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LEGISLATIVE ACTION

Senate

House

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04/24/2009 03:25 PM

Senator Fasano moved the following:

1 **Senate Substitute for Amendment (147230) (with title**
2 **amendment)**

3
4 Delete lines 1003 - 1231
5 and insert:

6 3. For all residential property insurance filings made or
7 submitted after January 25, 2007, but before December 31, 2012
8 ~~2009~~, an insurer seeking a rate that is greater than the rate
9 most recently approved by the office shall make a "file and use"
10 filing. For purposes of this subparagraph, motor vehicle
11 collision and comprehensive coverages are not considered to be
12 property coverages.



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

18 1. Past and prospective loss experience within and without
19 this state.

20 2. Past and prospective expenses.

21 3. The degree of competition among insurers for the risk
22 insured.

23 4. Investment income reasonably expected by the insurer,
24 consistent with the insurer's investment practices, from
25 investable premiums anticipated in the filing, plus any other
26 expected income from currently invested assets representing the
27 amount expected on unearned premium reserves and loss reserves.
28 The commission may adopt rules using reasonable techniques of
29 actuarial science and economics to specify the manner in which
30 insurers shall calculate investment income attributable to such
31 classes of insurance written in this state and the manner in
32 which such investment income shall be used to calculate
33 insurance rates. Such manner shall contemplate allowances for an
34 underwriting profit factor and full consideration of investment
35 income which produce a reasonable rate of return; however,
36 investment income from invested surplus may not be considered.

37 5. The reasonableness of the judgment reflected in the
38 filing.

39 6. Dividends, savings, or unabsorbed premium deposits
40 allowed or returned to Florida policyholders, members, or
41 subscribers.



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- 42 7. The adequacy of loss reserves.
- 43 8. The cost of reinsurance. The office shall not disapprove
44 a rate as excessive solely due to the insurer having obtained
45 catastrophic reinsurance to cover the insurer's estimated 250-
46 year probable maximum loss or any lower level of loss.
- 47 9. Trend factors, including trends in actual losses per
48 insured unit for the insurer making the filing.
- 49 10. Conflagration and catastrophe hazards, if applicable.
- 50 11. Projected hurricane losses, if applicable, which must
51 be estimated using a model or method found to be acceptable or
52 reliable by the Florida Commission on Hurricane Loss Projection
53 Methodology, and as further provided in s. 627.0628.
- 54 12. A reasonable margin for underwriting profit and
55 contingencies.
- 56 13. The cost of medical services, if applicable.
- 57 14. Other relevant factors which impact upon the frequency
58 or severity of claims or upon expenses.
- 59 (c) In the case of fire insurance rates, consideration
60 shall be given to the availability of water supplies and the
61 experience of the fire insurance business during a period of not
62 less than the most recent 5-year period for which such
63 experience is available.
- 64 (d) If conflagration or catastrophe hazards are given
65 consideration by an insurer in its rates or rating plan,
66 including surcharges and discounts, the insurer shall establish
67 a reserve for that portion of the premium allocated to such
68 hazard and shall maintain the premium in a catastrophe reserve.
69 Any removal of such premiums from the reserve for purposes other
70 than paying claims associated with a catastrophe or purchasing



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71 reinsurance for catastrophes shall be subject to approval of the
72 office. Any ceding commission received by an insurer purchasing
73 reinsurance for catastrophes shall be placed in the catastrophe
74 reserve.

75 (e) After consideration of the rate factors provided in
76 paragraphs (b), (c), and (d), a rate may be found by the office
77 to be excessive, inadequate, or unfairly discriminatory based
78 upon the following standards:

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

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

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

91 4. A rating plan, including discounts, credits, or
92 surcharges, shall be deemed unfairly discriminatory if it fails
93 to clearly and equitably reflect consideration of the
94 policyholder's participation in a risk management program
95 adopted pursuant to s. 627.0625.

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



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100 of risks.

101 6. A rate shall be deemed unfairly discriminatory as to a
102 risk or group of risks if the application of premium discounts,
103 credits, or surcharges among such risks does not bear a
104 reasonable relationship to the expected loss and expense
105 experience among the various risks.

106 (f) In reviewing a rate filing, the office may require the
107 insurer to provide at the insurer's expense all information
108 necessary to evaluate the condition of the company and the
109 reasonableness of the filing according to the criteria
110 enumerated in this section.

111 (g) The office may at any time review a rate, rating
112 schedule, rating manual, or rate change; the pertinent records
113 of the insurer; and market conditions. If the office finds on a
114 preliminary basis that a rate may be excessive, inadequate, or
115 unfairly discriminatory, the office shall initiate proceedings
116 to disapprove the rate and shall so notify the insurer. However,
117 the office may not disapprove as excessive any rate for which it
118 has given final approval or which has been deemed approved for a
119 period of 1 year after the effective date of the filing unless
120 the office finds that a material misrepresentation or material
121 error was made by the insurer or was contained in the filing.
122 Upon being so notified, the insurer or rating organization
123 shall, within 60 days, file with the office all information
124 which, in the belief of the insurer or organization, proves the
125 reasonableness, adequacy, and fairness of the rate or rate
126 change. The office shall issue a notice of intent to approve or
127 a notice of intent to disapprove pursuant to the procedures of
128 paragraph (a) within 90 days after receipt of the insurer's



