

1 A bill to be entitled
2 An act relating to title insurance; creating s. 626.8422,
3 F.S.; authorizing a title insurance agent or agency to
4 charge a reasonable fee for certain services; providing
5 that such charges are not part of the rate charged by the
6 title insurer; requiring that certain information
7 regarding each charge be filed with the Office of
8 Insurance Regulation; requiring that the office publish
9 such information by specified means; prohibiting charges
10 for certain services from being set below the cost to
11 provide such services; amending s. 626.9541, F.S.;
12 deleting certain portions of clarifying language related
13 to the payment of certain portions of premium; prohibiting
14 the payment of any portion of the premium as consideration
15 for the referral of title insurance business; amending s.
16 627.7711, F.S.; expanding the definition of "premium" to
17 include endorsements, commitments, or other contracts;
18 providing additional exceptions to the scope of the term
19 "premium"; providing a method of calculation of premium;
20 creating s. 627.7712, F.S.; authorizing a title insurance
21 agent or agency to charge a reasonable fee for certain
22 services; providing that such charges are not part of the
23 rate charged by the title insurer; requiring that certain
24 information regarding each charge be filed with the
25 office; requiring that the office publish such information
26 by specified means; prohibiting charges for certain
27 services from being set below the cost to provide such
28 services; amending s. 627.780, F.S.; prohibiting a person

29 | from knowingly quoting, charging, accepting, collecting,
30 | or receiving a premium for title insurance other than the
31 | premium approved by the office; amending s. 627.782, F.S.;
32 | providing for the approval of rates; requiring that each
33 | title insurer make an annual filing with the office on or
34 | before a specified deadline demonstrating that the rate
35 | for such insurance is actuarially sound; prohibiting rates
36 | for such filing from including certain charges,
37 | commission, or compensation; providing methods by which
38 | filing requirements may be satisfied; requiring that the
39 | office issue a notice of intent to approve or disapprove
40 | the filing on or before a specified deadline; providing
41 | that such notice constitutes agency action; providing that
42 | requests for supporting information, mathematical or
43 | mechanical corrections, or notification of the office's
44 | preliminary findings do not toll the deadline date;
45 | providing that a rate be deemed approved if the office
46 | does not issue the required notice within the specified
47 | period; requiring that the office review a rate filing to
48 | determine if the rate is excessive, inadequate, or
49 | unfairly discriminatory; requiring that the office
50 | consider certain factors and information when making such
51 | review; providing standards upon which a rate may be found
52 | excessive, inadequate, or unfairly discriminatory;
53 | authorizing the office to require an insurer to provide,
54 | at the insurer's expense, any information necessary to
55 | evaluate the condition of the company and reasonableness
56 | of the filing; authorizing the office to review certain

57 information at any time; requiring that the office
58 initiate proceedings to disapprove a rate and notify the
59 insurer if the office finds on a preliminary basis that a
60 rate is excessive, inadequate, or unfairly discriminatory;
61 requiring that an insurer, upon receipt of such notice
62 from the office, provide certain information within a
63 specified period; requiring that the office issue a notice
64 of intent to approve or a notice of intent to disapprove
65 within a specified period; providing that an insurer has
66 the burden of proof to show by a preponderance of the
67 evidence that a rate is not excessive, inadequate, or
68 unfairly discriminatory; prohibiting an insurer from
69 altering a rate after its receipt of notice from the
70 office that a rate may be excessive, inadequate, or
71 unfairly discriminatory for a specified period; providing
72 exceptions; authorizing the office to disapprove without
73 notice any rate increase filed by an insurer during the
74 prohibited period; requiring that certain individuals
75 affiliated with a title insurer certify specified
76 information on a form approved by the Financial Services
77 Commission when submitting a rate filing; providing that
78 it is a violation of state law for a certifying officer or
79 actuary to knowingly make a false certification; providing
80 that failure to provide such certification results in a
81 filing being disapproved without prejudice; authorizing an
82 insurer to refile a rate filing under such circumstances;
83 defining the term "actuary"; authorizing an insurer to
84 apply for an extension to make a filing under certain

85 | circumstances; authorizing the office to exempt a company
 86 | from filing rates or rate certifications under certain
 87 | circumstances; authorizing the office to order insurers
 88 | not meeting certain filing requirements to discontinue the
 89 | issuance of policies for which the required filing was not
 90 | made until such time that the office determines that the
 91 | required filing has been submitted properly; providing for
 92 | application of an approved rate; authorizing the
 93 | commission to require by rule that licensees submit
 94 | certain information determined by the office as necessary
 95 | to analyze premium rates, retention rates, or the
 96 | condition of the title insurance industry; authorizing the
 97 | commission to adopt rules; amending s. 627.7845, F.S.;
 98 | providing that an insurer is liable to the insured for
 99 | damages up to treble the amount of coverage under certain
 100 | conditions; repealing s. 627.783, F.S., relating to rate
 101 | deviation; providing for application of the act; providing
 102 | an effective date.

