

By Senator Lawson

6-1478-07

1 A bill to be entitled
2 An act relating to title insurance rates;
3 amending s. 627.783, F.S.; authorizing title
4 insurers and rating organizations to petition
5 the Office of Insurance Regulation for specific
6 rate deviations or special coverage in addition
7 to adopted premiums; providing procedures for
8 the filing and review of petitions and related
9 forms; requiring insurers and rating
10 organizations to establish and use rates,
11 rating schedules, or rating manuals that will
12 allow a reasonable rate of return on premiums
13 written in this state; requiring that insurers
14 file such rates, rating schedules, and rating
15 manuals with the office according to certain
16 procedures; requiring the office to issue a
17 notice of intent to approve or disapprove a
18 filing within a specified period after the
19 office receives the filing; providing that a
20 filing is deemed approved if the office does
21 not issue the required notice within a
22 specified period; requiring the office to state
23 its reasons for disapproval with specificity;
24 requiring the office to review a petition to
25 determine if it is excessive, inadequate, or
26 unfairly discriminatory; requiring the office
27 to consider certain factors when reviewing a
28 petition; providing standards on which the
29 office may base a finding that a rate is
30 excessive, inadequate, or unfairly
31 discriminatory; requiring insurers to provide

1 the office with certain information upon the
2 office's request; authorizing the office to
3 review certain information at any time to
4 determine if a previously filed rate is
5 excessive, inadequate, or unfairly
6 discriminatory; providing procedures for
7 disapproval of such a rate; prohibiting the
8 office from disapproving certain rates as
9 excessive unless certain extenuating
10 circumstances exist; requiring that the office
11 give notice to the insurer if the office finds
12 on a preliminary basis that an existing rate is
13 excessive, inadequate, or unfairly
14 discriminatory; providing that the insurer may
15 submit certain information in support of such a
16 rate; prohibiting an insurer from altering such
17 a rate for a specified period after receiving
18 notice; requiring the office to issue an order
19 of disapproval if it finds that a rate is
20 excessive, inadequate, or unfairly
21 discriminatory; providing that an insurer may
22 demand arbitration of a rate instead of an
23 administrative hearing; providing requirements
24 and procedures for arbitration of rate filings;
25 requiring the office and the insurer to treat
26 the decision of the arbitrators as a final
27 ruling regarding the approval or disapproval of
28 a filing; providing for payment of arbitration
29 costs; requiring the office to adopt rules;
30 providing for a waiver of certain rights by the
31 insurer upon the inception of arbitration;

1 providing an exception to such waiver;
2 authorizing the Financial Services Commission
3 to adopt rules; providing an effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Subsection (1) of section 627.783, Florida
8 Statutes, is amended, and subsections (3) and (4) are added to
9 that section, to read:

10 627.783 Rate deviation.--

11 (1) A title insurer or rating organization may
12 petition the office for an order authorizing a specific
13 deviation from the adopted premium or for special coverage in
14 addition to the adopted premiums, and a title insurer or title
15 insurance agent may petition the office for an order
16 authorizing ~~and permitting~~ a specific deviation above the
17 reasonable charge for related title services rendered as
18 specified in s. 627.782(1). The petition ~~must~~ shall be sworn,
19 in writing, and ~~sworn to and shall~~ set forth allegations of
20 fact upon which the petitioner will rely, including the
21 petitioner's reasons for requesting the deviation. If
22 appropriate, any related form must be filed pursuant to s.
23 627.777 and reviewed concurrently with the petition. Any
24 authorized title insurer, agent, or agency may join in the
25 petition for ~~like~~ authority to deviate or may file a separate
26 petition praying for similar ~~like~~ authority or opposing the
27 deviation. The office shall rule on all such petitions
28 simultaneously. The rates and forms approved pursuant to this
29 section shall be available for an additional charge when a
30 title policy is provided.
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1 (3) As to all such petitions for deviations or special
2 coverage:

3 (a) Insurers or rating organizations shall establish
4 and use rates, rating schedules, or rating manuals that will
5 allow the insurer a reasonable rate of return on premiums
6 written in this state. Insurers and rating organizations must
7 file a copy of all rates, rating schedules, rating manuals,
8 and any changes thereto with the office using the following
9 procedure:

10 1. The filing must be made at least 90 days before the
11 proposed effective date and the filing may not be implemented
12 during the office's review of the filing, any resulting
13 proceeding, or any judicial review. The office shall finalize
14 its review by issuing a notice of intent to approve or a
15 notice of intent to disapprove within 90 days after receipt of
16 the filing. The notice of intent to approve and the notice of
17 intent to disapprove constitute agency action for purposes of
18 chapter 120. Requests for supporting information, requests for
19 mathematical or mechanical corrections, or notification to the
20 insurer by the office of its preliminary findings do not toll
21 the 90-day period during any such proceedings and subsequent
22 judicial review.

23 2. The rate shall be deemed approved if the office
24 does not issue a notice of intent to approve or a notice of
25 intent to disapprove within 90 days after receipt of the
26 filing. If the office issues a notice of intent to disapprove,
27 it must state with specificity its reasons for disapproval.

