

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 Committee on Banking and Insurance

BILL: SB 570

INTRODUCER: Senator Galvano

SUBJECT: Title Insurance

DATE: January 29, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____

I. Summary:

SB 570 relates to title insurance. This bill responds to a recent Florida Supreme Court decision by providing that only contract remedies are available for the breach of a duty that arises solely from the terms of a contract of title insurance.

This bill provides that title insurance agency and agent applications created by the Department of Financial Services (“Department”) not be on a printed form. This would allow the Department to use online applications. Current law allows an applicant for licensure as a title insurance agent to substitute work experience in the title insurance business for classroom instruction. This bill specifies that the work experience in responsible title insurance duties must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. This bill provides that the naming requirements do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming standards are effective October 1, 2014.

This bill removes the requirement that a title insurance agency deposit securities with the Department having a market value of \$35,000 or a bond in the same amount at the time of application for licensure. This requirement is no longer necessary because current law requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer.

This bill provides that a title insurance agent must be licensed and appointed in order to sell title insurance.

This bill is effective July 1, 2014.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.²

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (“Department”) while title insurance companies are licensed and regulated by the Office of Insurance Regulation.

Title Insurance and the Economic Loss Rule

The economic loss rule is a “judicially created doctrine that sets forth circumstances under which a tort action is prohibited if the only damages suffered are economic losses.”³ Parties to a contract are generally prohibited from recovering damages in tort for matters arising from the contract.⁴ The Florida Supreme Court has explained:

Underlying [the economic loss] rule is the assumption that the parties to a contract have allocated the economic risks of nonperformance through the bargaining process. A party to a contract who attempts to circumvent the contractual agreement by making a claim for economic loss in tort is, in effect, seeking to obtain a better bargain than originally made. Thus, when the parties are in privity, contract principles are generally more appropriate for determining remedies for consequential damages that the parties have, or could have, addressed through their contractual agreement. Accordingly, courts have held that a tort action is barred where a defendant has not committed a breach of duty apart from a breach of contract.⁵

In *Tiara Condominium Association v. Marsh & McClellan*, the Florida Supreme Court held that the economic loss rule does not bar an insured’s suit against an insurance broker where the parties are in contractual privity and the damages are solely economic.⁶ The court further held that the economic loss rule is limited to products liability cases.⁷ In limiting the economic loss rule to product liability cases, the court explained that it had long “expressed its desire” to return the economic loss rule to its intended purpose of limiting actions in product liability cases.⁸

¹ See s. 624.608, F.S.

² See *Lawyers Title Insurance Co. v. Novastar Mortgage, Inc.*, 862 So.2d 793,797 (Fla. 4th DCA 2004).

³ *Tiara Condominium Association v. Marsh & McClellan*, 110 So. 3d 399, 401 (Fla. 2013).

⁴ *Id.* at 402.

⁵ *Indemnity Ins. Co. of North America v. American Aviation, Inc.*, 891 So.2d 532, 536-537 (Fla.,2004)(internal citations omitted).

⁶ *Tiara Condominium Association*, 399 So. 3d at 402.

⁷ *Tiara Condominium Association*, 399 So. 3d at 402.

⁸ *Tiara Condominium Association*, 399 So. 3d at 407.

Licensing and Appointment of Title Insurance Agents

A person may not act as a title insurance agent until the person is licensed by the Department.^{9, 10} Once a person obtains a license, the person must be authorized or appointed by a title insurer to transact insurance on behalf of the insurer.¹¹ In order to obtain a license, an applicant must complete a 40 hour classroom course in title insurance or have had 12 months of experience in responsible title insurance duties while working as a substantially full time employee of a title agency, title agent, title insurer, or an attorney who conducts real estate closings and issues title insurance policies but is exempt from licensure.¹² An applicant must also qualify to take and must pass a required examination.¹³

Naming of Title Insurance Agencies

Florida law generally prohibits an insurance agency name from being deceptive or misleading. Section 626.8413, F.S., provides that a title insurance agent shall not adopt a name which contains the words “title insurance,” “title guaranty,” or “title guarantee” unless such words are followed by the word “agent” or “agency.” The restrictions on names make clear to a purchaser that title insurance is being purchased from an agent or agency rather than directly from a title insurer. The naming requirements in s. 626.8413, F.S. do not apply to a title insurer acting as an agent for another title insurer.

Bond Requirement

Section 626.8418(2), F.S., requires an applicant for licensure as a title insurance agency to deposit security with the Department of at least \$35,000 or post a surety bond payable to the Department of at least \$35,000 for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. Section 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer appointing the agency. The bond must be for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer.

III. Effect of Proposed Changes:

The Economic Loss Rule (Section 7)

This bill responds to the court’s decision in *Tiara Condominium Association* by providing that only contract remedies are available for breach of a duty which arises solely from the terms of a contract of title insurance.

⁹ See s. 626.8417, F.S.

¹⁰ Title insurers and attorneys admitted to practice law in Florida and in good standing with the Florida Bar are exempt from the licensing and appointment requirements. See s. 626.8417(4)(a), F.S.

¹¹ See s. 626.841(1), Florida Statutes, defining “title insurance agent” as one appointed by a title insurer to issue policies on its behalf.

¹² See 626.8417(3)(a), F.S.

¹³ See 626.8417(3)(b), F.S.

Licensing and Appointment of Title Insurance Agents (Sections 1 and 3)

This bill amends s. 626.8412, F.S., to provide that a title insurance agent must be licensed and appointed in order to sell title insurance.

This bill provides that the Department's license application need not be on a printed form. This would allow the Department to use online applications. This bill specifies that the 12 months of experience in responsible title insurance duties required as an alternative to classroom instruction must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

Naming of Title Insurance Agencies (Section 2)

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. It provides that a title insurance agent or agency may not adopt a name which contains the words "title insurance," "title company," "title guaranty," or "title guarantee" unless such words are followed by the word "agent" or "agency." This bill provides that the naming restrictions do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

Bond Requirement

Sections 4 and 5 of this bill remove the requirement that a title insurance agency deposit with the Department securities having a market value of \$35,000 or a bond in the same amount at the time of application for licensure for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with an appointing insurer. This requirement is no longer necessary because s. 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer.

Sections 6 and 8 of this bill removes obsolete language relating to binders and guarantees of title. Those terms are no longer used.

Effective Date

Section 9 of this bill provides an effective date of July 1, 2014.

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:

Limiting liability to contract remedies could benefit insurers by making remedies for breach of contract more predictable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.8412, 626.8413, 626.8417, 626.8418, 626.8419, 626.8437, 627.778, and 627.7845.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.