103 |
 104 | Be It Enacted by the Legislature of the State of Florida:

105 |
 106 | Section 1. Section 626.8422, Florida Statutes, is created
 107 | to read:

108 | 626.8422 Charges for services.--

109 | (1) A title insurance agent or agency may charge a
 110 | reasonable fee for primary title services, title searches, and
 111 | closing services or the components thereof actually performed by
 112 | the agent or agency. Any charges under this section do not

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113 constitute a part of the rate charged by the title insurer for
114 the issuance of the title insurance form, policy, commitment, or
115 contract issued in connection therewith. The agent or agency
116 must file with the office the amount of each such charge or
117 change to such charge, including the components thereof,
118 together with related information as required by the office on a
119 form adopted by the office. The office shall publish the
120 information collected from agents or agencies pursuant to this
121 section via the Internet or otherwise as the office deems
122 sufficient to apprise the public of costs for these services
123 among the various agents or agencies.

124 (2) Charges for the services or components of services
125 described in subsection (1) set by the agent or agency may not
126 be set below the cost to provide such services.

127 Section 2. Paragraph (h) of subsection (1) of section
128 626.9541, Florida Statutes, is amended to read:

129 626.9541 Unfair methods of competition and unfair or
130 deceptive acts or practices defined.--

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

134 (h) *Unlawful rebates*.--

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

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

140 b. Paying, allowing, or giving, or offering to pay, allow,

141 or give, directly or indirectly, as inducement to such insurance
 142 contract, any unlawful rebate of premiums payable on the
 143 contract, any special favor or advantage in the dividends or
 144 other benefits thereon, or any valuable consideration or
 145 inducement whatever not specified in the contract; or

146 c. Giving, selling, or purchasing, or offering to give,
 147 sell, or purchase, as inducement to such insurance contract or
 148 in connection therewith, any stocks, bonds, or other securities
 149 of any insurance company or other corporation, association, or
 150 partnership, or any dividends or profits accrued thereon, or
 151 anything of value whatsoever not specified in the insurance
 152 contract.

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

156 a. In the case of any contract of life insurance or life
 157 annuity, paying bonuses to all policyholders or otherwise
 158 abating their premiums in whole or in part out of surplus
 159 accumulated from nonparticipating insurance; provided that any
 160 such bonuses or abatement of premiums is fair and equitable to
 161 all policyholders and for the best interests of the company and
 162 its policyholders.

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

168 c. Readjustment of the rate of premium for a group

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169 insurance policy based on the loss or expense thereunder, at the
170 end of the first or any subsequent policy year of insurance
171 thereunder, which may be made retroactive only for such policy
172 year.

173 d. Issuance of life insurance policies or annuity
174 contracts at rates less than the usual rates of premiums for
175 such policies or contracts, as group insurance or employee
176 insurance as defined in this code.

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

181 3.a. No title insurer, or any member, employee, attorney,
182 agent, or agency thereof, shall pay, allow, or give, or offer to
183 pay, allow, or give, directly or indirectly, as inducement to
184 title insurance, or after such insurance has been effected, any
185 rebate or abatement of the premium or any other charge or fee,
186 or provide any special favor or advantage, or any monetary
187 consideration or inducement whatever.

188 b. Nothing in this subparagraph shall be construed as
189 prohibiting the payment of fees to attorneys at law, duly
190 licensed to practice law in the courts of this state, for
191 professional services, ~~or as prohibiting the payment of earned~~
192 ~~portions of the premium to duly appointed agents or agencies who~~
193 ~~actually perform services for the title insurer.~~ Nothing in this
194 subparagraph shall be construed as prohibiting a rebate or
195 abatement of an attorney's fee charged for professional
196 services, ~~or that portion of the premium that is not required to~~

197 ~~be retained by the insurer pursuant to s. 627.782(1),~~ or any
 198 other agent charge or fee to the person responsible for paying
 199 the premium, charge, or fee.

