

The bill provides that commercial motor vehicle insurance covering a fleet of 5 or more vehicles is exempt from: s. 627.0651(1), F.S., requiring certain rate filing information; s. 627.0651(2), F.S., requiring the OIR to review the rate filing; s. 627.0651(9), F.S., allowing the OIR to require information necessary to evaluate the filing; and s. 627.0645, F.S., requiring annual rate filings.

Proponents of the bill state that the types of insurance specified for exemption are those for which a competitive market exists and the insured will likely be a sophisticated purchaser. Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory.

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.0651.

II. Present Situation:

Kinds of Insurance

The Florida Insurance Code specifies that insurance shall be classified into the following “kinds of insurance”:

- Life.
- Health.
- Property.
- Casualty.
- Surety.
- Marine.
- Title.

Certain insurance coverage may come within the definition of more than one kind of insurance, and the inclusion within the definition of one kind does not necessarily exclude coverage from being considered within the definition of another kind. In addition, kinds of insurance are classified into different “lines of insurance.”² Each kind of insurance is defined in a separate section.³ “Property Insurance” is defined as insurance on real or personal property against loss from any hazard.⁴ “Casualty Insurance”⁵ is defined as including:

- Vehicle insurance -- covers damage to land vehicles, aircraft, or riding animal;
- Liability insurance -- covers legal liability;
- Workers’ compensation;
- Burglary and theft;
- Personal property floater -- insurance on personal effects;
- Glass;

² Sections 624.601 through 624.6012, F.S.

³ Sections 624.602 through 624.608, F.S.

⁴ Section 624.604, F.S.

⁵ Section 624.605, F.S.

- Boiler and machinery -- insurance against liability and loss to property resulting from accidents or explosions of boilers, pipes, etc.;
- Leakage and fire extinguishing equipment;
- Credit insurance
- Credit property insurance -- coverage on personal property used as collateral;
- Malpractice;
- Animal;
- Elevator – coverage for damage to property resulting from the maintenance or use of elevators;
- Entertainments – coverage indemnifying the producer of motion pictures, television productions, sporting events, etc., for postponements or cancellations due to the death or illness of the principals;
- Failure to record documents;
- Failure to file personal property instruments;
- Debt cancellation; and
- Miscellaneous.

“Surety insurance” is defined to include contract bonds, indemnity bonds, contract performance guarantee bonds, performance bonds for judicial proceedings, fidelity insurance, and residual value insurance.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in Part I of ch. 627, F.S.,⁶ which is entitled the “Rating Law,” and applies to all property, casualty and surety insurance. Section 627.062, F.S., imposes rating standards that apply to all insurance subject to Part I, and requires that rates may not be excessive, inadequate, or unfairly discriminatory. Every insurance rate regulated by Part I is held to this standard and must be submitted by the insurer to the Office of Insurance Regulation (OIR), which reviews the rate and either approves or disapproves the rate.⁷ Generally, insurers may choose to submit their rate to the OIR pursuant to either the “file and use” method or the “use and file” method. Under “file and use,” the insurer submits to the OIR their proposed rate at least 90 days before the rate’s effective date and shall not implement the rate until it is approved. Under “use and file,” the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate’s effective date. If a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive. Currently, all proposed rate increases for residential property insurance must be submitted under the “file and use” method.

In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors required by s. 627.062(2)(b), F.S.:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;

⁶ Sections 627.011, F.S., through 627.311, F.S.

⁷ Section 627.062(2)(h), F.S.

- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- Projected hurricane losses, if applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

Section 627.062(2), F.S., explicitly does not apply to workers' compensation and employer's liability insurance, or to motor vehicle insurance.

Motor vehicle insurance is subject to standards established in s. 627.06501, F.S., through s. 627.06535, F.S. The standards under s. 627.0651, F.S., for determining whether a rate is excessive, inadequate, or unfairly discriminatory are almost identical to those in s. 627.062, F.S., with the notable addition of the cost of motor repairs as a factor, and the omission of projected hurricane losses.

