

By Senator Bennett

21-00493-09

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

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30 provide such services; amending s. 627.780, F.S.;

31 prohibiting a person from knowingly quoting, charging,

32 accepting, collecting, or receiving a premium for

33 title insurance other than the premium approved by the

34 office; amending s. 627.782, F.S.; providing for the

35 approval of rates; requiring that each title insurer

36 make an annual filing with the office on or before a

37 specified deadline demonstrating that the rate for

38 such insurance is actuarially sound; prohibiting rates

39 for such filing from including certain charges,

40 commission, or compensation; providing methods by

41 which filing requirements may be satisfied; requiring

42 that the office issue a notice of intent to approve or

43 disapprove the filing on or before a specified

44 deadline; providing that such notice constitutes

45 agency action; providing that requests for supporting

46 information, mathematical or mechanical corrections,

47 or notification of the office's preliminary findings

48 do not toll the deadline date; providing that a rate

49 be deemed approved if the office does not issue the

50 required notice within the specified period; requiring

51 that the office review a rate filing to determine if

52 the rate is excessive, inadequate, or unfairly

53 discriminatory; requiring that the office consider

54 certain factors and information when making such

55 review; providing standards upon which a rate may be

56 found excessive, inadequate, or unfairly

57 discriminatory; authorizing the office to require an

58 insurer to provide, at the insurer's expense, any

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

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

111
112 Be It Enacted by the Legislature of the State of Florida:

113
114 Section 1. Section 626.8422, Florida Statutes, is created
115 to read:

116 626.8422 Charges for services.-

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117 (1) A title insurance agent or agency may charge a
118 reasonable fee for primary title services, title searches, and
119 closing services or the components thereof actually performed by
120 the agent or agency. Any charges under this section do not
121 constitute a part of the rate charged by the title insurer for
122 the issuance of the title insurance form, policy, commitment, or
123 contract issued in connection therewith. The agent or agency
124 must file with the office the amount of each such charge or
125 change to such charge, including the components thereof,
126 together with related information as required by the office on a
127 form adopted by the office. The office shall publish the
128 information collected from agents or agencies pursuant to this
129 section via the Internet or otherwise as the office deems
130 sufficient to apprise the public of costs for these services
131 among the various agents or agencies.

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

135 Section 2. Paragraph (h) of subsection (1) of section
136 626.9541, Florida Statutes, is amended to read:

137 626.9541 Unfair methods of competition and unfair or
138 deceptive acts or practices defined.—

139 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
140 ACTS.—The following are defined as unfair methods of competition
141 and unfair or deceptive acts or practices:

142 (h) *Unlawful rebates.*—

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

145 a. Permitting, or offering to make, or making, any contract

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146 or agreement as to such contract other than as plainly expressed
147 in the insurance contract issued thereon;

148 b. Paying, allowing, or giving, or offering to pay, allow,
149 or give, directly or indirectly, as inducement to such insurance
150 contract, any unlawful rebate of premiums payable on the
151 contract, any special favor or advantage in the dividends or
152 other benefits thereon, or any valuable consideration or
153 inducement whatever not specified in the contract;

154 c. Giving, selling, or purchasing, or offering to give,
155 sell, or purchase, as inducement to such insurance contract or
156 in connection therewith, any stocks, bonds, or other securities
157 of any insurance company or other corporation, association, or
158 partnership, or any dividends or profits accrued thereon, or
159 anything of value whatsoever not specified in the insurance
160 contract.

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

164 a. In the case of any contract of life insurance or life
165 annuity, paying bonuses to all policyholders or otherwise
166 abating their premiums in whole or in part out of surplus
167 accumulated from nonparticipating insurance; provided that any
168 such bonuses or abatement of premiums is fair and equitable to
169 all policyholders and for the best interests of the company and
170 its policyholders.

171 b. In the case of life insurance policies issued on the
172 industrial debit plan, making allowance to policyholders who
173 have continuously for a specified period made premium payments
174 directly to an office of the insurer in an amount which fairly

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175 represents the saving in collection expenses.

176 c. Readjustment of the rate of premium for a group
177 insurance policy based on the loss or expense thereunder, at the
178 end of the first or any subsequent policy year of insurance
179 thereunder, which may be made retroactive only for such policy
180 year.

