

## Council Substitute for House Bill No. 111

An act relating to title insurance; amending s. 626.84201, F.S.; providing additional requirements for nonresident title insurance agent licensure; amending s. 626.9541, F.S.; revising unlawful rebate specifications; amending s. 627.7711, F.S.; revising definitions; amending s. 627.780, F.S.; providing an exception to a prohibition against dealing in certain premium; amending ss. 627.782 and 627.783, F.S.; revising rate and rate deviation requirements; amending s. 627.7845, F.S.; revising determination of insurability and records retention requirements; amending s. 701.04, F.S.; revising requirements for an estoppel letter; amending s. 701.041, F.S.; revising definitions; providing for application to certain mortgages; providing liability for title insurance agents recording a certificate of release; repealing the authority of the Financial Services Commission to adopt rules regarding the charge for the certificate of release; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 626.84201, Florida Statutes, is amended to read:

626.84201 Nonresident title insurance agents.—Notwithstanding s. 626.8414(2), the department, upon application and payment of the fees specified in s. 624.501, may issue a license as a nonresident title insurance agent to an individual not a resident of this state in the same manner applicable to the licensure of nonresident general lines agents under the provisions of s. 626.741, provided the individual passes the examination for licensure required under s. 626.221. Nonresident title insurance agents licensed pursuant to this section must complete the continuing education requirements of s. 626.2815 in the same manner as resident title insurance agents. Sections 626.742 and 626.743 apply to nonresident title insurance agents.

Section 2. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) Unlawful rebates.—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:

a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the ~~agent's, agency's, or title insurer's share of the premium~~ or any other charge or fee for related title services below the cost for providing such services, or provide any special favor or advantage, or any monetary consideration or inducement whatever. ~~Nothing herein contained shall preclude an abatement in an attorney's fee charged for legal services.~~

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts

of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney's fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee said charge, or any monetary consideration or inducement whatsoever, except other than as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney's fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

Section 3. Subsection (1) of section 627.7711, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

627.7711 Definitions.—As used in this part, the term:

(1)(a) “Closing Related title services” means services performed by a licensed title insurer, or title insurance agent or agency, or attorney agent in the agent's or agency's capacity as such, including, but not limited to, preparing or obtaining a title search, examining title, examining searches of the records of a Uniform Commercial Code filing office and such other information as may be necessary, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued. The premium, together with the charge for related title services, constitutes the regular title insurance premium.

(b) “Primary title services” means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search and examination of the title or a search of the records of a Uniform Commercial Code filing office and such other information as may be necessary, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy. Such services do not include closing services or title searches, for which a separate charge or separate charges may be made.

(4) “Title search” means the compiling of title information from official or public records.

Section 4. Subsection (1) of section 627.780, Florida Statutes, is amended to read:

627.780 Illegal dealings in ~~risk~~ premium.—

(1) A person may not knowingly quote, charge, accept, collect, or receive a premium for title insurance other than the premium adopted by the commission, except as provided in s. 626.9541(1)(h)3.b.

Section 5. Subsection (1) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(1) Subject to the rating provisions of this code, the commission must adopt a rule specifying the premium to be charged in this state 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. However, in a transaction subject to the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq., as amended, no portion of the premium attributable to providing a primary title service shall be paid to or retained by any person who does not actually perform or is not liable for the performance of such service. ~~The commission may, by rule, establish limitations on related title services charges made in addition to the premium based upon the expenses associated with the services rendered and other relevant factors.~~

Section 6. Subsection (1) of section 627.783, Florida Statutes, is amended to read:

627.783 Rate deviation.—

(1) A title insurer may petition the office for an order authorizing a specific deviation from the adopted premium, ~~and a title insurer or title insurance agent may petition the office for an order authorizing and permitting a specific deviation above the reasonable charge for related title services rendered specified in s. 627.782(1).~~ The petition shall be in writing and sworn to and shall set forth allegations of fact upon which the petitioner will rely, including the petitioner's reasons for requesting the deviation. Any authorized title insurer, agent, or agency may join in the petition for like authority to deviate or may file a separate petition praying for like authority or opposing the deviation. The office shall rule on all such petitions simultaneously.

