Review of Alternatives to Property and Casualty Insurance Rate Regulation in Florida

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Background

Overview

Insurance is regulated by the states. The degree of regulation varies among jurisdictions, however, most regulation deals with rates, insurer solvency, and consumer protection. While ensuring that insurers remain financially viable and protecting the insurance-buying public are important concerns, insurance regulators are facing critical challenges as far as rate regulation. With the increasing globalization of financial services and intense competition from outside as well as inside the insurance community, state policymakers are being asked to deregulate or, at a minimum, streamline aspects of the rating system and to provide greater uniformity in rate regulation among the 50 states.

In particular, the regulatory environment as to property and casualty insurance rates is undergoing change.[1] Many state administrators have concluded that open pricing competition among insurers could be an effective "regulator" of property and casualty insurance rates.[2] These policymakers have focused primarily on commercial insurance and decided that consumers would be better served by less restrictive regulatory interventions and by greater reliance on competition. Over the last 2 years, 20 state legislatures or insurance departments have instituted some form of commercial lines rate and form filing deregulation and 5 other jurisdictions are considering such legislation.[3] Florida's Department of Insurance

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[1]This report will focus on property and casualty insurance rate provisions, as opposed to life and health insurance. Section 627.062, F.S., constitutes the state's rating law applying to property and casualty (including surety) insurance, but it does not apply to private passenger automobile, workers' compensation, employers liability, reinsurance, aircraft or marine coverages, surplus lines, or life and health insurance. Currently, different lines of insurance for which there is rate regulation are covered by statutory sections devoted to those particular lines. For example, s. 627.0651, F.S., applies to private passenger auto, while ss. 627.072 and 627.091, F.S., govern workers' compensation and employers liability.
In general, p*roperty insurance* is insurance on real or personal property whether on land, water or in the air, against loss or damage from any hazard or cause (s. 624.604, F.S.); *casualty insurance* includes a number of types of insurance (vehicle, liability, burglary and theft, workers' compensation, credit, malpractice, and insurance on types of machinery and equipment) (s. 624.605, F.S.); and, *surety insurance* includes a contract bond or a performance bond, an indemnity bond, fidelity insurance and residual value insurance (s. 624.606, F.S.).

[2] *Project History of the Property and Casualty Model Rate and Policy Form Law,* National Association of Insurance Commissioners, March 2000. States have adopted various methods of regulating insurance rates, but most provisions fall into two categories: "prior approval" and "competitive."

[3] *Update,* National Conference of Insurance Legislators.

promulgated its commercial lines deregulation rule which was effective August 4, 2000.

Various issues related to the regulation of Florida's property and casualty insurance rates have been discussed, considered, or filed as legislation over the last several years. These issues have included:

(1) Repealing the binding arbitration option for rate filings disapproved by the Department of Insurance.[4]

(2) Repealing arbitration, but allowing administrative law judges to have final determination over rate decisions.

(3) Creating an Insurance Rating Commission (modeled after the Public Service Commission) to regulate rates rather than the Department of Insurance.[5]

(4) Restricting the use of hurricane loss projection models in rate filings.[6]

(5) Shifting the burden of proof from insurance companies to the Department of Insurance.

(6) Providing that a rate filing is not excessive if competition exists.

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[4] Committee Substitute for Senate Bill 144 (Insurance/Rate Filings) was passed by the Committee on Banking and Insurance during the 2000 Session, but died in the Committee on Agriculture and Consumer Services. The bill repealed the option of binding arbitration as to disputes between property and casualty insurance companies and the Department of Insurance over an insurer's rate filing. The effect of this provision would be that disputes between the insurer and the department over an insurer's rate filing could be conducted only through administrative litigation under the Administrative Procedures Act (ch. 120, F.S.).

[5] Committee Substitute for Senate Bill 1682 (Cabinet Reorganization) was passed by the Senate during the 2000 Session, but the House substituted its own bill which subsequently died in House messages. The bill established the Insurance Rating Commission and it authorized that body to approve rates for insurance and have all the powers and duties relating to rates that are currently delegated to the Department of Insurance. The Commission would be composed of five members appointed by the Governor and confirmed by the Senate. The bill provided that the Public Counsel was to represent the public before the Insurance Rating Commission. The legislation also repealed binding arbitration.

[6] Senate Bill 1964 (Insurance) prohibited property and casualty insurers from using existing models to determine hurricane-loss factors for use in rate filings until the Florida Commission on Hurricane Loss Projection Methodology finds that a publicly owned model developed by the State University System (SUS) is accurate and reliable for determining such factors. The bill also repealed arbitration. This legislation was filed during the 2000 session, but was not considered by a committee.

(7) Allowing "use and file" rate filings to be made without requiring an insurer to refund that portion of the rate determined to be excessive.

(8) Adopting a flex band rating system.

The purpose of this report is to examine Florida's property and casualty rate provisions and review the various policy alternatives, outlined above, to the state's rating scheme. The report will analyze the pros and cons of these policy options, rather than making recommendations. The report will also compare Florida's rate provisions with the rate requirements in the other states and the model property and casualty rating laws drafted by the National Association of Insurance Commissioners and the National Conference of Insurance Legislators.

History of Florida's Property and Casualty Insurance Rating Laws

Developing rates that accurately reflect each policyholder's share of predicted losses is one of the most important operations performed by insurance companies. Since a given rate is the basis of an insured's premium, it is important to both the insured and the insurer that the rate, and therefore the premium, be a fair measure of the company's exposure to loss.[7]

The rates charged by insurers are subject to review by state insurance regulators with the type and scope of such review varying among jurisdictions. However, three principles guide every state's rate regulation system: that rates be *adequate* (to maintain solvency), but *not excessive* (not so high as to lead to exorbitant profits), nor *unfairly discriminatory* (price differences must reflect expected claim and expense differences).[8] Given these guiding principles, states have various

[7] The insurance *premium* means the consideration paid to an insurer by the policyholder for issuance of the policy of insurance for a specified period of time. The insurance *rate* is the unit charge by which the measure of exposure or amount of insurance specified in a insurance policy is multiplied to determine the premium (for example, $1,000 worth of coverage). To arrive at the premium, the rate is multiplied by the number of insurance units purchased. (s. 627.041, F.S.)
In summary, to determine the premiums they charge, insurance companies predict the expenses they will incur to pay for losses, recognizing that this prediction is subject to uncertainty. To the predicted amount for expenses, insurers add an amount sufficient to cover the expected administrative costs of operating the company. In addition, a risk charge is included to add a margin for error in the prediction. This amount is then modified to reflect the investment income that can be earned on the funds held for future claim payments. The amount needed by the company is then divided among all policyholders according to their individual characteristics and the amount of insurance desired.

[8] *Insurance Issues Update,* Insurance Information Institute, September 2000.

methods of regulating rates which fall generally into two categories: "prior approval" and "competitive." *Prior approval* systems require rate changes to be filed with the state's insurance commissioner prior to use. These filings are then reviewed and either approved for use or disapproved. *Competitive* systems may or may not require rates to be filed. However, under all competitive systems, new rates may be put into effect without the commissioner's prior approval.[9]

In the early days of the insurance industry, insurance companies were individually free to charge rates which fit their business aims and that the market would bear.[10] Insurance rating bureaus were subsequently created to provide common pricing for insurers to avoid "ruinous" competition among companies. However, this rigid control resulted in no price competition in the insurance market.[11] Detailed laws designed to specifically regulate insurance rates did not emerge until after Congress enacted the McCarrin-Ferguson Act in 1945 which allowed states to regulate insurance.[12] That same year, Florida modified its rating law for property and casualty insurance by requiring insurance companies to obtain prior rate approval from the insurance commissioner.[13] Such rates could not be "unreasonably high or inadequate for the safety and soundness of the insurer" and could "not unfairly discriminate between risks in the State."[14] Rate filings were deemed approved unless disapproved by the commissioner within 30 days.

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[9] *Id.*

[10] *Rate Regulation: The Eye of Florida's Insurance Storm,* Florida Association of Insurance Agents. February 1996.

[11] *Report to the Legislature on the Operation of Florida Insurance Rating Law,* Department of Insurance (1967-68).

[12] 15 U.S.C. §§ 1011 - 1015 (1997); Congress passed the McCarran-Ferguson Act in response to the Supreme Court's ruling in United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944). In United States v. South-Eastern Underwriters Ass'n, the Court held that a federal anti-trust law, the Sherman Act, applied to the business of insurance. The Court's ruling in South-Eastern Underwriters Ass'n caused great concern among the states because the Sherman Act was generally worded and did not specifically mention its application to insurance, which was traditionally regulated by the states. States feared that because of South-Eastern Underwriters Ass'n, other generally worded federal statutes might also be interpreted to apply to insurance. Congress responded by enacting the McCarran-Ferguson Act, declaring that regulation of insurance by the states was in the public interest and granting a limited exception to the insurance industry from federal anti-trust law. It provided that the Sherman Act, the Clayton Act, and the Federal Trade Commission Act apply to the business of insurance "to the extent that such business is not regulated by state law." The Sherman Act does, however, apply to insurer boycotts, coercion, and intimidation.

[13] The provisions for fire and other (property) insurance were under ch. 629, F.S. (ch. 22621, Laws of Florida (1945); while the casualty insurance laws were in ch. 630, F.S., (ch. 22637, Laws of Florida (1945).

[14] *Id.*

The Legislature amended Florida's insurance rate regulation during the 1959 reorganization of the Insurance Code.[15] The 1959 law continued the essentials of the earlier code which established a prior approval system. However, prompt action was required by the commissioner because there was a 15-day "deemer" provision which, if the rates had not been approved or disapproved, could be put into effect by the insurer.[16]

Since 1959 in Florida, there have been three separate waves of insurance rate regulation legislation, starting in 1967, and following in 1986 and 1996.[17] The Legislature in 1967 moved the state from its reliance on a prior approval rating scheme into a "competitive pricing" posture by adopting the "California Plan."[18] Under that law, companies were free to set rates without interference by the Insurance Commissioner. In fact, in order to disapprove a rate, the Insurance Commissioner would have to find that a "reasonable degree of competition does *not exist* in the area with respect to the classification to which the rate is applicable."[19]

In 1986, the Legislature substantially redrafted the rating law, deleted the "competition" provision, and established a "file and use" and "use and file" rate regulatory system which is used (with certain modifications) presently.[20] Under the "file and use" provisions, insurers were required to file property and casualty rates for approval with the department 60 days before the proposed effective date and the time could be tolled (that is, suspended) if the department requested additional information. However, rates were deemed approved if the department did not issue a notice of its preliminary findings to the insurer within the 60-day period. Under the "use and file" provisions, filings must be made within 30 days

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[15] Ch. 59-205, Laws of Florida.

