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CS/HB 111, Engrossed 1

2007 Legislature

1 A bill to be entitled

2 An act relating to title insurance; amending s. 626.84201,
3 F.S.; providing additional requirements for nonresident
4 title insurance agent licensure; amending s. 626.9541,
5 F.S.; revising unlawful rebate specifications; amending s.
6 627.7711, F.S.; revising definitions; amending s. 627.780,
7 F.S.; providing an exception to a prohibition against
8 dealing in certain premium; amending ss. 627.782 and
9 627.783, F.S.; revising rate and rate deviation
10 requirements; amending s. 627.7845, F.S.; revising
11 determination of insurability and records retention
12 requirements; amending s. 701.04, F.S.; revising
13 requirements for an estoppel letter; amending s. 701.041,
14 F.S.; revising definitions; providing for application to
15 certain mortgages; providing liability for title insurance
16 agents recording a certificate of release; repealing the
17 authority of the Financial Services Commission to adopt
18 rules regarding the charge for the certificate of release;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 626.84201, Florida Statutes, is amended
24 to read:

25 626.84201 Nonresident title insurance
26 agents.--Notwithstanding s. 626.8414(2), the department, upon
27 application and payment of the fees specified in s. 624.501, may
28 issue a license as a nonresident title insurance agent to an

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

29 individual not a resident of this state in the same manner
 30 applicable to the licensure of nonresident general lines agents
 31 under the provisions of s. 626.741, provided the individual
 32 passes the examination for licensure required under s. 626.221.
 33 Nonresident title insurance agents licensed pursuant to this
 34 section must complete the continuing education requirements of
 35 s. 626.2815 in the same manner as resident title insurance
 36 agents. Sections 626.742 and 626.743 apply to nonresident title
 37 insurance agents.

38 Section 2. Paragraph (h) of subsection (1) of section
 39 626.9541, Florida Statutes, is amended to read:

40 626.9541 Unfair methods of competition and unfair or
 41 deceptive acts or practices defined.--

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

45 (h) Unlawful rebates.--

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

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

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

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

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

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

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

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

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

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

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

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

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

103 b. Nothing in this subparagraph shall be construed as
 104 prohibiting the payment of fees to attorneys at law duly
 105 licensed to practice law in the courts of this state, for
 106 professional services, or as prohibiting the payment of earned
 107 portions of the premium to duly appointed agents or agencies who
 108 actually perform services for the title insurer. Nothing in this
 109 subparagraph shall be construed as prohibiting a rebate or
 110 abatement of an attorney's fee charged for professional
 111 services, or that portion of the premium that is not required to

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

112 be retained by the insurer pursuant to s. 627.782(1), or any
 113 other agent charge or fee to the person responsible for paying
 114 the premium, charge, or fee.

115 c. No insured named in a policy, or any other person
 116 directly or indirectly connected with the transaction involving
 117 the issuance of such policy, including, but not limited to, any
 118 mortgage broker, real estate broker, builder, or attorney, any
 119 employee, agent, agency, or representative thereof, or any other
 120 person whatsoever, shall knowingly receive or accept, directly
 121 or indirectly, any rebate or abatement of any portion of the
 122 title insurance premium or of any other charge or fee said
 123 charge, or any monetary consideration or inducement whatsoever,
 124 except other than as set forth in sub-subparagraph b.; provided,
 125 in no event shall any portion of the attorney's fee, any portion
 126 of the premium that is not required to be retained by the
 127 insurer pursuant to s. 627.782(1), any agent charge or fee, or
 128 any other monetary consideration or inducement be paid directly
 129 or indirectly for the referral of title insurance business.

130 Section 3. Subsection (1) of section 627.7711, Florida
 131 Statutes, is amended, and subsection (4) is added to that
 132 section, to read:

133 627.7711 Definitions.--As used in this part, the term:

134 (1) (a) "Closing Related ~~title services~~" means services
 135 performed by a licensed title insurer, ~~or~~ title insurance agent
 136 or agency, or attorney agent in the agent's or agency's capacity
 137 as such, including, but not limited to, ~~preparing or obtaining a~~
 138 ~~title search, examining title, examining searches of the records~~
 139 ~~of a Uniform Commercial Code filing office and such other~~

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

140 ~~information as may be necessary,~~ preparing documents necessary
 141 to close the transaction, conducting the closing, or handling
 142 the disbursing of funds related to the closing in a real estate
 143 closing transaction in which a title insurance commitment or
 144 policy is to be issued. ~~The premium, together with the charge~~
 145 ~~for related title services, constitutes the regular title~~
 146 ~~insurance premium.~~

147 (b) "Primary title services" means determining
 148 insurability in accordance with sound underwriting practices
 149 based upon evaluation of a reasonable title search ~~and~~
 150 ~~examination of the title~~ or a search of the records of a Uniform
 151 Commercial Code filing office and such other information as may
 152 be necessary, determination and clearance of underwriting
 153 objections and requirements to eliminate risk, preparation and
 154 issuance of a title insurance commitment setting forth the
 155 requirements to insure, and preparation and issuance of the
 156 policy. Such services do not include closing services or title
 157 searches, for which a separate charge or separate charges may be
 158 made.

