

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1564

INTRODUCER: Senator Atwater

SUBJECT: Insurance Rate Standards/Arbitration

DATE: March 21, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Pre-meeting
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1564 makes permanent the requirement that property insurers use the “file and use” filing procedure for rate changes that are *greater* than the rate most recently approved by the Office of Insurance Regulation (OIR). The 2007 Legislature mandated this rate filing provision to be effective through December 31, 2008.¹ The “file and use” procedure requires a rate filing to be made by a property insurer at least 90 days prior to the proposed effective date of the rate. This allows the OIR to review the rate increase to determine that it is not excessive prior to it being implemented. Conversely, property insurers filing for rates which are *lower* than the rate most recently approved, may continue to utilize the “use and file” procedure which allows a rate filing to be made 30 days after the rate filing is implemented. These rate requirements do not apply to casualty insurers.²

The legislation also makes permanent the provision repealing the arbitration procedure which is an option that property and casualty insurers can utilize in appealing a rate denial by the OIR. The 2007 Legislature prohibited insurers from utilizing arbitration through January 1, 2009.³ By eliminating arbitration, insurers must utilize the rate review procedures under the Administrative Procedure Act (APA) pursuant to Chapter 120, F.S., before an administrative law judge with the Division of Administrative Hearings.

¹ CS/HB 1A, enacted during the 2007 Special Session A (Chapter 2007-1, Laws of Florida).

² CS/SB 2498, enacted during the 2007 Regulation Session (Chapter 2007-90, Laws of Florida), limited the applicability of the “file and use” provision to property insurers.

³ CS/HB 1A, enacted during the 2007 Special Session A (Chapter 2007-1, Laws of Florida).

This bill substantially amends the following sections of the Florida Statutes: 627.062, 627.0613, 627.0628 and 627.351.

II. Present Situation:

Rate Filing Standards and Procedures

Section 627.062, F.S., provides the rating standards for property and casualty insurers in Florida under the regulatory authority of the Office of Insurance Regulation (OIR). Prior to 2007, property and casualty insurers filing rates for approval with the OIR had the option of utilizing two procedures: “file and use” or “use and file.” Under file and use, insurers are required to file rates 90 days *before* the proposed effective date while under the use and file provision, insurers could file their rates 30 days *after* the rate filing is implemented. Under the file and use option, OIR must finalize its review by issuing a notice of intent to approve or disapprove within 90 days after receipt of the filing; otherwise the filing is deemed approved. Under the use and file option, an insurer may implement the filing prior to approval, but may be ordered by OIR to refund to the policyholder that portion of the rate found by OIR to be excessive.

During the 2007 Special Session A, the Legislature required property and casualty insurers, through December 31, 2008, to utilize only the file and use procedure to implement a rate change if the rate was *greater* than the rate most recently approved by the OIR.⁴ Conversely, if the rate change was *lower* than the rate most recently approved, insurers were allowed the option to utilize the use and file procedure. During the 2007 Regular Session, legislation was enacted which limited the applicability of the file and use requirement to property insurance.⁵ Insurers filing rates for casualty insurance may use either the file and use or use and file rate procedure. Casualty insurance includes general liability, professional liability, medical malpractice, boiler and machinery, credit insurance, etc, and the 2007 legislation further specified that “property insurance” does not include commercial motor vehicle collision and comprehensive coverage. This statute also does not apply to private passenger motor vehicle insurance or workers’ compensation insurance, which are subject to s. 627.0651 and s. 627.072, F.S., respectively.

The OIR may disapprove a rate filing if it determines such rates to be “excessive, inadequate, or unfairly discriminatory” as these terms are defined.⁶ The law specifies numerous factors which the OIR must consider in making this determination.

⁴ Chapter 2007-1, Laws of Florida.

⁵ Chapter 2007-90, Laws of Florida. Casualty insurers are free to use the use and file option for all rate filings. Casualty insurance includes motor vehicle collision and comprehensive coverages, medical malpractice and workers compensation insurance.

⁶ Under s. 627.062(2)(e), F.S., rates are deemed “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; rates are deemed “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 “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; and rates are deemed “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 experience among the various risks.

Arbitration

Insurers making rate filings for property and casualty insurance under s. 627.062, F.S., other than medical malpractice, have been allowed to elect binding arbitration of a rate filing denial by the OIR since 1996.⁷ This section does not apply to private passenger auto insurance or workers' compensation insurance, as noted above. After the OIR issues a notice of intent to disapprove a rate filing, insurers may, instead of demanding an administrative hearing under the Administrative Procedure Act (APA) under chapter 120, F.S., request arbitration before a panel of three arbitrators. Under arbitration, the insurer and the OIR each select one arbitrator, and the third is chosen by the other two arbitrators. An arbitrator must be certified by the American Arbitration Association and may not be an employee of an insurance company or insurance regulator. Rate arbitration follows the procedures of the Arbitration Code and the costs of arbitration are paid by the insurer. Upon initiation of arbitration, the insurer waives all rights to challenge the action of the OIR under the APA. The decision of the panel constitutes final approval of a rate filing.

Either party to the arbitration proceeding may apply to the circuit court to vacate or modify the panel's decision. Grounds for vacation include corruption or fraud, evident partiality by an 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.

