

By Senator Altman

24-00987-12

20121404

1 A bill to be entitled
2 An act relating to title insurance; amending s.
3 626.2815, F.S.; specifying continuing education
4 requirements for title insurance agents; authorizing
5 the Department of Financial Services to contract with
6 a private entity for services related to continuing
7 education for title insurance agents; amending s.
8 626.841, F.S.; providing a definition for the term
9 "agent in charge of a title insurance agency";
10 amending s. 626.8417, F.S.; requiring that certain
11 attorney-owned entities that engage in business as a
12 title insurance agency, other than the active practice
13 of law, must be licensed as a title insurance agency
14 with a designated agent in charge; amending s.
15 626.8418, F.S.; deleting specified financial security
16 and bond requirements relating to an applicant for
17 licensure as a title insurance agency; amending s.
18 626.8419, F.S.; increasing the amount of a fidelity
19 bond that a title insurance agency must file with the
20 department and limiting the amount of the deductible
21 applicable to such bond; creating s. 626.8422, F.S.;
22 specifying requirements that apply to title insurance
23 agencies relating to the designation of an agent in
24 charge at specified locations; providing a penalty for
25 failing to designate an agent in charge under certain
26 circumstances; amending s. 626.8437, F.S.; specifying
27 additional grounds to deny, suspend, revoke, or refuse
28 to renew or continue the license or appointment of a
29 title insurance agent or agency; amending s. 626.8473,

24-00987-12

20121404

30 F.S.; requiring an attorney serving as a title or real
31 estate settlement agent to deposit and maintain
32 certain funds in a separate trust account and permit
33 the account to be audited by the applicable title
34 insurer, unless prohibited by the rules of The Florida
35 Bar; amending s. 627.777, F.S.; providing procedures
36 and requirements relating to the approval or
37 disapproval of title insurance forms by the
38 department; creating s. 627.7815, F.S.; specifying
39 requirements for submission of a document or
40 information to the department in order for a person to
41 claim that the document is a trade secret; requiring
42 each page or portion to be labeled as a trade secret
43 and be separated from non-trade secret material;
44 requiring the submitting party to include an affidavit
45 certifying certain information about the documents
46 claimed to be trade secrets; providing that certain
47 data submitted by a title insurance agent or title
48 insurer is presumed to be a trade secret whether or
49 not so designated; amending s. 627.782, F.S.;
50 requiring title insurance agencies and certain
51 insurers to submit specified information to the
52 department to assist in the analysis of title
53 insurance premium rates, title search costs, and the
54 condition of the title insurance industry; creating s.
55 627.7985, F.S.; authorizing the department to adopt
56 specified rules relating to title insurance; providing
57 penalties for willful violation of any such rule;
58 creating s. 689.263, F.S.; specifying requirements

24-00987-12

20121404

59 that a title insurance agent or agency must meet in
60 order to distribute funds relating to certain real
61 estate sales or purchases; providing an effective
62 date.

63
64 Be It Enacted by the Legislature of the State of Florida:

65
66 Section 1. Paragraph (d) of subsection (3) of section
67 626.2815, Florida Statutes, is amended, paragraph (1) is added
68 to that subsection, and subsection (8) is added to that section,
69 to read:

70 626.2815 Continuing education required; application;
71 exceptions; requirements; penalties.—

72 (3)

73 (d) Any person who holds a license as a customer
74 representative, limited customer representative, ~~title agent,~~
75 motor vehicle physical damage and mechanical breakdown insurance
76 agent, crop or hail and multiple-peril crop insurance agent, or
77 as an industrial fire insurance or burglary insurance agent and
78 who is not a licensed life or health insurance agent, must ~~shall~~
79 ~~be required to~~ complete 10 hours of continuing education courses
80 every 2 years.

81 (1) Any person who holds a license as a title insurance
82 agent must complete a minimum of 10 hours of continuing
83 education courses every 2 years in title insurance and escrow
84 management specific to this state and approved by the
85 department, which shall include at least 3 hours of continuing
86 education on the subject matter of ethics, rules, or compliance
87 with state and federal regulations relating to title insurance

24-00987-12

20121404

88 and closing services.

89 (8) The department may contract with a private entity for
90 services related to the administration, review, or approval of a
91 continuing education program for title insurance agents. The
92 contract shall be procured as one for a contractual service
93 pursuant to s. 287.057.

94 Section 2. Section 626.841, Florida Statutes, is amended to
95 read:

96 626.841 Definitions.—The term:

97 (1) "Agent in charge of a title insurance agency" means an
98 attorney or a licensed and appointed title insurance agent who
99 is designated as agent in charge pursuant to s. 626.8422.