[16] Under this provision, insurance rates were required to be filed with the Insurance Commissioner and were open to "public inspection" for 15 days, at which time the Commissioner could approve or disapprove a filing without a hearing. If the Commissioner failed to act, the filing was deemed approved.
A "deemer" provision allows a certain number of days for the regulator to take action. If the filing is not disapproved within that period, then the filing is "deemed" approved. Timely action, the basic intent of deemer clauses, can be frustrated to the extent that a regulator chooses to regard the filing as incomplete so that the deemer clock is either stopped or not started.

[17] These were amendments to the rating provisions under s. 627.062, F.S.

[18] Ch. 67-9, Laws of Florida. The statute, modeled after California law, provided that "nothing is intended to give the Commissioner power to fix or determine a rate level by classification or otherwise." The California Plan was repealed in 1971 as it applied to private passenger automobile insurance rates (Ch. 71-3(b), Laws of Florida).

[19] S. 627.062(2)2, F.S. In 1982, the Legislature authorized the Department of Insurance to promulgate rules using actuarial and economic principles describing the factors that would be utilized in determining when price competition is sufficient to assure that rates are not excessive in relation to the benefits provided. (Ch. 82-243, Laws of Florida.)

[20] Ch. 86-160, Laws of Florida.

after the effective date and the department could order the insurer to return to policyholders portions of rates found to be excessive. The law further set forth specific factors to guide the department in its rate review and established that insurers must carry the burden of proof by a preponderance of the evidence to show that the rate is *not* excessive, inadequate, or unfairly discriminatory.[21]

From the perspective of insurance companies, the tolling provision led to long delays in setting new prices to meet market conditions, while the reimbursement requirement introduced substantial financial uncertainty because the prices insurers set could be reset retroactively and insurers would have to make refunds to policyholders. Finally, the burden of proof requirement forced insurers, irrespective of how competitive the market might be or what other insurers were charging, to demonstrate that the rates met the statutory standards.

In 1996, the Legislature again amended the rating law to lengthen the time period from 60 to 90 days for file and use filings, removed the tolling provision, and authorized the option of binding arbitration as to disputes between property and casualty insurance companies and the Department of Insurance over an insurer's rate filing.[22]

Florida's Current Rate Regulation Provisions

Rating Law **-** All property and casualty insurers authorized to do business in the state are required to file rates for approval with the Department of Insurance either 90 days before the proposed effective date ("file and use") or 30 days after the rate filing is implemented ("use and file").[23] Under the file and use option, the department may finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing. These notices are "agency action" for purposes of the Administrative Procedure Act, and give the insurer the right to choose an administrative hearing or binding arbitration. Prior to approving or disapproving a rate filing, the department may request additional supporting information for the filing from the insurer, but such a request does *not* toll the 90-day review period. If the department fails to issue a notice of intent to approve or disapprove within the 90-day review period, the filing is deemed approved. Under the "use and file" option, an insurance company may be ordered by the department to refund a portion of the rate to the policyholder in the form of a credit or refund if it is found to be excessive.

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[21] The law also provided that the rates for "individual risks", not rated in accordance with the insurer's rates, could be filed within 90 days following the effective date. This provision was deleted in 1992 and insurers were required to just maintain documentation for 5 years on risks subject to individual risk rating (ch. 92-318, Laws of Florida).
[22] Ch. 96-194, Laws of Florida.
[23] S. 627.062, F.S.

Standards for Disapproval **-** The department may disapprove a rate filing if it determines such rates to be "excessive, inadequate, or unfairly discriminatory." These terms are defined in the Florida Statutes in the following manner:[24]

(a) Rates are "excessive" if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.[25]

(b) Rates are "inadequate" if they are clearly insufficient, together with investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply. Also, rates are deemed "inadequate" as to premium charged to a risk if discounts or credits are allowed which exceeded a reasonable reflection of expense savings and expected loss experience from the risk.

(c) Rates are "unfairly discriminatory" as to a risk if the application of premium discounts, credits, or surcharges among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.[26]

In making its rating decision, the department must consider, in accordance with generally accepted and reasonable actuarial techniques, thirteen factors which affect the insurer's rate filing which include: past and prospective loss experience, expenses, market competition for the risk insured, investment income, the reasonableness of the judgment reflected in the rate filing, dividends, the adequacy of loss reserves, cost of reinsurance, trend factors, catastrophe hazards, profits, medical services (if applicable), and other relevant factors which impact upon the frequency or severity of claims or upon expenses.

Methodology

Florida's property and casualty insurance rating laws and previous legislative reports on this topic were reviewed and summarized for the background section of this report. Staff researched numerous state rating provisions and examined the

[24] S. 627.062, F.S.

[25] Rates are also *excessive* if, among other things, the rate structure established by a stock company provides for replenishment of surpluses from premiums, when the replenishment is attributable to investment losses.

[26] A rating plan, including discounts, credits, or surcharges, shall be deemed *unfairly discriminatory* if it fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program.

property and casualty model rating laws from the National Association of Insurance Commissioners and the National Conference of Insurance Legislators.

Committee staff analyzed various insurance company rate filings and arbitration decisions rendered since the inception of the arbitration law. Information was reviewed concerning insurance rating provisions from national and state research institutions, associations, insurance companies, and government regulators. Interviews were conducted with representatives from these groups.

This report will focus on property and casualty insurance rating provisions subject to s. 627.062, F.S. This statutory provision applies to all property and casualty lines of insurance, except personal automobile and workers' compensation.[27] This report will analyze the pros and cons of options or alternatives to the present rating provisions rather than making recommendations.

Findings

Efforts to Streamline Florida's Rate Filing Process

Over the past several years, the Department of Insurance has greatly simplified its internal rate, rule, and form filing review procedures in an effort to process filings in a more timely and efficient manner. This effort was accelerated in 1996 because the Legislature repealed the tolling provision for file and use rate filings, thus limiting the amount of time the department would have for review.[28] Among the changes the department adopted are the following:

- An expedited review procedure was implemented by the Bureau of Property and Casualty Forms and Rates so that rate filing reviews could be completed within 60 days or less.[29]

- Computer systems were set up to capture information pertaining to an insurer's rate filing. Such systems alleviate the need for data entry by the department and allow the department's actuaries to compare rate information among insurance companies. Also, electronic worksheets are now provided to insurers filing residential property filings for the collection and evaluation of homeowners credits, wind mitigation devices, building code effectiveness grading scales, and mobile home standards.

- Administrative rules were rewritten to clearly delineate the requirements for

[27] This report will not review life and health insurance rating provisions.
[28] Ch. 96-194, Laws of Florida. The Legislature allocated several positions to the department to implement this internal reform.
[29] On average, the department receives from 2,000 to 3,000 rate and form filings a year. The majority of these filings relate to commercial insurance.

making a rate filing.

• The department is redesigning its web site (to be implemented this month) so that insurers can download relevant reporting forms and rate information. Additionally, the department is planning to create a document management system so that a rate filing can be tracked electronically through the entire review process. Once the file is approved, it will be accessible electronically to consumers.

• The department is in the process of developing a system, in conjunction with the National Association of Insurance Commissioners (NAIC), to allow insurers to make their entire rate and form filing electronically. Under this system, known as SERFF,[30] companies will make only one filing to the NAIC and the NAIC will in turn electronically transmit the filing to the affected state.

• The NAIC, in conjunction with governors, state legislators, and insurance departments, has proposed a "Speed to Market Initiative" which would create a national centralized clearinghouse for insurance companies to make their rate, form, and advertising filings. A pilot project has already begun pertaining to annuities.

As a direct result of these reforms, the amount of time the Department of Insurance has spent to review filings has been greatly reduced. For example, the average number of days to review and close out a rate filing has been reduced by 23 percent for homeowners and commercial rate filings, 26 percent for workers' compensation rate filings, 48 percent for private passenger automobile rate filings and 33 percent for form filings.[31]

[30] System for Electronic Rate and Form Filing.
[31] This is over a 4 year period. However, for workers' compensation filings it was calculated over a 3 year period.

How Florida's Rate Provisions Compare with the National Model Laws and other States' Laws

Deregulation of Commercial Property and Casualty Rates

In March of this year, the National Association of Insurance Commissioners (NAIC) issued its draft model property and casualty rating law and made two conclusions: that competition could be an effective regulator of property and casualty insurance rates and that commercial insurance consumers are better served by a greater reliance on competition.[32] A year earlier, the National Conference of Insurance Legislators (NCOIL) had reached a similar conclusion when it published its model law proposing the deregulation of large commercial risks.[33]

The NAIC model law states that a competitive market "is presumed to exist" unless the insurance commissioner, after hearing, determines that a reasonable degree of competition does not exist in the market.[34] In determining whether a competitive market exists, the model law sets forth relevant tests pertaining to market structure, market performance, and market conduct. The Commissioner has the burden of proof to show competition does not exist.[35]

The model contemplates several other approaches as to rate regulation in order to enable the degree of regulation or competition to vary so as to fit the needs of each state. Specifically, the model uses a file and use rating approach for noncompetitive markets, where an insurer files a rate and the insurance commissioner has 30 days in which to disapprove the rate, or it is deemed approved.[36] The model also has provisions for flexible rating "for states not comfortable with a competitive rating environment."

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[32] Model Law Draft 775, Property and Casualty Rate and Policy Form Model Law, NAIC, March 6, 2000. The NAIC is an organization of insurance regulators from all the states and provides a forum for the development of uniform policy in particular areas of insurance.