181 d. Issuance of life insurance policies or annuity contracts
182 at rates less than the usual rates of premiums for such policies
183 or contracts, as group insurance or employee insurance as
184 defined in this code.

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

189 3.a. No title insurer, or any member, employee, attorney,
190 agent, or agency thereof, shall pay, allow, or give, or offer to
191 pay, allow, or give, directly or indirectly, as inducement to
192 title insurance, or after such insurance has been effected, any
193 rebate or abatement of the premium or any other charge or fee,
194 or provide any special favor or advantage, or any monetary
195 consideration or inducement whatever.

196 b. Nothing in this subparagraph shall be construed as
197 prohibiting the payment of fees to attorneys at law, duly
198 licensed to practice law in the courts of this state, for
199 professional services, ~~or as prohibiting the payment of earned~~
200 ~~portions of the premium to duly appointed agents or agencies who~~
201 ~~actually perform services for the title insurer.~~ Nothing in this
202 subparagraph shall be construed as prohibiting a rebate or
203 abatement of an attorney's fee charged for professional

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204 ~~services, or that portion of the premium that is not required to~~
205 ~~be retained by the insurer pursuant to s. 627.782(1),~~ or any
206 other agent charge or fee to the person responsible for paying
207 the premium, charge, or fee.

208 c. No insured named in a policy, or any other person
209 directly or indirectly connected with the transaction involving
210 the issuance of such policy, including, but not limited to, any
211 mortgage broker, real estate broker, builder, or attorney, any
212 employee, agent, agency, or representative thereof, or any other
213 person whatsoever, shall knowingly receive or accept, directly
214 or indirectly, any rebate or abatement of any portion of the
215 title insurance premium or of any other charge or fee or any
216 monetary consideration or inducement whatsoever, except as set
217 forth in sub-subparagraph b.; provided, in no event shall any
218 portion of the attorney's fee, any portion of the premium ~~that~~
219 ~~is not required to be retained by the insurer pursuant to s.~~
220 ~~627.782(1),~~ any agent charge or fee, or any other monetary
221 consideration or inducement be paid directly or indirectly for
222 the referral of title insurance business.

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

225 627.7711 Definitions.—As used in this part, the term:

226 (2) "Premium" means the charge, ~~as specified by rule of the~~
227 ~~commission, that is~~ made by a title insurer for a title
228 insurance policy, endorsement, commitment, or other contract for
229 ~~including the charge for performance of primary title services~~
230 ~~by a title insurer or title insurance agent or agency, and~~
231 incurring the risks incident to the such policy, endorsement,
232 commitment, or other contract under the several classifications

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

242 Section 4. Section 627.7712, Florida Statutes, is created
243 to read:

244 627.7712 Charges for services.-

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

260 (2) Charges for the services or components of services
261 described in subsection (1) set by the agent or agency may not

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262 be set below the cost to provide such services.

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

265 627.780 Illegal dealings in premium.—

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

270 Section 6. Section 627.782, Florida Statutes, is amended to
271 read:

272 627.782 Approval ~~Adoption~~ of rates.—

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

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

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

286 2. If no rate change is proposed, a filing consisting of a
287 certification by an actuary that the existing rate is
288 actuarially sound and not excessive, inadequate, or unfairly
289 discriminatory.

290 (b) The office shall finalize its review by issuing a

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291 notice of intent to approve or a notice of intent to disapprove
292 within 90 days after the date of its receipt of the filing. The
293 notice of intent to approve and the notice of intent to
294 disapprove constitute agency action for purposes of chapter 120.
295 Requests for supporting information, requests for mathematical
296 or mechanical corrections, or notification to the insurer by the
297 office of its preliminary findings do not toll the 90-day period
298 during any such proceeding. The rate shall be deemed approved if
299 the office does not issue a notice of intent to approve or a
300 notice of intent to disapprove within 90 days after the date of
301 its receipt of the filing.

302 (c) Upon receipt of a rate filing, the office shall review
303 the rate filing to determine if the rate is excessive,
304 inadequate, or unfairly discriminatory. The office shall, in
305 accordance with generally accepted and reasonable actuarial
306 principles and techniques, consider the following factors when
307 making such determination:

308 1. Each title insurer's loss experience and prospective
309 loss experience within and without this state under closing
310 protection letters, policies, endorsements, commitments, and
311 other contracts and policy liabilities.

