

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 643 Title Insurance
SPONSOR(S): Insurance & Banking Subcommittee and Moraitis, Jr.
TIED BILLS: HB 645 **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 1 N, As CS	Reilly	Cooper
2) Rulemaking & Regulation Subcommittee	14 Y, 1 N	Miller	Rubottom
3) Government Operations Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. The bill requires title insurers and title insurance agencies to submit to the Office of Insurance Regulation (OIR), by March 31 of each year, data that have been identified as necessary to assist in the analysis of premium rates, title search costs, and the condition of Florida's title insurance industry. The Financial Services Commission is authorized to promulgate rules governing the collection and analysis of such data. The Department of Financial Services is required to take adverse action against title insurance agents or agencies that fail to timely file the required data, including suspension or revocation of authority.

Under current law, title insurance agents must complete 10 hours of continuing education (CE) every 2 years on any insurance products sold in Florida. However, these agents are authorized to sell only title insurance products and no other lines of insurance. The bill amends CE requirements for title insurance agents, specifying that the credit hours must be earned in title insurance and escrow management courses specific to Florida and approved by the Department of Financial Services. At least 1.5 of the CE hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

The bill requires attorneys who serve as title insurance or real estate settlement agents to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Such attorneys are also required to permit title insurers for whom they hold funds to audit the separate account.

The bill also requires the OIR to:

- Approve or disapprove forms filed by title insurers within 180 days after receipt and, when approving a form, to determine if the current rate applies or if the coverages require the adoption of rules.
- Expeditiously approve filed forms that contain identical coverages, rates, and approved deviations to a form the OIR has approved for another title insurer to prevent a competitive advantage in the marketplace.

The OIR is authorized to revoke approval of any form after providing 180 days notice to the title insurer.

To the extent that the bill provides timeframes for the approval/disapproval of title insurance forms and annual review of title insurance data by the OIR, it will permit title insurers to respond more quickly to changes in the marketplace and ensure that the premiums charged are appropriate.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.¹ Title insurance is a policy issued by a title insurer 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. It 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 provides a duty to defend 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.²

Regulation in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents in Florida. Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage^{3,4} and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).⁵ Title insurers may deviate from the proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.⁶

Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.⁷ Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30%. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.⁸ This rulemaking is not mandatory under the present statute.

Title Insurance Agencies and Agents

¹ 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.

² See, e.g., the website of the American Land Title Association, <http://www.alta.org> (last visited January 7, 2012). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

³ Section 627.777, F.S.

⁴ According to the OIR, there is currently no timeframe within which it is required to approve or disapprove filed title insurance forms.

⁵ Section 627.782, F.S.

⁶ Section 627.783, F.S.

⁷ Section 627.786, F.S.

⁸ Section 627.782(8), F.S.

Title insurance agencies must apply for and be licensed by the DFS, and are separately appointed⁹ 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 years¹⁰ on any insurance products sold in Florida, and must be separately appointed by each insurer they represent.

Effect of the Bill

The bill makes changes to title insurance regulation as follows.

Title Insurance Forms

The bill requires OIR 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, the 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, the OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations as the approved form.

Submission of Data to the OIR

Title insurers, their direct or retail businesses in the state, and title agencies will be required to submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is authorized to adopt rules to assist in data analysis and collection. Failure to submit the required data timely to OIR will constitute grounds for DFS to take disciplinary action against the licensed or appointment of the title insurance agent or agency. Possible sanctions include suspension or revocation of a license or appointment. The bill creates a safe harbor for non-compliance if the data reporting rule is subject to a rule challenge under s. 120.56, F.S.,¹¹ contesting the form or substance of the data that must be submitted.

Separate Escrow Account for Specified Funds Held by Attorneys

Attorneys who serve as title insurance or real estate settlement agents will be required to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Attorneys are required to allow insurers for whom they hold funds to audit the separate account.

Continuing Education Requirements for Title Insurance Agents

While the number of continuing education (CE) hours title insurance agents must complete every 2 years remains unchanged (10 hours), the bill requires that the credits be earned in title insurance and

⁹ An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.

¹⁰ Section 626.2815(3)(d), F.S.

¹¹ The section of the Administrative Procedure Act (APA) under which a party may challenge a rule as an invalid exercise of delegated authority.

escrow management courses specific to Florida, and which have been approved by the DFS. At least 1.5 of these hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.2815, F.S., to revise continuing education requirements for title insurance agents.

Section 2. Amends s. 626.8437, F.S., to require the Department of Financial Services to deny, suspend or revoke the authority of title insurance agents and agencies that do not timely submit annual data to the OIR.

Section 3. Amends s. 626.8473, F.S., to require attorneys who serve as title or real estate settlement agents to deposit funds received in connection with these transactions in a separate account, unless such deposit as to a particular client would violate rules of the Florida Bar.

Section 4. Amends s. 627.777, F.S., relating to approval or disapproval of title insurance forms filed with the OIR.

Section 5. Amends s. 627.782, F.S., to require title insurers, their affiliated businesses in Florida, and title agents to submit certain financial data annually to the OIR; mandates penalties for failure to timely submit required data.

Section 6. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring title insurers to annually submit data for analysis to the OIR, establishing timeframes within which filed forms must be approved or disapproved, and requiring a determination of whether current rates apply to newly approved forms, will allow the title insurance industry to be more responsive to changes in the title insurance market and ensure proper review of premium charges.

Title insurers and title agencies may have to invest in technology and expand the programming capacities of their current computer systems to collect and provide the OIR with data based upon the bill's requirement for rulemaking by the Financial Services Commission. As it is likely that the regulatory

cost of such rule will exceed \$1 million in the aggregate over 5 years, the OIR will be required to submit the rule to the Legislature for ratification before it takes effect pursuant to s. 120.541(3), F.S.

D. FISCAL COMMENTS:

See comments in Section II.C.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the Financial Services Commission to promulgate rules governing the submission and collection of certain financial data from title insurers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes failure to timely submit certain financial data a violation of the statute for which DFS may impose sanctions against an applicant, licensee, or appointee. However, if the rule establishing the form and type of data to be reported is subject to a pending challenge the reporting requirement apparently would not apply. By attempting to provide a safe harbor from sanctions, the bill creates uncertainty as to how this exception would be applied. The bill could provide that the reporting requirement would be suspended only for the party who files a proper rule challenge until the entry of a final order on the petition.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.