[33] The National Conference of Insurance Legislators (NCOIL) is an organization of state legislators whose main area of public policy concern is insurance legislation and regulation. It adopted its draft law in February 1999. The are other model laws proposed by various insurance groups. For example, the American Legislative Exchange Council (ALEC) has issued its model which established a use and file rate regulatory system for personal lines of insurance, a no-file system for commercial lines, and would allow policies sold to large, sophisticated commercial insurance providers to be exempt from rate and regulatory requirements.

[34] The model applies to all lines of insurance, except accident, health, title, and workers' compensation.

[35] The commissioner must hold yearly hearings and find that a continued lack of a reasonable degree of competition still exists.

[36] The commissioner can extend this period another 30 days.

The NAIC model also establishes an exemption from rate and form requirements for large commercial policyholders and suggests that insurance departments be granted authority to monitor competition and react with appropriate changes to regulatory processes through implementation of regulations, including the waiver of some or all rate filing requirements for one or more commercial lines of insurance. It addresses the inefficiencies for multi-state commercial policyholders by introducing a limited form of reciprocity for insurers selling policies to risks operating in more than one state, and finally it promotes the use of the System for Electronic Rate and Form Filing through changes that make the rate and form filing process media neutral.

The NCOIL model is more narrow in scope providing for policies issued to large commercial insureds to be exempt from certain rate and form filing requirements and allows for the competitive underwriting and rating of policies in most commercial lines of insurance. It also exempts surplus line placements for large commercial insureds from diligent search requirements and exempts policies covering multi-state exposures/operations from certain state regulatory requirements that may be in conflict with those of the insured's headquarters state.

The movement to ease the regulatory environment as to property and casualty insurance rates, particularly applying to commercial insureds, has not only been developing on a national level with the model laws, but has been gaining momentum among the various states for several years.[37] Over the past decade, brokers and insurers who handle large commercial risks have attempted to influence state policymakers to accept the idea of rate deregulation for these risks which, unlike many individual consumers, have the expertise to compare complex contracts and pricing schemes. These brokers and insurers maintained that the cost of complying with multi-state regulatory provisions pushed many companies to seek coverage off-shore in places such as Bermuda where there is far less regulation.[38]

In the last 2 years, 20 state legislatures or insurance departments have instituted some form of commercial lines rate and form filing deregulation and 5 other jurisdictions are considering such legislation.[39] In general, these deregulation provisions provide that commercial entities must meet at least two of a list of

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[37] The movement of states away from prior approval of rates has been more pronounced in connection with commercial lines than personal lines.

[38] *Insurance Issues Update*, Insurance Information Institute, March 2000.

[39] *Update*, National Conference of Insurance Legislators. The 20 states are: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Missouri, Nebraska, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington. The 5 jurisdictions are: Kansas, New York, Massachusetts, Vermont, and the District of Columbia.

criteria that establish their size and sophistication as insurance buyers, but the range and size varies from state to state.

Recently, Florida's Department of Insurance promulgated its commercial lines deregulation rule which provides that if commercial risks meet any two or more conditions, such risks would be eligible for individual risk rating which means the insurer would not have to file rates, but be required to maintain certain documentation for 5 years.[40] The conditions are that the risk: employ at least 500 full-time employees; generate net revenues of at least $100 million in the latest fiscal year; have a net worth of at least $50 million; pay annual premiums of at least $500 million for specified types of insurance; procure insurance through a certified risk manager; is a public entity with a population of 50,000, or is a nonprofit organization or public entity with a minimum annual budget of $45 million. Florida's rule substantially tracks the criteria set forth in the NAIC model law. However, under the NCOIL model the criteria are not as restrictive.[41]

Comparison of State Rating Provisions

Rating laws are at the core of state insurance codes. However, comparison of such laws among the states is generally oversimplified, and it is often difficult to categorize the appropriate language in a state's code. Given this caveat, staff reviewed the property and casualty rate filing laws of the other 49 states and the District of Columbia to generally identify the different approaches taken by these jurisdictions.[42]

State rating provisions range from the most restrictive approach, prior approval, to the least restrictive avenue, which is to have no filing requirements. However, most state rating provisions fall into three broad categories: *prior approval* (rates

[40] Rule 4-170.019, F.A.C. The current Florida law provides an exemption from the rate filing and approval requirements for individual risks that are not rated in accordance with the insurer's filed rates. (s. 627.062(3), F.S.) The department cited this law as authority for its commercial deregulation rule. The rule does not apply to private passenger automobile, homeowners, or workers' compensation. It also sets forth criteria for individually rated risks that are distinguished from large commercial risks. Last legislative session, Senate Bill 2010 exempted certain insurance companies from rate and form requirements for policies issued to large commercial risks if such risks met specified criteria. The bill was similar to provisions contained in the NCOIL model law, but the bill was not considered by any committee.

[41] The NCOIL model provides that the insured use an insurance broker or agent and meet two of the following criteria: employment of 50 employees; net revenues of $50 million; net worth of $25 million; unspecified minimum amount of annual premiums; employment of a risk manager or retained insurance consultant; unspecified minimum municipal population; or be a nonprofit or public entity with a budget of $25 million.

[42] See Appendix for the compendium of state property and casualty rating laws with definitions of the rating provisions which is published by the National Association of Insurance Commissioners.

must be filed with and approved by the state insurance department before they can be used, however, approval can be by means of a deemer provision, which means approval if rates are not denied within a specified number of days); *file and use* (rates must be filed with the state insurance department prior to their use, and specific approval is not required but the department may retain the right of subsequent disapproval), and *use and file* (rates must be filed with the state insurance department within a specified period after they have been placed in use).[43]

Staff found that approximately 23 states (and the District of Columbia), had some form of a prior approval provision, although more than half of those states (14) had a deemer clause which means the rates are deemed approved if the department does not act within a certain number of days. Of the 23 states, 5 had some form of either use and file or file and use provision which means that certain lines within property and casualty had different rate filing requirements. Twenty states, including Florida, had some form of file and use rate filing procedure, although two of the states, Florida and Kentucky, also had use and file provisions.

In Florida, insurance companies may file their rates either 90 days before the effective date (file and use) or 30 days after the rate filing is implemented (use and file). However, Florida's file and use provisions are functionally equivalent to a prior approval with a deemer provision because if the insurance department does not act on the rate filing within 90 days, the rate is deemed approved.

Six states utilized a use and file rating scheme, while one state, Illinois, has no rate filing requirements for property and casualty risks.[44] Staff also found that there were differences among the states as to whether or not a competitive market existed for a certain line of insurance and as to the number of days insurance departments had for review.

Alternatives to Florida's Rate Regulation

Repeal Binding Arbitration for Rate Filings Disapproved by the Department of Insurance - If the Department of Insurance disapproves a rate filing, the insurer may either request an administrative hearing under the Administrative Procedures Act (ch. 120, F.S., A.P.A.) or seek binding arbitration.[45] Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH). Once the hearing is completed, the ALJ has 30 days to issue his or her decision, termed a Recommended Order, to

[43] Definitions are from the NAIC chart.
[44] However, Illinois does have a 10-day use and file provision for homeowner and dwelling and fire risks.
[45] The administrative hearing provisions are set forth in s. 120.57(1), F.S., while arbitration is provided in s. 627.062, F.S., and in ss. 682.06-682.10, F.S.

the Insurance Commissioner for final review.[46] Representatives with DOAH state that the average time it takes for a case which is referred by an agency to DOAH until the issuance of a Recommended Order is estimated to be 3 and one half months. This estimate is based on the average of all cases for 1999.

The Recommended Order contains findings of fact and conclusions of law as found by the ALJ. In turn, the Commissioner has 90 days to issue a Final Order, and that order may adopt the ALJ's Recommended Order or may reject or modify the conclusions of law contained in the Recommended Order. However, the Commissioner, in the Final Order, may not substitute findings of facts contained in the Recommended Order which were supported by competent substantial evidence.[47] A party may then appeal the Commissioner's Final Order to the First District Court of Appeal and that court may take upwards to a year or more to render its final decision.

Until 1996, the administrative process was the insurer's only legal remedy and the lengthy delay and perception that a court would be unlikely to reverse a Final Order of the department typically led to a consent agreement between the department and the insurer. In 1996, the law was amended to allow insurers to request binding arbitration of a rate filing as an alternative to an administrative hearing.[48] After the department issues a notice of intent to disapprove a rate filing, the insurer may request arbitration before a panel of three arbitrators. The panel is chosen as follows: one is selected by the insurer, one by the Department, and the third is chosen by the two other arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be the employee of any insurance company or insurance regulator. The procedures outlined in the Arbitration Code (chapter 682, F.S.) are applied to rate arbitration and the costs of arbitration are paid by the insurer. The decision of the panel, which must be made within 90 days, constitutes the final approval of a rate filing.

There is no appeal per se of the panel's decision to a higher court, as there would be under the APA. However, either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's decision under limited conditions.[49] In general, grounds for vacating include corruption or fraud, evident partiality by a neutral arbitrator, and action beyond the arbitrators' powers or jurisdiction. Grounds for modification include miscalculations, errors as to form, and actions on matters not submitted for arbitration. Upon initiation of arbitration, the insurer waives all rights to challenge the action of the Department of Insurance

[46] Parties are allowed 15 days to file exceptions to the Recommended Order.
[47] S. 627.0612, F.S.
[48] Ch. 96-194, Laws of Florida. Arbitration has been an option for insurers, including the Residential Property & Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA), since the inception of the arbitration provision in January 1, 1997.
[49] Sections 682.13 and 682.14, F.S.

under the APA or any other law; however, these rights are restored to the insurer if the arbitrators fail to act within 90 days after initiation of arbitration.

Since the inception of the arbitration provision, only nine insurance companies and the FWUA have requested arbitration. The table below features the company, the requested rate change and the final decision by the arbitration panel. According to the Department of Insurance, during this same period, very few insurers have litigated their rate filings under the APA because the majority of those insurers have either settled their rate disputes with the department or withdrawn their filing.