200 c. No insured named in a policy, or any other person
 201 directly or indirectly connected with the transaction involving
 202 the issuance of such policy, including, but not limited to, any
 203 mortgage broker, real estate broker, builder, or attorney, any
 204 employee, agent, agency, or representative thereof, or any other
 205 person whatsoever, shall knowingly receive or accept, directly
 206 or indirectly, any rebate or abatement of any portion of the
 207 title insurance premium or of any other charge or fee or any
 208 monetary consideration or inducement whatsoever, except as set
 209 forth in sub-subparagraph b.; provided, in no event shall any
 210 portion of the attorney's fee, any portion of the premium ~~that~~
 211 ~~is not required to be retained by the insurer pursuant to s.~~
 212 ~~627.782(1),~~ any agent charge or fee, or any other monetary
 213 consideration or inducement be paid directly or indirectly for
 214 the referral of title insurance business.

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

217 627.7711 Definitions.--As used in this part, the term:

218 (2) "Premium" means the charge, ~~as specified by rule of~~
 219 ~~the commission, that is made by a title insurer for a title~~
 220 insurance policy, endorsement, commitment, or other contract for
 221 ~~including the charge for performance of primary title services~~
 222 ~~by a title insurer or title insurance agent or agency, and~~
 223 incurring the risks incident to the ~~such~~ policy, endorsement,
 224 commitment, or other contract under the several classifications

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225 of title insurance contracts and forms, and upon which charge a
226 premium tax is paid under s. 624.509. As used in this part or in
227 any other law, with respect to title insurance, the word
228 "premium" does not include a commission or any reimbursement for
229 primary title services, title searches, closing services, or any
230 component thereof performed by a title insurer, title insurance
231 agent, or agency. The premium shall be calculated by multiplying
232 the approved rate by each \$1,000 of title insurance limits
233 provided.

234 Section 4. Section 627.7712, Florida Statutes, is created
235 to read:

236 627.7712 Charges for services.--

237 (1) A title insurance agent or agency may charge a
238 reasonable fee for primary title services, title searches, and
239 closing services or the components thereof actually performed by
240 the agent or agency. Any charges under this section do not
241 constitute a part of the rate charged by the title insurer for
242 the issuance of the title insurance form, policy, commitment, or
243 contract issued in connection therewith. The agent or agency
244 must file with the office the amount of each such charge or
245 change to such charge, including the components thereof,
246 together with related information as required by the office on a
247 form adopted by the office. The office shall publish the
248 information collected from agents or agencies pursuant to this
249 section via the Internet or otherwise as the office deems
250 sufficient to apprise the public of costs for these services
251 among the various agents or agencies.

252 (2) Charges for the services or components of services

253 described in subsection (1) set by the agent or agency may not
 254 be set below the cost to provide such services.

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

257 627.780 Illegal dealings in premium.--

258 (1) A person may not knowingly quote, charge, accept,
 259 collect, or receive a premium for title insurance other than the
 260 premium approved by the office ~~adopted by the commission~~, except
 261 as provided in s. 626.9541(1)(h)3.b.

262 Section 6. Section 627.782, Florida Statutes, is amended
 263 to read:

264 627.782 Approval ~~Adoption~~ of rates.--

265 (1) Each title insurer shall make an annual filing with
 266 the office no later than 12 months after the date of that
 267 insurer's previous filing which demonstrates that the rate is
 268 actuarially sound. Rates for the required filing may not include
 269 any charge for primary title services, closing services, or
 270 title searches as defined in s. 627.7711 or any commission or
 271 other compensation made to title agents or agencies.

272 (a) The filing requirements of this section shall be
 273 satisfied by one of the following methods:

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

278 2. If no rate change is proposed, a filing consisting of a
 279 certification by an actuary that the existing rate is
 280 actuarially sound and not excessive, inadequate, or unfairly

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281 discriminatory.

282 (b) The office shall finalize its review by issuing a
283 notice of intent to approve or a notice of intent to disapprove
284 within 90 days after the date of its receipt of the filing. The
285 notice of intent to approve and the notice of intent to
286 disapprove constitute agency action for purposes of chapter 120.
287 Requests for supporting information, requests for mathematical
288 or mechanical corrections, or notification to the insurer by the
289 office of its preliminary findings do not toll the 90-day period
290 during any such proceeding. The rate shall be deemed approved if
291 the office does not issue a notice of intent to approve or a
292 notice of intent to disapprove within 90 days after the date of
293 its receipt of the filing.

294 (c) Upon receipt of a rate filing, the office shall review
295 the rate filing to determine if the rate is excessive,
296 inadequate, or unfairly discriminatory. The office shall, in
297 accordance with generally accepted and reasonable actuarial
298 principles and techniques, consider the following factors when
299 making such determination:

300 1. Each title insurer's loss experience and prospective
301 loss experience within and without this state under closing
302 protection letters, policies, endorsements, commitments, and
303 other contracts and policy liabilities.

