

By Senator Grant

13-388-99

See HB

1                                   A bill to be entitled  
 2           An act relating to title insurance; amending  
 3           ss. 624.509, 626.841, 626.8411, 626.9541,  
 4           627.7711, 627.777, 627.7773, 627.7776, 627.780,  
 5           627.783, 627.7831, 627.784, 627.7841, 627.7842,  
 6           627.7845, 627.786, 627.791, and 627.792, F.S.;  
 7           revising and clarifying application of  
 8           provisions relating to title insurance agents,  
 9           policies, premiums, rates, contracts, charges,  
 10          and practices; amending s. 627.7711, F.S.;  
 11          revising definitions; amending s. 627.782,  
 12          F.S.; providing a limitation on payment of  
 13          portions of premiums for primary title  
 14          services; providing an effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Subsection (1) of section 624.509, Florida  
 19 Statutes, 1998 Supplement, is amended to read:

20           624.509 Premium tax; rate and computation.--

21           (1) In addition to the license taxes provided for in  
 22 this chapter, each insurer shall also annually, and on or  
 23 before March 1 in each year, except as to wet marine and  
 24 transportation insurance taxed under s. 624.510, pay to the  
 25 Department of Revenue a tax on insurance premiums, ~~risk~~  
 26 premiums for title insurance, or assessments, including  
 27 membership fees and policy fees and gross deposits received  
 28 from subscribers to reciprocal or interinsurance agreements,  
 29 and on annuity premiums or considerations, received during the  
 30 preceding calendar year, the amounts thereof to be determined  
 31 as set forth in this section, to wit:

1           (a) An amount equal to 1.75 percent of the gross  
2 amount of such receipts on account of life and health  
3 insurance policies covering persons resident in this state and  
4 on account of all other types of policies and contracts  
5 (except annuity policies or contracts taxable under paragraph  
6 (b)) covering property, subjects, or risks located, resident,  
7 or to be performed in this state, omitting premiums on  
8 reinsurance accepted, and less return premiums or assessments,  
9 but without deductions:

- 10           1. For reinsurance ceded to other insurers;  
11           2. For moneys paid upon surrender of policies or  
12 certificates for cash surrender value;  
13           3. For discounts or refunds for direct or prompt  
14 payment of premiums or assessments; and  
15           4. On account of dividends of any nature or amount  
16 paid and credited or allowed to holders of insurance policies;  
17 certificates; or surety, indemnity, reciprocal, or  
18 interinsurance contracts or agreements; and

19           (b) An amount equal to 1 percent of the gross receipts  
20 on annuity policies or contracts paid by holders thereof in  
21 this state.

22           Section 2. Section 626.841, Florida Statutes, is  
23 amended to read:

24           626.841 Definitions.--The term:

25           (1) "Title insurance agent" means a person appointed  
26 in writing by a title insurer to issue and countersign  
27 commitments or binders, ~~commitments~~, policies of title  
28 insurance, ~~or guarantees of title~~ in its behalf.

29           (2) "Title insurance agency" means an insurance agency  
30 under which title insurance agents and other employees  
31 determine insurability in accordance with underwriting rules

1 and standards prescribed by the title insurer represented by  
2 the agency, and issue and countersign commitments binders,  
3 ~~commitments of title insurance~~, endorsements, or policies  
4 ~~guarantees~~ of title insurance, on behalf of the appointing  
5 title insurer. The term does not include a title insurer.

6 Section 3. Paragraph (c) of subsection (2) of section  
7 626.8411, Florida Statutes, 1998 Supplement, is amended to  
8 read:

9 626.8411 Application of Florida Insurance Code  
10 provisions to title insurance agents or agencies.--

11 (2) The following provisions of part I do not apply to  
12 title insurance agents or title insurance agencies:

13 (c) Section 626.572 ~~626.752~~, relating to rebating,  
14 when allowed ~~exchange of business~~.