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

107 (3)~~(1)~~ "Title insurance agent" means a person appointed in
108 writing by a title insurer to issue and countersign commitments
109 or policies of title insurance on ~~in~~ its behalf.

110 Section 3. Paragraph (c) of subsection (4) of section
111 626.8417, Florida Statutes, is amended to read:

112 626.8417 Title insurance agent licensure; exemptions.—

113 (4)

114 (c) If one or more ~~an attorney or~~ attorneys own a
115 corporation or other legal entity that ~~which~~ is doing business
116 as a title insurance agency other than an entity engaged in the

24-00987-12

20121404

117 active practice of law, the agency must be licensed and
118 appointed as a title insurance agency with an agent in charge
119 designated for the agency.

120 Section 4. Section 626.8418, Florida Statutes, is amended
121 to read:

122 626.8418 Application for title insurance agency license.—
123 Before ~~Prior to~~ doing business in this state as a title
124 insurance agency, a title insurance agency ~~must meet all of the~~
125 ~~following requirements:~~

126 ~~(1) The applicant~~ must file with the department an
127 application for a license as a title insurance agency, on
128 printed forms furnished by the department, that includes all of
129 the following:

130 (1) ~~(a)~~ The name of each majority owner, partner, officer,
131 and director of the agency.

132 (2) ~~(b)~~ The residence address of each person required to be
133 listed under subsection (1) paragraph (a).

134 (3) ~~(c)~~ The name of the agency and its principal business
135 address.

136 (4) ~~(d)~~ The location of each agency office and the name
137 under which each agency office conducts or will conduct
138 business.

139 (5) ~~(e)~~ The name of each agent to be in full-time charge of
140 an agency office and specification of which office.

141 (6) ~~(f)~~ Such additional information as the department
142 requires by rule to ascertain the trustworthiness and competence
143 of persons required to be listed on the application and to
144 ascertain that such persons meet the requirements of this code.

145 ~~(2) The applicant must have deposited with the department~~

24-00987-12

20121404

146 ~~securities of the type eligible for deposit under s. 625.52 and~~
147 ~~having at all times a market value of not less than \$35,000. In~~
148 ~~place of such deposit, the title insurance agency may post a~~
149 ~~surety bond of like amount payable to the department for the~~
150 ~~benefit of any appointing insurer damaged by a violation by the~~
151 ~~title insurance agency of its contract with the appointing~~
152 ~~insurer. If a properly documented claim is timely filed with the~~
153 ~~department by a damaged title insurer, the department may remit~~
154 ~~an appropriate amount of the deposit or the proceeds that are~~
155 ~~received from the surety in payment of the claim. The required~~
156 ~~deposit or bond must be made by the title insurance agency, and~~
157 ~~a title insurer may not provide the deposit or bond directly or~~
158 ~~indirectly on behalf of the title insurance agency. The deposit~~
159 ~~or bond must secure the performance by the title insurance~~
160 ~~agency of its duties and responsibilities under the issuing~~
161 ~~agency contracts with each title insurer for which it is~~
162 ~~appointed. The agency may exchange or substitute other~~
163 ~~securities of like quality and value for securities on deposit,~~
164 ~~may receive the interest and other income accruing on such~~
165 ~~securities, and may inspect the deposit at all reasonable times.~~
166 ~~Such deposit or bond must remain unimpaired as long as the title~~
167 ~~insurance agency continues in business in this state and until 1~~
168 ~~year after termination of all title insurance agency~~
169 ~~appointments held by the title insurance agency. The title~~
170 ~~insurance agency is entitled to the return of the deposit or~~
171 ~~bond together with accrued interest after such year has passed,~~
172 ~~if no claim has been made against the deposit or bond. If a~~
173 ~~surety bond is unavailable generally, the department may adopt~~
174 ~~rules for alternative methods to comply with this subsection.~~

24-00987-12

20121404

175 ~~With respect to such alternative methods for compliance, the~~
176 ~~department must be guided by the past business performance and~~
177 ~~good reputation and character of the proposed title insurance~~
178 ~~agency. A surety bond is deemed to be unavailable generally if~~
179 ~~the prevailing annual premium exceeds 25 percent of the~~
180 ~~principal amount of the bond.~~

181 Section 5. Paragraph (a) of subsection (1) of section
182 626.8419, Florida Statutes, is amended to read:

183 626.8419 Appointment of title insurance agency.—

184 (1) The title insurer engaging or employing the title
185 insurance agency must file with the department, on printed forms
186 furnished by the department, an application certifying that the
187 proposed title insurance agency meets all of the following
188 requirements:

189 (a) The agency must have obtained a fidelity bond in an
190 amount, not less than \$250,000, with a deductible not exceeding
191 1 percent of the bond amount ~~\$50,000~~, acceptable to the insurer
192 appointing the agency. If a fidelity bond is unavailable
193 generally, the department must adopt rules for alternative
194 methods to comply with this paragraph.

