CHAPTER 99-286

Committee Substitute for House Bill No. 403

An act relating to title insurance; amending ss. 624.509, 626.841, 626.8411, 626.9541, 627.7711, 627.777, 627.7773, 627.7776, 627.780, 627.783, 627.7831, 627.784, 627.7841, 627.7842, 627.7845, 627.786, 627.791, and 627.792, F.S.; revising and clarifying application of provisions relating to title insurance agents, policies, premiums, rates, contracts, charges, and practices; amending s. 625.111, F.S.; specifying the components of unearned premium reserve for certain financial statements; providing a formula for releasing unearned premium reserve over a period of years; providing definitions; amending s. 627.7711, F.S.; revising definitions; amending s. 627.782, F.S.; providing a limitation on payment of portions of premiums for primary title services; creating s. 627.7825, F.S.; specifying certain alternative premium rates to be charged by title insurers for certain title insurance contracts for a certain period; providing requirements; providing limitations; providing for a new home purchase discount; excepting such rates from certain deviation provisions under certain circumstances; creating s. 627.793, F.S.; authorizing the Department of Insurance to adopt rules; providing an effective date.

WHEREAS, the Legislature finds that regulation of insurance is in the public interest; that it promotes the public health, safety and welfare by assuring the solvency and soundness of insurers; that determination of insurability of title to real property prior to insuring such property is essential to the maintenance of the solvency and soundness of title insurers; and that because title insurance agents or agencies determine insurability on behalf of title insurers, there is a direct relationship between the determination of insurability performed by title agents or agencies and the public interest, NOW, THEREFORE,

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

Section 1. Subsection (1) of section 624.509, Florida Statutes, 1998 Supplement, is amended to read:

624.509 Premium tax; rate and computation.—

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, ~~risk~~ premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in

this state and on account of all other types of policies and contracts (except annuity policies or contracts taxable under paragraph (b)) covering property, subjects, or risks located, resident, or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions:

1. For reinsurance ceded to other insurers;

2. For moneys paid upon surrender of policies or certificates for cash surrender value;

3. For discounts or refunds for direct or prompt payment of premiums or assessments; and

4. On account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies; certificates; or surety, indemnity, reciprocal, or interinsurance contracts or agreements; and

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state.

Section 2. Section 625.111, Florida Statutes, is amended to read:

(Substantial rewording of section. See
s. 625.111, F.S., for present text.)

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims, as required under s. 625.041, a title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. The sums required under this section to be reserved for unearned premiums on title guarantees and policies at all times and for all purposes shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of such insurer in determining its financial condition. While such sums are so reserved, they shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies in the event of the insolvency of the insurer. Nothing contained in this section shall preclude such insurer from investing such reserve in investments authorized by law for such an insurer and the income from such invested reserve shall be included in the general income of the insurer to be used by such insurer for any lawful purpose.

(1) For unearned premium reserves established on or after July 1, 1999, such unearned premium reserve shall consist of not less than an amount equal to the sum of:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with provisions of law of this state in effect at the time the

associated premiums were written or assumed and as amended prior to July 1, 1999.

(b) A total amount equal to 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) An additional amount, if deemed necessary by a qualified actuary, which shall be subsequently released as provided in subsection (2). Using financial results as of December 31 of each year, all domestic title insurers shall obtain a Statement of Actuarial Opinion from a qualified actuary regarding the insurer's loss and loss adjustment expense reserves, including reserves for known claims, adverse development on known claims, incurred but not reported claims, and unallocated loss adjustment expenses. The actuarial opinion shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. If the amount of the reserve stated in the opinion and displayed in Schedule P of the annual statement for that reporting date is greater than the sum of the known claim reserve and unearned premium reserve as calculated under this section, as of the same reporting date and including any previous actuarial provisions added at earlier dates, the insurer shall add to the insurer's unearned premium reserve an actuarial amount equal to the reserve shown in the actuarial opinion, minus the known claim reserve and the unearned premium reserve, as of the current reporting date and calculated in accordance with this section, but in no event calculated as of any date prior to December 31, 1999. The comparison shall be made using that line on Schedule P displaying the Total Net Loss and Loss Adjustment Expense which is comprised of the Known Claim Reserve, and any associated Adverse Development Reserve, the reserve for Incurred But Not Reported Losses, and Unallocated Loss Adjustment Expenses.

