**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 Judiciary

| | |
|---|---|
| BILL: | CS/SB 570 |
| INTRODUCER: | Banking and Insurance Committee and Senator Galvano |
| SUBJECT: | Title Insurance |
| DATE: | March 10, 2014 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Billmeier | Knudson | BI | **Fav/CS** |
| 2. | Munroe | Cibula | JU | **Pre-meeting** |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:


CS/SB 570 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 or other instrument, relating to real estate closings, issued and approved by the Office of Insurance Regulation.

This bill provides that title insurance agency and agent applications created by the Department of Financial Services need not be on a printed form. This change allows the use of 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 provides that the work experience 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 requirements are effective October 1, 2014.

This bill removes the requirement that a title insurance agency deposit securities with the Department of Financial Services 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 a title insurance agency must 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 changes from March 31 to May 31, the date which title insurers and agencies must report information required by the Office of Insurance Regulation for the analysis of title insurance premium rates.

## 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 & McClennan*, the Florida Supreme Court held that the economic loss rule does not bar an insured's suit against an insurance broker where the

[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 & McClennan*, 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).

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]

Prior to *Tiara Condominium*, Florida followed a majority view that title insurers owe no duty to the insured.[9] A leading case on the applicability of the economic loss rule and the title insurance industry was *Chicago Title Insurance Co. v. Commonwealth Forest Investments,* Inc.[10] In that case, the court found that "the economic loss rule protects these contractual expectations, including the important expectation that a title insurer's risk will be limited to the dollar amount shown on the face of the policy."[11] The court concluded that the negligence action against the title insurer was barred by the economic loss rule and the unambiguous language of the policy which precluded an independent tort action for negligence.[12]

**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.[13],[14] 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.[15] 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.[16] An applicant must also qualify to take and pass a required examination.[17]

**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.

---

[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.
[9] *See e.g., MacDonald v. Old Republic Nat. Title Ins. Co.*, 882 F.Supp.2d 236, 244 (D.Mass. 2012).
[10] *Chicago Title Ins. Co. v. Commonwealth Forest Inv. Inc.*, 494 F.Supp.2d 1332, (M.D. Fla. 2007).
[11] *Chicago Title Ins. Co.*, 494 F.Supp.2d at 1337.
[12] *Chicago Title Ins. Co.*, 494 F.Supp.2d at 1337-38.
[13] *See* s. 626.8417, F.S.
[14] 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.
[15] *See* s. 626.841(1), Florida Statutes, defining "title insurance agent" as one appointed by a title insurer to issue policies on its behalf.
[16] *See* s. 626.8417(3)(a), F.S.
[17] *See* s. 626.8417(3)(b), F.S.

**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.

**Reports to the Office of Insurance Regulation**

Title insurance agencies and title insurers are required to submit information including revenue, loss, and expense data to the Office of Insurance Regulation on March 31 of the year after the reporting year.[18] The Office of Insurance Regulation uses the information to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry.[19]

## III. Effect of Proposed Changes:

**The Economic Loss Rule (Section 7)**

This bill responds to the 2013 decision of the Florida Supreme Court *Tiara Condominium Association v. Marsh & McClennan,* 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 or an instrument, such as closing protection letter, issued pursuant to s. 627.786(3), 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 by the Department of Financial Services and appointed by a title insurer in order to sell title insurance.

This bill provides that the Department's license application need not be on a printed form. This change allows 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

[18] *See* s. 627.782(8), F.S.
[19] *Id*.

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)**

The bill removes 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.

**Technical Changes**

Sections 6 and 9 of this bill removes obsolete language relating to binders and guarantees of title. Those terms are no longer used.

Section 8 changes the date which title insurers and title insurance agencies must report required revenue, loss, and expense data to the Office of the Insurance Regulation from March 31 to May 31.

Other technical changes which clarify existing law, without changing its meaning, are made throughout the bill.

**Effective Date (Section 10)**

The bill takes effect 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, 627.782, and 627.7845.

## IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 4, 2014:**
The CS provides that only contract remedies are available for a breach of duty arising from the terms of an instrument issued pursuant to s. 627.786(3), F.S., and changes the date which title insurers and title insurance agencies must report information to the Office of Insurance Regulation from March 31 to May 31.

B. Amendments:

None.