15 Section 4. Paragraph (h) of subsection (1) of section  
16 626.9541, Florida Statutes, is amended to read:

17 626.9541 Unfair methods of competition and unfair or  
18 deceptive acts or practices defined.--

19 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR  
20 DECEPTIVE ACTS.--The following are defined as unfair methods  
21 of competition and unfair or deceptive acts or practices:

22 (h) ~~Unlawful~~ Rebates.--

23 1. Except as otherwise expressly provided by law, or  
24 in an applicable filing with the department, knowingly:

25 a. Permitting, or offering to make, or making, any  
26 contract or agreement as to such contract other than as  
27 plainly expressed in the insurance contract issued thereon;

28 b. Paying, allowing, or giving, or offering to pay,  
29 allow, or give, directly or indirectly, as inducement to such  
30 insurance contract, any ~~unlawful~~ rebate of premiums payable on  
31 the contract, any special favor or advantage in the dividends

1 or other benefits thereon, or any valuable consideration or  
2 inducement whatever not specified in the contract;

3 c. Giving, selling, or purchasing, or offering to  
4 give, sell, or purchase, as inducement to such insurance  
5 contract or in connection therewith, any stocks, bonds, or  
6 other securities of any insurance company or other  
7 corporation, association, or partnership, or any dividends or  
8 profits accrued thereon, or anything of value whatsoever not  
9 specified in the insurance contract.

10 2. Nothing in paragraph (g) or subparagraph 1. of this  
11 paragraph shall be construed as including within the  
12 definition of discrimination or ~~unlawful~~ rebates:

13 a. In the case of any contract of life insurance or  
14 life annuity, paying bonuses to all policyholders or otherwise  
15 abating their premiums in whole or in part out of surplus  
16 accumulated from nonparticipating insurance; provided that any  
17 such bonuses or abatement of premiums is fair and equitable to  
18 all policyholders and for the best interests of the company  
19 and its policyholders.

20 b. In the case of life insurance policies issued on  
21 the industrial debit plan, making allowance to policyholders  
22 who have continuously for a specified period made premium  
23 payments directly to an office of the insurer in an amount  
24 which fairly represents the saving in collection expenses.

25 c. Readjustment of the rate of premium for a group  
26 insurance policy based on the loss or expense thereunder, at  
27 the end of the first or any subsequent policy year of  
28 insurance thereunder, which may be made retroactive only for  
29 such policy year.

30 d. Issuance of life insurance policies or annuity  
31 contracts at rates less than the usual rates of premiums for

1 such policies or contracts, as group insurance or employee  
2 insurance as defined in this code.

3 e. Issuing life or disability insurance policies on a  
4 salary savings, bank draft, preauthorized check, payroll  
5 deduction, or other similar plan at a reduced rate reasonably  
6 related to the savings made by the use of such plan.

7 3.a. No title insurer, or any member, employee,  
8 attorney, agent, agency, or solicitor thereof, shall pay,  
9 allow, or give, or offer to pay, allow, or give, directly or  
10 indirectly, as inducement to title insurance, or after such  
11 insurance has been effected, any ~~unlawful~~ rebate or abatement  
12 of the agent's, agency's, or title insurer's share of the  
13 premium or any charge for related title services below the  
14 cost for providing such services, or provide charge made  
15 ~~incident to the issuance of such insurance, any special favor~~  
16 ~~or advantage, or any monetary consideration or inducement~~  
17 ~~whatever. The words "charge made incident to the issuance of~~  
18 ~~such insurance" shall be construed to encompass underwriting~~  
19 ~~premium, agent's commission, abstracting charges, title~~  
20 ~~examination fee, and closing charges; however, Nothing herein~~  
21 ~~contained shall preclude an abatement in an attorney's fee~~  
22 ~~charged for legal services rendered incident to the issuance~~  
23 ~~of such insurance.~~

24 b. Nothing in this subparagraph shall be construed as  
25 prohibiting the payment of fees to attorneys at law duly  
26 licensed to practice law in the courts of this state, for  
27 professional services ~~in the actual examination of title to~~  
28 ~~real property as a condition to the issuance of title~~  
29 ~~insurance, or as prohibiting the payment of earned portions of~~  
30 ~~the premium commissions to duly appointed agents or agencies~~  
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1 who actually perform services for the title insurer ~~issue the~~  
2 ~~policy of title insurance for the underwriting company.~~

3 c. No insured named in a policy, or any other person  
4 directly or indirectly connected with the transaction  
5 involving the issuance of such policy, including, but not  
6 limited to, any mortgage broker, real estate broker, builder,  
7 or attorney, any employee, agent, agency, representative, or  
8 solicitor thereof, or any other person whatsoever, shall  
9 knowingly receive or accept, directly or indirectly, any  
10 ~~unlawful~~ rebate or abatement of said charge, or any monetary  
11 consideration or inducement, other than as set forth in  
12 sub-subparagraph b.