Companies Requesting Arbitration Since Inception (January 1, 1997 to Present)

Company Name	Filing Received	Filing Type	Requested Rate Change	Arbitration Decision
State Farm Fire & Casualty	May 5, 1997	F & U	25.60%	25.60%
Continental Ins. Group (CNA)	August 14, 1997	*U & F*	28.10%	Remand filing to Department[50]
Florida Windstorm Underwriting Assn. (FWUA)	August 25, 1997	F & U	61.00%- (Phased in over 3 years)	12.0%
United Services Auto. Assn.(USAA)	September 2, 1997	F & U	19.40%	14.80%
Nationwide Ins. Co. of Florida	December 17, 1998	F & U	29.00%	18.00%
Florida Windstorm Underwriting Assn. (FWUA)	May 3, 1999	F & U	96.00%	96.00%[51]
First Floridian	June 21, 1999	F & U	17.20%	11.80%[52]
State Farm Florida	October 7, 1999	F & U	7.00%	7.00%
United Services Auto. Assn. (USAA)	November 1, 1999	F & U	16.60%	7.70%
Cypress (Homeowners Program)	Feb. 8, 2000	*U & F*	12.02%	0%[53]
Cypress (Dwelling)	Feb. 8, 2000	*U & F*	14.03%	0%[54]

Source: Department of Insurance

Since the inception of arbitration, a total of 458 filings have been made which have rate level impact.[55] Of that number, the department has issued 103 notices of

[50] CNA's filing was remanded to the department, and the department subsequently issued a consent order approving a 12.8 percent increase. CNA was prohibited from filing a homeowners rate increase prior to January 2000.

[51] The maximum rate increase is capped at 20 percent for the first year, 30 percent for the second year, and 40 percent for each subsequent year. The FWUA is required to apply discounts, thus lowering the amount of premium paid, for loss mitigation retroactively to policyholders who mitigate their homes. The FWUA offers various cost saving features so that insureds can receive a fiscal incentive to retrofit their home, or where feasible, include retrofitting features in the construction of a new home. The arbitration panel decision is being challenged by the Department of Insurance.

[52] The arbitration panel decision is being challenged by the Department of Insurance.

[53] Cypress was allowed to keep the premium it collected from policyholders from April 1, 2000 to October 1, 2000.

[54] Cypress was allowed to keep the premium it collected from policyholders from April 1, 2000 to October 1, 2000.

[55] These are homeowner and mobile homeowner filings from the period of January 1, 1997 through September 5, 2000.

intent to deny rate requests. In such cases, the insurers had the option of going to arbitration, an administrative hearing, or settling the rate dispute with the department through negotiations.[56] Representatives with the department point out that even though only nine insurers (and the FWUA) have requested arbitration, those companies represent some of the largest insurers in terms of market share in the state.

Insurance companies often prefer arbitration over administrative hearings because it takes much less time for a rate decision to be rendered by the panel, and is more efficient and cost-effective. Industry representatives claim that with arbitration, they can expect a resolution of a rate dispute within 90 days, as opposed to 9 months to a year or more (if there is an appeal), in administrative litigation. Also, an insurer choosing arbitration has the opportunity to appoint an arbitrator familiar with rate-making and the insurance industry, generally. By contrast, administrative law judges with DOAH hear a great variety of cases and often have no background in insurance. Finally, industry officials argue that the arbitration panel procedure takes rate-making decisions out of the realm of politics, provides a level playing field for each side, and results in a fair decision.

Proponents who wish to repeal arbitration argue that the final rate decision should rest with the Insurance Commissioner. It is argued that from a public policy perspective, the elected Insurance Commissioner, and not an arbitration panel, should be the final rate-setting authority. Additionally, consumers expect their elected insurance representative to advocate their interests, as opposed to the interests of insurance companies, when insurers seek rate increases. Some consumers claim that the recent arbitration panel decision to grant a substantial increase for the FWUA justifies their position.

Repeal Arbitration, but Allow Administrative Law Judges to have Final Determination over Rate Decisions – As noted above, an administrative law judge (ALJ) who hears a rate filing dispute subsequently issues a Recommended Order to the Department of Insurance (Insurance Commissioner). The department then has 90 days to render its Final Order. There are instances, however, where the ALJ exercises "final order authority" which include, but are not limited to, the following: attorneys' fees and costs (s. 57.111, F.S.); rule challenges (s. 120.56, F.S.); summary hearings (s. 120.574, F.S.); land development regulations (s. 163.3213, F.S.); exceptional students (s. 230.23, F.S.); public entity crimes (s. 287.133, F.S.); contract crimes (s. 337.165, F.S.); involuntary placement (Baker Act) (s. 394.467, F.S.); citrus canker claims and attorney's fees (ss. 602.065 and 602.075, F.S.).

Under this alternative, the rate review process would be expedited because it would eliminate the department's review of the ALJ's order. Allowing an

[56] The majority of companies have either settled their rating disputes with the department or withdrawn their filing.

appointed ALJ to issue final orders and thus determine rate filings is similar to allowing an appointed arbitration panel to determine rates.[57] However, a greater level of public accountability would be provided by having final decisions rendered by an ALJ, as opposed to a non-governmental arbitration panel, but it would still provide a balanced process designed to reach a fair result. Formal procedures are clearly established for administrative hearings and decisions are likely to be more consistent and thorough than arbitration panel decisions.

The same arguments that are made against the current arbitration procedure can be made against this option, because this process would continue to prevent the Insurance Commissioner from making the final decision as to rate filings.

Create an Insurance Rating Commission to Regulate Rates Rather than the Department of Insurance – During the 2000 session, legislation was passed by the Senate creating an appointed Insurance Rating Commission (Commission) which would approve rates for insurance and have all the powers and duties relating to rates that are currently delegated to the Department of Insurance.[58] The bill was part of a Cabinet reform bill that provided for regulation of banking and insurance by the Chief Financial Officer. Modeled after the Public Service Commission (PSC), the Rating Commission would be composed of 5 members appointed by the Governor and confirmed by the Senate. Each member would have to be competent and knowledgeable, based on actual experience, in a least one subject area or discipline: insurance, accounting, actuarial science, law, or finance. Commission members would be subject to conflict of interest and standard of conduct provisions which currently apply to PSC members.

Under the legislation, all current rate regulation authority housed within the Department of Insurance would be transferred to the Commission, including related rule-making authority. The bill made no changes as to the current rate filing criteria under s. 627.062, F.S. The Rating Commission would approve and license rating and statistical organizations, e.g., workers' compensation, order insurers to make excess profit refunds and appoint members to the Florida Commission on Hurricane Loss Projection Methodology. Also, the Public Counsel would represent the public in matters before the Commission.

Advocates of an appointed commission state that decisions of the Rating Commission would be less political than decisions made by an elected Insurance Commissioner, but would retain public accountability. The appointed Public Service Commission (PSC), upon which the Rating Commission was based, is generally viewed as working well and subject to less controversy than when the

[57] Administrative Law Judges are state career service employees who are hired by the Chief Judge with DOAH.

[58] Committee Substitute for Senate Bill 1682 passed the Senate, but the House substituted its own bill which subsequently died in House messages. This bill also repealed binding arbitration.

PSC was an elected body. Additionally, all decisions of two or more Rating Commissioners would be subject to the Open Meetings Law. However, opponents of such a commission assert that there would be administrative problems with the Rating Commission because it would be difficult to separate rate regulation from the other insurance functions, especially policy and form review and solvency issues, which would be under the Department of Insurance. Opponents also echo an argument made concerning the arbitration panel, which is that an elected Insurance Commissioner should be responsible and accountable to the public for rate regulation and not an appointed commission.

Restrict the Use of Hurricane Loss Projection Models in Rate Filings - Insurers and regulators have become increasingly dependent on hurricane loss projection models to estimate the expected losses from hurricanes, particularly after Hurricane Andrew. The premiums that insurers are required to pay for coverage from the Florida Hurricane Catastrophe Fund are based on models that have met the standards approved by the Florida Commission on Hurricane Loss Projection Methodology (Commission), which was created by act of the Legislature in 1995.[59] Also, the Department of Insurance requires insurers to use hurricane models to determine the amount of surplus and reinsurance needed in order for the insurer to be approved for taking a block of policies out of the Residential Property and Casualty Joint Underwriting Association (RPCJUA) or Florida Windstorm Underwriting Association (FWUA). Yet, the department has also been critical of insurers' reliance on models in establishing premium rates.

The 1995 law creating the Commission on Hurricane Loss Projection Methodology provides legislative findings and intent that reliable projections of hurricane losses are necessary to ensure that rates for residential property insurance are neither excessive nor inadequate; that the ability to make these projections has been greatly enhanced by the development of computer models; that it is the public policy of the state to encourage the use of the most sophisticated actuarial methods to assure that rates are lawful; and that there is a need for expert evaluation of the models.[60] The Commission is administratively housed in, but independent of, the State Board of Administration and is composed of eleven members: the Insurance Consumer Advocate of the Department of Insurance, the Chief Operating Officer of the Florida Hurricane Catastrophe Fund,

[59] Ch. 95-276, Laws of Florida; currently in s. 627.0628, F.S. The Florida Hurricane Catastrophe Fund, commonly referred to as the "Cat" Fund, is a state trust fund administered by the State Board of Administration (SBA), created in 1993 to reimburse residential property insurers for a portion of their hurricane losses (ch. 93-409, Laws of Florida, currently in s. 215.555, F.S.). The Fund collects premiums from insurers on a tax-exempt basis and provides additional reinsurance capacity at lower rates than can be obtained from private reinsurers.

[60] Ch. 95-276, Laws of Florida.

the Executive Director of the RPCJUA, the Director of the Division of Emergency Management of the Department of Community Affairs, the actuary member of the Florida Hurricane Catastrophe Fund advisory council, and the following six members appointed by the Insurance Commissioner: a department actuary, a private sector actuary, and four State University System faculty members with expertise in insurance finance, statistics, meteorology, and computer system design.

The Commission has adopted standards and specifications of acceptable computer models and as of November 1999 has approved five different models as having met these standards.[61] The original 1995 act provided that the findings of the Commission were binding on the department except in certain circumstances, but amendments in 1996 provided, instead, that the findings and models approved by the commission are *admissible and relevant* in the department's consideration of a rate filing or in any administrative or judicial review of the department's actions.[62]

Critics of the models have argued for restricting or limiting the use of hurricane loss projection models in rate filings. One option is for the law to be silent as to the admissibility, relevancy, accuracy or reliability of hurricane models with respect to rate filings, thus leaving those determinations up to an arbitration panel, administrative law judge or the department, depending upon the hearing process. Another option is to provide that the results from a model are not admissible or relevant unless all of the assumptions used to develop the model are revealed to, or known by, the department.

