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1                   A bill to be entitled  
2           An act relating to title insurance; amending s. 627.783,  
3           F.S.; revising requirements, criteria, and procedures for  
4           and limitations on petitions for rate deviations or  
5           special coverage; providing for determinations of whether  
6           certain rates are excessive, inadequate, or unfairly  
7           discriminatory; providing requirements and procedures for  
8           approving or disapproving certain rates; providing for  
9           arbitration; providing for effect of arbitration;  
10          providing responsibilities of the Office of Insurance  
11          Regulation and insurers; authorizing the Financial  
12          Services Commission to adopt rules; providing an effective  
13          date.

14  
15   Be It Enacted by the Legislature of the State of Florida:

16  
17          Section 1.   Section 627.783, Florida Statutes, is amended  
18          to read:

19                 627.783   Rate deviation.--

20                 (1)   A title insurer or rating organization may petition  
21          the office for an order authorizing a specific deviation from  
22          the adopted premium, or for special coverage in addition to the  
23          adopted premium, and a title insurer or title insurance agent  
24          may petition the office for an order authorizing and permitting  
25          a specific deviation above the reasonable charge for related  
26          title services rendered specified in s. 627.782(1). The petition  
27          shall be in writing and sworn to and shall set forth allegations  
28          of fact upon which the petitioner will rely, including the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 petitioner's reasons for requesting the deviation. If  
30 appropriate, any related form shall be filed pursuant to s.  
31 627.777 and shall be reviewed concurrently with the petition.  
32 Any authorized title insurer, agent, or agency may join in the  
33 petition for like authority to deviate or may file a separate  
34 petition praying for like authority or opposing the deviation.  
35 The office shall rule on all such petitions simultaneously. The  
36 rates and forms approved pursuant to this section shall be  
37 available for an additional charge when a title policy or  
38 policies are provided.

39 (2) If, in the judgment of the office, the requested  
40 deviation is not justified, the office may enter an order  
41 denying the petition. An order granting a petition constitutes  
42 an amendment to the adopted premium as to the petitioners named  
43 in the order, and is subject to s. 627.782.

44 (3) As to all such petitions for deviations or special  
45 coverage:

46 (a) Insurers or rating organizations shall establish and  
47 use rates, rating schedules, or rating manuals to allow the  
48 insurer a reasonable rate of return on such deviations written  
49 in this state. A copy of rates, rating schedules, rating manuals  
50 and any changes to such rates, rating schedules, and rating  
51 manuals shall be filed with the office using the following  
52 procedure:

53 1. The filing shall be made at least 90 days before the  
54 proposed effective date, and the filing may not be implemented  
55 during the office's review of the filing, any proceeding, and  
56 judicial review. In such case, the office shall finalize its

57 review by issuance of a notice of intent to approve or a notice  
58 of intent to disapprove within 90 days after receipt of the  
59 filing. A notice of intent to approve and a notice of intent to  
60 disapprove constitute agency action for purposes of the  
61 Administrative Procedure Act. Requests for supporting  
62 information, requests for mathematical or mechanical  
63 corrections, or notification to the insurer by the office of its  
64 preliminary findings shall not toll the 90-day period during any  
65 such proceedings and subsequent judicial review. The rate shall  
66 be deemed approved if the office does not issue a notice of  
67 intent to approve or a notice of intent to disapprove within 90  
68 days after receipt of the filing. If the office issues a notice  
69 of intent to disapprove, the notice shall state with specificity  
70 the reasons for disapproval.

71 (b) Upon receiving a petition for deviation, the office  
72 shall review the petition to determine if the deviation is  
73 excessive, inadequate, or unfairly discriminatory. In making  
74 that determination, the office shall, in accordance with  
75 generally accepted and reasonable actuarial techniques, consider  
76 the factors specified in s. 627.782(2).

77 (c) After consideration of the rate factors provided in  
78 paragraph (b), a rate may be found by the office to be  
79 excessive, inadequate, or unfairly discriminatory based upon the  
80 following standards:

81 1. A rate shall be deemed excessive if the rate is likely  
82 to produce a profit from business in this state that is  
83 unreasonably high in relation to the risk involved in the title  
84 business or if expenses are unreasonably high in relation to

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85 services rendered.

86 2. A rate shall be deemed inadequate if the rate is  
87 clearly insufficient, together with the investment income  
88 attributable to the rate, to sustain projected losses and  
89 expenses in the title business to which they apply.

