

By Senator Fasano

11-00135B-08

20082540__

1 A bill to be entitled
2 An act relating to title insurance; creating s.
3 626.84202, F.S.; authorizing a title insurance agent or
4 agency to make reasonable charges for certain services;
5 prohibiting such charges from being part of the premium
6 or rate charged by the title insurer for the issuance
7 of the title insurance form, policy, commitment, or
8 contract issued in connection therewith; requiring that
9 the agent or agency annually file certain information
10 with the Department of Financial Services; requiring
11 that the department publish certain information;
12 defining the term "predatory pricing"; prohibiting the
13 practice of predatory pricing with respect to certain
14 services; amending s. 626.9541, F.S.; authorizing the
15 rebate or abatement of an attorney's fee for certain
16 professional services if such rebate or abatement does
17 not violate state law; amending s. 627.7711, F.S.;
18 expanding the definition of the term "premium" to
19 include certain endorsements, commitments, or other
20 contracts, as well as a formula by which the premium is
21 calculated; creating s. 627.7712, F.S.; authorizing a
22 title insurer to make reasonable charges for certain
23 services; prohibiting such charges from being part of
24 the rate charged by the title insurer for the issuance
25 of the title insurance form, policy, commitment, or
26 contract issued in connection therewith; requiring that
27 the agent or agency annually file certain information
28 with the department; requiring that the department
29 publish certain information; authorizing the department

11-00135B-08

20082540__

30 and the Office of Insurance Regulation to jointly
31 publish certain information; prohibiting the practice
32 of predatory pricing as defined by state law with
33 respect to certain services; amending s. 627.780, F.S.;
34 prohibiting a person from knowingly quoting, charging,
35 accepting, collecting, or receiving premium for title
36 insurance other than the premium approved by the
37 office; amending s. 627.782, F.S.; providing for the
38 approval of rates by the office; requiring that each
39 title insurer make an annual filing with the office on
40 or before a specified deadline demonstrating that a
41 rate is actuarially sound; providing that rates for the
42 required filing do not include certain charges;
43 providing methods by which an insurer may satisfy
44 filing requirements; requiring that the office review
45 filings and issue a notice of intent to approve or a
46 notice of intent to disapprove within a specified
47 period following the date on which the office receives
48 such filing; providing that such notice constitutes
49 agency action; providing that requests for additional
50 information do not toll the notice period during any
51 proceedings or judicial review involving the filing;
52 requiring that a rate be deemed approved under certain
53 circumstances; requiring that the office review each
54 filing to determine whether the filing is excessive,
55 inadequate, or unfairly discriminatory; requiring that
56 the office consider certain factors when making such
57 determination; providing standards upon which a finding
58 that a rate is excessive, inadequate, or unfairly

11-00135B-08

20082540__

59 | discriminatory may be based; authorizing the office to
60 | require an insurer to provide, at the insurer's
61 | expense, any additional information necessary to
62 | evaluate the condition of the company and the
63 | reasonableness of the filing; authorizing the office to
64 | review certain information at any time; providing
65 | procedures for instances in which the office finds that
66 | a rate might be excessive, inadequate, or unfairly
67 | discriminatory; providing that an insurer must prove by
68 | a preponderance of the evidence that a rate is not
69 | excessive, inadequate, or unfairly discriminatory;
70 | authorizing the office to disapprove certain rate
71 | increase without fulfilling notice requirements;
72 | requiring that the chief executive officer and chief
73 | actuary of a title insurer certify certain information
74 | when submitting a rate filing; providing that it is a
75 | violation of state law to knowingly make a false
76 | certification of such information; providing penalties;
77 | providing that the failure to provide such certificate
78 | results in a filing being disapproved without
79 | prejudice; authorizing an insurer to refile such a
80 | disapproved filing; authorizing an insurer to apply for
81 | an extension of the period for submission of a rate
82 | filing under certain circumstances; authorizing the
83 | office to exempt an insurer from filing rates or rate
84 | certifications under certain circumstances; authorizing
85 | the office to take certain actions if an insurer fails
86 | to meet filing requirements or untimely submits a
87 | filing; deleting a requirement that the commission