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

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

163 627.780 Illegal dealings in ~~risk~~ premium.--

164 (1) A person may not knowingly quote, charge, accept,
 165 collect, or receive a premium for title insurance other than the
 166 premium adopted by the commission, except as provided in s.
 167 626.9541(1)(h)3.b.

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

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

170 627.782 Adoption of rates.--

171 (1) Subject to the rating provisions of this code, the
 172 commission must adopt a rule specifying the premium to be
 173 charged in this state by title insurers for the respective types
 174 of title insurance contracts and, for policies issued through
 175 agents or agencies, the percentage of such premium required to
 176 be retained by the title insurer which shall not be less than 30
 177 percent. However, in a transaction subject to the Real Estate
 178 Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq.,
 179 as amended, no portion of the premium attributable to providing
 180 a primary title service shall be paid to or retained by any
 181 person who does not actually perform or is not liable for the
 182 performance of such service. ~~The commission may, by rule,~~
 183 ~~establish limitations on related title services charges made in~~
 184 ~~addition to the premium based upon the expenses associated with~~
 185 ~~the services rendered and other relevant factors.~~

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

188 627.783 Rate deviation.--

189 (1) A title insurer may petition the office for an order
 190 authorizing a specific deviation from the adopted premium, ~~and a~~
 191 ~~title insurer or title insurance agent may petition the office~~
 192 ~~for an order authorizing and permitting a specific deviation~~
 193 ~~above the reasonable charge for related title services rendered~~
 194 ~~specified in s. 627.782(1).~~ The petition shall be in writing and
 195 sworn to and shall set forth allegations of fact upon which the

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

196 petitioner will rely, including the petitioner's reasons for
 197 requesting the deviation. Any authorized title insurer, agent,
 198 or agency may join in the petition for like authority to deviate
 199 or may file a separate petition praying for like authority or
 200 opposing the deviation. The office shall rule on all such
 201 petitions simultaneously.

202 Section 7. Subsections (1), (2), and (3) of section
 203 627.7845, Florida Statutes, are amended to read:

204 627.7845 Determination of insurability required;
 205 preservation of evidence of title search and examination.--

206 (1) A title insurer may not issue a title insurance
 207 commitment, endorsement, or title insurance policy until the
 208 title insurer has caused to be made ~~conducted~~ a determination of
 209 insurability based upon the evaluation of a reasonable title
 210 search and examination of the title or a search of the records
 211 of a Uniform Commercial Code filing office, as applicable, has
 212 examined such other information as may be necessary, and has
 213 caused to be made a determination of insurability of title or
 214 the existence, attachments, perfection, and priority of a
 215 Uniform Commercial Code security interest, including endorsement
 216 coverages, in accordance with sound underwriting practices.

217 (2) The title insurer shall cause the evidence of the
 218 determination of insurability and the reasonable title search
 219 and examination of the title or search of the records of a
 220 Uniform Commercial Code filing office to be preserved and
 221 retained in its files or in the files of its title insurance
 222 agent or agency for a period of not less than 7 years after the
 223 title insurance commitment, title insurance policy, or guarantee

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

224 of title was issued. The title insurer or agent or agency must
 225 produce the evidence required to be maintained by this
 226 subsection at its offices upon the demand of the office. Instead
 227 of retaining the original evidence, the title insurer or the
 228 title insurance agent or agency may, in the regular course of
 229 business, establish a system under which all or part of the
 230 evidence is recorded, copied, or reproduced by any photographic,
 231 photostatic, microfilm, microcard, miniature photographic, or
 232 other process which accurately reproduces or forms a durable
 233 medium for reproducing the original.

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

240 Section 8. Subsection (1) of section 701.04, Florida
 241 Statutes, is amended to read:

242 701.04 Cancellation of mortgages, liens, and judgments.--

243 (1) Within 14 days after receipt of the written request of
 244 a mortgagor, the holder of a mortgage shall deliver to the
 245 mortgagor at a place designated in the written request an
 246 estoppel letter setting forth the unpaid ~~principal~~ balance of
 247 the loan secured by the mortgage, including principal, interest,
 248 and any other charges properly due under or secured by the
 249 mortgage and interest on a per-day basis for the unpaid balance
 250 due, and the per diem rate. Whenever the amount of money due on
 251 any mortgage, lien, or judgment shall be fully paid to the

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

252 person or party entitled to the payment thereof, the mortgagee,
 253 creditor, or assignee, or the attorney of record in the case of
 254 a judgment, to whom such payment shall have been made, shall
 255 execute in writing an instrument acknowledging satisfaction of
 256 said mortgage, lien, or judgment and have the same acknowledged,
 257 or proven, and duly entered of record in the book provided by
 258 law for such purposes in the proper county. Within 60 days of
 259 the date of receipt of the full payment of the mortgage, lien,
 260 or judgment, the person required to acknowledge satisfaction of
 261 the mortgage, lien, or judgment shall send or cause to be sent
 262 the recorded satisfaction to the person who has made the full
 263 payment. In the case of a civil action arising out of the
 264 provisions of this section, the prevailing party shall be
 265 entitled to attorney's fees and costs.