Proponents advocating these alternatives argue that the modeling procedure is flawed because many of the actuarial and other assumptions used in the modeling process are not known to regulators due to the proprietary nature of certain information. Thus, regulators have no way to judge the accuracy or reliability of such models. Further, there are wide differences among the different models. For example, representatives with the Department of Insurance argue that there is a wide disparity among the 5 modelers who have currently met the standards of the Commission. The department has compared the 5 models and found differences as to average loss costs pertaining to construction types of homes among the 67 counties in the state and as to probable maximum loss data.[63] For example, the estimated probable maximum loss (PML) for a 100-year storm ranges from a high of $83 billion from one modeler (Applied Research Associates) down to $23

[61] The five modelers are: Risk Management Solutions (RMS - IRAS); E.W. Blanch (Catalyst 3.0); EQECAT (US WIND); Applied Insurance Research (AIR); and Applied Research Associates (HURLOSS 1.3). The Commission's 2000 Standards have just been adopted and will be published on November 1, 2000. For the upcoming cycle, modelers will have until February 28, 2001, to make a submission to the Commission for review.
[62] Ch. 96-194, Laws of Florida.
[63] Memorandum from Ken Ritzenthaler, Department of Insurance. August 29, 2000.

billion for another modeler (E.W. Blanch). Also, there exists a public distrust of models.[64]

Insurance companies advocate the use of catastrophe models because they are the best way to evaluate catastrophic loss costs, are more accurate than the old method,[65] are generally accepted within the actuarial profession and are widely used in the insurance industry. In fact, computer modeling has exposed tremendous errors in ratemaking practices that had been accepted for decades. The Legislature emphasized these concepts in finding that the "ability to accurately project hurricane losses has been enhanced greatly in recent years through the use of computer modeling…and that it is the public policy of the state to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates..." [66]

The traditional actuarial method of basing insurance rates on past historical data has severe limitations when applied to hurricanes. In order to get a true picture of what the real loss potential is, a much longer period of experience is needed than for other property insurance risks. But, the older the data, the more it must be modified to reflect current population, property value, construction, building codes, and other factors, which make some type of modeling process necessary.

The use of modeling in setting rates is also argued to be a key to attracting the necessary capital to underwrite the hurricane risk. Insurers must maintain large catastrophe reserves or purchase reinsurance to cover hurricane claims that exceed premium income. Bonding provides part of this capital through state-created facilities supported by assessments.[67] But the hurricane risk retained by the private sector must be underwritten by investors who voluntarily commit their capital. Catastrophe models are almost universally accepted by the capital markets and disallowing or limiting their use could severely restrict access to needed capital and cause greater problems of availability of coverage.

Those who argue that the current law should not be changed point out that it merely provides that models approved by the Commission are admissible and relevant and are not binding on the department as the law previously stated. The Legislature created the Commission precisely for the purpose of expert evaluation

[64] A "public model" is currently being developed by the State University System. In last session's appropriation act, $1,211,178 was appropriated from the Insurance Commissioner's Regulatory Trust Fund to the State University System (SUS) to develop a public hurricane loss projection model to estimate the expected losses from hurricanes to "guarantee appropriate insurance rates regulation."
[65] Known as the "excess wind procedure."
[66] S. 627.0628, F.S.
[67] The state-created facilities are the Florida Hurricane Catastrophe Fund, the Florida Residential Property and Casualty Joint Underwriting Association, and the Florida Windstorm Underwriting Association.

of models. The Commission, a body independent of both the insurance industry and the department, is comprised of eleven experts, of which seven are appointed by the Insurance Commissioner, who thoroughly review all aspects of the catastrophe model, including the information deemed proprietary. As a result of the standards developed by the Commission, many changes were made to the models that improved their reliability.

Finally, it is asserted that certain modeling information is proprietary because companies have spent millions of dollars in developing the models and thus have required outside parties to examine the models and agree not to divulge their trade secrets to competitors. Thus, regulators can review the proprietary information so long as they agree not to divulge the trade secrets.

Shift the Burden of Proof as to Rate Filing Disputes from Insurance Companies to the Department of Insurance – In 1986, legislation was passed which remains in effect today to require insurers to prove, by a preponderance of the evidence, that their rate is not excessive, inadequate, or unfairly discriminatory.[68] This law was a significant change because under the prior law, the Insurance Commissioner carried the burden of proof and in order to disapprove a rate, the Commissioner had to find that a "reasonable degree of competition did *not* exist in the area with respect to the classification to which the rate is applicable.[69]

Insurance representatives characterize the current law as creating a presumption that an insurer is guilty of excessive rates by mandating the insurer prove that its rates are not excessive. They assert that it requires companies to prove a negative which is very difficult to overcome and believe that placing the burden of proof on the department would be a more equitable approach.

Advocates of the current law assert that the insurance company making a change in its rates should have the burden of demonstrating that the new rate is not excessive, inadequate, or unfairly discriminatory. The company is the only party that has the data necessary to demonstrate whether or not the rate increase is justified. If the insurer did not have the burden of proof, no evidence or data would need to be presented and the burden would fall on the department to obtain data from the insurer and develop its own "rate filing."

Provide that a Rate Filing is Not Excessive if Competition Exists - This option would allow insurers to defend their position that their rates are not excessive if they can establish that similar insurance is available to persons of similar risk characteristics at lawful rates. Advocates of this approach believe that the current climate among many states is to let the insurance marketplace be the arena to regulate rates. They argue that the Florida Department of Insurance could develop

[68] Ch. 86-160, Laws of Florida.
[69] S. 627.062(2)2, F.S.

relevant tests to determine whether a reasonable degree of competition exists which pertain to market structure, market performance, and market conduct and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers.

The NAIC has recently developed various tests to determine the existence of a competitive market in its model law draft entitled "Property and Casualty Rate and Policy Form Model Law."[70] Such tests include, but are not be limited to, the following: size and number of firms actively engaged in the market; market shares and changes in market shares of firms; ease of entry and exit from a given market; underwriting restrictions; whether profitability for companies generally in the market segment is unreasonable high; availability of consumer information concerning the product and sales outlets or other sales mechanisms; and efforts of insurers to provide consumer information.

Opponents of this alternative argue that Florida has already exempted large commercial risks from rate and form filings (if such risks met certain criteria).[71] However, rate filings as to smaller commercial risks and personal lines still need to be reviewed to ensure adequate consumer protection. Further, the current law already allows insurers to offer evidence of competition when companies file their rates. It is one of a number of factors which the department considers.

Allow Use and File Rate Filings to be Made Without Requiring an Insurer to Refund the Amount Determined to be Excessive – Under the present use and file rating law, an insurer may file its rates no later than 30 days *after* the effective date of the rate. However, the Department of Insurance may order the insurer to reimburse the policyholder that portion of the rate determined by the department to be excessive in the form of a credit or refund. This proposal would allow insurance companies to implement rate changes without the fear of reimbursements by allowing a company to retain the amount of the rate increase deemed excessive.

Insurance companies complain that, unlike Florida, the vast majority of states do not require companies to refund policyholders for that portion of their rate found to be excessive.[72] This provision is "punitive" to insurers and is not contained in any of the national "model" law provisions. Additionally, it is expensive and an

[70] Draft model 775, March 6, 2000. Under the NAIC model law, a competitive market is presumed to exist unless the Insurance Commissioner, after hearing, determines that a reasonable degree of competition does *not* exist.

[71] The Department of Insurance promulgated its commercial lines deregulation rule effective August 4, 2000. See discussion of this issue above under "Deregulation of Commercial Property and Casualty Rates."

[72] Staff was able to verify that Oklahoma was the only other state to provide for such refunds.

administrative burden for companies to keep track of which policyholder is entitled to a refund and the refund amount when the final rate determination may not be made for many months.

Opponents of this option assert that the current use and file provision is working well and serves as a deterrent to insurers who implement rates that are subjective or unsupported. In support of this contention, regulators point out that the department has not ordered many refunds over the past several years, perhaps less than ten refunds in the last 5 years.

Adopt a Flex Band Rating System – One option would be to allow insurers to increase rates up to a certain percentage or range, such as 10 or 15 percent, without approval by the department. Another option would be that an insurer would not have to refund excess premium if the percentage of the rate requested is within a certain range of their previously filed rates. Thus, insurers would be permitted to increase or reduce their rates within the specified band or range without having to make refunds. An alternative option would allow an insurer to refund premium only if the amount determined to be excessive is above or below a certain percentage.

Proponents of these alternatives argue that any of these proposals would encourage insurance companies to take necessary increases in smaller amounts thereby minimizing the "affordability shock" which comes with larger rate hikes. By implementing the flex band rating provision, insurers could avoid the administrative and financial burden necessitated by refunds.

Opponents counter that insurers are already mandated to adjust base rates annually (s. 627.0645, F.S.) to ensure that rates are adequate, thus avoiding large rate increases. Also, allowing insurers to increase rates under any of the flex band options would be detrimental to consumers.

Conclusions and Recommendations

As discussed in this report, the state's property and casualty rating law has changed considerably over the years and while there is a great deal of regulatory control by the Department of Insurance, commercial lines for large employers have been deregulated and the department has endeavored to streamline rating procedures. Many states have likewise deregulated large commercial lines and some others are letting competition in the insurance market place determine the degree of regulatory control over personal lines. Florida's rating provisions have also been compared to the two national model laws drafted by the National Association of Insurance Commissioners and National Conference of Insurance Legislators.

Various alternatives to Florida's current rating scheme have been reviewed and issues related to rate regulation have been analyzed. The following are options for revising the rating law that may be considered by the Legislature and the arguments for and against each option.

Options That May Be Considered

• **Repeal Binding Arbitration** – One alternative is to eliminate the provision allowing property and casualty insurers to submit rate filings disapproved by the Department of Insurance (Insurance Commissioner) to an arbitration panel.[73] This option would reinstate the prior law which allowed insurers to administratively litigate the rate issue before the Division of Administrative Hearings under the APA.[74] Under arbitration, the arbitration panel makes the final rate decision instead of the Insurance Commissioner. By repealing arbitration, the final rate decision would rest with the Commissioner, subject to judicial review.

