

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 1404

INTRODUCER: Judiciary Committee, Banking and Insurance Committee, and Senator Altman

SUBJECT: Title Insurance

DATE: February 13, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	Fav/CS
2.	<u>Irwin</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. In Florida, two entities provide regulatory oversight of the title insurance industry, the Department of Financial Services (DFS), which regulates title agents and agencies, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage¹ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).²

The Committee Substitute (CS) makes the following changes with regard to title insurance agents and agencies:

- Changes to the continuing educational requirements for agents.
- Allows DFS to deny the renewal of licensure for failure to timely report data.
- Requires attorneys to maintain separate trust accounts for title transactions.
- Requires OIR to approve forms within certain time period from when they are submitted.

¹ Section 627.777, F.S.

² Section 627.782(1), F.S.

- Requires title agents and agencies to maintain and submit records to OIR.

This bill substantially amends the following sections of the Florida Statutes: 626.2815, 626.8437, 626.8473, 627.777, and 627.782.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.³ Title insurance is a policy issued by a title insurer⁴ that, after performing a search of title, represents the disposition of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and an obligation to indemnify the policyholder for damage to the lender's security interest created by a cloud on the title, unmarketable title, or adverse title that was not discovered by the insurer.

Title Insurance Agencies and Agents

Title insurance agencies must apply for and be licensed by DFS, and are separately appointed by each title insurer they represent.⁵ To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by DFS.⁶ The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees.⁷ In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling.⁸ Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee.⁹ Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years.¹⁰

³ Section 624.608(1), F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code. *See* Section 626.608(2), F.S.

⁴ Section 627.7711(3), F.S.

⁵ *See* Section 626.172(1), F.S. (stating DFS licenses title insurance agencies); Section 626.015(3), F.S., (defining an appointment as the authority given by an insurer to a licensee to transact insurance on its behalf).

⁶ Section 626.221(1), F.S.

⁷ Section 626.241(1), F.S.

⁸ Section 626.241(7), F.S.

⁹ Section 626.8417(3)(a), F.S.

¹⁰ Section 626.2815(3)(d), F.S.

III. Effect of Proposed Changes:**Continuing Education**

The CS does not change the number of hours (10) a licensed agent must complete every two years, but it does require DFS to approve 10 hours of courses specific to title insurance and escrow management. Additionally 3 of the 10 hours of courses approved by DFS must be about ethics, rules, or compliance with state and federal regulations pertaining to title insurance and closing services.

Submission of Data

The CS requires each title insurance agency doing business in this state to maintain and submit to OIR by March 31 of each year, information OIR may determine necessary to assist in the analysis of title insurance rates, title search costs and the condition of the title insurance industry in this state. The CS also allows DFS to suspend or revoke a license for failure to timely report data as requested by OIR.

Attorneys

The CS requires attorneys acting in the capacity of a title insurance agent to keep in a separate trust account all escrowed funds collected from title insurance transactions, these accounts are to be made available for audit by the insurer unless particular accounts for certain clients would violate applicable rules of The Florida Bar.

Title Insurance Forms

The Office of Insurance Regulation is required to approve or disapprove filed title insurance forms within 180 days of receipt. (Currently, there are no timeframes within which filed forms must be approved or disapproved.) When approving a form, OIR must determine if the current rate applies or if the coverages require rulemaking. To prevent a competitive advantage to an insurer that has received approval of a filed form, OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations.

This act shall take effect July 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licenses may face revocation for failure to timely submit data to OIR.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The bill requires the Office of Insurance Regulation to approve or disapprove a form filed for approval within 180 days after receipt. The agency, however, does not appear to be subject to a consequence if it fails to act within the allotted time. Under s. 120.60(1), F.S., for example, an application for a license is deemed approved if a state agency fails to approve or deny an application within a statutorily prescribed time. Similarly, the Legislature may wish to consider whether a form should be deemed approved if OIR fails to act on the form within 180 days after receipt.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 9, 2012:

The CS increases from 3 hours from 1.5 hours the number of hours of continuing education which a title insurance agent must complete on the subject matter of ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

Additionally, the CS deletes a provision that would have exempted a title insurance agency or title agent from sanctions for failing to timely submit certain data to the Financial Services Commission (FSC) if the data had been submitted and the agent or agency filed a challenge to the rule specifying the form or substance of the data required.

The CS also expands the rulemaking authority of FSC by enabling the commission to adopt rules “relating to” the collection and analysis of data, rather than rules “to assist in” the collection and analysis of data.

CS by Banking and Insurance on January 26, 2012:

The CS changed the continuing educational requirements from 3 hours to 1.5 hours pertaining to ethics, rules and compliance with state and federal regulations of title services.

The CS corrected an error in the originally filed bill that mistakenly referred to the “department” (DFS) and not the “office” (OIR).

The CS also removed the following provisions from the original filed bill:

- The definition of agent in charge and the outline of relevant responsibilities.
- The section regarding applicant no longer having to deposit securities.
- An increase in fidelity bonding that an agency must maintain.
- The authority of DFS to deny the renewal of licensure for certain offenses.
- The process for labeling submitted documents as trade secrets.
- A statement of settlement cost be required before funds can be dispersed.

B. Amendments:

None.