

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 643 (CS/CS/SB 1404)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Economic Affairs Committee; Insurance & Banking Subcommittee; Moraitis (Judiciary; Banking and Insurance; Altman)	118 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 1404	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

House Bill 643 passed the House on February 16, 2012, and subsequently passed the Senate on March 7, 2012. The bill provides changes to title insurance regulation as described in the following.

Title insurers and title insurance agencies are required 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 regarding the collection and analysis of such data. Additionally, 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.

The current requirement that title insurance agents complete 10 hours of continuing education every two years remains unchanged. However, for compliance periods beginning on or after October 1, 2014, the credits must be earned in title insurance and escrow management courses specific to Florida that have been approved by the Department of Financial Services. At least three of the credit hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services. The change in curriculum reflects the fact that title insurance agents are authorized only to sell title insurance products.

Attorneys who serve as title insurance or real estate settlement agents are 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. Such attorneys are also required to permit title insurers for whom they hold funds to audit the separate account.

The OIR is required to:

- Approve or disapprove forms filed by title insurers within 180 days after receipt and, when approving a form, 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 also authorized to revoke approval of any form after providing 180 days notice to the title insurer.

This bill does not have a fiscal impact on state or local government.

The bill was approved by the Governor on May 4, 2012, ch. 2012-206, Laws of Florida. Sections 2-5 of the bill are effective July 1, 2012. Section 1 of the bill is effective October 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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 secured 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 percent. 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.

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 time frame 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 and Agents

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 four 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 two years¹⁰ on any insurance products sold in Florida, and must be separately appointed by each insurer they represent.

Effect of Proposed Changes

Title Insurance Forms

Currently, there are no time frames within which the OIR must approve or disapprove forms filed by title insurers. The bill requires the OIR to approve or disapprove filed title insurance forms within 180 days of receipt. 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 are 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 regarding the collection and analysis of the data. Failure to submit the required data timely to the OIR will constitute grounds for the DFS to take disciplinary action against the license or appointment of the title insurance agent or agency. Possible sanctions include suspension or revocation of a license or appointment.

Separate Escrow Account for Specified Funds Held by Attorneys

Attorneys who serve as title insurance or real estate settlement agents are 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 hours that title insurance agents must complete every two years remains unchanged (10 hours), the bill requires that the credits be earned in title insurance and escrow management courses specific to Florida, and which have been approved by the DFS. At least

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.

three of these hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

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:

To the extent that the bill provides time frames 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.

D. FISCAL COMMENTS:

None.