312 2. A reasonable margin for profit and contingencies,
313 including contingent liability under s. 627.7865, sufficient to
314 allow title insurers to earn a rate of return on their capital
315 which will attract and retain adequate capital investment in the
316 title insurance business and maintain an efficient title
317 insurance delivery system.

318 3. Past expenses and prospective expenses for the
319 administration and handling of risks.

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320 4. Liability for defalcation.

321 5. The degree of competition among insurers for the risk
322 insured.

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

337 7. The reasonableness of the judgment reflected in the
338 filing.

339 8. Dividends, savings, or unabsorbed premium deposits
340 allowed or returned to Florida policyholders, members, or
341 subscribers.

342 9. The adequacy of loss reserves.

343 10. The cost of reinsurance.

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

346 12. Other relevant factors that affect the frequency or
347 severity of claims or expenses.

348 (d) After consideration of the rate factors provided in

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349 paragraph (c), a rate may be found by the office to be
350 excessive, inadequate, or unfairly discriminatory based upon the
351 following standards:

352 1. Rates shall be deemed excessive if they are likely to
353 produce a profit from Florida business which is unreasonably
354 high in relation to the risk involved in the class of business
355 or if expenses are unreasonably high in relation to services
356 rendered.

357 2. Rates shall be deemed excessive if, among other things,
358 the rate structure established by a title insurer provides for
359 replenishment of surpluses from premiums if the replenishment is
360 necessitated by investment losses.

361 3. Rates shall be deemed inadequate if the rates and the
362 investment income attributable to them are clearly insufficient
363 to sustain projected losses and expenses in the class of
364 business to which they apply.

365 (e) In reviewing a rate filing, the office may require the
366 insurer to provide, at the insurer's expense, all information
367 necessary to evaluate the condition of the company and the
368 reasonableness of the filing according to the criteria
369 enumerated in this section.

370 (f) The office may at any time review a rate, rating
371 schedule, rating manual, or rate change; the pertinent records
372 of the insurer; and market conditions. If the office finds on a
373 preliminary basis that a rate may be excessive, inadequate, or
374 unfairly discriminatory, the office shall initiate proceedings
375 to disapprove the rate and shall notify the insurer. Upon being
376 notified, the insurer shall, within 60 days, file with the
377 office all information that, in the belief of the insurer,

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

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

402 1. The signing officer and actuary have reviewed the rate
403 filing;

404 2. Based on the knowledge of the signing officer and
405 actuary, the rate filing does not contain any untrue statement
406 of a material fact or omit a material fact necessary to make the

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407 statements not misleading, in light of the circumstances under
408 which such statements were made;

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

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

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

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

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

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

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

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

462 ~~(a) The title insurers' loss experience and prospective~~
463 ~~loss experience under closing protection letters and policy~~
464 ~~liabilities.~~

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

471 ~~(c) Past expenses and prospective expenses for~~
472 ~~administration and handling of risks.~~

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

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

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

477 ~~(4) Rates may not be excessive, inadequate, or unfairly~~
478 ~~discriminatory.~~

479 ~~(2)-(5) The approved rate ~~premium~~ applies to each \$100 of~~
480 ~~insurance issued to an insured.~~

481 ~~(3)-(6) The approved rate applies ~~premium rates~~ apply~~
482 ~~throughout this state.~~

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

488 ~~(4)-(8) The commission may, by rule, require licensees under~~
489 ~~this part to annually submit statistical information, including~~
490 ~~loss and expense data, as the office ~~department~~ determines to be~~
491 ~~necessary to analyze premium rates, retention rates, and the~~
492 ~~condition of the title insurance industry.~~

493 ~~(5) The commission may establish procedures for the~~

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494 required filings by rule.

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

497 627.7845 Determination of insurability required;
498 preservation of evidence of title search and examination.-

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

513 Section 8. Section 627.783, Florida Statutes, is repealed.

514 Section 9. This act shall take effect July 1, 2009, and
515 applies to title insurance forms, contracts, commitments, or
516 policies issued on or after that date.