

HB 111

2007

A bill to be entitled

An act relating to title insurance; amending s. 626.84201, F.S.; providing additional requirements for nonresident title insurance agent licensure; amending s. 626.9541, F.S.; revising unlawful rebate specifications; amending s. 627.7711, F.S.; revising definitions; amending s. 627.780, F.S.; providing an exception to a prohibition against dealing in certain premium; amending ss. 627.782 and 627.783, F.S.; revising rate and rate deviation requirements; amending s. 627.7845, F.S.; revising determination of insurability and records retention requirements; providing an effective date.

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

Section 1. Section 626.84201, Florida Statutes, is amended to read:

626.84201 Nonresident title insurance agents.--Notwithstanding s. 626.8414(2), the department, upon application and payment of the fees specified in s. 624.501, may issue a license as a nonresident title insurance agent to an individual not a resident of this state in the same manner applicable to the licensure of nonresident general lines agents under the provisions of s. 626.741, provided the individual passes the examination for licensure required under s. 626.221. Nonresident title insurance agents licensed pursuant to this section must complete the continuing education requirements of s. 626.2815 in the same manner as resident title insurance

29 agents. Sections 626.742 and 626.743 apply to nonresident title  
 30 insurance agents.

31 Section 2. Paragraph (h) of subsection (1) of section  
 32 626.9541, Florida Statutes, is amended to read:

33 626.9541 Unfair methods of competition and unfair or  
 34 deceptive acts or practices defined.--

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

38 (h) Unlawful rebates.--

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

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

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

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

HB 111

2007

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

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

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

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

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

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

HB 111

2007

85           3.a. No title insurer, or any member, employee, attorney,  
86 agent, or agency thereof, shall pay, allow, or give, or offer to  
87 pay, allow, or give, directly or indirectly, as inducement to  
88 title insurance, or after such insurance has been effected, any  
89 rebate or abatement of the ~~agent's, agency's, or title insurer's~~  
90 ~~share of the premium or any other charge or fee for related~~  
91 ~~title services below the cost for providing such services,~~ or  
92 provide any special favor or advantage, or any monetary  
93 consideration or inducement whatever. ~~Nothing herein contained~~  
94 ~~shall preclude an abatement in an attorney's fee charged for~~  
95 ~~legal services.~~

96           b. Nothing in this subparagraph shall be construed as  
97 prohibiting the payment of fees to attorneys at law duly  
98 licensed to practice law in the courts of this state, for  
99 professional services, or as prohibiting the payment of earned  
100 portions of the premium to duly appointed agents or agencies who  
101 actually perform services for the title insurer. Nothing in this  
102 subparagraph shall be construed as prohibiting a rebate or  
103 abatement of an attorney's fee charged for professional services  
104 or the agent's share of the premium or any other agent charge or  
105 fee to the person responsible for paying the premium, charge, or  
106 fee.

107           c. No insured named in a policy, or any other person  
108 directly or indirectly connected with the transaction involving  
109 the issuance of such policy, including, but not limited to, any  
110 mortgage broker, real estate broker, builder, or attorney, any  
111 employee, agent, agency, or representative thereof, or any other  
112 person whatsoever, shall knowingly receive or accept, directly

HB 111

2007

113 or indirectly, any rebate or abatement of any portion of the  
114 title insurance premium or of any other charge or fee said  
115 ~~charge,~~ or any monetary consideration or inducement whatsoever,  
116 except other than as set forth in sub-subparagraph b.

117 Section 3. Subsection (1) of section 627.7711, Florida  
118 Statutes, is amended, and subsection (4) is added to that  
119 section, to read:

120 627.7711 Definitions.--As used in this part, the term:

121 (1) (a) "Closing Related ~~title services~~" means services  
122 performed by a licensed title insurer, ~~or~~ title insurance agent  
123 or agency, or attorney agent in the agent's or agency's capacity  
124 as such, including, but not limited to, ~~preparing or obtaining a~~  
125 ~~title search, examining title, examining searches of the records~~  
126 ~~of a Uniform Commercial Code filing office and such other~~  
127 ~~information as may be necessary,~~ preparing documents necessary  
128 to close the transaction, conducting the closing, or handling  
129 the disbursing of funds related to the closing in a real estate  
130 closing transaction in which a title insurance commitment or  
131 policy is to be issued. ~~The premium, together with the charge~~  
132 ~~for related title services, constitutes the regular title~~  
133 ~~insurance premium.~~

134 (b) "Primary title services" means determining  
135 insurability in accordance with sound underwriting practices  
136 based upon evaluation of a reasonable title search ~~and~~  
137 ~~examination of the title or a search of~~ the records of a Uniform  
138 Commercial Code filing office and such other information as may  
139 be necessary, determination and clearance of underwriting  
140 objections and requirements to eliminate risk, preparation and

HB 111

2007

141 issuance of a title insurance commitment setting forth the  
 142 requirements to insure, and preparation and issuance of the  
 143 policy. Such services do not include closing services or title  
 144 searches, for which a separate charge is or separate charges are  
 145 made.