(2)(a) With respect to the reserve established in accordance with paragraph (1)(a), the domestic title insurer shall release the reserve over a period of 20 subsequent years as provided in this paragraph. The insurer shall release 30 percent of the initial aggregate sum during 1999, with one quarter of that amount being released on March 31, June 30, September 30, and December 31, 1999, with the March 31 and June 30 releases to be retroactive and reflected on the September 30 financial statements. Thereafter, the insurer shall release, on the same quarterly basis as specified for reserves released during 1999, a percentage of the initial aggregate sum as follows: 15 percent during calendar year 2000, 10 percent during each of calendar years 2001 and 2002, 5 percent during each of calendar years 2003 and 2004, 3 percent during each of calendar years 2005 and 2006, 2 percent during each of calendar years 2007-2013, and 1 percent during each of calendar years 2014-2018.

(b) With respect to reserves established in accordance with paragraph (1)(b), the unearned premium for policies written or title liability assumed during a particular calendar year shall be earned, and released from reserve, over a period of 20 subsequent years as provided in this paragraph. The insurer shall release 30 percent of the initial sum during the year next succeeding the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year. Thereafter, the insurer shall release, on the same quarterly basis as specified for reserves released during the year first succeeding the year the premium was written or assumed, a percentage of the initial sum as follows: 15 percent during the next succeeding year, 10 percent during each of the next succeeding 2 years, 5 percent during each of the next succeeding 2 years, 3 percent during each of the next succeeding 2 years, 2 percent during each of the next succeeding 7 years, and 1 percent during each of the next succeeding 5 years.

(c) With respect to reserves established in accordance with paragraph (1)(c), any additional amount established in any calendar year shall be released in the years subsequent to its establishment as provided in paragraph (b), with the timing and percentage of releases being in all respects identical to those of unearned premium reserves that are calculated as provided in paragraph (b) and established with regard to premiums written or liability assumed in reinsurance in the same year as the year in which any additional amount was originally established.

(3) At any reporting date, the amount of the required releases of existing unearned premium reserves under subsection (2) shall be calculated and deducted from the total unearned premium reserve before any additional amount is established for the current calendar year in accordance with the provisions of paragraph (1)(c).

(4) As used in this section:

(a) "Net retained liability" means the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.

(b) "Qualified actuary" means a person who is, as detailed in the the National Association of Insurance Commissioners' Annual Statement Instructions:

1. A member in good standing of the Casualty Actuarial Society;

2. A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or

3. A person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days prior to the filing of its annual statement, the insurer must request approval that the person be deemed qualified and that request must be approved or denied. The request

must include the National Association of Insurance Commissioners' Biographical Form and a list of all loss reserve opinions issued in the last 3 years by this person.

(c) "Single risk" means the insured amount of any title insurance policy, except that where two or more title insurance policies are issued simultaneously covering different estates in the same real property, "single risk" means the sum of the insured amounts of all such title insurance policies. Any title insurance policy insuring a mortgage interest a claim payment under which reduces the insured amount of a fee or leasehold title insurance policy shall be excluded in computing the amount of a single risk to the extent that the insured amount of the mortgage title insurance policy does not exceed the insured amount of the fee or leasehold title insurance policy.

Section 3. Section 626.841, Florida Statutes, is amended to read:

626.841 Definitions.—The term:

(1) "Title insurance agent" means a person appointed in writing by a title insurer to issue and countersign commitments or ~~binders, commitments,~~ policies of title insurance~~, or guarantees of title~~ in its behalf.

(2) "Title insurance agency" means an insurance agency under which title insurance agents and other employees determine insurability in accordance with underwriting rules and standards prescribed by the title insurer represented by the agency, and issue and countersign commitments ~~binders, commitments of title insurance~~, endorsements, or policies ~~guarantees~~ of title insurance, on behalf of the appointing title insurer. The term does not include a title insurer.

Section 4. Paragraph (c) of subsection (2) of section 626.8411, Florida Statutes, 1998 Supplement, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(c) Section 626.572 ~~626.752~~, relating to rebating, when allowed ~~exchange of business~~.