11-00135B-08

20082540__

88 adopt rules specifying the percentage of premium
89 required to be retained by the title insurer;
90 authorizing the Financial Services Commission to adopt
91 rules; repealing s. 627.783, F.S., relating to title
92 insurance rate deviation; providing an effective date.
93

94 Be It Enacted by the Legislature of the State of Florida:
95

96 Section 1. Section 626.84202, Florida Statutes, is created
97 to read:

98 626.84202 Charges for services.--

99 (1) A title insurance agent or agency may make a reasonable
100 charge for primary title services, title searches, or closing
101 services contracted for or performed. Any charges issued pursuant
102 to this section may not be a part of the premium or rate charged
103 by the title insurer for the issuance of the title insurance
104 form, policy, commitment, or contract issued in connection
105 therewith. The agent or agency must annually file with the
106 department the amount of each such charge together with related
107 information on a form adopted by the department. The department
108 shall publicize the information collected from agents or agencies
109 pursuant to this section on its website or otherwise in a manner
110 sufficient to apprise the title insurance-buying public of costs
111 for such services.

112 (2) Charges for services or components of services set
113 forth in subsection (1) must not constitute predatory pricing.
114 For the purposes of this section, "predatory pricing" means
115 charges associated with services as described in subsection (1)
116 which are set below cost or which sacrifice present revenues for

11-00135B-08

20082540__

117 the purpose of driving out or reducing competition in the title
118 insurance market for such services or related components with the
119 intent to recoup revenue losses through subsequently higher
120 prices or greater business volume.

121 Section 2. Paragraph (h) of subsection (1) of section
122 626.9541, Florida Statutes, is amended to read:

123 626.9541 Unfair methods of competition and unfair or
124 deceptive acts or practices defined.--

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

128 (h) Unlawful rebates.--

129 1. Except as otherwise expressly provided by law, or in an
130 applicable filing with the office, knowingly:

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

134 b. Paying, allowing, or giving, or offering to pay, allow,
135 or give, directly or indirectly, as inducement to such insurance
136 contract, any unlawful rebate of premiums payable on the
137 contract, any special favor or advantage in the dividends or
138 other benefits thereon, or any valuable consideration or
139 inducement whatever not specified in the contract;

140 c. Giving, selling, or purchasing, or offering to give,
141 sell, or purchase, as inducement to such insurance contract or in
142 connection therewith, any stocks, bonds, or other securities of
143 any insurance company or other corporation, association, or
144 partnership, or any dividends or profits accrued thereon, or

11-00135B-08

20082540__

145 anything of value whatsoever not specified in the insurance
146 contract.

147 2. Nothing in paragraph (g) or subparagraph 1. of this
148 paragraph shall be construed as including within the definition
149 of discrimination or unlawful rebates:

150 a. In the case of any contract of life insurance or life
151 annuity, paying bonuses to all policyholders or otherwise abating
152 their premiums in whole or in part out of surplus accumulated
153 from nonparticipating insurance; provided that any such bonuses
154 or abatement of premiums is fair and equitable to all
155 policyholders and for the best interests of the company and its
156 policyholders.

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

162 c. Readjustment of the rate of premium for a group
163 insurance policy based on the loss or expense thereunder, at the
164 end of the first or any subsequent policy year of insurance
165 thereunder, which may be made retroactive only for such policy
166 year.

167 d. Issuance of life insurance policies or annuity contracts
168 at rates less than the usual rates of premiums for such policies
169 or contracts, as group insurance or employee insurance as defined
170 in this code.

171 e. Issuing life or disability insurance policies on a
172 salary savings, bank draft, preauthorized check, payroll

11-00135B-08

20082540__

173 deduction, or other similar plan at a reduced rate reasonably
174 related to the savings made by the use of such plan.

175 3.a. No title insurer, or any member, employee, attorney,
176 agent, or agency thereof, shall pay, allow, or give, or offer to
177 pay, allow, or give, directly or indirectly, as inducement to
178 title insurance, or after such insurance has been effected, any
179 rebate or abatement of the premium or any other charge or fee, or
180 provide any special favor or advantage, or any monetary
181 consideration or inducement whatever.