Arguments For: Proponents for repealing arbitration assert that from a public policy perspective, the elected Insurance Commissioner, and not an appointed arbitration panel, should be the final rate-setting authority. Further, consumers expect their elected insurance representative to advocate their interests, as opposed to the interests of insurance companies, when insurers seek rate increases. Some consumers claim that the recent arbitration panel decision to grant a substantial increase for the FWUA justifies their position.[75] Additionally, under

[73] Last session, CS/SB 144, which repealed binding arbitration, passed the Senate Committee on Banking and Insurance, but died in the Agriculture and Consumer Services Committee.

[74] Administrative Procedures Act under ch. 120, F.S. Binding arbitration became effective on January 1, 1997.

[75] The panel upheld the FWUA's 96 percent rate increase but required the increase to be phased-in over several years.

the current arbitration provisions, the panel's decision can only be overturned under very limited circumstances.

Arguments Against: Insurance companies prefer arbitration over administrative hearings because it takes much less time for a rate decision to be rendered by the panel, and it is also more efficient and cost-effective. Industry representatives claim that with arbitration, they can expect a resolution of a rate dispute within 90 days, as opposed to 9 months to a year or more (if there is an appeal) in administrative litigation. Insurance officials assert that the delays caused by administrative litigation exacerbate availability problems because such a process slows down the ability of companies to issue policies. Also, an insurer choosing arbitration has the opportunity to appoint an arbitrator familiar with rate making and the insurance industry generally. By contrast, administrative law judges with the Division of Administrative Hearings hear a great variety of cases and often have no background in insurance. Finally, industry officials argue that the arbitration panel procedure takes rate-making decisions out of the realm of politics, provides a level playing field for each side, and results in a fair decision.

• **Repeal Binding Arbitration, but Provide that Administrative Law Judges have Final Order Authority in Insurance Rate Filings –** Under the current administrative procedures law, administrative law judges (ALJ) render a Recommended Order containing findings of facts and conclusions of law concerning a contested rate filing. The Department of Insurance (Insurance Commissioner) then has 90 days to review the order and issue a Final Order which may alter the ALJ's conclusions of law, but may not substitute the judge's findings with the Commissioner's findings of facts, unless such facts in the Recommended Order were *not* supported by competent substantial evidence during the administrative hearing.

Arguments For: This option would expedite the rate review process because it eliminates the department's review of the ALJ's order. Allowing an appointed ALJ to issue final orders and thus determine rate filings is similar to allowing an appointed arbitration panel to determine rates.[76] However, a greater level of public accountability would be provided by having final decisions rendered by an ALJ, as opposed to a non-governmental arbitration panel, but it would still provide a balanced process designed to reach a fair result. Formal procedures are clearly established for administrative hearings and decisions are likely to be more consistent and thorough than arbitration panel decisions.

[76] Administrative law judges have "final order" authority under a variety of circumstances including, but not limited to, the following: attorneys' fees and costs (s. 57.111, F.S.); rule challenges (s. 120.56, F.S.); summary hearings (s. 120.574, F.S.); land development regulations (s. 163.3213, F.S.); exceptional students (s. 230.23, F.S.); public entity crimes (s. 287.133, F.S.); contract crimes (s. 337.165, F.S.); involuntary placement (Baker Act) (s. 394.467, F.S.); citrus canker claims and attorney's fees (ss. 602.065 and 602.075, F.S.).

Arguments Against: The same arguments that are made against the current arbitration procedure can be made against this option, because this process would continue to prevent the Insurance Commissioner from issuing the Final Order after a rate filing.

• **Create an Insurance Rating Commission to Regulate Rates –** This option would remove all rate decisions from the Department of Insurance and place such determinations under a rating commission appointed by the Governor as was passed by the Senate during the 2000 regular session.[77]

Arguments For: Proponents of an appointed commission assert that decisions of the Commission would be less political than decisions made by an elected Insurance Commissioner, but would retain public accountability. The appointed Public Service Commission (PSC), upon which the rating commission was modeled, is generally viewed as working well and subject to less controversy than when the PSC was an elected body. Additionally, all decisions of two or more rating commissioners would be subject to the Open Meetings Law.

Arguments Against: Opponents of the rating commission point out that there would be administrative problems with such a commission because it would be difficult to separate rate regulation from the other insurance functions, especially policy and form review and solvency issues, which would be under the Department of Insurance. Opponents also echo an argument made concerning the arbitration panel, which is that an elected Insurance Commissioner should be responsible and accountable to the public for rate regulation and not an appointed commission.

• **Restrict the Use of Hurricane Loss Projection Models in Rate Filings –** The current law states that any model approved by the Florida Commission on Hurricane Loss Projection Methodology (Commission) is "admissible and relevant" in any rate hearing.[78] Critics of the models have argued for restricting or limiting the use of hurricane loss projection models in rate filings. One option is for the law to be silent as to the admissibility, relevancy, accuracy or reliability of hurricane models with respect to rate filings, thus leaving those determinations up to an arbitration panel, administrative law judge or the department, depending upon the hearing process. Another option is to provide that the results from a model are not admissible or relevant unless all of the assumptions used to develop the model are revealed to, or known by, the department.

Arguments For: Proponents advocating these alternatives argue that the modeling procedure is flawed because many of the actuarial and other assumptions used in

[77] Although CS/SB 1682 passed the Senate, the House substituted its own bill which ultimately died in messages.
[78] S. 627.0628, F.S.

the modeling process are not known to regulators due to the proprietary nature of certain information. Thus, regulators have no way to judge the accuracy or reliability of such models. Further, there are wide differences or discrepancies among the different models which have been found to be reliable by the Commission. For example, the Department of Insurance notes that the estimated probable maximum loss (PML) for a 100-year storm ranges from a high of $83 billion from one modeler (Applied Research Associates) down to $23 billion from another modeler (E. W. Blanch). Also, there exists a public distrust of models.

Arguments Against: Insurance companies believe that catastrophe models are the best way to evaluate catastrophic loss costs, are more accurate than the old method, are generally accepted within the actuarial profession, and are widely used in the insurance industry. In fact, computer modeling has exposed tremendous errors in ratemaking practices that had been accepted for decades. The Legislature emphasized these concepts in finding that the "ability to accurately project hurricane losses has been enhanced greatly in recent years through the use of computer modeling…and that it is the public policy of the state to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates..."[79]

Company representatives argue that the current law should not be changed because it merely provides that models approved by the Commission are admissible and relevant and are not binding on the department as the law previously stated. The Legislature created the Commission precisely for the purpose of expert evaluation of models. The Commission, a body independent of both the insurance industry and the department, is comprised of eleven experts, of which seven are appointed by the Insurance Commissioner, who thoroughly review all aspects of the catastrophe model, including the information deemed proprietary. As a result of the standards developed by the Commission, many changes were made to the models that improved their reliability.

It is asserted that certain modeling information is proprietary because companies have spent millions of dollars in developing the models and thus have required outside parties to examine the models and agree not to divulge their trade secrets to competitors. Thus, regulators can review the proprietary information so long as they agree not to divulge the trade secrets.

•**Shift the Burden of Proof from Insurance Companies to the Department of Insurance –** Insurance companies must currently prove, by a preponderance of the evidence, that their rate is not excessive, inadequate, or unfairly discriminatory.

[79] S. 627.0628, F.S.

Arguments For: Insurance representatives have characterized the current law as creating a presumption that an insurer is guilty of excessive rates by mandating the insurer prove that its rates are not excessive. They assert that companies must prove a negative, that their rates are *not excessive*, which is very difficult to overcome. Companies believe that placing the burden of proof on the department would be a more equitable approach.

Arguments Against: Advocates of the current law argue that the insurance company that is making a change in its rates should have the burden of demonstrating that the new rate is not excessive, inadequate, or unfairly discriminatory. The company is the only party that has the data necessary to demonstrate whether or not the rate increase is justified. If the insurer did not have the burden of proof, no evidence or data would need to be presented and the burden would fall on the department to obtain data from the insurer and develop its own "rate filing."

• **Provide that a Rate is Not Excessive if Competition Exists –** This option would allow insurers to defend their position that their rates are not excessive if they can establish that similar insurance is available to persons of similar risk characteristics at lawful rates.

Arguments For: Advocates of this approach believe that the current climate among many states is to let the insurance marketplace be the arena to regulate rates. They argue that the Florida Department of Insurance could develop relevant tests to determine whether a reasonable degree of competition exists which pertain to market structure, market performance, and market conduct and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers. Further, the NAIC has recently developed various tests to determine a competitive market in its model law draft entitled "Property and Casualty Rate and Policy Form Model Law."

Arguments Against: Opponents of this alternative argue that Florida already exempts large commercial risks from rate and form filings (if such risks met certain criteria). However, rate filings as to smaller commercial risks and personal lines risks still need to be reviewed to ensure adequate consumer protection. Further, the current law already allows insurers to offer evidence of competition when companies file their rates. It is one of a number of factors which the department considers.

• **Allow "Use and File" Rate Filings to be Made Without Requiring an Insurer to Refund that Portion Determined to be Excessive –** Under the current use and file rating law, an insurer may file its rates no later than 30 days *after* the effective date of the rate. However, the department may order the insurer to refund to the policyholder that portion of the rate determined by the department

to be excessive in the form of a credit or refund.[80] This proposal would allow insurance companies to implement rate changes without the fear of refunds by allowing a company to retain the amount of the rate increase deemed excessive.

Arguments For: Insurance companies complain that, unlike Florida, the vast majority of states do not require companies to refund policyholders for that portion of their rate found to be excessive.[81] This provision is "punitive" to insurers and is not contained in any of the national "model" law provisions. Additionally, it is expensive and an administrative burden for companies to keep track of which policyholder is entitled to a refund and the refund amount when the final rate determination may not be made for many months.

Arguments Against: Opponents of this option assert that the current use and file provision is working well and serves as a deterrent to insurers who implement rates that are subjective or unsupported. In support of this contention, regulators point out that the department has not ordered many refunds over the past several years, perhaps less than ten refunds in the last 5 years.