195 Section 6. Section 626.8422, Florida Statutes, is created
196 to read:

197 626.8422 Agent in charge.—

198 (1) Each location within this state of a title insurance
199 agency or branch office of a title insurance agency that is
200 regularly open to the public for closing services, as defined in
201 s. 627.7711, and at which disbursement of escrow funds or policy
202 issuance services are regularly performed must have a separate
203 agent in charge designated by the title insurance agency. The

24-00987-12

20121404

204 failure of a title insurance agency to designate an agent in
205 charge, on a form prescribed by the department, within 10
206 working days after an agency begins business at a location or
207 makes a change of the agent in charge, is a violation of this
208 chapter, punishable as provided in s. 626.844.

209 (2) The agent in charge shall perform the activities
210 described in subsection (1) at the location where he or she is
211 the designated agent in charge.

212 (3) An agency shall designate an attorney duly admitted to
213 practice law in this state and in good standing with The Florida
214 Bar or a title insurance agent licensed in this state as agent
215 in charge for each location of the agency or insurer as
216 described in subsection (1). In the case of multiple locations
217 where the activities as described in subsection (1) are
218 performed, the agency shall designate a separate agent in charge
219 for each location.

220 Section 7. Subsections (11) and (12) are added to section
221 626.8437, Florida Statutes, to read:

222 626.8437 Grounds for denial, suspension, revocation, or
223 refusal to renew license or appointment.—The department shall
224 deny, suspend, revoke, or refuse to renew or continue the
225 license or appointment of any title insurance agent or agency,
226 and it shall suspend or revoke the eligibility to hold a license
227 or appointment of such person, if it finds that as to the
228 applicant, licensee, appointee, or any principal thereof, any
229 one or more of the following grounds exist:

230 (11) Failure to timely submit data as required by the
231 department.

232 (12) If a licensee, being charged with an insurance or

24-00987-12

20121404

233 financial-related felony, a crime involving moral turpitude, or
234 a crime punishable by imprisonment of 1 year or more under the
235 law of any state, territory, or country.

236 Section 8. Subsection (8) is added to section 626.8473,
237 Florida Statutes, to read:

238 626.8473 Escrow; trust fund.—

239 (8) An attorney shall deposit and maintain all funds
240 received in connection with transactions in which the attorney
241 is serving as a title or real estate settlement agent into a
242 separate trust account that is maintained exclusively for funds
243 received in connection with such transactions and permit the
244 account to be audited by its title insurers, unless maintaining
245 funds in the separate account for a particular client would
246 violate applicable rules of The Florida Bar.

247 Section 9. Section 627.777, Florida Statutes, is amended to
248 read:

249 627.777 Approval of forms.—

250 (1) A title insurer may not issue or agree to issue any
251 form of title insurance commitment, title insurance policy,
252 other contract of title insurance, or related form until it is
253 filed with and approved by the office. The office may not
254 disapprove a title guarantee or policy form on the ground that
255 it has on it a blank form for an attorney's opinion on the
256 title.

257 (2) If the form filed for approval is a form certified and
258 adopted by the American Land Title Association at the time of
259 filing, the department shall approve or disapprove the form
260 within 180 days after receipt. If the form is not a form
261 certified by the American Land Title Association at the time of

24-00987-12

20121404

262 filing, the department shall approve or disapprove the form
263 within 1 year after receipt.

264 (3) When the department approves any form, it shall
265 determine if the current rate in effect applies or if the
266 coverages require the adoption of a rule pursuant to s. 627.782.

267 (4) The department may revoke approval of any form after
268 providing 180 days' notice to the title insurer if the basis for
269 revocation is that the American Land Title Association has
270 decertified a previously approved form.

271 (5) An insurer may not achieve a competitive advantage over
272 any other insurer, agency, or agent as to rates or forms. If a
273 form or rate is approved for an insurer, the department shall
274 expeditiously approve the forms of other insurers who apply for
275 approval if those forms contain identical coverages, rates, or
276 deviations which have been approved under s. 627.783.

277 Section 10. Section 627.7815, Florida Statutes, is created
278 to read:

279 627.7815 Trade secret documents.—If any person who is
280 required to submit a document or other information to the
281 department pursuant to this part or by rule or order of the
282 department claims that such submission contains a trade secret,
283 such person may file with the department a notice of trade
284 secret. Failure to do so constitutes a waiver of any claim by
285 the person that the requested document or information is a trade
286 secret.