Section 5. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

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

(h) Unlawful Rebates.—

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

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

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

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

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

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

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

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

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

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

3.a. No title insurer, or any member, employee, attorney, agent, agency, or solicitor thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any ~~unlawful~~ rebate or abatement of the agent's, agency's, or title insurer's share of the premium or any charge for related

title services below the cost for providing such services, or provide ~~charge made incident to the issuance of such insurance,~~ any special favor or advantage, or any monetary consideration or inducement whatever. ~~The words "charge made incident to the issuance of such insurance" shall be construed to encompass underwriting premium, agent's commission, abstracting charges, title examination fee, and closing charges; however,~~ Nothing herein contained shall preclude an abatement in an attorney's fee charged for legal services ~~rendered incident to the issuance of such insurance~~.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services ~~in the actual examination of title to real property as a condition to the issuance of title insurance~~, or as prohibiting the payment of earned portions of the premium ~~commissions~~ to duly appointed agents or agencies who actually perform services for the title insurer ~~issue the policy of title insurance for the underwriting company~~.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, representative, or solicitor thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any ~~unlawful~~ rebate or abatement of said charge, or any monetary consideration or inducement, other than as set forth in sub-subparagraph b.

Section 6. Subsections (1) and (2) of section 627.7711, Florida Statutes, are amended to read:

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

(1)(a) "Related title services" means services performed by a title insurer or title insurance agent or agency, in the agent's or agency's capacity as such, including, but not limited to, preparing or obtaining a title search, examining title ~~information~~, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance ~~binder,~~ commitment~~,~~ or policy is to be issued. The ~~risk~~ premium, together with the charge for related title services, constitutes the regular title insurance premium.

(b) "Primary title services" means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable search and examination of the title, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy.

(2) "~~Risk~~ Premium" means the charge, as specified by rule of the department, that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy

~~the assumption of the risk~~, under the several classifications of title insurance contracts and forms, and upon which charge a premium tax is paid under s. 624.509. As used in this part or in any other law, with respect to title insurance, the word ~~words~~ "premium" does ~~or "risk premium" mean only the risk premium as defined in this section and do~~ not include a commission ~~any other charge incidental to title insurance~~.

Section 7. Section 627.777, Florida Statutes, is amended to read:

627.777 Approval of forms.—A title insurer may not issue or agree to issue any form of ~~title insurance binder,~~ title insurance commitment, ~~preliminary report,~~ title insurance policy, other contract of title insurance, or related form until it is filed with and approved by the department. The department may not disapprove a title guarantee or policy form on the ground that it has on it a blank form for an attorney's opinion on the title.

Section 8. Section 627.7773, Florida Statutes, is amended to read:

627.7773 Accounting and auditing of forms by title insurers.—

(1) Each title insurer authorized to do business in this state shall, at least once during each calendar year, require of each of its title insurance agents or agencies accountings of all outstanding forms in the agent's or agency's possession of the types that are specified in s. 627.777.

(2) If the department has reason to believe that an audit of outstanding forms should be required of any title insurer as to a title insurance agent or agency, the department may require the title insurer to make a special audit of the forms. The title insurer shall complete the audit not later than 60 days after the request is received from the department, and shall report the results of the special audit to the department no later than 90 days after the request is received.

Section 9. Section 627.7776, Florida Statutes, is amended to read:

627.7776 Furnishing of supplies; civil liability.—

(1) A title insurer may not furnish to any person any blank forms, applications, stationery, or other supplies to be used in soliciting, negotiating, or effecting contracts of title insurance on its behalf until that person has received from the insurer a contract to act as a title insurance agent or agency and has been licensed by the department, if required by s. 626.8417.

(2) A title insurer or title insurance agent or agency that furnishes any supplies to a person not authorized by the title insurer as provided in subsection (1) is subject to civil liability to any insured of the title insurer to the same extent and in the same manner as if the person had been appointed or authorized by the title insurer to act in its behalf.

Section 10. Section 627.780, Florida Statutes, is amended to read:

627.780 Illegal dealings in risk premium.—

(1) A person may not knowingly quote, charge, accept, collect, or receive a ~~risk~~ premium for title insurance other than the ~~risk~~ premium adopted by the department.