13 Section 5. Subsections (1) and (2) of section  
14 627.7711, Florida Statutes, are amended to read:

15 627.7711 Definitions.--As used in this part, the term:

16 (1)(a) "Related title services" means services  
17 performed by a title insurer or title insurance agent or  
18 agency, in the agent's or agency's capacity as such,  
19 including, but not limited to, preparing or obtaining a title  
20 search, examining title information, preparing documents  
21 necessary to close the transaction, conducting the closing, or  
22 handling the disbursing of funds related to the closing in a  
23 real estate closing transaction in which a title insurance  
24 ~~binder, commitment, or~~ policy is to be issued. The ~~risk~~  
25 premium, together with the charge for related title services,  
26 constitutes the regular title insurance premium.

27 (b) "Primary title services" means determining  
28 insurability in accordance with sound underwriting practices  
29 based upon evaluation of a reasonable search and examination  
30 of the title, determination and clearance of underwriting  
31 objections and requirements to eliminate risk, preparation and

1 issuance of a title insurance commitment setting forth the  
2 requirements to insure, and preparation and issuance of the  
3 policy.

4 (2) "~~Risk~~ Premium" means the charge, as specified by  
5 rule of the department, that is made by a title insurer for a  
6 title insurance policy, including the charge for performance  
7 of primary title services by a title insurer or title  
8 insurance agent or agency, and incurring the risks incident to  
9 such policy ~~the assumption of the risk~~, under the several  
10 classifications of title insurance contracts and forms, and  
11 upon which charge a premium tax is paid under s. 624.509. As  
12 used in this part or in any other law, with respect to title  
13 insurance, the words "premium" does or "~~risk premium~~" mean  
14 ~~only the risk premium as defined in this section and do not~~  
15 ~~include a commission any other charge incidental to title~~  
16 ~~insurance.~~

17 Section 6. Section 627.777, Florida Statutes, is  
18 amended to read:

19 627.777 Approval of forms.--A title insurer may not  
20 issue or agree to issue any form of ~~title insurance binder,~~  
21 ~~title insurance commitment, preliminary report,~~title  
22 insurance policy, other contract of title insurance, or  
23 related form until it is filed with and approved by the  
24 department. ~~The department may not disapprove a title~~  
25 ~~guarantee or policy form on the ground that it has on it a~~  
26 ~~blank form for an attorney's opinion on the title.~~

27 Section 7. Section 627.7773, Florida Statutes, is  
28 amended to read:

29 627.7773 Accounting and auditing of forms by title  
30 insurers.--

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1           (1) Each title insurer authorized to do business in  
2 this state shall, at least once during each calendar year,  
3 require of each of its title insurance agents or agencies  
4 accountings of all outstanding forms in the agent's or  
5 agency's possession of the types that are specified in s.  
6 627.777.

7           (2) If the department has reason to believe that an  
8 audit of outstanding forms should be required of any title  
9 insurer as to a title insurance agent or agency, the  
10 department may require the title insurer to make a special  
11 audit of the forms. The title insurer shall complete the  
12 audit not later than 60 days after the request is received  
13 from the department, and shall report the results of the  
14 special audit to the department no later than 90 days after  
15 the request is received.

16           Section 8. Section 627.7776, Florida Statutes, is  
17 amended to read:

18           627.7776 Furnishing of supplies; civil liability.--

19           (1) A title insurer may not furnish to any person any  
20 blank forms, applications, stationery, or other supplies to be  
21 used in soliciting, negotiating, or effecting contracts of  
22 title insurance on its behalf until that person has received  
23 from the insurer a contract to act as a title insurance agent  
24 or agency and has been licensed by the department, if required  
25 by s. 626.8417.