287 (1) Each page of such document or specific portion of a
288 document claimed to be a trade secret must be clearly marked
289 "trade secret."

290 (2) All material marked "trade secret" must be separated

24-00987-12

20121404

291 from all non-trade-secret material, such as being submitted in a
292 separate envelope clearly marked "trade secret."

293 (3) When submitting a notice of trade secret to the
294 department, the submitting party must include an affidavit
295 certifying under oath to the truth of the following statements
296 concerning all information and documents that are claimed to be
297 trade secrets:

298 (a) [I consider/My company considers] this information a
299 trade secret that has value and provides an advantage or an
300 opportunity to obtain an advantage over those who do not know or
301 use it.

302 (b) [I have/My company has] taken measures to prevent the
303 disclosure of the information to anyone other than those who
304 have been selected to have access for limited purposes, and [I
305 intend/my company intends] to continue to take such measures.

306 (c) The information is not, and has not been, reasonably
307 obtainable without [my/our] consent by other persons by use of
308 legitimate means.

309 (d) The information is not publicly available elsewhere.

310 (4) Any data submitted by a title insurance agent or title
311 insurer pursuant to s. 627.782 are presumed to be a trade secret
312 under this section whether or not so designated.

313 Section 11. Subsection (8) of section 627.782, Florida
314 Statutes, is amended to read:

315 627.782 Adoption of rates.—

316 (8) Each title insurance agency licensed to do business in
317 this state and each insurer engaging in direct, retail, or
318 affiliated business in this state shall maintain and submit
319 information, including revenue, loss, and expense data, as the

24-00987-12

20121404

320 department determines necessary to assist in the analysis of
321 title insurance premium rates, title search costs, and the
322 condition of the title insurance industry in this state. This
323 information must be transmitted to the department annually by
324 March 31 of the year after the reporting year. The department
325 shall adopt rules to assist in the collection and analysis of
326 the data from the title insurance industry. ~~The commission may,~~
327 ~~by rule, require licensees under this part to annually submit~~
328 ~~statistical information, including loss and expense data, as the~~
329 ~~department determines to be necessary to analyze premium rates,~~
330 ~~retention rates, and the condition of the title insurance~~
331 ~~industry.~~

332 Section 12. Section 627.7985, Florida Statutes, is created
333 to read:

334 627.7985 Rules as to title insurance.-

335 (1) In addition to the authority to adopt rules relating to
336 title insurance authorized elsewhere in the Florida Insurance
337 Code, the department may adopt rules that:

338 (a) Define the license and appointment requirements for
339 title insurance agents and agencies.

340 (b) Establish penalty guidelines for enforcing the
341 requirements of the Florida Insurance Code.

342 (c) Describe the fiduciary responsibilities and duties of
343 title insurers, title insurance agents, and title insurance
344 agencies, including, but not limited to, responsibilities and
345 duties related to escrow accounts.

346 (d) Identify the responsibilities, duties, and designations
347 of the agent in charge of the title insurance agency.

348 (e) Enable the collection and analysis of information

24-00987-12

20121404

349 relating to the title insurance business submitted by title
350 insurers, title insurance agents, and title insurance agencies.

351 (f) Set reasonable requirements for the timely recording of
352 documents and the delivery of final title insurance policies.

353 (g) Set reasonable requirements for the timely disbursement
354 of escrow funds unless a written escrow agreement specifies a
355 longer holding period.

356 (h) Establish rules for the protection, calculation, and
357 timely remittance of premiums that are owed to title insurers.

358 (i) Prohibit the markup of the cost of any third-party
359 goods and services that do not add value.

360 (2) In addition to any other penalty provided for under the
361 Florida Insurance Code for a violation of a rule, a title
362 insurer or title insurance agent or agency is subject to
363 suspension or revocation of a certificate of authority or
364 license, as may be applicable, for the willful violation of any
365 rule.

366 Section 13. Section 689.263, Florida Statutes, is created
367 to read:

368 689.263 Sale of residential property; settlement statement
369 requirements.—A title insurance agent or title insurance agency
370 may not disburse funds pursuant to a completed purchase and sale
371 transaction or refinance transaction subject to the Real Estate
372 Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. ss. 2601 et
373 seq., as amended, without requiring a statement of settlement
374 costs meeting the following requirements:

375 (1) The settlement statement must be executed by the buyer,
376 borrower, seller, if any, and settlement agent as defined by
377 RESPA.

24-00987-12

20121404__

378 (2) If a title insurance premium is to be disbursed, the
379 title insurer and the title insurance agent or title insurance
380 agency, if any, must be disclosed.

381 Section 14. This act shall take effect July 1, 2012.