304 2. A reasonable margin for profit and contingencies,
305 including contingent liability under s. 627.7865, sufficient to
306 allow title insurers to earn a rate of return on their capital
307 which will attract and retain adequate capital investment in the
308 title insurance business and maintain an efficient title

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309 insurance delivery system.

310 3. Past expenses and prospective expenses for the
311 administration and handling of risks.

312 4. Liability for defalcation.

313 5. The degree of competition among insurers for the risk
314 insured.

315 6. Investment income reasonably expected by the insurer,
316 consistent with the insurer's investment practices, from
317 premiums anticipated in the filing, plus any other expected
318 income from currently invested assets representing the amount
319 expected on unearned premium reserves and loss reserves. The
320 commission may adopt rules using reasonable techniques of
321 actuarial science and economics to specify the manner in which
322 insurers must calculate investment income attributable to such
323 classes of insurance written in this state and the manner in
324 which such investment income must be used in the calculation of
325 insurance rates. The manner of calculation shall contemplate
326 allowances for a profit factor and investment income that
327 produce a reasonable rate of return; however, investment income
328 from invested surplus must not be considered.

329 7. The reasonableness of the judgment reflected in the
330 filing.

331 8. Dividends, savings, or unabsorbed premium deposits
332 allowed or returned to Florida policyholders, members, or
333 subscribers.

334 9. The adequacy of loss reserves.

335 10. The cost of reinsurance.

336 11. Trend factors, including trends in actual losses per

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337 insured unit for the insurer making the filing.

338 12. Other relevant factors that affect the frequency or
339 severity of claims or expenses.

340 (d) After consideration of the rate factors provided in
341 paragraph (c), a rate may be found by the office to be
342 excessive, inadequate, or unfairly discriminatory based upon the
343 following standards:

344 1. Rates shall be deemed excessive if they are likely to
345 produce a profit from Florida business which is unreasonably
346 high in relation to the risk involved in the class of business
347 or if expenses are unreasonably high in relation to services
348 rendered.

349 2. Rates shall be deemed excessive if, among other things,
350 the rate structure established by a title insurer provides for
351 replenishment of surpluses from premiums if the replenishment is
352 necessitated by investment losses.

353 3. Rates shall be deemed inadequate if the rates and the
354 investment income attributable to them are clearly insufficient
355 to sustain projected losses and expenses in the class of
356 business to which they apply.

357 (e) In reviewing a rate filing, the office may require the
358 insurer to provide, at the insurer's expense, all information
359 necessary to evaluate the condition of the company and the
360 reasonableness of the filing according to the criteria
361 enumerated in this section.

362 (f) The office may at any time review a rate, rating
363 schedule, rating manual, or rate change; the pertinent records
364 of the insurer; and market conditions. If the office finds on a

365 preliminary basis that a rate may be excessive, inadequate, or
366 unfairly discriminatory, the office shall initiate proceedings
367 to disapprove the rate and shall notify the insurer. Upon being
368 notified, the insurer shall, within 60 days, file with the
369 office all information that, in the belief of the insurer,
370 proves the reasonableness, adequacy, and fairness of the rate or
371 rate change. The office shall issue a notice of intent to
372 approve or a notice of intent to disapprove pursuant to the
373 procedures of paragraph (b) within 90 days after the date of its
374 receipt of the insurer's initial response. In such instances and
375 in any administrative proceeding relating to the legality of the
376 rate, the insurer has the burden of proof to show by a
377 preponderance of the evidence that the rate is not excessive,
378 inadequate, or unfairly discriminatory. After the office
379 notifies an insurer that a rate may be excessive, inadequate, or
380 unfairly discriminatory, unless the office withdraws the
381 notification, the insurer may not alter the rate except to
382 conform with the office's notice until the earlier of 120 days
383 after the date the notification was provided or 180 days after
384 the date of the implementation of the rate. The office may,
385 subject to chapter 120, disapprove without the required 60-day
386 notification any rate increase filed by an insurer within the
387 prohibited period or during the time that the legality of the
388 increased rate is being contested.