182 b. Nothing in this subparagraph shall be construed as
183 prohibiting the payment of fees to attorneys at law duly licensed
184 to practice law in the courts of this state, for professional
185 services, or as prohibiting the payment of earned portions of the
186 premium to duly appointed agents or agencies who actually perform
187 services for the title insurer. Nothing in this subparagraph
188 shall be construed as prohibiting a rebate or abatement of an
189 attorney's fee charged for professional services, ~~or that portion~~
190 ~~of the premium that is not required to be retained by the insurer~~
191 ~~pursuant to s. 627.782(1),~~ or any other agent or agency charge or
192 fee to the person responsible for paying the premium, charge, or
193 fee if the agent or agency rebate or abatement does not violate
194 the provisions of s. 626.84202.

195 c. No insured named in a policy, or any other person
196 directly or indirectly connected with the transaction involving
197 the issuance of such policy, including, but not limited to, any
198 mortgage broker, real estate broker, builder, or attorney, any
199 employee, agent, agency, or representative thereof, or any other
200 person whatsoever, shall knowingly receive or accept, directly or
201 indirectly, any rebate or abatement of any portion of the title

11-00135B-08

20082540__

202 insurance premium or of any other charge or fee or any monetary
203 consideration or inducement whatsoever, except as set forth in
204 sub-subparagraph b.; provided, in no event shall any portion of
205 the attorney's fee, any portion of the premium that is not
206 required to be retained by the insurer pursuant to s. 627.782(1),
207 any agent charge or fee, or any other monetary consideration or
208 inducement be paid directly or indirectly for the referral of
209 title insurance business.

210 Section 3. Subsection (2) of section 627.7711, Florida
211 Statutes, is amended to read:

212 627.7711 Definitions.--As used in this part, the term:

213 (2) "Premium" means the charge, ~~as specified by rule of the~~
214 ~~commission,~~ that is made by a title insurer for a title insurance
215 policy, endorsement, commitment, or other contract for, including
216 ~~the charge for performance of primary title services by a title~~
217 ~~insurer or title insurance agent or agency,~~ and incurring the
218 risks incident to the such policy, endorsement, commitment, or
219 other contract under the several classifications of title
220 insurance contracts and forms, and upon which charge a premium
221 tax is paid under s. 624.509. As used in this part or in any
222 other law, with respect to title insurance, the word "premium"
223 may include a reasonable sales commission but may does not
224 include a commission or any reimbursement for primary title
225 services, a title search, or closing services, or a component
226 thereof performed by a title insurer, title insurance agent, or
227 title insurance agency. Premium shall be calculated by
228 multiplying the approved rate by the amount of the title
229 insurance limits provided, divided by 1,000.

11-00135B-08

20082540__

230 Section 4. Section 627.7712, Florida Statutes, is created
231 to read:

232 627.7712 Charges for services.--

233 (1) A title insurer may make a reasonable charge for
234 primary title services, title searches, or closing services
235 contracted for or performed. Any charges issued pursuant to this
236 section may not be a part of the premium or rate charged by the
237 title insurer for the issuance of the title insurance form,
238 policy, commitment, or contract issued in connection therewith.
239 The agent or agency must annually file with the department the
240 amount of each such charge, together with related information on
241 a form adopted by the department. The department shall publicize
242 the information collected from agents or agencies pursuant to
243 this section on its website or otherwise in a manner sufficient
244 to apprise the title-insurance-buying public of costs for such
245 services. The office and the department may jointly publicize
246 information collected pursuant to s. 626.84202 for the purposes
247 of facilitating the distribution of such information to the
248 public.

249 (2) Charges for services or components of services set
250 forth in subsection (1) must not constitute predatory pricing.
251 For purposes of this section, "predatory pricing" has the same
252 meaning as in s. 626.84202(2).