Excess Rates

The Rating Law in s. 627.171, F.S., permits an insurer to use a rate in excess of the otherwise applicable filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies or more than 10 percent of its commercial lines policies written or renewed in each calendar year.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.062, F.S., relating to rating requirements for property, casualty and surety policies. The bill excludes the following types of insurance from the filing and review requirements of ss. 627.062(2)(a) and (f), F.S.:

- Excess or umbrella;
- Surety and fidelity;
- Boiler and machinery and leakage and fire-extinguishing equipment;
- Errors and omissions;
- Directors and officers, employment practices and management liability;
- Intellectual property and patent infringement liability;
- Advertising injury and Internet liability;
- Property risks rated under a highly protected risks rating plan; and
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements of paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance,

similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

The bill requires that an insurer must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include:

- The name of the insurer;
- The type of insurance;
- The total premium written during the immediately preceding year for that type of insurance; and
- The average statewide percentage change in rates.

Underwriting files, premiums, and loss and expense statistics must be maintained by the insurer and are subject to inspection by the OIR.

Section 2. Amends s. 627.0651, F.S., relating to ratesetting for motor vehicle insurance. The bill provides that commercial motor vehicle insurance covering a fleet of 5 or more self-propelled vehicles are exempt from:

- Section 627.0651(1), F.S., which establishes the procedures required for automobile insurers to file rates, rating schedules and rating manuals;
- Section 627.0651(2), F.S., which specifies the factors the OIR must apply to determine whether an automobile insurer's rates are excessive, inadequate, or unfairly discriminatory;
- Section 627.0651(2), F.S., which allows the OIR to require information necessary to evaluate the filing; and
- Section 627.0645, F.S., which requires annual rate filings.

The bill provides that rates for insurance under this section may not be excessive, inadequate, or unfairly discriminatory, and must be set to allow the insurer a reasonable rate of return. The bill requires an insurer to notify the OIR of any rate changes within 30 days of the effective date of the change. The bill requires that the notice must include the name of the insurer, the type or kind of insurance subject to rate change, total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change, and the average statewide percentage change in rates. The bill requires that the insurer must maintain underwriting files, premiums, losses, and expense statistics, which are subject to examination by the OIR. The bill requires that the OIR consider all the factors that are required in current s. 627.0651(2)(a)–(1), F.S., and s. 627.0651(3)–(8), F.S. to determine if the rate is excessive, inadequate, or unfairly discriminatory.

The bill provides that a rating organization must also notify the office of any changes to loss cost for insurance and risks within 30 days after the effective date of the change. This notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost

change, loss costs during the immediately preceding year, and the average statewide percentage change in loss cost. The bill requires the rating organization to maintain loss and exposure statistics, which are subject to examination by the OIR. The bill requires that the OIR consider all the factors that are required in current s. 627.0651(2)(a)–(1), F.S., and s. 627.0651(3)-(8), F.S. to determine if the rate is excessive, inadequate, or unfairly discriminatory.

The bill requires that in reviewing the rate, the OIR may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the rate.

Section 3. Provides an effective date of January 1, 2011.

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:

The bill will allow insurers that sell the types of coverage that are being exempted from certain provisions of ss. 627.062(2), F.S., and 627.0651, F.S., to make pricing changes on a more expedited basis and avoid some of the expense incurred in a full rate review process.

C. Government Sector Impact:

The bill relieves the specified types of insurance from filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review every rate filing for the types of insurance that are being exempted from that requirement. The OIR reports that many of the rate filings that will no longer be required under the bill are currently being filed as part of a larger comprehensive filing (e.g., product review, form review) that will continue to require OIR review.

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.)

CS by Banking and Insurance on April 7, 2010:

The Committee Substitute deleted the following types of insurance from those that are exempted from the rate filing and review requirements of s. 627.062(2), F.S.:

- Commercial motor vehicle;
- Professional liability, except medical malpractice coverage;
- Environmental liability;
- Unique or unusual risks or portions of risks not rated according to manuals, rating plans, or rate schedules, including “A” rates;
- Commercial lines insurance risks, excluding property and medical malpractice coverage, producing an annual premium of \$25,000 or more.

The Committee Substitute adds a requirement that rating organizations must notify the OIR of any changes to loss cost for insurance and risks within 30 days after the effective date of the change, and specifies what must be included in the notice.

The Committee Substitute specifies that the exemption from filing and review requirements for motor vehicle insurance is limited to commercial motor vehicle insurance covering a fleet of 5 or more self-propelled vehicles. The Committee Substitute reconstructs the way in which this exemption is applied by creating new s. 627.0651(14)(a)-(f), F.S., rather than amending each of the existing subsections 627.0651(1) – (9), F.S., as the original bill had.

Amendments:

None.