

By the Committees on Banking and Insurance; Appropriations; and Banking and Insurance; and Senators Brandes, Simpson, Benacquisto, Galvano, Bradley, and Latvala

597-02468-14

2014542c3

1 A bill to be entitled
2 An act relating to flood insurance; amending s.
3 627.062, F.S.; adding projected flood losses to the
4 factors that must be considered by the Office of
5 Insurance Regulation in reviewing certain rate
6 filings; amending s. 627.0628, F.S.; requiring the
7 commission to adopt standards and guidelines relating
8 to flood loss by a certain date; creating s. 627.715,
9 F.S.; authorizing insurers to offer flood insurance on
10 residential property in this state; requiring the
11 insurer to also offer coverage equivalent to that
12 provided by the National Flood Insurance Program
13 (NFIP); defining the term "flood"; establishing the
14 minimum coverage requirements for a flood insurance
15 policy; providing coverage limitations that an insurer
16 may include in such policies; requiring that certain
17 limitations and notices be noted on the policy
18 declarations or face page; requiring the insurer to
19 obtain a signed acknowledgement from the applicant
20 which provides certain specified information;
21 providing the insurer with rate options; authorizing
22 the office to conduct an examination with respect to
23 any rate change; authorizing an insurer to export a
24 contract or endorsement to a surplus lines insurer
25 without meeting certain requirements; requiring prior
26 notice for cancellation or nonrenewal of a policy;
27 providing additional requirements with respect to
28 notifying the Office of Insurance Regulation before
29 writing flood insurance, filing a plan of operation

597-02468-14

2014542c3

30 with the office, using forms that have been approved
31 by the office, and filing reinsurance contracts before
32 a certain date; prohibiting Citizens Property
33 Insurance Corporation from writing flood insurance;
34 prohibiting the Florida Hurricane Catastrophe Fund
35 from reimbursing losses caused by flooding; providing
36 certain exemptions; preempting any conflicts with
37 other provisions of the Florida Insurance Code;
38 providing that the Commissioner of the Office of
39 Insurance Regulation may provide certification that a
40 condition qualifies for flood insurance or disaster
41 assistance; providing that such certification is not
42 subject to ch. 120, F.S.; providing an effective date.
43

44 Be It Enacted by the Legislature of the State of Florida:
45

46 Section 1. Paragraph (b) of subsection (2) of section
47 627.062, Florida Statutes, is amended to read:

48 627.062 Rate standards.—

49 (2) As to all such classes of insurance:

50 (b) Upon receiving a rate filing, the office shall review
51 the filing to determine if a rate is excessive, inadequate, or
52 unfairly discriminatory. In making that determination, the
53 office shall, in accordance with generally accepted and
54 reasonable actuarial techniques, consider the following factors:

55 1. Past and prospective loss experience within and without
56 this state.

57 2. Past and prospective expenses.

58 3. The degree of competition among insurers for the risk

597-02468-14

2014542c3

59 insured.

60 4. Investment income reasonably expected by the insurer,
61 consistent with the insurer's investment practices, from
62 investable premiums anticipated in the filing, plus any other
63 expected income from currently invested assets representing the
64 amount expected on unearned premium reserves and loss reserves.
65 The commission may adopt rules using reasonable techniques of
66 actuarial science and economics to specify the manner in which
67 insurers calculate investment income attributable to classes of
68 insurance written in this state and the manner in which
69 investment income is used to calculate insurance rates. Such
70 manner must contemplate allowances for an underwriting profit
71 factor and full consideration of investment income that produce
72 ~~which produce~~ a reasonable rate of return; however, investment
73 income from invested surplus may not be considered.

74 5. The reasonableness of the judgment reflected in the
75 filing.

76 6. Dividends, savings, or unabsorbed premium deposits
77 allowed or returned to ~~Florida~~ policyholders, members, or
78 subscribers in this state.

79 7. The adequacy of loss reserves.

80 8. The cost of reinsurance. The office may not disapprove a
81 rate as excessive solely due to the insurer having obtained
82 catastrophic reinsurance to cover the insurer's estimated 250-
83 year probable maximum loss or any lower level of loss.

84 9. Trend factors, including trends in actual losses per
85 insured unit for the insurer making the filing.

86 10. Conflagration and catastrophe hazards, if applicable.

87 11. Projected hurricane losses, if applicable, which must

597-02468-14

2014542c3

88 be estimated using a model or method found to be acceptable or
89 reliable by the Florida Commission on Hurricane Loss Projection
90 Methodology, and as further provided in s. 627.0628.