253 Section 5. Subsection (1) of section 627.780, Florida
254 Statutes, is amended to read:

255 627.780 Illegal dealings in premium.--

256 (1) A person may not knowingly quote, charge, accept,
257 collect, or receive a premium for title insurance other than the

11-00135B-08

20082540__

258 premium approved by the office ~~adopted by the commission~~, except
259 as provided in s. 626.9541(1)(h)3.b.

260 Section 6. Section 627.782, Florida Statutes, is amended to
261 read:

262 627.782 Approval ~~Adoption~~ of rates.--

263 (1) Each title insurer shall make an annual filing with the
264 Office of Insurance Regulation no later than 12 months after the
265 date on which the title insurer submitted its previous filing
266 which demonstrates that the rate is actuarially sound. Rates for
267 the required filing do not include the charges for primary
268 services, title searches, or closing services as defined in s.
269 627.7711.

270 (a) The filing requirements of this section must be
271 satisfied by one of the following methods:

272 1. A rate filing prepared by an actuary which contains
273 documentation demonstrating that the proposed rates are not
274 excessive, inadequate, or unfairly discriminatory pursuant to the
275 applicable rating laws or rules of the commission.

276 2. If no rate change is proposed, a filing consisting of a
277 certification by an actuary that the existing rate level produces
278 rates that are actuarially sound and not inadequate.

279 (b) The office shall finalize its review by issuing a
280 notice of intent to approve or a notice of intent to disapprove
281 within 90 days after the date on which it receives the filing.
282 The notice of intent to approve and the notice of intent to
283 disapprove constitute agency action for purposes of chapter 120.
284 Requests for supporting information, requests for mathematical or
285 mechanical corrections, or notification to the insurer by the
286 office of its preliminary findings do not toll the 90-day period

11-00135B-08

20082540__

287 during any such proceedings or subsequent judicial review. The
288 rate shall be deemed approved if the office does not issue a
289 notice of intent to approve or a notice of intent to disapprove
290 within 90 days after the date on which it receives the filing.

291 (c) Upon receiving a rate filing, the office shall review
292 the rate filing to determine if the rate is excessive,
293 inadequate, or unfairly discriminatory. In making such
294 determination, the office shall, in accordance with generally
295 accepted and reasonable actuarial principles and techniques,
296 consider the following factors:

297 1. Each title insurer's loss experience and prospective
298 loss experience under closing protection letters and policy
299 liabilities.

300 2. A reasonable margin for profit and contingencies,
301 including contingent liability under s. 627.7865, sufficient to
302 allow title insurers to earn a rate of return on their capital
303 which will attract and retain adequate capital investment in the
304 title insurance business.

305 3. Past expenses and prospective expenses for the
306 administration and handling of risks.

307 4. Liability for defalcation.

308 5. The degree of competition among insurers for the risk
309 insured.

310 6. Investment income reasonably expected by the insurer,
311 consistent with the insurer's investment practices, from
312 investable premiums anticipated in the filing, plus any other
313 expected income from currently invested assets representing the
314 amount expected on unearned premium reserves and loss reserves.

315 The commission may adopt rules using reasonable techniques of

11-00135B-08

20082540__

316 actuarial science and economics to specify the manner in which
317 insurers must calculate investment income attributable to such
318 classes of insurance written in this state and the manner in
319 which such investment income must be used in the calculation of
320 insurance rates. The manner of calculation shall contemplate
321 allowances for an underwriting profit factor and investment
322 income that produce a reasonable rate of return. However,
323 investment income from invested surplus may not be considered.

324 7. The reasonableness of the judgment reflected in the
325 filing.

326 8. Dividends, savings, or unabsorbed premium deposits
327 allowed or returned to Florida policyholders, members, or
328 subscribers.

329 9. The adequacy of loss reserves.

330 10. The cost of reinsurance.

331 11. Trend factors, including trends in actual losses per
332 insured unit for the insurer making the filing.

333 12. Other relevant factors that affect the frequency or
334 severity of claims or upon expenses.