(2) A title insurer may not knowingly accept, collect, or receive any sum as ~~risk~~ premium for title insurance, if the title insurance is not then provided or is not to be provided, subject to acceptance of the risk, in due course, unless the title insurer promptly enters the sum on its books of account as premium collected in advance.

Section 11. Section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(1) Subject to the rating provisions of this code, the department must adopt a rule specifying the ~~risk~~ premium to be charged in this state by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer which shall ~~and services incident thereto. The department may, by rule, establish limitations on such reasonable charges made in addition to the risk premium based upon the expenses associated with the services rendered and other relevant factors. The department must also adopt rules incident to the applicability of the risk premium, including the percentage or amount of the risk premium required to be maintained by the title insurer, and related rules to ensure that the amounts required to be maintained by the insurer are~~ not be less than 30 percent ~~of the risk premium for policies sold by agents~~. However, in a transaction subject to the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as amended, no portion of the premium attributable to providing a primary title service shall be paid to or retained by any person who does not actually perform or is not liable for the performance of such service. The department may, by rule, establish limitations on related title services charges made in addition to the premium based upon the expenses associated with the services rendered and other relevant factors.

(2) In adopting premium rates, the department must give due consideration to the following:

(a) The title insurers' loss experience and prospective loss experience under ~~insured~~ closing protection ~~service~~ letters~~, search and examination services,~~ and policy liabilities.

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

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

(d) Liability for defalcation.

(e) Other relevant factors.

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

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

(5) The ~~risk~~ premium applies to each $100 of insurance issued to an insured.

(6) The ~~risk~~ premium rates apply throughout this state.

(7) The department shall, in accordance with the standards provided in subsection (2), review the ~~risk~~ premium ~~and the related title services rate~~ as needed, but not less frequently than once every 3 years, and shall, based upon the review required by this subsection, revise the ~~risk~~ premium ~~and the related title services rate~~ if the results of the review so warrant.

(8) The department may, by rule, require licensees under this part to annually submit statistical information, including loss and expense data, as the department determines to be necessary to analyze ~~risk~~ premium ~~and related title services~~ rates, retention rates, and the condition of the title insurance industry.

Section 12. Section 627.7825, Florida Statutes, is created to read:

627.7825 Alternative rate adoption.—Notwithstanding s. 627.782(1) and (7), the premium rates to be charged by title insurers in this state from July 1, 1999, through June 30, 2002, for title insurance contracts shall be as set forth in this section. The rules related to premium rates for title insurance, including endorsements, adopted by the department and in effect on April 1, 1999, that do not conflict with the provisions of this section shall remain in effect until June 30, 2002. The department shall not grant a rate deviation pursuant to s. 627.783 for the premium rates established in this section and in department rules in effect on April 1, 1999, that do not conflict with this section.

(1) ORIGINAL TITLE INSURANCE RATES.—

(a) For owner and leasehold title insurance:

1. The premium for the original owner's or for leasehold insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

The minimum premium for all conveyances except multiple conveyances shall be $100. The minimum premium for multiple conveyances on the same property shall be $60.

2. In all cases, the owner's policy shall be issued for the full insurable value of the premises.

(b) For mortgage title insurance:

1. The premium for the original mortgage title insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

The minimum premium for all conveyances except multiple conveyances shall be $100. The minimum premium for multiple conveyances on the same property shall be $60.

2. A mortgage title insurance policy shall not be issued for an amount less than the full principal debt. A policy may, however, be issued for an amount up to 25 percent in excess of the principal debt to cover interest and foreclosure costs.

(2) REISSUE RATES.—

(a) The reissue premium charge for owner's, mortgage, and leasehold title insurance policies shall be:

	Per Thousand
Up to $100,000 of liability written	$3.30
Over $100,000 and up to $1 million, add	$3.00
Over $1 million and up to $10 million, add	$2.00
Over $10 million, add	$1.50

The minimum premium shall be $100.

(b) Provided a previous owner's policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner's policy or policies, the reissue premium rates in paragraph (a) shall apply to:

1. Policies on real property which is unimproved except for roads, bridges, drainage facilities, and utilities if the current owner's title has been insured prior to the application for a new policy;

2. Policies issued with an effective date of less than 3 years after the effective date of the policy insuring the seller or mortgagor in the current transaction; or

3. Mortgage policies issued on refinancing of property insured by an original owner's policy which insured the title of the current mortgagor.