389 (g) When submitting a rate filing, the chief executive
390 officer or the chief financial officer of the title insurer and
391 the chief actuary of the title insurer must certify the
392 following information on a form approved by the commission,

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393 under oath, and subject to penalty of perjury:

394 1. The signing officer and actuary have reviewed the rate
395 filing;

396 2. Based on the knowledge of the signing officer and
397 actuary, the rate filing does not contain any untrue statement
398 of a material fact or omit a material fact necessary to make the
399 statements not misleading, in light of the circumstances under
400 which such statements were made;

401 3. Based on the knowledge of the signing officer and
402 actuary, the information and other factors described in this
403 section, including, but not limited to, investment income,
404 present the basis of the rate filing in all material respects
405 for the periods presented in the filing; and

406 4. Based on the knowledge of the signing officer and
407 actuary, the rate filing reflects all premium savings that are
408 reasonably expected to result from legislative enactments and
409 are in accordance with generally accepted and reasonable
410 actuarial techniques.

411
412 A signing officer or actuary who knowingly makes a false
413 certification under this subsection commits a violation of s.
414 626.9541(1)(e) and is subject to the penalties prescribed in s.
415 626.9521. Failure to provide such certification by the officer
416 and actuary shall result in the rate filing being disapproved
417 without prejudice. Under such circumstances, the insurer or
418 rating organization may refile its rate filing with the required
419 certification. As used in this paragraph, the term "actuary"
420 means an individual who is a member of the Casualty Actuary

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421 Society or the American Academy of Actuaries.

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

428 (i) After receiving a request to be exempted from the
429 provisions of this section before the filing is due, the office
430 may, due to insignificant numbers of policies in force or
431 insignificant premium volume, exempt a company from filing rates
432 or rate certification as required by this section.

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

440 ~~(1) Subject to the rating provisions of this code, the~~
441 ~~commission must adopt a rule specifying the premium to be~~
442 ~~charged in this state by title insurers for the respective types~~
443 ~~of title insurance contracts and, for policies issued through~~
444 ~~agents or agencies, the percentage of such premium required to~~
445 ~~be retained by the title insurer which shall not be less than 30~~
446 ~~percent. However, in a transaction subject to the Real Estate~~
447 ~~Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq.,~~
448 ~~as amended, no portion of the premium attributable to providing~~

449 ~~a primary title service shall be paid to or retained by any~~
 450 ~~person who does not actually perform or is not liable for the~~
 451 ~~performance of such service.~~

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

454 ~~(a) The title insurers' loss experience and prospective~~
 455 ~~loss experience under closing protection letters and policy~~
 456 ~~liabilities.~~

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

463 ~~(c) Past expenses and prospective expenses for~~
 464 ~~administration and handling of risks.~~

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

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

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

469 ~~(4) Rates may not be excessive, inadequate, or unfairly~~
 470 ~~discriminatory.~~

471 ~~(2)~~(5) The approved rate ~~premium~~ applies to each \$100 of
 472 insurance issued to an insured.

473 ~~(3)~~(6) The approved rate applies ~~premium rates~~ apply
 474 throughout this state.

475 ~~(7) The commission shall, in accordance with the standards~~
 476 ~~provided in subsection (2), review the premium as needed, but~~

477 ~~not less frequently than once every 3 years, and shall, based~~
 478 ~~upon the review required by this subsection, revise the premium~~
 479 ~~if the results of the review so warrant.~~

480 (4)~~(8)~~ The commission may, by rule, require licensees
 481 under this part to annually submit statistical information,
 482 including loss and expense data, as the office ~~department~~
 483 determines to be necessary to analyze premium rates, retention
 484 rates, and the condition of the title insurance industry.

485 (5) The commission may establish procedures for the
 486 required filings by rule.

487 Section 7. Subsection (1) of section 627.7845, Florida
 488 Statutes, is amended to read:

489 627.7845 Determination of insurability required;
 490 preservation of evidence of title search and examination.--

491 (1) A title insurer may not issue a title insurance
 492 commitment, endorsement, or title insurance policy until the
 493 title insurer has caused to be made a determination of
 494 insurability based upon the evaluation of a reasonable title
 495 search or a search of the records of a Uniform Commercial Code
 496 filing office, as applicable, has examined such other
 497 information as may be necessary, and has caused to be made a
 498 determination of insurability of title or the existence,
 499 attachments, perfection, and priority of a Uniform Commercial
 500 Code security interest, including endorsement coverages, in
 501 accordance with sound underwriting practices. If an insurer or
 502 its agent is negligent in performing the activities required in
 503 this subsection, the insurer is liable to the insured for
 504 damages up to three times the amount of coverage.

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505 | Section 8. Section 627.783, Florida Statutes, is repealed.

506 | Section 9. This act shall take effect July 1, 2009, and
507 | applies to title insurance forms, contracts, commitments, or
508 | policies issued on or after that date.