

1 collecting, or receiving a premium for title
2 insurance unless the premium is approved by the
3 office; repealing s. 627.782, F.S., relating to
4 the adoption of rates by the Financial Services
5 Commission; repealing s. 627.783, F.S.,
6 relating to provisions authorizing a deviation
7 from an adopted premium upon approval by the
8 office; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 627.777, Florida Statutes, is
13 amended to read:

14 627.777 Filing; approval of forms.--

15 (1) A title insurer may not issue or agree to issue
16 any form of title insurance commitment, title insurance
17 policy, other contract of title insurance, or related form
18 until it is filed with and approved by the office. The office
19 may not disapprove a title guarantee or policy form on the
20 ground that it has on it a blank form for an attorney's
21 opinion on the title.

22 (2) Each title insurer shall make an annual filing
23 with the office no later than 12 months after its previous
24 filing, demonstrating that the rate is actuarially sound.
25 Rates for the required filing must include the charges for
26 primary title services and related title services as defined
27 in s. 627.7711.

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

1 accepted and reasonable actuarial principles and techniques,
2 consider the following factors:
3 1. Past and prospective loss experience within and
4 without this state.
5 2. Each title insurer's loss experience and
6 prospective loss experience under closing protection letters
7 and policy liabilities.
8 3. A reasonable margin for underwriting profit and
9 contingencies, including contingent liability under s.
10 627.7865, sufficient to allow title insurers, agents, and
11 agencies to earn a rate of return on their capital which will
12 attract and retain adequate capital investment in the title
13 insurance business and maintain an efficient title insurance
14 delivery system.
15 4. Past expenses and prospective expenses for
16 administration and handling of risks.
17 5. Liability for defalcation.
18 6. The degree of competition among insurers for the
19 risk insured.
20 7. Investment income reasonably expected by the
21 insurer, consistent with the insurer's investment practices,
22 from investable premiums anticipated in the filing, plus any
23 other expected income from currently invested assets
24 representing the amount expected on unearned premium reserves
25 and loss reserves. The commission may adopt rules using
26 reasonable techniques of actuarial science and economics to
27 specify the manner in which insurers must calculate investment
28 income attributable to such classes of insurance written in
29 this state and the manner in which such investment income must
30 be used in the calculation of insurance rates. The manner of
31 calculation shall contemplate allowances for an underwriting

1 profit factor and investment income that produce a reasonable
2 rate of return; however, investment income from invested
3 surplus must not be considered.

4 8. The reasonableness of the judgment reflected in the
5 filing.

6 9. Dividends, savings, or unabsorbed premium deposits
7 allowed or returned to Florida policyholders, members, or
8 subscribers.

9 10. The adequacy of loss reserves.

10 11. The cost of reinsurance.

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

13 13. Other relevant factors that affect the frequency
14 or severity of claims or upon expenses.

15 (b) After consideration of the rate factors provided
16 in paragraph (a), a rate may be found by the office to be
17 excessive, inadequate, or unfairly discriminatory based upon
18 the following standards:

19 1. Rates shall be deemed excessive if they are likely
20 to produce a profit from Florida business which is
21 unreasonably high in relation to the risk involved in the
22 class of business or if expenses are unreasonably high in
23 relation to services rendered.

24 2. Rates shall be deemed excessive if, among other
25 things, the rate structure established by a stock insurance
26 company provides for replenishment of surpluses from premiums,
27 when the replenishment is necessitated by investment losses.

28 3. Rates shall be deemed inadequate if the rates and
29 the investment income attributable to them are clearly
30 insufficient to sustain projected losses and expenses in the
31 class of business to which they apply.

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

6 5. A rate shall be deemed unfairly discriminatory as
7 to a risk or group of risks if the application of premium
8 discounts, credits, or surcharges among such risks does not
9 bear a reasonable relationship to the expected loss and
10 expense experience among the various risks.

11 (c) In reviewing a rate filing, the office may require
12 the insurer to provide at the insurer's expense all
13 information necessary to evaluate the condition of the company
14 and the reasonableness of the filing according to the criteria
15 enumerated in this section.