(c) Any amount of new insurance, in the aggregate, in excess of the amount under the previous policy shall be computed at the original owner's or leasehold rates, as provided in subsection (1).

(3) NEW HOME PURCHASE DISCOUNT.—Provided the seller has not leased or occupied the premises, the original premium for a policy on the first sale of residential property with a one to four family improvement that is granted a certificate of occupancy shall be discounted by the amount of premium paid for any prior loan policies insuring the lien of a mortgage executed by the seller on the premises. In the case of prior loan policies insuring the lien of a mortgage on multiple units or parcels, the discount shall be prorated by dividing the amount of the premium paid for the prior loan policies by the total number of units or parcels without regard to varying unit or parcel value. The minimum new home purchase premium shall be $200. The new home purchase discount may not be combined with any other reduction from original premium rates provided for in this section. The insurer shall reserve for unearned premiums only on the excess amount of the policy over the amount of the actual or prorated amount of the prior loan policy.

(4) SUBSTITUTION LOANS RATES.—

(a) When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the following premium rates for substitution loans shall apply:

Age of Previous Loan	Premium Rates
3 years or under	30 percent of the original rates
From 3 to 4 years	40 percent of the original rates
From 4 to 5 years	50 percent of the original rates
From 5 to 10 years	60 percent of the original rates
Over 10 years	100 percent of original rates

The minimum premium for substitution loan rates shall be $100.

(b) At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the foregoing premium rates shall be calculated. To these rates shall be added the original rates in the applicable schedules for any new insurance, including any difference between the unpaid principal balance of the previous loan and the amount of the new loan.

(c) In the case of a substitution loan of $250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the premium for such substitution loans shall be the rates as set forth in paragraphs (a) and (b).

Section 13. Section 627.783, Florida Statutes, is amended to read:

627.783 Rate deviation.—

(1) A title insurer may petition the department for an order authorizing a specific deviation from the adopted ~~risk~~ premium, and a title insurer or title insurance agent may petition the department for an order authorizing and permitting a specific deviation above the reasonable charge for related title ~~other~~ services rendered specified in s. 627.782(1). The petition shall be in writing and sworn to and shall set forth allegations of fact upon which the petitioner will rely, including the petitioner's reasons for requesting the deviation. Any authorized title insurer, ~~or~~ agent, or agency may join in the petition for like authority to deviate or may file a separate petition praying for like authority or opposing the deviation. The department shall rule on all such petitions simultaneously.

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

Section 14. Section 627.7831, Florida Statutes, is amended to read:

627.7831 ~~Title binders and~~ Commitments; charges; collection.—

(1) When a title insurance ~~binder or a~~ commitment to insure a title or risk is issued at the request of the insured or the insured's representative, ~~or~~ agent, or agency, a portion of the ~~risk~~ premium must be charged for the ~~binder or~~ commitment when issued. The portion of the ~~risk~~ premium charged for the ~~binder or~~ commitment must be credited to the ~~risk~~ premium due upon issuance of the title insurance policy.

(2) The amount charged under subsection (1) must be collected no later than the date of the closing or 12 months after the date of the commitment ~~or binder~~, whichever occurs earlier, or another date agreed to in writing at the time of issuance of the ~~binder or~~ commitment.

(3) This section does not apply to a transaction involving a residential property.

Section 15. Section 627.784, Florida Statutes, is amended to read:

627.784 Casualty title insurance prohibited.—A title insurance policy or guarantee of title may not be issued without regard ~~with disregard~~ to the possible existence of adverse matters or defects of title.

Section 16. Section 627.7841, Florida Statutes, is amended to read:

627.7841 Insurance against adverse matters or defects in the title.—If a title insurer issuing a ~~binder,~~ commitment or, policy of title insurance~~, or guarantee of title~~ upon an estate, lien, or interest in property located in this state through its officers, employees, ~~or~~ agents, or agencies disburses settlement or closing funds, the title insurer shall insure against the possible existence of adverse matters or defects in the title which are recorded during

the period of time between the effective date of the ~~binder or~~ commitment and the date of recording of the document creating the estate or interest to be insured, except as to matters of which the insured has knowledge.

