

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 Banking and Insurance Committee

BILL: SB 1404

INTRODUCER: Senator Altman

SUBJECT: Title Insurance

DATE: January 23, 2012

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	<u>Pre-meeting</u>
2. _____	_____	<u>JU</u>	_____
3. _____	_____	<u>BC</u>	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

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 bill makes the following changes with regard to title insurance agents and agencies:

- Changes to the continuing educational requirements for agents.
- Defines agent in charge and outline their responsibilities.
- Requires attorneys to maintain separate trust accounts.
- Removes the requirement that applicant deposit securities.
- Increases the amount of fidelity bonding an agency must maintain.
- Allows the DFS to deny the renewal of licensure for certain offenses.
- Requires the DFS to approve forms within time period from when they are submitted.
- Defines the process for labeling submitted documents as trade secrets.
- Allows the DFS to adopt rules relating to title insurance.
- Requires when a statement of settlement cost is required before funds can be dispersed.

¹ Section 627.777, F.S.

² Section 627.782, F.S.

This bill substantially amends the following sections of the Florida Statutes: 626.2815, 626.841, 626.8417, 626.8418, 626.8419, 626.8437, 626.8473, 627.777, 627.782.

This bill creates the following sections of the Florida Statutes: 626.8422, 627.7815, 627.7985, 689.263.

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 state 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 also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on 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 the DFS, and are separately appointed⁵ by each title insurer they represent. To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. 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. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling. 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. Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years⁶ on any insurance products sold in Florida.

Bonds

Section 626.8418(2), F.S., requires applicants for agency licensure to deposit with the DFS securities of \$35,000 or obtain surety bonds in that amount payable to the DFS for the benefit of the appointing insurer in case of damage from a violation by the title agency. As of June 27, 2011, 1,958 title agencies hold valid licenses and have posted the bond or deposited securities in

³ Section 624.608, 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.

⁴ 627.7711(3), F.S.

⁵ An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.

⁶ Section 626.2815(3)(d), F.S.

the amount of \$35,000 with the Bureau of Collateral Security in a like amount.⁷ Section 626.8419(1)(a), F.S., requires agencies to obtain a fidelity bond in an amount of \$50,000.

III. Effect of Proposed Changes:

The bill makes the following changes with regard to title insurance agents and agencies:

- Requires the DFS to approve 10 hours of new courses specific to title insurance and escrow management. Additionally 3 of the 10 hours of courses approved by the DFS must be about ethics, rules and compliance with state and federal regulations pertaining to title insurance and closing services. The bill allows the DFS to contract with a private entity to provide services related to the continuing education of title insurance agents.
- Defines “agent in charge” as an attorney or licensed title insurance agent who is designated by the title insurance agency.
- Requires one or more attorneys who own an entity doing sole business as a title insurance agency to appoint a licensed agent in charge.
- Removes the requirement that an applicant for title insurance agency be required to deposit securities with the DFS.
- Increases the amount of fidelity bonding a title insurance agency must obtain from \$50,000 to \$250,000.
- Creates s. 626.8422, F.S., defining the role and duties of the agent in charge and requires an agent in charge must be designated for each title insurance agency or branch office.
- Allows the DFS to deny a renewal of licensure for failure by the licensee to timely provide data required by the department. Also allows the DFS to deny a renewal of licensure if the licensee has been charged with committing insurance or other financially related felonies.
- Requires attorneys acting in the capacity of title insurance agent must keep in a separate trust account all escrowed funds collected from title insurance transactions.
- Requires the DFS to approve or disapprove within 180 days forms certified and submitted by the American Land Title Association (ALTA). Forms not certified by ALTA that are submitted must be approved or disapproved by the DFS within 1 year.
- Defines the procedures for labeling documents submitted to the DFS as trade secrets. Requires an affidavit certifying under oath the need for such documents to be labeled trade secrets.
- Requires each title insurance agency doing business in the state must maintain and submit to the DFS by March 31st of each year information the DFS may determine necessary to assist in the analysis of title insurance rates, title search costs and the condition of the title insurance industry in the state.
- Allows the DFS to adopt rules relating to the regulation of title insurance agents and agencies:
 - Define the license and appointment requirements for title insurance agents and agencies.
 - Establish penalty guidelines for enforcing the Insurance Code.
 - Describe the fiduciary responsibilities and duties of title insurers, title insurance agents, and title insurance agencies.
 - Identify the responsibilities, duties, and designations of the agent in charge of the title insurance agency.

⁷ Analysis for HB 643 by the Department of Financial Services, November 28, 2011. On file with committee staff.

- Enable the collection and analysis of information relating to the title insurance business.
 - Set reasonable requirements for the timely recording of documents and the delivery of final title insurance policies.
 - Set reasonable requirements for the timely disbursement of escrow funds.
 - Establish rules for the protection, calculation, and remittance of premiums.
 - Prohibit the markup of the cost of any third-party goods and services that do not add value.
- Requires title insurance agents and agencies may not disburse funds pursuant to a completed purchase and sale transaction or refinance transaction without requiring a statement of settlement cost from the buyer, borrower, seller and settlement agent.
- This act shall take effect July 1, 2012.

Other Potential Implications:

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:

- There is an additional \$200,000 bonding requirement for title agencies.
- The DFS can suspend, deny or revoke a license for failure to timely submit data.

C. Government Sector Impact:

See Technical Deficiencies.

VI. Technical Deficiencies:

The bill refers to the “department” not the “office” with regard to approving forms and setting rates.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