335 (d) After consideration of the rate factors provided in
336 paragraph (a), a rate may be found by the office to be excessive,
337 inadequate, or unfairly discriminatory based upon the following
338 standards:

339 1. Rates shall be deemed excessive if they are likely to
340 produce a profit from Florida business which is unreasonably high
341 in relation to the risk involved in the class of business or if
342 expenses are unreasonably high in relation to services rendered.

343 2. Rates shall be deemed excessive if, among other things,
344 the rate structure established by a stock insurance company

11-00135B-08

20082540__

345 provides for the replenishment of surpluses from premiums and the
346 replenishment is necessitated by investment losses.

347 3. Rates shall be deemed inadequate if the rates and the
348 investment income attributable to such rates are clearly
349 insufficient to sustain projected losses and expenses in the
350 class of business to which they apply.

351 4. A rate shall be deemed inadequate as to the premium
352 charged to a risk or group of risks if discounts or credits that
353 exceed a reasonable reflection of expense savings and reasonably
354 expected loss experience from the risk or group of risks are
355 allowed.

356 5. A rate shall be deemed unfairly discriminatory as to a
357 risk or group of risks if the application of premium discounts,
358 credits, or surcharges among such risks does not bear a
359 reasonable relationship to the expected loss and expense
360 experience among the various risks.

361 (e) When reviewing a rate filing, the office may require
362 the insurer to provide at the insurer's expense any information
363 necessary to evaluate the condition of the company and the
364 reasonableness of the filing according to the provisions of this
365 section.

366 (f) The office may at any time review a rate, rating
367 schedule, rating manual, rate change, the pertinent records of
368 the insurer, or market conditions. If the office finds on a
369 preliminary basis that a rate might be excessive, inadequate, or
370 unfairly discriminatory, the office shall initiate proceedings to
371 disapprove the rate and shall notify the insurer. Upon being
372 notified, the insurer shall, within 60 days after the date on
373 which it receives such notice, file with the office all

11-00135B-08

20082540__

374 information that, in the belief of the insurer, proves the
375 reasonableness, adequacy, and fairness of the rate or rate
376 change. The office shall issue a notice of intent to approve or a
377 notice of intent to disapprove pursuant to the procedures of
378 subsection (3) within 90 days after the date on which it receives
379 the insurer's initial response. In such instances and in any
380 administrative proceeding relating to the legality of the rate,
381 the insurer or rating organization has the burden of proof to
382 show by a preponderance of the evidence that the rate is not
383 excessive, inadequate, or unfairly discriminatory. After the
384 office notifies an insurer that a rate may be excessive,
385 inadequate, or unfairly discriminatory, unless the office
386 withdraws the notification, the insurer may not alter the rate
387 except to conform with the office's notice until 120 days after
388 the date the notification was provided or 180 days after the date
389 of the implementation of the rate, whichever is earlier. The
390 office may, subject to chapter 120, disapprove without the
391 required 60-day notification, any rate increase filed by an
392 insurer within the prohibited time period or during the time that
393 the legality of the increased rate is being contested.

394 (g) When submitting a rate filing, the chief executive
395 officer or the chief financial officer of the title insurer and
396 the chief actuary of the title insurer must certify the following
397 information on a form approved by the commission, under oath and
398 subject to penalty of perjury:

399 1. The signing officer and actuary have reviewed the rate
400 filing;

401 2. Based on the knowledge of the signing officer and
402 actuary, the rate filing does not contain any untrue statement of

11-00135B-08

20082540__

403 a material fact or omit a material fact necessary to make the
404 statements not misleading, in light of the circumstances under
405 which such statements were made;

406 3. Based on the knowledge of the signing officer and
407 actuary, the information and other factors described in this
408 section, including, but not limited to, investment income,
409 present the basis of the rate filing in all material respects for
410 the periods presented in the filing; and

411 4. Based on the knowledge of the signing officer and
412 actuary, the rate filing reflects all premium savings that are
413 reasonably expected to result from legislative enactments and are
414 in accordance with generally accepted and reasonable actuarial
415 techniques.