146 (4) "Title search" means the compiling of title  
 147 information from official or public records.

148 Section 4. Subsection (1) of section 627.780, Florida  
 149 Statutes, is amended to read:

150 627.780 Illegal dealings in ~~risk~~ premium.--

151 (1) A person may not knowingly quote, charge, accept,  
 152 collect, or receive a premium for title insurance other than the  
 153 premium adopted by the commission, except as provided in s.  
 154 626.9541(1)(h)3.b.

155 Section 5. Subsection (1) of section 627.782, Florida  
 156 Statutes, is amended to read:

157 627.782 Adoption of rates.--

158 (1) Subject to the rating provisions of this code, the  
 159 commission must adopt a rule specifying the premium to be  
 160 charged in this state by title insurers for the respective types  
 161 of title insurance contracts and, for policies issued through  
 162 agents or agencies, the percentage of such premium required to  
 163 be retained by the title insurer which shall not be less than 30  
 164 percent. However, in a transaction subject to the Real Estate  
 165 Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq.,  
 166 as amended, no portion of the premium attributable to providing  
 167 a primary title service shall be paid to or retained by any  
 168 person who does not actually perform or is not liable for the

HB 111

2007

169 performance of such service. ~~The commission may, by rule,~~  
 170 ~~establish limitations on related title services charges made in~~  
 171 ~~addition to the premium based upon the expenses associated with~~  
 172 ~~the services rendered and other relevant factors.~~

173 Section 6. Subsection (1) of section 627.783, Florida  
 174 Statutes, is amended to read:

175 627.783 Rate deviation.--

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

189 Section 7. Subsections (1), (2), and (3) of section  
 190 627.7845, Florida Statutes, are amended to read:

191 627.7845 Determination of insurability required;  
 192 preservation of evidence of title search and examination.--

193 (1) A title insurer may not issue a title insurance  
 194 commitment, endorsement, or title insurance policy until the  
 195 title insurer has caused to be made ~~conducted~~ a determination of  
 196 insurability based upon the evaluation of a reasonable title

HB 111

2007

197 search ~~and examination of the title~~ or a search of the records  
198 of a Uniform Commercial Code filing office, as applicable, has  
199 examined such other information as may be necessary, and has  
200 caused to be made a determination of insurability of title or  
201 the existence, attachments, perfection, and priority of a  
202 Uniform Commercial Code security interest, including endorsement  
203 coverages, in accordance with sound underwriting practices.

204 (2) The title insurer shall cause the evidence of the  
205 determination of insurability and the reasonable title search  
206 ~~and examination of the title~~ or search of the records of a  
207 Uniform Commercial Code filing office to be preserved and  
208 retained in its files or in the files of its title insurance  
209 agent or agency for a period of not less than 7 years after the  
210 title insurance commitment, title insurance policy, or guarantee  
211 of title was issued. The title insurer or agent or agency must  
212 produce the evidence required to be maintained by this  
213 subsection at its offices upon the demand of the office. Instead  
214 of retaining the original evidence, the title insurer or the  
215 title insurance agent or agency may, in the regular course of  
216 business, establish a system under which all or part of the  
217 evidence is recorded, copied, or reproduced by any photographic,  
218 photostatic, microfilm, microcard, miniature photographic, or  
219 other process which accurately reproduces or forms a durable  
220 medium for reproducing the original.

221 (3) The title insurer or its agent or agency must maintain  
222 a record of the actual ~~risk premium~~ charged ~~and related title~~  
223 ~~service charges made~~ for issuance of the policy and any  
224 endorsements in its files for a period of not less than 7 years.



HB 111

2007

225 | The title insurer, agent, or agency must produce the record at  
226 | its office upon demand of the office.

227 |       Section 8. This act shall take effect October 1, 2007.