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129 initial response. In such instances and in any administrative
130 proceeding relating to the legality of the rate, the insurer or
131 rating organization shall carry the burden of proof by a
132 preponderance of the evidence to show that the rate is not
133 excessive, inadequate, or unfairly discriminatory. After the
134 office notifies an insurer that a rate may be excessive,
135 inadequate, or unfairly discriminatory, unless the office
136 withdraws the notification, the insurer shall not alter the rate
137 except to conform with the office's notice until the earlier of
138 120 days after the date the notification was provided or 180
139 days after the date of the implementation of the rate. The
140 office may, subject to chapter 120, disapprove without the 60-
141 day notification any rate increase filed by an insurer within
142 the prohibited time period or during the time that the legality
143 of the increased rate is being contested.

144 (h) In the event the office finds that a rate or rate
145 change is excessive, inadequate, or unfairly discriminatory, the
146 office shall issue an order of disapproval specifying that a new
147 rate or rate schedule which responds to the findings of the
148 office be filed by the insurer. The office shall further order,
149 for any "use and file" filing made in accordance with
150 subparagraph (a)2., that premiums charged each policyholder
151 constituting the portion of the rate above that which was
152 actuarially justified be returned to such policyholder in the
153 form of a credit or refund. If the office finds that an
154 insurer's rate or rate change is inadequate, the new rate or
155 rate schedule filed with the office in response to such a
156 finding shall be applicable only to new or renewal business of
157 the insurer written on or after the effective date of the



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158 responsive filing.

159 (i) Except as otherwise specifically provided in this
160 chapter, the office shall not prohibit any insurer, including
161 any residual market plan or joint underwriting association, from
162 paying acquisition costs based on the full amount of premium, as
163 defined in s. 627.403, applicable to any policy, or prohibit any
164 such insurer from including the full amount of acquisition costs
165 in a rate filing.

166 (j) With respect to residential property insurance rate
167 filings, the rate filing must account for mitigation measures
168 undertaken by policyholders to reduce hurricane losses.

169 (k)1. An insurer may make a separate filing limited solely
170 to an adjustment of its rates for reinsurance or financing costs
171 to replace or finance payment of amounts covered by the Florida
172 Hurricane Catastrophe Fund if:

173 a. Reinsurance costs contained in the filing do not result
174 in an overall premium increase of more than 10 percent for any
175 individual policyholder. If the insurer elects to purchase a
176 liquidity instrument or line of credit instead of reinsurance,
177 the cost included in the filing for the liquidity instrument or
178 line of credit may not result in a premium increase exceeding 3
179 percent for any individual policyholder;

180 b. The insurer includes in the filing a copy of all of its
181 reinsurance, liquidity instrument, or line of credit contracts;
182 proof of the billing or payment for the contracts; and the
183 calculations upon which the proposed rate changes are based
184 demonstrating that the costs meet the criteria of this section
185 and are not loaded for expenses or profit;

186 c. The insurer makes no other changes to its rates; and



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187 d. The insurer has not implemented an increase in its rate
188 within the 6 months immediately preceding the filing.

189 2. An insurer making a filing pursuant to this paragraph is
190 not eligible to file for any additional rate increase for the
191 same business for at least 12 months after implementation of the
192 limited filing.

193 3. This paragraph does not limit the authority of the
194 office to disapprove the rate filing as excessive, inadequate,
195 or unfairly discriminatory. All other standards of the rating
196 law apply, including the standard of reasonableness.

197 4. This paragraph does not apply to rate filings for any
198 insurance other than residential property insurance.

199
200 The provisions of this subsection do ~~shall~~ not apply to
201 workers' compensation and employer's liability insurance and to
202 motor vehicle insurance.

203 (5) With respect to a rate filing involving coverage of the
204 type for which the insurer is required to pay a reimbursement
205 premium to the Florida Hurricane Catastrophe Fund, the insurer
206 may fully recoup in its property insurance premiums any
207 reimbursement premiums paid to the Florida Hurricane Catastrophe
208 Fund, together with reasonable costs of other reinsurance, but
209 except as otherwise provided in this section, may not recoup
210 reinsurance costs that duplicate coverage provided by the
211 Florida Hurricane Catastrophe Fund. An insurer may not recoup
212 more than 1 year of reimbursement premium at a time. Any under-
213 recoupment from the prior year may be added to the following
214 year's reimbursement premium and any over-recoupment shall be
215 subtracted from the following year's reimbursement premium.



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

And the title is amended as follows:

Delete lines 45 - 50

and insert:

627.062, F.S.; extending the period for which an insurer seeking a residential property insurance rate that is greater than the rate most recently approved by the Office of Insurance Regulation must make a "file and use" filing; authorizing an insurer to make a separate filing limited solely to an adjustment of its rates for reinsurance or financing costs to replace or finance payment of amounts covered by the Florida Hurricane Catastrophe Fund under certain circumstances; providing that certain insurers are not eligible to file for certain additional rate increases during a specified period after implementation of a limited filing; preserving the authority of the office to disapprove a rate filing as excessive, inadequate, or unfairly discriminatory; providing for the applicability of certain provisions of state law; amending s. 627.0621, F.S.;