Section 7. Subsections (1), (2), and (3) of section 627.7845, Florida Statutes, are amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(1) A title insurer may not issue a title insurance commitment, endorsement, or title insurance policy until the title insurer has caused to be made

~~conducted a determination of insurability based upon the evaluation of a reasonable title search and examination of the title or a search of the records of a Uniform Commercial Code filing office, as applicable, has examined such other information as may be necessary, and has caused to be made a determination of insurability of title or the existence, attachments, perfection, and priority of a Uniform Commercial Code security interest, including endorsement coverages, in accordance with sound underwriting practices.~~

(2) The title insurer shall cause the evidence of the determination of insurability and the reasonable title search and examination of the title or search of the records of a Uniform Commercial Code filing office to be preserved and retained in its files or in the files of its title insurance agent or agency for a period of not less than 7 years after the title insurance commitment, title insurance policy, or guarantee of title was issued. The title insurer or agent or agency must produce the evidence required to be maintained by this subsection at its offices upon the demand of the office. Instead of retaining the original evidence, the title insurer or the title insurance agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original.

(3) The title insurer or its agent or agency must maintain a record of the actual risk premium charged and related title service charges made for issuance of the policy and any endorsements in its files for a period of not less than 7 years. The title insurer, agent, or agency must produce the record at its office upon demand of the office.

Section 8. Subsection (1) of section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of a mortgagor, the holder of a mortgage shall deliver to the mortgagor at a place designated in the written request an estoppel letter setting forth the unpaid principal balance of the loan secured by the mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance due, and the per diem rate. Whenever the amount of money due on any mortgage, lien, or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien, or judgment and have the same acknowledged, or proven, and duly entered of record in the book provided by law for such purposes in the proper county. Within 60 days of the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of the provisions of this section, the prevailing party shall be entitled to attorney's fees and costs.

Section 9. Subsection (1), paragraphs (b), (e), and (f) of subsection (3), paragraphs (a) and (c) of subsection (6), and subsections (8) and (9) of section 701.041, Florida Statutes, are amended to read:

701.041 Title insurer; mortgage release certificate.—

(1) DEFINITIONS.—For purposes of this section:

(a) “Estoppel letter” means a statement of the amount of:

1. The unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage.

2. Interest on a per-day basis for the unpaid balance. “Mortgage” means a mortgage or mortgage lien on an interest in real property in this state, including any modifications thereof, given to secure a loan in the principal amount of \$500,000 or less, other than a mortgage securing an open-end or revolving credit agreement.

(b) “Mortgagee” means:

1. The grantee of a mortgage; or

2. If a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

(c) “Mortgage servicer” means the last person to whom a mortgagor or the mortgagor’s successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting an estoppel letter a payoff statement is the mortgage servicer for the mortgage described in the estoppel letter payment statement.

(d) “Mortgagor” means the grantor of a mortgage.

~~(e) “Payoff statement” means a statement of the amount of:~~

~~1. The unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage.~~

~~2. Interest on a per-day basis for the unpaid balance.~~

~~(e)(f) “Record” means to record with the clerk of the circuit court or the comptroller in the county or counties in which the real property securing the mortgage is located.~~

~~(f)(g) “Title insurer” means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 624.~~

(3) CONTENTS.—A certificate of release executed under this section must contain:

(b) A statement that the mortgage being released is eligible for release under this section, including any modifications thereof, was in the principal amount of \$500,000 or less.

(e) A statement that the mortgagee or mortgage servicer provided an estoppel letter a payoff statement which was used to make payment in full of the unpaid balance of the loan secured by the mortgage.

(f) A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the estoppel letter payoff statement and that a copy of the certificate of release was sent to the mortgagee or mortgage servicer that provided the estoppel letter payoff statement.

(6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE AGENT.—

(a) In addition to any other remedy provided by law, a title insurer and title insurance agent recording a certificate of release under this section shall be liable to the holder of the obligation secured by the mortgage for actual damage sustained due to the recording of the certificate of release. Reasonable costs and attorneys' fees shall be awarded to the prevailing party.

(c) The title insurer and title insurance agent shall have no liability under this subsection if the title insurer or title insurance agent shows that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the estoppel letter payoff statement furnished by the mortgagee or the mortgage servicer.

(8) APPLICATION.—This section applies only to a mortgage that secures a loan, including any modifications of such mortgage, in the principal amount of \$500,000 or less as determined from the recorded mortgage and contains no disclosure of record that the mortgage secures an open-end or revolving line of credit agreement.

(9) PREMIUM.—The Financial Services Commission shall adopt rules establishing an actuarially sound premium charge to be made for each certificate of release recorded pursuant to this section.

Section 10. This act shall take effect October 1, 2007.

Approved by the Governor May 22, 2007.

Filed in Office Secretary of State May 22, 2007.