

By Senator Peaden

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1 A bill to be entitled
2 An act relating to commercial insurance rates;
3 amending s. 627.062, F.S.; exempting specified types
4 of insurance and commercial lines risks from certain
5 requirements of state law relating to the filing and
6 review of rates; requiring that an insurer notify the
7 Office of Insurance Regulation following a change to
8 certain rates; requiring that an insurer maintain
9 certain information regarding underwriting files,
10 premiums, and loss and expense statistics, which
11 information is subject to review by the office;
12 amending s. 627.0651, F.S.; limiting the applicability
13 of certain provisions governing the establishment and
14 use of rates and rating schedules to private passenger
15 automobile insurance rates; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (d) is added to subsection (3) of
21 section 627.062, Florida Statutes, to read:

22 627.062 Rate standards.—

23 (3)

24 (d) The following categories or types of insurance and
25 commercial lines risks are not subject to the filing and review
26 requirements of subsection (2):

27 1. Excess or umbrella;

28 2. Surety and fidelity;

29 3. Boiler and machinery, as well as leakage and fire-

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30 extinguishing equipment;

31 4. Commercial motor vehicle;

32 5. Errors and omissions;

33 6. Professional liability, except medical malpractice
34 coverage;

35 7. Directors and officers, employment practices and
36 management liability;

37 8. Intellectual property and patent infringement liability;

38 9. Advertising injury and Internet liability;

39 10. Environmental liability;

40 11. Property risks rated under a highly protected risks
41 rating plan;

42 12. Unique or unusual risks or portions of risks not rated
43 according to manuals, rating plans, or rate schedules, including
44 "A" rates;

45 13. Commercial lines insurance risks, excluding property
46 and medical malpractice coverage, producing an annual premium of
47 \$25,000 or more; and

48 14. Any other commercial lines categories of insurance or
49 commercial lines risks that the office determines should not be
50 subject to the filing and review requirements of subsection (2)
51 because of the existence of a competitive market for such
52 insurance, similarity of such insurance to other categories or
53 kinds of insurance not subject to filing and review requirements
54 of subsection (2), or potential improvement of the general
55 operational efficiency of the office.

56
57 An insurer must notify the office of any changes to rates for
58 types of insurance described in this paragraph which are not

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59 subject to subsection (2) no later than 30 days after the
60 effective date of the change. The notice must include the name
61 of the insurer; the type or kind of insurance subject to rate
62 change; total premium written during the immediately preceding
63 year by the insurer for the type or kind of insurance subject to
64 the rate change; and the average statewide percentage change in
65 rates. Underwriting files, premiums, and loss and expense
66 statistics with regard to risks written by an insurer not
67 subject to the filing and review requirements of subsection (2)
68 shall be maintained by the insurer and are subject to
69 examination by the office.

70 Section 2. Subsections (1), (2), (3), and (4), paragraph
71 (a) of subsection (5), and subsections (6), (7), (8), and (9) of
72 section 627.0651, Florida Statutes, are amended to read:

73 627.0651 Making and use of rates for motor vehicle
74 insurance.—

75 (1) Insurers shall establish and use rates, rating
76 schedules, or rating manuals to allow the insurer a reasonable
77 rate of return on motor vehicle insurance written in this state.
78 A copy of private passenger automobile insurance rates, rating
79 schedules, and rating manuals, and changes therein, shall be
80 filed with the office under one of the following procedures:

81 (a) If the filing is made at least 60 days before the
82 proposed effective date and the filing is not implemented during
83 the office's review of the filing and any proceeding and
84 judicial review, such filing shall be considered a "file and
85 use" filing. In such case, the office shall initiate proceedings
86 to disapprove the rate and so notify the insurer or shall
87 finalize its review within 60 days after receipt of the filing.

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88 Notification to the insurer by the office of its preliminary
89 findings shall toll the 60-day period during any such
90 proceedings and subsequent judicial review. The rate shall be
91 deemed approved if the office does not issue notice to the
92 insurer of its preliminary findings within 60 days after the
93 filing.

94 (b) If the filing is not made in accordance with the
95 provisions of paragraph (a), such filing shall be made as soon
96 as practicable, but no later than 30 days after the effective
97 date, and shall be considered a "use and file" filing. An
98 insurer making a "use and file" filing is potentially subject to
99 an order by the office to return to policyholders portions of
100 rates found to be excessive, as provided in subsection (11).