16 (d) The office may at any time review a rate, rating
17 schedule, rating manual, or rate change; the pertinent records
18 of the insurer; and market conditions. If the office finds on
19 a preliminary basis that a rate may be excessive, inadequate,
20 or unfairly discriminatory, the office shall initiate
21 proceedings to disapprove the rate and shall notify the
22 insurer. However, the office may not disapprove as excessive
23 any rate for which it has given final approval or which has
24 been deemed approved for a period of 1 year after the
25 effective date of the filing unless the office finds that a
26 material misrepresentation or material error was made by the
27 insurer or was contained in the filing. Upon being notified,
28 the insurer shall, within 60 days, file with the office all
29 information that, in the belief of the insurer, proves the
30 reasonableness, adequacy, and fairness of the rate or rate
31 change. The office shall issue a notice of intent to approve

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

18 (e) If the office finds that a rate or rate change is
19 excessive, inadequate, or unfairly discriminatory, the office
20 shall issue an order of disapproval specifying that a new rate
21 or rate schedule that responds to the findings of the office
22 be filed by the insurer. The office shall further order that
23 premiums charged to each policyholder constituting the portion
24 of the rate above that which was actuarially justified be
25 returned to such policyholder in the form of a credit or
26 refund. If the office finds that a insurer's rate or rate
27 change is inadequate, the new rate or rate schedule filed with
28 the office in response to such a finding applies only to new
29 or renewal business of the insurer written on or after the
30 effective date of the responsive filing.

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1 (f) When submitting a rate filing, the chief executive
2 officer or the chief financial officer of the title insurer
3 and the chief actuary of the title insurer must certify the
4 following information on a form approved by the commission,
5 under oath and subject to penalty of perjury:

6 1. The signing officer and actuary have reviewed the
7 rate filing;

8 2. Based on the knowledge of the signing officer and
9 actuary, the rate filing does not contain any untrue statement
10 of a material fact or omit a material fact necessary to make
11 the statements not misleading, in light of the circumstances
12 under which such statements were made;

13 3. Based on the knowledge of the signing officer and
14 actuary, the information and other factors described in this
15 section, including, but not limited to, investment income,
16 fairly present the basis of the rate filing in all material
17 respects for the periods presented in the filing; and

18 4. Based on the knowledge of the signing officer and
19 actuary, the rate filing reflects all premium savings that are
20 reasonably expected to result from legislative enactments and
21 are in accordance with generally accepted and reasonable
22 actuarial techniques.

23
24 A signing officer or actuary who knowingly makes a false
25 certification under this subsection commits a violation of s.
26 626.9541(1)(e) and is subject to the penalties prescribed in
27 s. 626.9521. Failure to provide such certification by the
28 officer and actuary shall result in the rate filing being
29 disapproved without prejudice. Under such circumstances, the
30 insurer or rating organization may refile its rate filing with
31 the required certification. As used in this paragraph, the

1 term, "actuary" means an individual who is a member of the
2 Society of Actuaries or the American Academy of Actuaries.

3 (g) If, at the time a filing is required under this
4 section, an insurer is in the process of completing a rate
5 review, the insurer may apply to the office for an extension
6 of up to an additional 30 days to make the filing. The request
7 for an extension must be received by the office no later than
8 the date the filing is due.

9 (h) After receiving a request to be exempted from the
10 provisions of this section before the filing is due, the
11 office may, due to insignificant numbers of policies in force
12 or insignificant premium volume, exempt a company from filing
13 rates or rate certification as required by this section.

14 (i) If an insurer fails to meet the filing
15 requirements of this subsection and does not submit the filing
16 within 60 days following the date on which the filing is due,
17 the office may, in addition to any other penalty authorized by
18 law, order the insurer to discontinue the issuance of policies
19 for which the required filing was not made until such time
20 that the office determines that the required filing has been
21 submitted properly.

22 (3) Each title insurer, agency, and agent shall make
23 an annual filing of statistical data for related title
24 services as defined in s. 627.7711 with the office no later
25 than 12 months after its previous filing. The commission may,
26 by rule, require title insurers, agencies, or agents under
27 this part to annually submit statistical information,
28 including loss and expense data, as the office determines to
29 be necessary to analyze premium rates, retention rates, and
30 the condition of the title insurance industry.

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