

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2338

SPONSOR: Banking and Insurance Committee and Senator Clary

SUBJECT: Workers' Compensation (Rate Filings)

DATE: April 20, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 2338 creates a 9-member study commission appointed by the President of the Senate and the Speaker of the House of Representatives, including 2 members of the Senate, 2 members of the House, 2 representatives of insurers, 2 representatives of employers, and the Insurance Commissioner or his designee. The study commission would perform a study of Florida's workers' compensation rating law alternatives and make recommendations to the Legislature by December 15 concerning the most appropriate method for establishing rates and premium for workers' compensation in Florida. The staffs of the Senate Banking and Insurance Committee and the House Insurance Committee would provide support services and the commission would be authorized to contract with outside independent parties for such information as they determine necessary. The sum of \$100,000 is appropriated from the Insurance Commissioner's Regulatory Trust Fund for this purpose.

Currently, insurers that write workers' compensation insurance must have their rates approved by the Department of Insurance prior to use, but an insurer may satisfy this obligation by being a member or subscriber to a licensed rating organization that makes such filings on its behalf. All workers' compensation insurers in Florida are currently members or subscribers to a rating organization and use its rate filings, as approved by the department. Although insurers are permitted to individually file rates or to file for deviations from the approved rate, the deviation standards restrict their use. Currently, there are only three insurers with approved deviation filings.

This bill does not amend any section of the Florida Statutes.

## II. Present Situation:

All insurers writing workers' compensation insurance in Florida must file their rates with the Department of Insurance and the department must approve the filing before it becomes effective. However, an insurer may satisfy its obligation to make such rate filings by being a member or

subscriber to a licensed rating organization which makes such filings on its behalf. [ss. 627.091 and 627.101, F.S.] There are currently two licensed rating organizations -- the National Council on Compensation Insurance (NCCI) and Insurance Data Resources (IDR). The law does not require any insurer to become a member of a rating organization, but currently all 390 authorized workers' compensation insurers in Florida (about 300 of which are actively writing coverage) belong to one of these organizations and no insurer currently has filed an independent rate filing.

Self-insurance funds that write workers' compensation are subject to the same rate filing requirements and all of the existing self-insurance funds belong to one of the rating organizations and uses their approved rates. Individual self-insured employers, however, are not subject to rate filing and approval requirements.

The current law allows a workers' compensation insurer that belongs to a rating organization to file for a *deviation* above or below the approved rate, subject to approval by the department. However, legislative changes in 1996 had the effect of restricting the use of deviations. As amended and currently provided in s. 627.211, F.S., in evaluating an application for a deviation, the department must consider, among other factors, the financial condition of the insurer and the impact of the deviation on current market conditions, including the composition of the market, the stability of rates, and the level of competition in the market. [Ch. 96-405, L.O.F.] Currently, only three insurers have approved deviation filings in effect, allowing for maximum deviations below the approved rate of 10%, 10%, and 15%, respectively. From January 1, 1997, through August 14, 1998, 54 deviation filings were made with the department, of which 4 were approved, 38 were disapproved, 11 withdrawn, and 1 suspended.

Certain credits (discounts) from standard rates are required by the Legislature or have otherwise been approved by the department: (1) Section 627.0915, F.S., requires the department to approve actuarially sound credits for employers that implement a drug-free workplace and/or an approved safety program, under certain criteria, pursuant to which the department has approved a 5% drug-free workplace credit and 2% safety program credit. (2) The department has approved a Contractor Premium Adjustment credit that allows for credits ranging from about 5% to 25% for contractors that pay greater hourly wage rates than average for certain job classifications. (3) Deductible credits that are standard for all insurers are approved pursuant to the NCCI filing for deductibles of less than \$100,000 per claim. For large deductibles in excess of \$100,000, insurers individually file for approval of credits which vary among insurers.

The department has also approved retrospective rating plans filed by NCCI and individual insurers that provide for increasing or decreasing an employer's standard rate, based on the employer's actual claims experience during the policy year.

The current law authorizes an insurer to file "schedule rating" factors, subject to approval by the department, to apply to each employer that qualifies based on the "merits of each insured's individual risk as determined by using schedules of rating factors which shall be applied uniformly." [s. 627.211(2), F.S.] The insurer must file data with the department to support the use of such schedule rating factors. At this time no insurer has any such schedule rating factors approved.

Florida has an excess profits law for workers' compensation that requires the department to order an insurer to provide refunds or credits on renewal premiums if the insurer earns excess profits under the specific formula of the statute. (s. 627.215, F.S.) Enacted in 1979, this law resulted in excess profit refunds in 1982, 1983, and 1984, totaling \$2,479,780. No excess profits refunds have been ordered since that time. In 1991, the law was extended to cover commercial property and casualty insurance and the excess profits calculation merges all such lines, so there is no longer a separate calculation for workers' compensation.

The following table lists the annual overall rate changes for workers' compensation approved by the department since 1992, effective January 1 of each year:

<u>Year</u>	<u>Premium Level Change (%)</u>
1992	+21.2
1993	+7.2
1994	(-10.6)
1995	no change
1996	no change
1997	(-11.3)
1998	(-3.2)
1999	+1.6

A 1996 study and report by the actuarial firm of Wakely and Associates, under contract with the Department of Insurance, found that Florida's workers' compensation rate system was among the least competitive in the country and recommended that Florida adopt a system that provides for more competitive workers' compensation rating. The Wakely study found that in Florida deviations were seldom used and that in other states studied by Wakely, deviations were applied for much more often than in Florida and were larger than the deviations approved for use in Florida.

The staff of the House Financial Services Committee prepared a report entitled, *Deregulation of Workers' Compensation Pricing* (October 30, 1998) which "examines ways the Legislature can make the ratemaking process more market driven and increase opportunities for competitive pricing of worker's compensation." This report is the source for some of the statistical information in this analysis. The report determined that in nine states, including Florida, a rating organization files one full rate to which all insurers adhere. In 35 states, rating organizations file loss costs only and each insurer must file at least their own profit and expenses. All of these states previously had the "one full rate" approach used by Florida, and changed their law to the loss cost approach beginning in the early 1980's. Six states have monopolistic, state-created insurance funds that provide workers' compensation insurance to all employers in the state.

In March 1999, the Workers' Compensation Oversight Board voted (by tie vote) against a motion to recommend that the Legislature consider changing the current rating law to a loss cost rate filing system. A report by the board's Premiums and Benefits Committee had recommended changes to the rating law that are the basis for the provisions of SB 2338.

**III. Effect of Proposed Changes:**

CS/SB 2338 creates a 9-member study commission appointed by the President of the Senate and the Speaker of the House of Representatives, including 2 members of the Senate, 2 members of the House, 2 representatives of insurers, 2 representatives of employers, and the Insurance Commissioner or his designee. The study commission would perform a study of Florida's workers' compensation rating law alternatives and make recommendations to the Legislature by December 15 concerning the most appropriate method for establishing rates and premium for workers' compensation in Florida. The staffs of the Senate Banking and Insurance Committee and the House Insurance Committee would provide support services and the commission would be authorized to contract with outside independent parties for such information as they determine is necessary. The sum of \$100,000 is appropriated from the Insurance Commissioner's Regulatory Trust Fund for this purpose.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill appropriates \$100,000 from the Insurance Commissioner's Regulatory Trust Fund for implementing the provisions of this bill. Members of the study commission are entitled to reimbursement for travel and per diem expenses and the commission is authorized to contract with independent parties for such information as it deems necessary to complete its study and recommendations. The staffs of the Senate Banking and Insurance Committee and the House Insurance Committee must provide support services to the study commission.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions of this bill are also contained in CS/SB 1806 by the Fiscal Policy Committee and Senator Thomas.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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