90 (d) In reviewing a rate filing, the office may require the  
91 insurer to provide at the insurer's expense all information  
92 necessary to evaluate the condition of the company and the  
93 reasonableness of the filing according to the criteria specified  
94 in this section.

95 (e) The office may at any time review a rate, rating  
96 schedule, rating manual, or rate change; the pertinent records  
97 of the insurer; and market conditions. If the office finds on a  
98 preliminary basis that a rate may be excessive, inadequate, or  
99 unfairly discriminatory, the office shall initiate proceedings  
100 to disapprove the rate and shall notify the insurer. However,  
101 the office may not disapprove any rate as excessive for which  
102 the office has given final approval or which has been deemed  
103 approved for a period of 1 year after the effective date of the  
104 filing unless the office finds that a material misrepresentation  
105 or material error was made by the insurer or in the filing. Upon  
106 being notified by the office, the insurer or rating organization  
107 shall, within 60 days, file with the office all information  
108 which, in the belief of the insurer or organization, proves the  
109 reasonableness, adequacy, and fairness of the rate or rate  
110 change. The office shall issue a notice of intent to approve or  
111 a notice of intent to disapprove pursuant to the procedures of  
112 paragraph (a) within 90 days after receipt of the insurer's

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113 initial response. In such instances and in any administrative  
114 proceeding relating to the legality of the rate, the insurer or  
115 rating organization has the burden of proving by a preponderance  
116 of the evidence that the rate is not excessive, inadequate, or  
117 unfairly discriminatory. After the office notifies an insurer  
118 that a rate may be excessive, inadequate, or unfairly  
119 discriminatory, unless the office withdraws the notification,  
120 the insurer shall not alter the rate except to conform with the  
121 office's notice until the earlier of 120 days after the date the  
122 notification was provided or 180 days after the date of the  
123 implementation of the rate. The office may, subject to chapter  
124 120, disapprove without the 60-day notification any rate  
125 increase filed by an insurer within the prohibited time period  
126 or during the time the legality of the increased rate is being  
127 contested.

128 (f) If the office finds that a rate or rate change is  
129 excessive, inadequate, or unfairly discriminatory, the office  
130 shall issue an order of disapproval specifying that a new rate  
131 or rate schedule which responds to the findings of the office be  
132 filed by the insurer. If the office finds that an insurer's rate  
133 or rate change is inadequate, the new rate or rate schedule  
134 filed with the office in response to such a finding shall be  
135 applicable only to new or renewal business of the insurer  
136 written on or after the effective date of the responsive filing.

137 (g) After any action with respect to a rate filing that  
138 constitutes agency action for purposes of the Administrative  
139 Procedure Act, an insurer may, in lieu of demanding a hearing  
140 under s. 120.57, require arbitration of the rate filing.

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141 Arbitration shall be conducted by a board of arbitrators  
142 consisting of an arbitrator selected by the office, an  
143 arbitrator selected by the insurer, and an arbitrator selected  
144 jointly by the other two arbitrators. Each arbitrator must be  
145 certified by the American Arbitration Association. A decision is  
146 valid only upon the affirmative vote of at least two of the  
147 arbitrators. No arbitrator may be an employee of any insurance  
148 regulator or regulatory body or of any insurer, regardless of  
149 whether or not the employing insurer does business in this  
150 state. The office and the insurer shall treat the decision of  
151 the arbitrators as the final approval of a rate filing. Costs of  
152 arbitration shall be paid by the insurer.

153 1. Arbitration under this subsection shall be conducted  
154 pursuant to the procedures specified in ss. 682.06-682.10.  
155 Either party may apply to the circuit court to vacate or modify  
156 the decision pursuant to s. 682.13 or s. 682.14. The office  
157 shall adopt rules for arbitration under this subsection, which  
158 rules may not be inconsistent with the arbitration rules of the  
159 American Arbitration Association as of January 1, 1996.

160 2. Upon initiation of the arbitration process, the insurer  
161 waives all rights to challenge the action of the office under  
162 the Administrative Procedure Act or any other provision of law;  
163 however, such rights are restored to the insurer if the  
164 arbitrators fail to render a decision within 90 days after  
165 initiation of the arbitration process

166 (4) The commission may adopt rules pursuant to ss.  
167 120.536(1) and 120.54 implementing the provisions of this  
168 section and to protect the interests of insureds, title

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169 | insurers, title insurance agents, and the public. These rules  
170 | shall be in substantial compliance with American Land Title  
171 | Association approved policy and endorsement forms relating to  
172 | title insurance.

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