91 12. Projected flood losses, if applicable, which may be
92 estimated using a model, a method, or an average of models or
93 methods determined to be acceptable or reliable by the Florida
94 Commission on Hurricane Loss Projection Methodology, and as
95 further provided in s. 627.0628.

96 ~~13.12.~~ A reasonable margin for underwriting profit and
97 contingencies.

98 ~~14.13.~~ The cost of medical services, if applicable.

99 ~~15.14.~~ Other relevant factors that affect the frequency or
100 severity of claims or expenses.

101

102 The provisions of this subsection do not apply to workers'
103 compensation, employer's liability insurance, and motor vehicle
104 insurance.

105 Section 2. Subsection (3) of section 627.0628, Florida
106 Statutes, is amended to read:

107 627.0628 Florida Commission on Hurricane Loss Projection
108 Methodology; public records exemption; public meetings
109 exemption.—

110 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

111 (a) The commission shall consider ~~any~~ actuarial methods,
112 principles, standards, models, or output ranges that have the
113 potential for improving the accuracy ~~of~~ or reliability of the
114 hurricane loss projections and flood loss projections used in
115 residential property insurance rate filings. The commission
116 shall, ~~from time to time,~~ adopt and update findings, as needed,

597-02468-14

2014542c3

117 as to the accuracy or reliability of particular methods,
118 principles, standards, models, or output ranges.

119 (b) The commission shall consider ~~any~~ actuarial methods,
120 principles, standards, or models that have the potential for
121 improving the accuracy ~~of~~ or reliability of projecting probable
122 maximum loss levels. The commission shall adopt and update
123 findings, as needed, as to the accuracy or reliability of
124 particular methods, principles, standards, or models related to
125 probable maximum loss calculations.

126 (c) In establishing reimbursement premiums for the Florida
127 Hurricane Catastrophe Fund, the State Board of Administration
128 must, to the extent feasible, employ actuarial methods,
129 principles, standards, models, or output ranges found by the
130 commission to be accurate or reliable.

131 (d) With respect to a rate filing under s. 627.062, an
132 insurer shall employ and may not modify or adjust actuarial
133 methods, principles, standards, models, or output ranges found
134 by the commission to be accurate or reliable in determining
135 hurricane loss factors for use in a rate filing under s.
136 627.062. An insurer shall employ and may not modify or adjust
137 models found by the commission to be accurate or reliable in
138 determining probable maximum loss levels pursuant to paragraph
139 (b) with respect to a rate filing under s. 627.062 made more
140 than 60 days after the commission has made such findings. This
141 paragraph does not prohibit an insurer from averaging model
142 results or output ranges or from using an average for the
143 purpose of a flood insurance rate filing under s. 627.062.

144 (e) The commission shall adopt actuarial methods,
145 principles, standards, models, or output ranges for flood loss

597-02468-14

2014542c3

146 by July 1, 2016.

147 (f)~~(e)~~ The commission shall revise ~~adopt revisions to~~
148 previously adopted actuarial methods, principles, standards,
149 models, or output ranges every odd-numbered ~~odd~~ year.

150 (g)~~(f)~~1. A trade secret, as defined in s. 688.002, which
151 ~~that~~ is used in designing and constructing a hurricane loss
152 model and which ~~that~~ is provided pursuant to this section~~,~~ by a
153 private company~~,~~ to the commission, office, or consumer advocate
154 appointed pursuant to s. 627.0613~~,~~ is confidential and exempt
155 from s. 119.07(1) and s. 24(a), Art. I of the State
156 Constitution.

157 2.a. That portion of a meeting of the commission or of a
158 rate proceeding on an insurer's rate filing at which a trade
159 secret made confidential and exempt by this paragraph is
160 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
161 State Constitution. The closed meeting must be recorded, and no
162 portion of the closed meeting may be off the record.

163 b. The recording of a closed portion of a meeting is exempt
164 from s. 119.07(1) and s. 24(a), Art. I of the State
165 Constitution.

166 c. This subparagraph is subject to the Open Government
167 Sunset Review Act in accordance with s. 119.15 and shall stand
168 repealed on October 2, 2015, unless reviewed and saved from
169 repeal through reenactment by the Legislature.