266 Section 9. Subsection (1), paragraphs (b), (e), and (f) of
 267 subsection (3), paragraphs (a) and (c) of subsection (6), and
 268 subsections (8) and (9) of section 701.041, Florida Statutes,
 269 are amended to read:

270 701.041 Title insurer; mortgage release certificate.--

271 (1) DEFINITIONS.--For purposes of this section:

272 (a) "Estoppel letter" means a statement of the amount of:

273 1. The unpaid balance of a loan secured by a mortgage,
 274 including principal, interest, and any other charges properly
 275 due under or secured by the mortgage.

276 2. Interest on a per-day basis for the unpaid balance.

277 ~~"Mortgage" means a mortgage or mortgage lien on an interest in~~
 278 ~~real property in this state, including any modifications~~
 279 ~~thereof, given to secure a loan in the principal amount of~~

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

280 ~~\$500,000 or less, other than a mortgage securing an open end or~~
 281 ~~revolving credit agreement.~~

282 (b) "Mortgagee" means:

- 283 1. The grantee of a mortgage; or
- 284 2. If a mortgage has been assigned of record, the last
- 285 person to whom the mortgage has been assigned of record.

286 (c) "Mortgage servicer" means the last person to whom a
 287 mortgagor or the mortgagor's successor in interest has been
 288 instructed by a mortgagee to send payments on a loan secured by
 289 a mortgage. A person transmitting an estoppel letter ~~a payoff~~
 290 ~~statement~~ is the mortgage servicer for the mortgage described in
 291 the estoppel letter ~~payment statement~~.

292 (d) "Mortgagor" means the grantor of a mortgage.

293 ~~(e) "Payoff statement" means a statement of the amount of:~~

- 294 1. ~~The unpaid balance of a loan secured by a mortgage,~~
- 295 ~~including principal, interest, and any other charges properly~~
- 296 ~~due under or secured by the mortgage.~~
- 297 2. ~~Interest on a per day basis for the unpaid balance.~~

298 ~~(e)~~ (f) "Record" means to record with the clerk of the
 299 circuit court or the comptroller in the county or counties in
 300 which the real property securing the mortgage is located.

301 ~~(f)~~ (g) "Title insurer" means a corporation or other
 302 business entity authorized and licensed to transact the business
 303 of insuring titles to interests in real property in this state
 304 under chapter 624.

305 (3) CONTENTS.--A certificate of release executed under
 306 this section must contain:

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

307 (b) A statement that the mortgage being released is
 308 eligible for release under this section, ~~including any~~
 309 ~~modifications thereof, was in the principal amount of \$500,000~~
 310 ~~or less.~~

311 (e) A statement that the mortgagee or mortgage servicer
 312 provided an estoppel letter ~~a payoff statement~~ which was used to
 313 make payment in full of the unpaid balance of the loan secured
 314 by the mortgage.

315 (f) A statement that payment in full of the unpaid balance
 316 of the loan secured by the mortgage was made in accordance with
 317 the estoppel letter ~~payoff statement~~ and that a copy of the
 318 certificate of release was sent to the mortgagee or mortgage
 319 servicer that provided the estoppel letter ~~payoff statement~~.

320 (6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE
 321 AGENT.--

322 (a) In addition to any other remedy provided by law, a
 323 title insurer and title insurance agent recording a certificate
 324 of release under this section shall be liable to the holder of
 325 the obligation secured by the mortgage for actual damage
 326 sustained due to the recording of the certificate of release.
 327 Reasonable costs and attorneys' fees shall be awarded to the
 328 prevailing party.

329 (c) The title insurer and title insurance agent shall have
 330 no liability under this subsection if the title insurer or title
 331 insurance agent shows that payment in full of the unpaid balance
 332 of the loan secured by the mortgage was made in accordance with
 333 the estoppel letter ~~payoff statement~~ furnished by the mortgagee
 334 or the mortgage servicer.

ENROLLED

CS/HB 111, Engrossed 1

2007 Legislature

335 (8) APPLICATION.--This section applies only to a mortgage
336 that secures a loan, ~~including any modifications of such~~
337 ~~mortgage,~~ in the principal amount of \$500,000 or less as
338 determined from the recorded mortgage and contains no disclosure
339 of record that the mortgage secures an open-end or revolving
340 line of credit agreement.

341 ~~(9) PREMIUM. The Financial Services Commission shall~~
342 ~~adopt rules establishing an actuarially sound premium charge to~~
343 ~~be made for each certificate of release recorded pursuant to~~
344 ~~this section.~~

345 Section 10. This act shall take effect October 1, 2007.