416
417 A signing officer or actuary who knowingly makes a false
418 certification under this subsection commits a violation of s.
419 626.9541(1)(e) and is subject to penalties as prescribed in s.
420 626.9521. Failure to provide such certification by the officer
421 and actuary shall result in the rate filing being disapproved
422 without prejudice. Under such circumstances, the insurer or
423 rating organization may refile its rate filing with the required
424 certification. As used in this subsection, the term "actuary"
425 means an individual who is a member of the Society of Actuaries
426 or the American Academy of Actuaries.

427 (h) If, at the time a filing is required under this
428 section, an insurer is in the process of completing a rate
429 review, the insurer may apply to the office for an extension of
430 up to an additional 30 days to make the filing. The request for
431 an extension must be received by the office no later than the

11-00135B-08

20082540__

432 date on which the filing is due.

433 (i) After receiving a request to be exempted from the
434 provisions of this section before the filing is due, the office
435 may, due to insignificant numbers of policies in force or
436 insignificant premium volume, exempt a company from filing rates
437 or rate certifications as required by this section.

438 (j) If an insurer fails to meet the filing requirements of
439 this subsection and does not submit the filing within 60 days
440 after the date on which the filing is due, the office may, in
441 addition to any other penalty authorized by law, order the
442 insurer to discontinue the issuance of policies for which the
443 required filing was not made until such time that the office
444 determines that the required filing has been submitted properly.

445 ~~Subject to the rating provisions of this code, the commission~~
446 ~~must adopt a rule specifying the premium to be charged in this~~
447 ~~state by title insurers for the respective types of title~~
448 ~~insurance contracts and, for policies issued through agents or~~
449 ~~agencies, the percentage of such premium required to be retained~~
450 ~~by the title insurer which shall not be less than 30 percent.~~
451 ~~However, in a transaction subject to the Real Estate Settlement~~
452 ~~Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq., as amended,~~
453 ~~no portion of the premium attributable to providing a primary~~
454 ~~title service shall be paid to or retained by any person who does~~
455 ~~not actually perform or is not liable for the performance of such~~
456 ~~service.~~

457 ~~(2) In adopting premium rates, the commission must give due~~
458 ~~consideration to the following:~~

11-00135B-08

20082540__

459 ~~(a) The title insurers' loss experience and prospective~~
460 ~~loss experience under closing protection letters and policy~~
461 ~~liabilities.~~

462 ~~(b) A reasonable margin for underwriting profit and~~
463 ~~contingencies, including contingent liability under s. 627.7865,~~
464 ~~sufficient to allow title insurers, agents, and agencies to earn~~
465 ~~a rate of return on their capital that will attract and retain~~
466 ~~adequate capital investment in the title insurance business and~~
467 ~~maintain an efficient title insurance delivery system.~~

468 ~~(c) Past expenses and prospective expenses for~~
469 ~~administration and handling of risks.~~

470 ~~(d) Liability for defalcation.~~

471 ~~(e) Other relevant factors.~~

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

474 ~~(4) Rates may not be excessive, inadequate, or unfairly~~
475 ~~discriminatory.~~

476 (2)(5) The approved rate premium applies to each \$100 of
477 insurance issued to an insured.

478 (3)(6) The approved rate applies premium rates apply
479 throughout this state.

480 ~~(7) The commission shall, in accordance with the standards~~
481 ~~provided in subsection (2), review the premium as needed, but not~~
482 ~~less frequently than once every 3 years, and shall, based upon~~
483 ~~the review required by this subsection, revise the premium if the~~
484 ~~results of the review so warrant.~~

485 (4)(8) The commission may, by rule, require licensees under
486 this part to annually submit statistical information, including
487 loss and expense data, as the office ~~department~~ determines to be

11-00135B-08

20082540__

488 necessary to analyze premium rates, retention rates, and the
489 condition of the title insurance industry.

490 (5) The commission may establish procedures for the
491 required filings by rule.

492 Section 7. Section 627.783, Florida Statutes, is repealed.

493 Section 8. This act shall take effect January 1, 2009, and
494 applies to title insurance forms, contracts, commitments, or
495 policies issued or used on or after that date.