101 (2) Upon receiving notice of a private passenger automobile
102 insurance rate filing or rate change, the office shall review
103 the rate or rate change to determine if the rate is excessive,
104 inadequate, or unfairly discriminatory. In making that
105 determination, the office shall in accordance with generally
106 accepted and reasonable actuarial techniques consider the
107 following factors:

108 (a) Past and prospective loss experience within and outside
109 this state.

110 (b) The past and prospective expenses.

111 (c) The degree of competition among insurers for the risk
112 insured.

113 (d) Investment income reasonably expected by the insurer,
114 consistent with the insurer's investment practices, from
115 investable premiums anticipated in the filing, plus any other
116 expected income from currently invested assets representing the

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117 amount expected on unearned premium reserves and loss reserves.
118 Such investment income shall not include income from invested
119 surplus. The commission may adopt rules utilizing reasonable
120 techniques of actuarial science and economics to specify the
121 manner in which insurers shall calculate investment income
122 attributable to motor vehicle insurance policies written in this
123 state and the manner in which such investment income is used in
124 the calculation of insurance rates. Such manner shall
125 contemplate the use of a positive underwriting profit allowance
126 in the rates that will be compatible with a reasonable rate of
127 return plus provisions for contingencies. The total of the
128 profit and contingency factor as specified in the filing shall
129 be utilized in computing excess profits in conjunction with s.
130 627.066. In adopting such rules, the commission shall in all
131 instances adhere to and implement the provisions of this
132 paragraph.

133 (e) The reasonableness of the judgment reflected in the
134 filing.

135 (f) Dividends, savings, or unabsorbed premium deposits
136 allowed or returned to Florida policyholders, members, or
137 subscribers.

138 (g) The cost of repairs to motor vehicles.

139 (h) The cost of medical services, if applicable.

140 (i) The adequacy of loss reserves.

141 (j) The cost of reinsurance.

142 (k) Trend factors, including trends in actual losses per
143 insured unit for the insurer making the filing.

144 (l) Other relevant factors which impact upon the frequency
145 or severity of claims or upon expenses.

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146 (3) Private passenger automobile insurance rates shall be
147 deemed excessive if they are likely to produce a profit from
148 Florida business that is unreasonably high in relation to the
149 risk involved in the class of business or if expenses are
150 unreasonably high in relation to services rendered.

151 (4) Private passenger automobile insurance rates shall be
152 deemed excessive if, among other things, the rate structure
153 established by a stock insurance company provides for
154 replenishment of surpluses from premiums, when such
155 replenishment is attributable to investment losses.

156 (5) (a) Private passenger automobile insurance rates shall
157 be deemed inadequate if they are clearly insufficient, together
158 with the investment income attributable to them, to sustain
159 projected losses and expenses in the class of business to which
160 they apply.

161 (6) One private passenger automobile insurance rate shall
162 be deemed unfairly discriminatory in relation to another in the
163 same class if it clearly fails to reflect equitably the
164 difference in expected losses and expenses.

165 (7) Private passenger automobile insurance rates are not
166 unfairly discriminatory because different premiums result for
167 policyholders with like loss exposures but different expense
168 factors, or like expense factors but different loss exposures,
169 so long as rates reflect the differences with reasonable
170 accuracy.

171 (8) Private passenger automobile insurance rates are not
172 unfairly discriminatory if averaged broadly among members of a
173 group; nor are rates unfairly discriminatory even though they
174 are lower than rates for nonmembers of the group. However, such

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175 rates are unfairly discriminatory if they are not actuarially
176 measurable and credible and sufficiently related to actual or
177 expected loss and expense experience of the group so as to
178 assure that nonmembers of the group are not unfairly
179 discriminated against. Use of a single United States Postal
180 Service zip code as a rating territory shall be deemed unfairly
181 discriminatory.

182 (9) In reviewing the private passenger automobile insurance
183 rate or rate change filed, the office may require the insurer to
184 provide at the insurer's expense all information necessary to
185 evaluate the condition of the company and the reasonableness of
186 the filing according to the criteria enumerated herein.

187 Section 3. This act shall take effect January 1, 2011.