• **Adopt a "Flex Band" Rating System –** Under this option insurers would be permitted to increase rates up to a certain percentage or range, such as 10 or 15 percent, without approval by the department. Another option is that an insurer would *not have to refund excess premium* if the percentage of the rate requested is within a certain range of their previously filed rates.[82] Thus, insurers would be permitted to increase or reduce their rates within the specified band or range without having to make refunds. The percentage range could be 5 to 10 percent. An alternative option would allow an insurer to refund premium only if the amount determined to be excessive is above or below a certain percentage.

Arguments For: Proponents argue that these options would encourage insurance companies to take necessary increases in smaller amounts thereby minimizing the "affordability shock" which comes with larger rate hikes. By implementing the flex band rating provision, insurers could avoid the administrative and financial burden necessitated by refunds.

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[80] As previously noted, the insurer can appeal the department's decision by requesting an administrative hearing or seek binding arbitration.

[81] Committee staff was able to verify that Oklahoma was the only other state which had a refund provision.

[82] The department could still determine the rate is excessive, but refunds to policyholders would not be allowed.

Arguments Against: Opponents counter that insurers are already mandated to adjust base rates annually (s. 627.0645, F.S.) to ensure that rates are adequate, thus avoiding large rate increases.

Appendixes

RATE FILING METHODS FOR PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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Explanation: In a state with prior approval, a filing may be deemed to have been approved after a certain number of days. If such a provision exists, the number of days is noted in parentheses. File and use states may require filing a certain number of days before the rates may become effective. If so, it is noted. Use and file states may require filing within a certain number of days after the rate becomes effective, and the number of days will be so noted. Flex rating percentages that trigger prior approval are noted in parentheses, also. A more complete definition of each filing method is found at the end of the chart.

STATE	CITATION	FILING METHOD	LINES	COMMENTS
AL	§§ 27-13-29 to 27-13-30, 27-13-33	prior approval (30 days)	property and inland marine	
	§§ 27-13-67 to 27-13-68, 27-13-72	prior approval (30 days)	casualty and surety, workers' compensation	
	§ 27-13-2	exempt from filing requirements	title	
AK	§ 21.39.040	prior approval (15 days)	all p/c lines, workers' compensation	
	§ 21.66.370	prior approval (30 days)	title	
AZ	§ 20-357	file and use (15 days)	medical malpractice, workers' compensation, title	
	§ 20-385	use and file (30 days)	other p/c lines	
AR	§ 23-67-211	file and use (20 days) competitive market; prior approval (60 day deemer) in noncompetitive market	personal lines and small commercial risks	Filing method based is on a finding of the existence of a competitive market by the commissioner.
	§§ 27-67-206; 27-79-109	no filing	large commercial risks	
	§ 23-67-219	prior approval	workers' compensation	
	No provision		title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
CA	Ins. § 1861.05	prior approval (60 day deemer)	private passenger auto	
	Ins. § 1861.135	file and use	surety	
	Ins. § 12401.1	file and use (30 day waiting period)	title	
	Ins. § 1861.05B	prior approval (60 day deemer)	other p/c lines	
CO	§ 10-4-401	file and use	p/c lines in competitive market including most workers' compensation, medical malpractice by the JUA	see also Reg. 91-1
	§ 10-11-118	file and use (30 days)	title	
CT	§ 38a-676	file and use	commercial lines	
	§ 38a-676	file and use (30 day waiting period)	workers' compensation	
	§ 38a-688	file and use in competitive market; file and use (30 day waiting period) in noncompetitive market	personal lines	Filing method based on a finding of the existence of a competitive market by the commissioner. Bulletin PC-8 is filing standard for loss costs.
	§ 38a-419	prior approval (30 day deemer)	title	
DE	tit. 18 § 2504	file and use (30 days)	all lines except title	Bulletin 90-4 is filing standard for loss costs.
	tit. 18 § 4501	file and use	title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
DC	§ 35-1608	prior approval	property	Bulletin 89-2 is filing standard; Bulletin 90-1 has filing procedures for loss costs for all insurers.
	§ 35-1703	prior approval (90 day deemer)	auto	
	§ 35-1704	file and use	casualty	
	§ 35-205	prior approval	workers' compensation	
	No provision		title	
FL	§ 627.0651	file and use (60 days) or use and file, (30 days) (insurer's option)	auto	If use and file rate is found excessive, the insurer must return excess premium.
	§ 627.062	file and use (90 days) or use and file (30 days) (insurer's option)	all other lines except, auto, title and workers' compensation	
	§ 627.062; Reg. 4-170.019	Maintain documentation to show justification for individual rate or that risk meets definition of a large commercial risk; complete quarterly reports.	individually rated risks and large commercial risks	
	§ 627.091	prior approval	workers' compensation	
	§§ 627.781, 627.782	rate set by FL Dept.	title	
GA	§ 33-9-21	prior approval (45 day deemer with option to extend by 100 days)	personal private passenger auto	Directive 90-PC-6 is filing standard for loss cost.
		file and use (45 days)	other p/c lines, including workers' compensation	Any filing may be examined. Increases of 10% to 25% may be examined at the commissioner's discretion. Greater than requires 25% mandatory examination.
	Reg. 120-2-77	no filing	large commercial risks	
	No provision		title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
HI	§ 431:14-104	prior approval (30 day deemer)	p/c	Commissioner may require insurers to submit new filings for any type of coverage when the commissioner has actuarially sound information that the rates are excessive, inadequate, or unfairly discriminatory.
		90 day wait period and public hearing	workers compensation	
	No provision		title	§ 431:20-120 stipulates that title insurers shall keep a complete file of its schedules of premiums and charges and amendments thereto until at least 5 years after they ceased to be in effect. File shall be available for the commissioner's inspection.
ID	§§ 41-1606 to 41-1608	prior approval (60 days)	workers' compensation	NCCI makes filings.
		use and file	other p/c lines	Ask companies to file their rates.
	§ 41-2706	prior approval	title	
IL	Reg. tit. 50 §§ 754.10 to 754.40	use and file (10 days)	private passenger auto, taxicabs, motorcycles, homeowner, dwelling fire, liquor liability	
	215 ILCS 5/457	use and file (30 days if a competitive market)	workers' compensation	Assumption of competitive market unless hearing by commissioner determines otherwise.
	215 ILCS 5/457	file and use (30 days if noncompetitive market)	workers' compensation	
	215 ILCS 5/155.18	use and file (30 days)	medical malpractice	
	215 ILCS 5/400.1	file and use	group inland marine	
		no filing	other p/c lines, title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
IN	§ 27-1-22-4	file and use	p/c lines	Bulletin 67 is filing standard for loss costs.
	§§ 27-1-22-2.5 to 27-1-22-4	no filing	large commercial insured	
	§ 27-1-22-2	exempt from filing requirements	title	
	§ 27-7-2-20.2	modified file and use (30 day wait)	workers' compensation	
IA	§§ 515A.4, 515F.5	prior approval (30 day deemer may be extended additional 15 days)	workers' compensation, other p/c lines, title	Directive of 4/6/90 is filing standard for loss costs.
	§§ 515F.20 to 515F.25	use and file (15 days)	homeowners, private passenger auto	Filing method based on a finding of the existence of a competitive market by commissioner.
KS	§ 40-955	prior approval (30 day deemer)	workers' compensation	
		file and use (30 days)	personal lines	
		file and use (no wait)	commercial lines, farm owners, business owners	
		file and use	any other rate filing	
		no filing	large commercial insured	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
KY	§ 304-13-051	use and file (15 days) in competitive market; file and use (30 days) in non-competitive market; prior approval of any rates which when combined with any rating factors effectively change pre-tax premium of any particular policy by more than +/- 25% in any 12-month period of time	all lines	filing method based on finding of existence of competitive market by commissioner.
LA	§ 22:1407	prior approval (45 day deemer)	all lines except workers' compensation	
	§ 22:1407(f)	modified prior approval (50 days)	all lines except workers' compensation	if no change in relationship between rates and expense portion and no change in rate relativities on any basis other than loss experience.
	§ 22:1407(k)	file and use (90 days)	workers' compensation (assigned risk)	if increase in rates is 25% or less on an annual basis, if over 25%, prior approval with 45 day deemer.
	§ 22:1407(k)	file and use (90 days)	workers' compensation (voluntary market)	if rate change does not exceed average of 20% annually, if exceeds 20% prior approval needed with 45 day deemer. After 1993 rating method returns to prior approval.
ME	tit. 24-A § 2304-A	modified file and use	p/c lines, title	
	tit. 24-A § 2412-A	no filing	large commercial risks	
	tit. 24-A § 2382 tit. 24-A § 2384-A	prior approval	workers' compensation	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
MD	Ins. §§ 11-307 and 11-329	file and use (30 days)	workers' compensation	
	Ins. §§ 11-101, 11-202, 11-205 to 11-212, 11-214 and 11-215, 11-218 to 11-222, 11-225 to 11-227 and 11-230 to 11-232	prior approval (30 day deemer)	p/c lines	
	Ins. §§ 11-101, 11-401 to 11-404 And 11-407 to 11-409	prior approval (15 day deemer)	title	
	Ins. §§ 11-307 and 11-341	file and use	lines designated by commissioner as competitive	filing method based on finding of existence of competitive market by commissioner.
MA	§ 174:6	file and use (15 days)	fire	
	§ 175A:5A	set by commissioner	medical malpractice	
	§ 175A:6	file and use (15 days)	casualty, title	
	§§ 175E:5 to 175E:7	set by commissioner or file and use (45 days)	motor vehicle	filing method based on finding of existence of competitive market by commissioner.
MI	§ 500.2108	file and use	auto and homeowner	
	§ 500.2406(4)	file and use	workers' compensation	
	§ 500.2608	prior approval (15 day deemer can be extended by 15 days)	property excluding auto and homeowners	
	§ 550.1101 to 550.1704	file and use (45 days)	title and casualty excluding workers' compensation	commissioner can request more information within 10 days after filing.
	§ 500.2628	file and use	property and inland marine excluding auto and homeowners	alternative filing method
	§ 500.2430	file and use	title and casualty excluding workers' compensation	alternative filing method