26           (2) A title insurer or title insurance agent or agency  
27 that furnishes any supplies to a person not authorized by the  
28 title insurer as provided in subsection (1) is subject to  
29 civil liability to any insured of the title insurer to the  
30 same extent and in the same manner as if the person had been  
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1 appointed or authorized by the title insurer to act in its  
2 behalf.

3 Section 9. Section 627.780, Florida Statutes, is  
4 amended to read:

5 627.780 Illegal dealings in ~~risk~~ premium.--

6 (1) A person may not knowingly quote, charge, accept,  
7 collect, or receive a ~~risk~~ premium for title insurance other  
8 than the ~~risk~~ premium adopted by the department.

9 (2) A title insurer may not knowingly accept, collect,  
10 or receive any sum as ~~risk~~ premium for title insurance, if the  
11 title insurance is not then provided or is not to be provided,  
12 subject to acceptance of the risk, in due course, unless the  
13 title insurer promptly enters the sum on its books of account  
14 as premium collected in advance.

15 Section 10. Section 627.782, Florida Statutes, is  
16 amended to read:

17 627.782 Adoption of rates.--

18 (1) Subject to the rating provisions of this code, the  
19 department must adopt a rule specifying the ~~risk~~ premium to be  
20 charged in this state by title insurers for the respective  
21 types of title insurance contracts and, for policies issued  
22 through agents or agencies, the percentage of such premium  
23 required to be retained by the title insurer which shall ~~and~~  
24 ~~services incident thereto. The department may, by rule,~~  
25 ~~establish limitations on such reasonable charges made in~~  
26 ~~addition to the risk premium based upon the expenses~~  
27 ~~associated with the services rendered and other relevant~~  
28 ~~factors. The department must also adopt rules incident to the~~  
29 ~~applicability of the risk premium, including the percentage or~~  
30 ~~amount of the risk premium required to be maintained by the~~  
31 ~~title insurer, and related rules to ensure that the amounts~~

1 ~~required to be maintained by the insurer~~ are not be less than  
2 30 percent of the ~~risk premium for policies sold by agents.~~  
3 However, in a transaction subject to the Real Estate  
4 Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as  
5 amended from time to time, no portion of the premium  
6 attributable to providing a primary title service shall be  
7 paid to or retained by any person who does not actually  
8 perform or is not liable for the performance of such service.

9 (2) In adopting premium rates, the department must  
10 give due consideration to the following:

11 (a) The title insurers' loss experience and  
12 prospective loss experience under ~~insured~~ closing protection  
13 ~~service~~ letters, ~~search and examination services~~, and policy  
14 liabilities.

15 (b) A reasonable margin for underwriting profit and  
16 contingencies, including contingent liability under s.  
17 627.7865, sufficient to allow title insurers, ~~and~~ agents, and  
18 agencies to earn a rate of return on their capital that will  
19 attract and retain adequate capital investment in the title  
20 insurance business and maintain the title insurance delivery  
21 system.

22 (c) Past expenses and prospective expenses for  
23 administration and handling of risks.

24 (d) Liability for defalcation.

25 (e) Other relevant factors.

26 (3) Rates may be grouped by classification or schedule  
27 and may differ as to class of risk assumed.

28 (4) Rates may not be excessive, inadequate, or  
29 unfairly discriminatory.

30 (5) The ~~risk~~ premium applies to each \$100 of insurance  
31 issued to an insured.

1           (6) The ~~risk~~ premium rates apply throughout this  
2 state.

3           (7) The department shall, in accordance with the  
4 standards provided in subsection (2), review the ~~risk~~ premium  
5 ~~and the related title services rate~~ as needed, but not less  
6 frequently than once every 3 years, and shall, based upon the  
7 review required by this subsection, revise the ~~risk~~ premium  
8 ~~and the related title services rate~~ if the results of the  
9 review so warrant.

10           (8) The department may, by rule, require licensees  
11 under this part to annually submit statistical information,  
12 including loss and expense data, as the department determines  
13 to be necessary to analyze ~~risk~~ premium ~~and related title~~  
14 ~~services~~ rates, retention rates, and the condition of the  
15 title insurance industry.

16           Section 11. Section 627.783, Florida Statutes, is  
17 amended to read:

18           627.783 Rate deviation.--

19           (1) A title insurer may petition the department for an  
20 order authorizing a specific deviation from the adopted ~~risk~~  
21 premium, and a title insurer or title insurance agent may  
22 petition the department for an order authorizing and  
23 permitting a specific deviation above the reasonable charge  
24 for other services rendered specified in s. 627.782(1). The  
25 petition shall be in writing and sworn to and shall set forth  
26 allegations of fact upon which the petitioner will rely,  
27 including the petitioner's reasons for requesting the  
28 deviation. Any authorized title insurer, or agent, or agency  
29 may join in the petition for like authority to deviate or may  
30 file a separate petition praying for like authority or

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1 opposing the deviation. The department shall rule on all such  
2 petitions simultaneously.

3 (2) If, in the judgment of the department, the  
4 requested deviation is not justified, the department may enter  
5 an order denying the petition. An order granting a petition  
6 constitutes an amendment to the adopted ~~risk~~ premium as to the  
7 petitioners named in the order, and is subject to s. 627.782.

8 Section 12. Section 627.7831, Florida Statutes, is  
9 amended to read:

10 627.7831 ~~Title binders and~~ Commitments; charges;  
11 collection.--

12 (1) When a title insurance ~~binder or~~ a commitment to  
13 insure a title or risk is issued at the request of the insured  
14 or the insured's representative, or agent, or agency, a  
15 portion of the ~~risk~~ premium must be charged for the ~~binder or~~  
16 commitment when issued. The portion of the ~~risk~~ premium  
17 charged for the ~~binder or~~ commitment must be credited to the  
18 ~~risk~~ premium due upon issuance of the title insurance policy.

19 (2) The amount charged under subsection (1) must be  
20 collected no later than the date of the closing or 12 months  
21 after the date of the commitment ~~or binder~~, whichever occurs  
22 earlier, or another date agreed to in writing at the time of  
23 issuance of the ~~binder or~~ commitment.

24 (3) This section does not apply to a transaction  
25 involving a residential property.

26 Section 13. Section 627.784, Florida Statutes, is  
27 amended to read:

28 627.784 Casualty title insurance prohibited.--A title  
29 insurance policy or guarantee of title may not be issued  
30 without regard ~~with disregard~~ to the possible existence of  
31 adverse matters or defects of title.

1           Section 14. Section 627.7841, Florida Statutes, is  
2 amended to read:

3           627.7841 Insurance against adverse matters or defects  
4 in the title.--If a title insurer issuing a ~~binder,~~  
5 commitment, policy of title insurance, or guarantee of title  
6 upon an estate, lien, or interest in property located in this  
7 state through its officers, employees, ~~or agents,~~ or agencies  
8 disburses settlement or closing funds, the title insurer shall  
9 insure against the possible existence of adverse matters or  
10 defects in the title which are recorded during the period of  
11 time between the effective date of the ~~binder or~~ commitment  
12 and the date of recording of the document creating the estate  
13 or interest to be insured, except as to matters of which the  
14 insured has knowledge.

15           Section 15. Subsection (2) of section 627.7842,  
16 Florida Statutes, is amended to read:

17           627.7842 Policy exceptions.--

18           (2) The title insurer, ~~or agent,~~ or agency issuing the  
19 title policy may except from coverage the items specified in  
20 subsection (1) if the title insurer, ~~or agent,~~ or agency has  
21 knowledge of facts requiring the exceptions, notwithstanding  
22 the survey or affidavits, if the insurer, ~~or agent,~~ or agency  
23 discloses such facts to the proposed insured.

24           Section 16. Section 627.7845, Florida Statutes, is  
25 amended to read:

26           627.7845 Determination of insurability required;  
27 preservation of evidence of title search and examination.--

28           (1) A title insurer may not issue a title insurance  
29 ~~binder,~~ commitment, endorsement, title insurance policy, or  
30 guarantee of title until the title insurer has caused to be  
31 conducted a reasonable search and examination of the title and

1 of such other information as may be necessary, and has caused  
2 to be made a determination of insurability of title, including  
3 endorsement coverages, in accordance with sound underwriting  
4 practices.

5 (2) The title insurer shall cause the evidence of the  
6 reasonable search and examination of the title to be preserved  
7 and retained in its files or in the files of its title  
8 insurance agent or agency for a period of not less than 7  
9 years after the title insurance ~~binder~~, commitment, title  
10 insurance policy, or guarantee of title was issued. The title  
11 insurer or agent or agency must produce the evidence required  
12 to be maintained by this subsection at its offices upon the  
13 demand of the department. Instead of retaining the original  
14 evidence, the title insurer or the title insurance agent or  
15 agency may, in the regular course of business, establish a  
16 system under which all or part of the evidence is recorded,  
17 copied, or reproduced by any photographic, photostatic,  
18 microfilm, microcard, miniature photographic, or other process  
19 which accurately reproduces or forms a durable medium for  
20 reproducing the original.

21 (3) The title insurer or its agent or agency must  
22 maintain a record of the actual risk premium and related title  
23 service charges made for issuance of the policy and any  
24 endorsements in its files for a period of not less than 7  
25 years. The title insurer, ~~or agent~~, or agency must produce  
26 the record at its office upon demand of the department.

27 (4) This section does not apply to an insurer assuming  
28 no primary liability in a contract of reinsurance or to an  
29 insurer acting as a coinsurer if any other coinsuring insurer  
30 has complied with this section.

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1           Section 17. Subsection (3) of section 627.786, Florida  
2 Statutes, is amended to read:

3           627.786 Transaction of title insurance and any other  
4 kind of insurance prohibited.--

5           (3) Subsection (1) does not preclude a title insurer  
6 from providing instruments to any prospective insured, in the  
7 form and content approved by the department, under which the  
8 title insurer assumes liability for loss due to the fraud of,  
9 dishonesty of, misappropriation of funds by, or failure to  
10 comply with written closing instructions by, its contract  
11 agents, agencies,or approved attorneys in connection with a  
12 real property transaction for which the title insurer is to  
13 issue a title insurance policy ~~or guarantee of title.~~

14           Section 18. Section 627.791, Florida Statutes, is  
15 amended to read:

16           627.791 Penalties against title insurers for  
17 violations by persons or entities not licensed.--A title  
18 insurer is subject to the penalties in ss. 624.418(2) and  
19 624.4211 for any violation of a lawful order or rule of the  
20 department, or for any violation of this code, committed by:

21           (1) A person, firm, association, corporation,  
22 cooperative, joint-stock company, or other legal entity not  
23 licensed under this part when issuing and countersigning  
24 ~~binders, commitments~~ or, policies of title insurance, ~~or~~  
25 ~~guarantees of title~~ on behalf of the title insurer.

26           (2) An attorney when issuing and countersigning  
27 ~~binders, commitments~~ or, policies of title insurance, ~~or~~  
28 ~~guarantees of title~~ on behalf of the title insurer.

29           Section 19. Section 627.792, Florida Statutes, is  
30 amended to read:

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1           627.792 Liability of title insurers for defalcation by  
2 title insurance agents or agencies.--A title insurer is liable  
3 for the defalcation, conversion, or misappropriation by a  
4 licensed title insurance agent or agency of funds held in  
5 trust by the agent or agency pursuant to s. 626.8473. If the  
6 agent or agency is an agent or agency for licensed by two or  
7 more title insurers, any liability shall be borne by the title  
8 insurer upon which a title insurance ~~binder, commitment or,~~  
9 ~~policy, or title guarantee~~ was issued prior to the illegal  
10 act. If no ~~binder, commitment or, policy, or guarantee~~ was  
11 issued, each title insurer represented by the agent or agency  
12 at the time of the illegal act shares in the liability in the  
13 same proportion that the premium remitted to it by the agent  
14 or agency during the 1-year period before the illegal act  
15 bears to the total premium remitted to all title insurers by  
16 the agent or agency during the same time period.

17           Section 20. This act shall take effect July 1, 1999.

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LEGISLATIVE SUMMARY

Generally revises and clarifies provisions relating to  
title insurance agents, policies, premiums, rates,  
contracts, charges, and practices.