Section 17. Subsection (2) of section 627.7842, Florida Statutes, is amended to read:

627.7842 Policy exceptions.—

(2) The title insurer, ~~or~~ agent, or agency issuing the title policy may except from coverage the items specified in subsection (1) if the title insurer, ~~or~~ agent, or agency has knowledge of facts requiring the exceptions, notwithstanding the survey or affidavits, if the insurer, ~~or~~ agent, or agency discloses such facts to the proposed insured.

Section 18. Section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(1) A title insurer may not issue a title insurance ~~binder,~~ commitment, endorsement, or title insurance policy~~, or guarantee of title~~ until the title insurer has caused to be conducted a reasonable search and examination of the title and of such other information as may be necessary, and has caused to be made a determination of insurability of title, including endorsement coverages, in accordance with sound underwriting practices.

(2) The title insurer shall cause the evidence of the reasonable search and examination of the title to be preserved and retained in its files or in the files of its title insurance agent or agency for a period of not less than 7 years after the title insurance ~~binder,~~ commitment, title insurance policy, or guarantee of title was issued. The title insurer or agent or agency must produce the evidence required to be maintained by this subsection at its offices upon the demand of the department. Instead of retaining the original evidence, the title insurer or the title insurance agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original.

(3) The title insurer or its agent or agency must maintain a record of the actual risk premium and related title service charges made for issuance of the policy and any endorsements in its files for a period of not less than 7 years. The title insurer, ~~or~~ agent, or agency must produce the record at its office upon demand of the department.

(4) This section does not apply to an insurer assuming no primary liability in a contract of reinsurance or to an insurer acting as a coinsurer if any other coinsuring insurer has complied with this section.

Section 19. Subsection (3) of section 627.786, Florida Statutes, is amended to read:

627.786 Transaction of title insurance and any other kind of insurance prohibited.—

(3) Subsection (1) does not preclude a title insurer from providing instruments to any prospective insured, in the form and content approved by the department, under which the title insurer assumes liability for loss due to the fraud of, dishonesty of, misappropriation of funds by, or failure to comply with written closing instructions by, its contract agents, agencies, or approved attorneys in connection with a real property transaction for which the title insurer is to issue a title insurance policy ~~or guarantee of title~~.

Section 20. Section 627.791, Florida Statutes, is amended to read:

627.791 Penalties against title insurers for violations by persons or entities not licensed.—A title insurer is subject to the penalties in ss. 624.418(2) and 624.4211 for any violation of a lawful order or rule of the department, or for any violation of this code, committed by:

(1) A person, firm, association, corporation, cooperative, joint-stock company, or other legal entity not licensed under this part when issuing and countersigning ~~binders,~~ commitments or~~,~~ policies of title insurance~~, or guarantees of title~~ on behalf of the title insurer.

(2) An attorney when issuing and countersigning ~~binders,~~ commitments or~~,~~ policies of title insurance~~, or guarantees of title~~ on behalf of the title insurer.

Section 21. Section 627.792, Florida Statutes, is amended to read:

627.792 Liability of title insurers for defalcation by title insurance agents or agencies.—A title insurer is liable for the defalcation, conversion, or misappropriation by a licensed title insurance agent or agency of funds held in trust by the agent or agency pursuant to s. 626.8473. If the agent or agency is an agent or agency for ~~licensed by~~ two or more title insurers, any liability shall be borne by the title insurer upon which a title insurance ~~binder,~~ commitment or~~,~~ policy~~, or title guarantee~~ was issued prior to the illegal act. If no ~~binder,~~ commitment or~~,~~ policy~~, or guarantee~~ was issued, each title insurer represented by the agent or agency at the time of the illegal act shares in the liability in the same proportion that the premium remitted to it by the agent or agency during the 1-year period before the illegal act bears to the total premium remitted to all title insurers by the agent or agency during the same time period.

Section 22. Section 627.793, Florida Statutes, is created to read:

627.793 Rulemaking authority.—The department is authorized to adopt rules implementing the provisions of this part.

Section 23. This act shall take effect July 1, 1999.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.