28 (b) Upon receiving a petition for deviation, the
29 office shall review it to determine if it is excessive,
30 inadequate, or unfairly discriminatory. In making that
31 determination, the office shall, in accordance with generally

1 accepted and reasonable actuarial techniques, consider the
2 factors specified in s. 627.782(2).

3 (c) After consideration of the rate factors described
4 in paragraph (b), the office may find a rate to be excessive,
5 inadequate, or unfairly discriminatory based upon the
6 following standards:

7 1. Rates shall be deemed excessive if they are likely
8 to produce a profit from businesses in this state which is
9 unreasonably high in relation to the risk involved in the
10 title business or if expenses are unreasonably high in
11 relation to services rendered.

12 2. Rates shall be deemed inadequate if they are
13 clearly insufficient, together with the investment income
14 attributable to them, to sustain projected losses and expenses
15 in the title of business to which they apply.

16 (d) When reviewing a rate filing, the office may
17 require the insurer to provide at the insurer's expense all
18 information necessary to evaluate the condition of the company
19 and the reasonableness of the filing according to the criteria
20 enumerated in this section.

21 (e) The office may at any time review a rate, rating
22 schedule, rating manual, rate change, pertinent records of the
23 insurer, or market conditions. If the office finds on a
24 preliminary basis that a rate may be excessive, inadequate, or
25 unfairly discriminatory, the office shall initiate proceedings
26 to disapprove the rate and shall immediately notify the
27 insurer. However, the office may not disapprove as excessive
28 any rate for which it has given final approval or which has
29 been deemed approved for a period of 1 year after the
30 effective date of the filing unless the office finds that a
31 material misrepresentation or material error was made by the

1 insurer or in the filing. Upon being so notified, the insurer
2 or rating organization shall, within 60 days, file with the
3 office all information that, in the belief of the insurer or
4 organization, proves the reasonableness, adequacy, and
5 fairness of the rate or rate change. The office shall issue a
6 notice of intent to approve or a notice of intent to
7 disapprove pursuant to the procedures of paragraph (a) within
8 90 days after receipt of the insurer's initial response. In
9 such instances and in any administrative proceeding relating
10 to the legality of the rate, the insurer or rating
11 organization has the burden of proof by a preponderance of the
12 evidence to show that the rate is not excessive, inadequate,
13 or unfairly discriminatory. After the office notifies an
14 insurer that a rate may be excessive, inadequate, or unfairly
15 discriminatory, unless the office withdraws the notification,
16 the insurer may not alter the rate except to conform with the
17 office's notice until the earlier of 120 days after the date
18 the notification was provided or 180 days after the date of
19 the implementation of the rate. The office may, subject to
20 chapter 120, disapprove without the 60-day notification any
21 rate increase filed by an insurer within the prohibited time
22 period or during the time that the legality of the increased
23 rate is being contested.

24 (f) If the office finds that a rate or rate change is
25 excessive, inadequate, or unfairly discriminatory, the office
26 shall issue an order of disapproval ordering the insurer to
27 file a new rate or rate schedule that responds to the findings
28 of the office. If the office finds that an insurer's rate or
29 rate change is inadequate, the new rate or rate schedule filed
30 with the office in response to such a finding applies only to
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1 new or renewal business of the insurer written on or after the
2 effective date of the responsive filing.

3 (g) After any action with respect to a rate filing
4 which constitutes agency action for purposes of chapter 120,
5 an insurer may, in lieu of demanding a hearing under s.
6 120.57, require arbitration of the rate filing. Arbitration
7 shall be conducted by a board of arbitrators consisting of an
8 arbitrator selected by the office, an arbitrator selected by
9 the insurer, and an arbitrator selected jointly by the other
10 two arbitrators. Each arbitrator must be certified by the
11 American Arbitration Association. A decision is valid only
12 upon the affirmative vote of at least two of the arbitrators.
13 An arbitrator may not be an employee of any insurance
14 regulator, regulatory body, or any insurer, regardless of
15 whether the employing insurer does business in this state. The
16 office and the insurer must treat the decision of the
17 arbitrators as the final ruling regarding the approval or
18 disapproval of a rate filing. Costs of arbitration shall be
19 paid by the insurer.

20 1. Arbitration under this subsection shall be
21 conducted pursuant to the procedures specified in ss. 682.06
22 and 682.10. Either party may apply to the circuit court to
23 vacate or modify the decision pursuant to s. 682.13 or s.
24 682.14. The office shall adopt rules for arbitration under
25 this subsection which may not be inconsistent with the
26 arbitration rules of the American Arbitration Association as
27 of January 1, 1996.

28 2. Upon initiation of the arbitration process, the
29 insurer waives all rights to challenge the action of the
30 office under chapter 120 or any other provision of law;
31 however, such rights are restored to the insurer if the

1 arbitrators fail to render a decision within 90 days after
2 initiation of the arbitration process.

3 (4) The Financial Services Commission may adopt rules
4 to administer this section. These rules shall protect the
5 interests of insureds, title insurers, title insurance agents,
6 and the public, and must be in substantial compliance with
7 policy and endorsement forms approved by the American Land
8 Title Association (ALTA) relating to title insurance.

9 Section 2. This act shall take effect July 1, 2007.

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SENATE SUMMARY

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