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
MN	§ 70A.06	file and use (60 days)	all lines except workers' compensation	
		prior approval	workers' compensation	
MS	§ 83-2-7	prior approval (30 day deemer)	p/c lines, including workers' compensation	
	No provision		title	
MO	§ 379.888	flex rating (25% increase or decrease)	commercial casualty	
	§ 379.321	use and file (10 days)	other p/c lines	
	§§ 379.321, 379.362	no filing	large commercial risks	
	§ 381.181	file and use (30 days)	title	
	§ 287.320	commissioner-set rates	workers' compensation	
	§ 287.123	use and file (30 days) file and use (30 days)	workers' compensation workers' compensation	Competitive market. Noncompetitive market.
MT	§ 33-16-203	file and use	p/c lines	
	§ 33-25-212	file and use	title	
NE	§ 44-5020	prior approval (30 days)	all except title	Bulletin CB-50(Amended 10/1/96) is filing standard for loss costs.
	§ 44-1960	prior approval (30 days)	title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
NV	§§ 686B.070 to 686B.110	prior approval (60 days)	personal auto, homeowners, mechanical malpractice,	
	§ 692A.120		mortgage guaranty	
	§ 616.380	no file	commercial auto, farm owners, commercial general liability	
		file and use (30 days)	title	
		prior approval	workers' compensation	
NH	§ 412:8	prior approval	workers' compensation	
	§§ 412:14 to 412:15	prior approval	auto	
	§ 414:4	file and use no filing	other p/c lines large commercial risks	
	§ 416-A:17	prior approval	title	
NJ	§ 17:29AA-5	use and file (30 days)	commercial lines where reasonable degree of competition	Filing method is based on a finding of the existence of a competitive market by commissioner.
	§§ 17:29A-6, 17:29A-7	prior approval	other p/c lines, workers' compensation	
	§§ 17:46B-42 to 17:46B-45	prior approval	title	
NM	§§ 59A-17-9, 59A-17-13	prior approval (60 day deemer)	p/c lines	
	§ 59A-17-10	prior approval (90 day deemer)	workers' compensation	
	§ 59A-30-6	commissioner-set rates	title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
NY	Ins. Law §§ 2305, 2328	prior approval (30 can be extended to maximum of 75 days)	workers' compensation, title, medical malpractice, personal and commercial lines	
	Ins. Law § 2344, Ins. Reg. 129	flex rating percentage varies by line	commercial liability	
		file and use (30 days can be extended to 75)	homeowners, farm owners	
	Ins. Law § 2310, Ins. Reg.129	file and use	other p/c lines	
NC	§§ 58-36-15, 58-36-20, 58-36-70, 58-40-30, 58-41-50	prior approval (60 days) prior approval (50 days) modified file and use	personal auto homeowners commercial property and casualty	Filing by rate bureau; Bulletin 90-L-4 is filing standard for loss costs.
		file and use (120 days)	workers' compensation	
		file and use (60 days)	title	
ND	§ 26.1-25-04	prior approval (60 days)	all lines except workers compensation	

RATE FILING METHODS FOR
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STATE	CITATION	FILING METHOD	LINES	COMMENTS
OH	§ 3937.03	file and use (30 days)	casualty, motor vehicle, fidelity, surety	
		file and use in competitive market; file and use (30 days) noncompetitive market	commercial casualty	Filing method based on a finding of the existence of a competitive market by the commissioner.
	§ 3935.04	prior approval	other lines, including title	
OK	tit. 36 § 902.1	file and use (10 days)	commercial fire, general liability, workers' compensation, medical malpractice	Variation from filed or approved rates.
	tit. 36 § 903	file and use	homeowners, commercial auto, farm owners	Review of rates by rating board.
	tit. 36 § 997	no filing	large commercial risks	
OR	§ 737.207	flex rating (15% increase or decrease)	commercial casualty	Bulletin INS-90-4 is filing standard for loss costs.
	§ 737.320	prior approval	workers' compensation, title	
	§ 737.205	file and use	other p/c lines	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
PA	tit. 75 §§ 2003 to 2007	prior approval (60 days plus 30 day extension)	personal auto	
	§ 40-67-104	prior approval (30 day deemer plus 30 day extension)	personal property	
	§ 40-53-104	prior approval	workers' compensation	Filed by rating bureau.
	§ 40-61-131	prior approval (30 day deemer)	title	
	§ 40-66-101 to 40-66-119	exempt from filing	large commercial risks	
		file and use (45 days plus 30 day extension)	small commercial risks	
RI	§§ 27-44-6, 27-6-8 to 27-6-11, 27-9-7 to 27-9-10	file and use (30 days plus 30 day extension)	casualty, property, title	Bulletin of 4/27/90 is filing standard for loss costs.
	§§ 27-7.1-3 to 27-7.1-7	prior approval	workers' compensation	
	§§ 27-64-1 to 27-64-2	no filing	large commercial risks	
SC	§§ 38-73-340, 38-73-915, 38-73-450	prior approval (60 day deemer)	all lines	
		prior approval or file and use	commercial auto rate changes of 7% or less	
	§ 38-73-490	prior approval	workers' compensation	
	§ 38-75-980	prior approval (60 day deemer)	title	
SD	§§ 58-24-1 to 58-24-67, 58-24-10.1	prior approval (30 days)	all lines	
	§§ 58-25-7 to 58-25-10	prior approval (30 days)	title	

RATE FILING METHODS FOR
PROPERTY/CASUALTY INSURANCE, WORKERS' COMPENSATION, TITLE

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STATE	CITATION	FILING METHOD	LINES	COMMENTS
TN	§ 56-5-305	prior approval (30 day deemer plus 30 day extension)	personal lines	
	§ 56-5-306(a)	use and file (15 days)	commercial lines	
	§ 56-5-306(b)	prior approval	workers' compensation	Requires approval of the Governor and Sec. of State.
	§ 56-35-111	file and use (60 days)	title	
TX	I.C. art. 5.101	file and use within bands (60 days), prior approval outside flex bands (60 days)	auto, residential property	Commissioner sets bench mark rates and flex bands, carriers submit flex filings.
	I.C. art. 5.81, 5.13-2, 5.55	file and use	commercial multi-peril, general liability, commercial property, workers' compensation	
	I.C. art. 5.53	prior approval (30 day deemer)	inland marine	
	I.C. art. 5.15	prior approval (60 day deemer)	professional liability, miscellaneous casualty and surety	
	I.C. art 21.50	file and use	mortgage guaranty	
	I.C. art. 9.07	board sets rates	title	

RATE FILING METHODS FOR
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STATE	CITATION	FILING METHOD	LINES	COMMENTS
UT	§ 31A-19a-203	use and file (30 days)	p/c	Commissioner may disapprove within 90 days after filed. May by rule specify rates be filed 30 days before become effective.
	§ 31A-19a-209	file and use (30 days)	title	
	§§ 31A-19a-405	file and use (30 days)	workers' compensation	Rating bureau files loss costs; insurers file loss cost multipliers; Bulletin 90-6 is filing standard for loss costs.
VT	tit. 8 § 4687	file and use (30 days)	workers' compensation, experience rating plan, scheduled rating plan and statistical plan	
	tit. 8 § 4688	use and file (15 days) in competitive market prior approval (30 day deemer) noncompetitive market	p/c, title and other types of workers' compensation	There is a presumption of competition unless a hearing determines otherwise.

RATE FILING METHODS FOR
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STATE	CITATION	FILING METHOD	LINES	COMMENTS
VA	§ 38.2-2006	prior approval (60 day deemer)	workers' compensation, uninsured motorist, home protection, FAIR Plan, auto plan	
	§ 38-2-1903	no filing	large commercial risks for workers' compensation	
	§ 38.2-1906	file and use in competitive market	p/c lines	Admin. Letter 1990-5 is filing standard for loss costs. Admin. Order 10210 (1993) says large commercial risks need not be charged manual rates if meet certain standards—applies to auto and general liability.
	§ 38.2-1912	file and use (60 days) in noncompetitive market	p/c lines identified by commission order after hearing	Filing method is based on a finding of the existence of a competitive market by the commissioner.
	§§ 38.2-4608, 38.2-1902	exempt from filing	title	
WA	§ 48.19.060	prior approval (30 day deemer can be extended to 45 days)	p/c, workers' compensation	
		use and file (30 days)	commercial lines	
	§ 48.29.140	file and use (15 days)	title	

RATE FILING METHODS FOR
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STATE	CITATION	FILING METHOD	LINES	COMMENTS
WV	§§ 33-20B-3, 33-20-4 no provision	prior approval (60 day deemer)	medical malpractice, other p/c lines, excluding workers' compensation title	Workers' compensation coverage is written by a monopolistic state fund. Info. Letter No. 68 is filing standard for loss costs.
WI	§ 625.13 § 626.13	use and file (30 days) prior approval (30 day deemer)	p/c, title workers' compensation	Bulletin of 6/11/90 is filing standard for loss costs. Wisconsin Compensation Rating Bureau makes the rate filings.
WY	§ 26-23-326 § 26-14-107	prior approval (30 day deemer) no file competitive market; prior approval (30 day deemer) noncompetitive market	title, medical malpractice p/c, including workers' compensation	 Competitive market is assumed to exist unless designated as noncompetitive or by finding of noncompetitiveness by commissioner.

RATE FILING METHODS FOR
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Definitions of Rating Laws	
Prior Approval	Rates must be filed with and approved by the state insurance department before they can be used. Approval can be by means of a deemer provision, which indicates approval if rates are not denied within a specified number of days.
Modified Prior Approval	Rate revisions involving change in expense ratio or rate relativity require prior approval. Rate revisions based on experience only are subject to "file and use" laws.
Flex Rating	Prior approval of rates required only if they exceed a certain percentage above (and sometimes below) the previously filed rates.
File and Use	Rates must be filed with the state insurance department prior to their use. Specific approval is not required but the department retains the right of subsequent disapproval.
Use and File	Rates must be filed with the state insurance department within a specified period after they have been placed in use.
No File	Rates are not required to be filed with or approved by the state insurance department. However, the company must maintain records of experience and other information used in developing the rates and make these available to the commissioner upon his request.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted.