

1 A bill to be entitled
 2 An act relating to title insurance; amending s. 627.780,
 3 F.S.; specifying Office of Insurance Regulation approval
 4 of premium rather than Financial Services Commission
 5 adoption of premium; creating 627.7805, F.S.; requiring
 6 title insurers to make annual rate filings with the
 7 office; requiring the office to review rate filings for
 8 certain purposes; providing factors for review; providing
 9 standards for determining whether rates are excessive,
 10 inadequate, or unfairly discriminatory; authorizing the
 11 office to require insurers to provide information;
 12 providing requirements and procedures for approving or
 13 disapproving certain rates; providing for effect of rate
 14 disapprovals; providing methods for rate filings;
 15 providing a definition; providing for extensions of time
 16 for certain rate filings; authorizing the office to exempt
 17 certain insurers from rate filings or rate certification
 18 under certain circumstances; authorizing the office to
 19 order an insurer to discontinue issuing policies under
 20 certain circumstances; authorizing the commission to adopt
 21 rules; repealing s. 627.782, F.S., relating to adoption of
 22 rates; repealing s. 627.783, F.S., relating to rate
 23 deviations; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 627.780, Florida Statutes, is amended
 28 to read:

29 627.780 Illegal dealings in risk premium.--

30 (1) A person may not knowingly quote, charge, accept,
31 collect, or receive a premium for title insurance other than the
32 premium approved by the office ~~adopted by the commission~~.

33 (2) A title insurer may not knowingly accept, collect, or
34 receive any sum as premium for title insurance, if the title
35 insurance is not then provided or is not to be provided, subject
36 to acceptance of the risk, in due course, unless the title
37 insurer promptly enters the sum on its books of account as
38 premium collected in advance.

39 Section 2. Section 627.7805, Florida Statutes, is created
40 to read:

41 627.7805 Rate filings.--

42 (1) Each title insurer shall make an annual rate filing
43 with the office no later than 12 months after its previous
44 filing, demonstrating that the rate is actuarially sound. Rates
45 for the required filing shall include the charges for primary
46 title services and related title services as defined in s.
47 627.7711.

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

54 (a) The insurer's past and prospective loss experience
55 within and without this state.

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56 (b) The insurer's loss experience and prospective loss
57 experience under closing protection letters and policy
58 liabilities.

59 (c) A reasonable margin for underwriting profit and
60 contingencies, including contingent liability under s. 627.7865,
61 sufficient to allow insurers, agents, and agencies to earn a
62 rate of return on capital that will attract and retain adequate
63 capital investment in the title insurance business and maintain
64 an efficient title insurance delivery system.

65 (d) The insurer's past expenses and prospective expenses
66 for administration and handling of risks.

67 (e) The insurer's liability for defalcation.

68 (f) The degree of competition among insurers for the risk
69 insured.

70 (g)1. The investment income reasonably expected by the
71 insurer, consistent with the insurer's investment practices,
72 from investable premiums anticipated in the filing, plus any
73 other expected income from currently invested assets
74 representing the amount expected on unearned premium reserves
75 and loss reserves.

76 2. The commission may adopt rules using reasonable
77 techniques of actuarial science and economics to specify the
78 manner in which insurers shall calculate investment income
79 attributable to such classes of insurance written in this state
80 and the manner in which such investment income shall be used in
81 the calculation of insurance rates. Such manner shall
82 contemplate allowances for an underwriting profit factor and
83 full consideration of investment income that produce a

84 reasonable rate of return; however, investment income from
 85 invested surplus shall not be considered.

86 (h) The reasonableness of the judgment reflected in the
 87 filing.

88 (i) The dividends, savings, or unabsorbed premium deposits
 89 allowed or returned to policyholders, members, or subscribers in
 90 this state.

91 (j) The adequacy of loss reserves.

92 (k) The cost of reinsurance.

93 (l) Trend factors, including trends in actual losses per
 94 insured unit for the insurer making the filing.

95 (m) Conflagration and catastrophe hazards, if applicable.

96 (n) A reasonable margin for underwriting profit and
 97 contingencies.

98 (o) Other relevant factors that impact the frequency or
 99 severity of claims or expenses.

100 (3) After consideration of the rate factors provided in
 101 subsection (2), a rate may be found by the office to be
 102 excessive, inadequate, or unfairly discriminatory based upon the
 103 following standards:

104 (a) A rate shall be deemed excessive if:

105 1. The rate is likely to produce a profit from business in
 106 this state that is unreasonably high in relation to the risk
 107 involved in the class of business or if expenses are
 108 unreasonably high in relation to services rendered.

109 2. Among other things, the rate structure established by a
 110 stock insurance company provides for replenishment of surpluses

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111 from premiums when the replenishment is attributable to
112 investment losses.

113 (b) A rate shall be deemed inadequate:

114 1. If the rate is clearly insufficient, together with the
115 investment income attributable to such rate, to sustain
116 projected losses and expenses in the class of business to which
117 it applies.

118 2. As to the premium charged to a risk or group of risks,
119 if discounts or credits are allowed that exceed a reasonable
120 reflection of expense savings and reasonably expected loss
121 experience from the risk or group of risks.

122 (c) A rate shall be deemed unfairly discriminatory as to a
123 risk or group of risks if the application of premium discounts,
124 credits, or surcharges among such risks does not bear a
125 reasonable relationship to the expected loss and expense
126 experience among the various risks.

127 (4) In reviewing a rate filing, the office may require the
128 insurer to provide at the insurer's expense all information
129 necessary to evaluate the condition of the company and the
130 reasonableness of the filing according to the criteria
131 enumerated in this section.

132 (5) The office may at any time review a rate, rating
133 schedule, rating manual, or rate change; the pertinent records
134 of the insurer; and market conditions. If the office finds on a
135 preliminary basis that a rate may be excessive, inadequate, or
136 unfairly discriminatory, the office shall initiate proceedings
137 to disapprove the rate and shall so notify the insurer. However,
138 the office may not disapprove as excessive any rate for which it

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139 has given final approval or that has been deemed approved for a
140 period of 1 year after the effective date of the filing unless
141 the office finds that a material misrepresentation or material
142 error was made by the insurer or was contained in the filing.
143 Upon being so notified, the insurer or rating organization
144 shall, within 60 days, file with the office all information
145 that, in the belief of the insurer or organization, proves the
146 reasonableness, adequacy, and fairness of the rate or rate
147 change. The office shall issue a notice of intent to approve or
148 a notice of intent to disapprove pursuant to subsection (2)
149 within 90 days after receipt of the insurer's initial response.
150 In such instances and in any administrative proceeding relating
151 to the legality of the rate, the insurer or rating organization
152 has the burden of proving by a preponderance of the evidence
153 that the rate is not excessive, inadequate, or unfairly
154 discriminatory. After the office notifies an insurer that a rate
155 may be excessive, inadequate, or unfairly discriminatory, unless
156 the office withdraws the notification, the insurer shall not
157 alter the rate except to conform with the office's notice until
158 the earlier of 120 days after the date the notification was
159 provided or 180 days after the date of the implementation of the
160 rate. The office may, subject to chapter 120, disapprove without
161 the 60-day notification any rate increase filed by an insurer
162 within the prohibited time period or during the time that the
163 legality of the increased rate is being contested.

164 (6) If the office finds that a rate or rate change is
165 excessive, inadequate, or unfairly discriminatory, the office
166 shall issue an order of disapproval specifying that a new rate

167 or rate schedule that responds to the findings of the office be
 168 filed by the insurer. The office shall further order that
 169 premiums charged each policyholder constituting the portion of
 170 the rate above that which was actuarially justified be returned
 171 to such policyholder in the form of a credit or refund. If the
 172 office finds that an insurer's rate or rate change is
 173 inadequate, the new rate or rate schedule filed with the office
 174 in response to such a finding shall be applicable only to new or
 175 renewal business of the insurer written on or after the
 176 effective date of the responsive filing.

177 (7) A rate filing required by this section shall be
 178 satisfied by one of the following methods:

179 (a) A rate filing prepared by an actuary that contains
 180 documentation demonstrating that the rate is actuarially sound
 181 in accordance with the applicable rating laws and rules adopted
 182 by the commission.

183 (b) If no rate change is proposed, a filing that consists
 184 of a certification by an actuary that the rates are actuarially
 185 sound in accordance with applicable laws and rules adopted by
 186 the commission.

187
 188 As used in this subsection, the term "actuary" means an
 189 individual who is a member of the Society of Actuaries or the
 190 American Academy of Actuaries. The chief executive officer of
 191 the insurer shall review and sign the certification indicating
 192 his or her agreement with its conclusions.

193 (8) If, at the time a filing is required under this
 194 section, an insurer is in the process of completing a rate

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195 review, the insurer may apply to the office for an extension of
196 up to 30 days in which to make the filing. The request for
197 extension must be received by the office no later than the date
198 the filing is due.

199 (9) The office, after receiving a request to be exempted
200 from the provisions of this section before the filing is due,
201 may, for good cause due to insignificant numbers of policies in
202 force or insignificant premium volume, exempt a company from
203 filing rates or rate certification as required by this section.

204 (10) If an insurer fails to meet the filing requirements
205 of this section and does not submit the filing within 60 days
206 following the date the filing is due, the office may, in
207 addition to any other penalty authorized by law, order the
208 insurer to discontinue the issuance of policies for which the
209 required filing was not made until such time as the office
210 determines that the required filing is properly submitted.

211 (11) The commission may establish by rule procedures for
212 required filings.

213 Section 3. Sections 627.782 and 627.783, Florida Statutes,
214 are repealed.

215 Section 4. This act shall take effect January 1, 2008.