170 Section 3. Section 627.715, Florida Statutes, is created to
171 read:

172 627.715 Flood insurance.—Subject to the requirements of
173 this section, an insurer may issue an insurance policy,
174 contract, or endorsement providing coverage for the peril of

597-02468-14

2014542c3

175 flood on any residential structure or its contents in this
176 state. Such insurer must also offer coverage equivalent to that
177 provided under a standard flood insurance policy issued under
178 the National Flood Insurance Program (NFIP)

179 (1) As used in this section, the term "flood" means a
180 general and temporary condition of partial or complete
181 inundation of 2 acres or more of normally dry land area or of
182 two or more properties, at least one of which is the
183 policyholder's property, from:

184 (a) Overflow of inland or tidal waters;

185 (b) Unusual and rapid accumulation or runoff of surface
186 waters from any source;

187 (c) Mudflow; or

188 (d) Collapse or subsidence of land along the shore of a
189 lake or similar body of water as a result of erosion or
190 undermining caused by waves or currents of water exceeding
191 anticipated cyclical levels.

192 (2) At a minimum, coverage for the peril of flood must
193 cover a flood as defined in subsection (1). Coverage for the
194 peril of flood may also include water intrusion, as defined by
195 the policy, which originates from outside the structure and is
196 not otherwise covered under the definition of flood.

197 (3) An insurer may offer a flood coverage policy, contract,
198 or endorsement that:

199 (a) Has a flood deductible based on a stated dollar amount
200 or a percentage of the coverage amount. The deductible amount
201 must be acceptable to federal mortgage and banking regulators if
202 such policy, contract, or endorsement is intended to satisfy a
203 mortgage requirement;

597-02468-14

2014542c3

204 (b) Provides that any flood loss will be adjusted on the
205 basis of:

206 1. The actual cash value of the property; or
207 2. Replacement costs up to the policy limits as provided
208 under s. 627.7011(3);

209 (c) Restricts flood coverage to the principal building, as
210 defined in the applicable policy;

211 (d) Is in an agreed-upon amount, including coverage limited
212 to the amount of all outstanding mortgages applicable to the
213 covered property. However, if a policy, contract, or endorsement
214 does not limit flood coverage to the replacement cost of the
215 covered property, the policy, contract, or endorsement may not
216 include a provision penalizing the policyholder for not insuring
217 the covered property up to replacement cost; or

218 (e) As to the peril of flood, does not cover:

219 1. Additional living expenses;

220 2. Personal property or contents; or

221 3. Law and ordinance coverage. However, an insurer must
222 offer law and ordinance coverage that is comparable to the law
223 and ordinance coverage offered in the standard NFIP policy.

224 (4) The deductibles and policy limits as to the peril of
225 flood, and any other limitations on coverage required to be
226 included by the office, must be prominently disclosed on the
227 declarations page or face page of the policy in at least 12-
228 point uppercase and boldfaced type and be accompanied by a
229 statement encouraging the policyholder to review the entire
230 policy carefully because it contains coverage limitations.

231 (5) Before issuing a flood insurance policy, contract, or
232 endorsement under this section, the insurance agent must obtain

597-02468-14

2014542c3

233 from an applicant an acknowledgement signed by the applicant
234 that includes the following statement in at least 12-point bold,
235 uppercase type: "BY ACCEPTING THIS FLOOD INSURANCE POLICY I HAVE
236 READ AND UNDERSTAND THE LIMITATIONS THAT MAY APPLY TO MY
237 POLICY." The signed acknowledgment must also include, in at
238 least 12-point bold, uppercase type, for a policy, contract, or
239 endorsement:

240 (a) That limits flood coverage to an amount less than the
241 full replacement cost of the property, the following statement:
242 "THIS POLICY LIMITS FLOOD COVERAGE TO LESS THAN THE FULL COST OF
243 REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-OF-
244 POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY
245 AT RISK."

246 (b) That insures a dwelling on the basis of actual cash
247 value, the following statement: "THIS POLICY PAYS YOU THE
248 DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED BY FLOOD,
249 WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU IF YOUR
250 PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

251 (c) The following disclosure: "FLOOD INSURANCE COVERAGE IS
252 AVAILABLE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. YOU SHOULD
253 CONSULT YOUR AGENT IF YOU HAVE QUESTIONS ABOUT NATIONAL FLOOD
254 INSURANCE PROGRAM COVERAGE."

255 (d) On a structure that was previously insured through the
256 NFIP at a subsidized rate, the following statement: "BY
257 ACCEPTING A PRIVATE FLOOD INSURANCE POLICY, YOU MAY LOSE YOUR
258 SUBSIDIZED RATE IN THE NATIONAL FLOOD INSURANCE PROGRAM IF YOU
259 RETURN TO THE NATIONAL FLOOD INSURANCE PROGRAM AT A LATER TIME."

260 (e) That includes the law and ordinance coverage that must
261 be offered under subparagraph (3)(e)3., the following

597-02468-14

2014542c3

262 disclosure: "LAW AND ORDINANCE COVERAGE UNDER THIS POLICY MIGHT
263 HAVE LIMITATIONS ON WHAT IS COVERED IN THE EVENT OF A LOSS. YOU
264 SHOULD CONSULT YOUR AGENT IF YOU HAVE QUESTIONS ABOUT THE
265 COVERAGE OFFERED UNDER THIS POLICY."

266

267 If this form is signed, it is conclusively presumed that the
268 applicant understood and selected on behalf of all insureds the
269 limitations of coverage in the policy as compared to a flood
270 insurance policy offered by the NFIP.

271 (6) In addition to any other method authorized under the
272 Florida Insurance Code, an insurer or rating organization may
273 establish and use flood coverage rates, rating schedules, or
274 rating manuals, filed by the insurer with the office, which
275 allow the insurer a reasonable rate of return on flood coverage
276 written in this state. Flood coverage rates established under
277 this subsection are not subject to s. 627.062(2) (a) and (f).

278 (a) An insurer shall notify the office of any change to
279 rates within 30 days after the effective date of the change. The
280 notice must include the name of the insurer and the average
281 statewide percentage change in rates.

282 (b) Actuarial data with regard to rates for flood coverage
283 shall be maintained by the insurer for 2 years after the
284 effective date of such rate change and may be examined by the
285 office pursuant to s. 624.319. The office may require the
286 insurer to incur the costs associated with an examination. Upon
287 examination, the office, in accordance with generally accepted
288 and reasonable actuarial techniques, shall consider the rate
289 factors specified in s. 627.062(2) (b), (c), and (d), and
290 standards specified in s. 627.062(2) (e) to determine if the rate

597-02468-14

2014542c3

291 is excessive, inadequate, or unfairly discriminatory. If the
292 office finds that the rate is excessive, inadequate, or unfairly
293 discriminatory, the office shall order the insurer to make a
294 full and complete rate filing under s. 627.062. Upon issuance of
295 the order, the insurer may not write additional flood insurance
296 coverage until the office has approved the rate.

297 (c) This subsection applies to the establishment and use of
298 flood coverage rates filed with the office before July 1, 2024.

299 (7) A surplus lines agent may export a contract or
300 endorsement to an eligible surplus lines insurer without making
301 a diligent effort to seek such coverage from three or more
302 authorized insurers under s. 626.916(1)(a). This subsection
303 expires July 1, 2017.

304 (8) The insurer shall notify the insured and any regulated
305 lending institution or federal agency mortgagee, in writing, at
306 least 60 days before the cancellation or nonrenewal of the
307 policy, contract, or endorsement providing flood coverage. An
308 insurer or insured may cancel the policy, contract, or
309 endorsement while in force or upon renewal if the cancellation
310 would be permitted under the NFIP.

311 (9) In addition to any other applicable requirements, an
312 insurer providing flood coverage under this section shall:

313 (a) Notify the office at least 30 days before writing flood
314 insurance in this state;

315 (b) File a plan of operation and financial projections or
316 revisions to such plan, as applicable, with the office;

317 (c) Offer flood insurance on a form that has been filed
318 with and approved by the office pursuant to s. 627.410. The
319 filed form may be substantially similar to the form used by the

597-02468-14

2014542c3

320 NFIP; and

321 (d) File all reinsurance contracts with the office on or
322 before June 30 of each year.

323 (10) Citizens Property Insurance Corporation may not
324 provide insurance for the peril of flood.

325 (11) The Florida Hurricane Catastrophe Fund may not
326 reimburse losses proximately caused by the peril of flood,
327 including losses that occur during a covered event as defined
328 under s. 215.555(2).

329 (12) This section does not apply to:

330 (a) Policies, contracts, and endorsements that provide
331 flood coverage for commercial nonresidential properties or
332 policies that provide excess flood coverage over the amount
333 recoverable under any other policy covering the same property.

334 (b) A flood insurance policy issued by or on behalf of the
335 NFIP.

336 (13) With respect to the regulation of flood insurance
337 coverage written in this state by admitted insurers, this
338 section supersedes any other provision in the Florida Insurance
339 Code in the event of a conflict.

340 Section 4. If federal law or rule requires a certification
341 by a state insurance regulatory official as a condition of
342 qualifying for private flood insurance or disaster assistance,
343 the Commissioner of the Office of Insurance Regulation may
344 provide the certification. The certification is not subject to
345 review under chapter 120.

346 Section 5. This act shall take effect upon becoming a law.