The OIR reviews and takes action on nearly 3,000 property and casualty filings annually. Since the inception of the arbitration provision (1996) through March 2005, the OIR had disapproved 103 rate requests. Of the 103 disapprovals, 11 insurers requested arbitration and the OIR prevailed in just one case.⁸ From April 2005 to January 2007,⁹ the OIR had settled the great majority of rate denials with insurers. Representatives with the OIR state that arbitration panels have usurped its statutory obligation to ensure rates are not excessive, inadequate or unfairly discriminatory.

In 2007, the Legislature prohibited property and casualty insurers from electing arbitration for rate disputes until January 1, 2009.¹⁰ The effect of the prohibition meant that rate appeals would be subject to the provisions of the APA. Under the APA, a formal adversarial hearing is held before a State Administrative Law Judge (ALJ) with the Division of Administrative Hearings. Once the hearing is completed, the ALJ has 30 days to issue a recommended order to the OIR. The recommended order contains findings of fact and conclusions of law as found by the ALJ. The OIR then has 90 days to issue a final order which may reject or modify the conclusions of law contained in the recommended order. However, the OIR's final order may not substitute findings of facts contained in the recommended order which were supported by competent substantial evidence. An insurer may then appeal the OIR's final order to the First District Court of Appeal.

2008 Senate Select Committee on Property Insurance Accountability

In January 2008, Senate President Pruitt created the Select Committee on Property Insurance Accountability and appointed Senators Atwater and Geller as the co-chairs of the 20-member

⁷ Section 627.062(6), F.S. Chapter 682, F.S., is cited as the Arbitration Code.

⁸ These eleven insurers represented the largest insurers in terms of market share in Florida.

⁹ In January 2007, the Legislature prohibited insurers from electing arbitration pursuant to chapter 2007-1, Laws of Florida.

¹⁰ CS/HB 1A, enacted during the 2007 Special Session A (Chapter 2007-1, Laws of Florida).

panel. The committee received testimony and information from the OIR, insurance companies, and other stakeholders throughout the hearing process. In a letter to the Senate President on March 13, 2008, the co-chairs provided a list of proposals that should be given further consideration by the appropriate standing committees.¹¹ These proposals included amending the rating and arbitrations provisions under s. 627.062, F.S., as summarized below:

- Repeal the “use and file” option, or extend the temporary prohibition on insurers making a “use and file” rate filing that allows an insurer to increase rates before approval by the OIR;
- Repeal the arbitration option, or extend the temporary prohibition on allowing insurers to use the option of appealing to an arbitration panel a rate filing disapproved by the OIR. (This would limit the insurer’s option to an administrative hearing before an ALJ of the Division of Administrative Hearings.)

III. Effect of Proposed Changes:

Section 1. Amends s. 627.062, F.S., pertaining to rate standards, by permanently repealing the “use and file” option for property insurers who file rate changes that are *greater* than the rate most recently approved by the OIR. Current law extends the use and file prohibition through December 31, 2008. By repealing the December 31, 2008 date, property insurers will have to make a “file and use” rate filing if their rate change is greater than the most recently approved rate. This allows the OIR to review the rate increase to determine that it is not excessive prior to it being implemented. Conversely, property insurers filing for rates which are *lower* than the rate most recently approved, may continue to utilize the “use and file” procedure which allows a rate filing to be made 30 days after the rate filing is implemented. These rate requirements do not apply to casualty insurance, motor vehicle insurance, or workers’ compensation insurance, as explained in Present Situation.¹²

Section 2. Deletes s. 627.062(6), F.S., relating to arbitration. The bill permanently repeals the provision which allows property and casualty insurers to appeal rate denials by the OIR to a three-member arbitration panel for final resolution. Current law extends the arbitration prohibition until January 1, 2009. The effect of this provision will be that if OIR issues a notice of intent to disapprove a property or casualty insurance rate filing, the insurer’s only option for formal review would be to request a hearing before an Administrative Law Judge of the Division of Administrative Hearings, pursuant to ch. 120, F.S., the Administrative Procedures Act.

Section 3. Amends s. 627.0613, relating to the Consumer Advocate. The bill strikes the arbitration language to conform to provisions in Section 2 of the bill.

Section 4. Amends s. 627.0628, F.S., pertaining to the Florida Commission on Hurricane Loss Projection Methodology. The bill strikes the arbitration language to conform to provisions in Section 2 of the bill.

¹¹ Letter from Senators Jeff Atwater and Steve Geller, Co-Chairs of the Select Committee on Property Insurance Accountability to President Pruitt, dated March 13, 2008.

¹² CS/SB 2498, enacted during the 2007 Regulation Session (Chapter 2007-90, Laws of Florida), limited the applicability of the “file and use” provision to property insurers.

Section 5. Amends s. 627.351, F.S., relating to insurance risk apportionment plans. The bill strikes the arbitration language to conform to provisions in Section 2 of the bill.

Section 6. Provides the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property insurers must continue to use a “file and use” procedure when seeking a rate increase and property and casualty insurers must utilize the hearing provisions under the APA when appealing a rate denial by the OIR. These provisions may make it less likely that an insurer will be able to increase rates without OIR approval (after January 1, 2009). This may provide greater protection to consumers from increased rates, but may also discourage insurers from committing capital to the Florida property insurance market.

C. Government Sector Impact:

None, assuming that OIR’s costs for an administrative hearing are comparable to its costs for an arbitration hearing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
