

STORAGE NAME: h1609a.rpp
DATE: April 14, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property & Probate
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1609

RELATING TO: Title insurance agents

SPONSOR(S): Representative Arnold

STATUTE(S) AFFECTED: Sections 626.8411 and 626.572, Florida Statutes.

COMPANION BILL(S): SB 1884

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Real Property & Probate
- (2) Financial Services
- (3) Governmental Operations
- (4)
- (5)

I. SUMMARY:

HB 1609 prohibits title insurance agents or agencies from providing rebates in the manner authorized by section 626.572, Florida Statutes.

The provisions of the bill operate retroactively.

The bill takes effect upon becoming a law.

The bill should not have a fiscal impact on state and local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Pursuant to statute, title insurers must retain at least 30 percent of risk premiums for policies sold by title insurance agents. § 627.782, Florida Statutes. Generally, the remaining 70 percent is paid to title insurance agents as a commission. A risk premium is defined by statute as being the charge made by the title insurer for the assumption of risk. § 627.7711, Florida Statutes. By rule, costs associated with "related title services," i.e., title search, examination, and closing, must be billed separately from the risk premium. Rule 4-186.003(13)(a) and (b) F.A.C. Whether a title insurance agent's ability to eliminate risks associated with title defects flows from their commission, or from their execution of "related title services" is unclear.

Currently, title insurance agents and agencies are seemingly **not** precluded by statute from rebating a portion of their commission in the manner prescribed in section 626.572, Florida Statutes. Section 626.572, Florida Statutes, which permits rebating, is located in Part I of chapter 626, Florida Statutes. Section 626.8411(2), Florida Statutes, renders some provisions of Part I inapplicable to title insurance agents or agencies. However, s. 626.572, F.S., is not among the enumerated inapplicable provisions. Therefore, s. 626.572, F.S., which permits rebating, seems to apply to title insurance agents or agencies.

In addition, s. 626.8411(2), F.S., does enumerate s. 626.752, F.S., as being inapplicable to title insurance agents or agencies. Section 626.752, F.S., which is not related to rebating, is located in Part II of chapter 626, Florida Statutes. Therefore, s. 626.8411(2), F.S., incorrectly characterizes s. 626.752, F.S., as being in Part I of chapter 626 Florida Statutes. Furthermore, the scope of Part II of ch. 626, F.S., does not extend to title insurance agents or agencies. See § 626.727, Florida Statutes.

Currently, s. 626.776, F.S., renders all of Part I of ch. 626, F.S., inapplicable to **title insurance**. It is unclear what ramifications this inapplicability has for title insurance **agents or agencies**, who would attempt to rebate under section 626.572, Florida Statutes.

Lastly, in 1986 the Florida Supreme Court declared two statutes relating to rebating by insurance agents, to be unconstitutional to the extent the statutes prohibited rebates of insurance agents' commissions. See Department of Insurance v. Dade County Consumer Advocates, 492 So.2d 1032, 1033 (Fla. 1986) (holding sections 626.611(11) and 626.9541(1)(h)1, Florida Statutes, were unconstitutional to the extent they prohibited rebating by agents).

B. EFFECT OF PROPOSED CHANGES:

HB 1609 inserts s. 626.572, F.S., into s. 626.8411(2), F.S., thereby making s. 626.572, F.S., which permits rebating, inapplicable to title insurance agents or agencies.

HB 1609 also removes s. 626.752, F.S., from section 626.8411(2), Florida Statutes. This seemingly has no effect regarding the section's applicability to title insurance agents or agencies. Section 626.727, Florida Statutes, provides that s. 626.752, F.S., is

inapplicable to title insurance agents or agencies. Therefore, regardless of whether s. 626.572, F.S., is removed from s. 626.8411(2), F.S., the section is inapplicable to title insurance agents and agencies. However, removing s. 626.752, F.S., from s. 626.8411(2) F.S., corrects the problem created by including a section from Part II in a paragraph of a section which speaks only to Part I.

The bill provides for retroactive effect. It is unclear how the retroactivity provision will affect contracts that are fully executed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

No.

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Assuming title insurance agents are currently permitted to rebate, this bill would preclude that presently lawful activity.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1

HB 1609 amends s. 626.8411(2), F.S., to include s. 626.572, F.S., in a provision which sets forth certain sections of ch. 626, F.S., as being inapplicable to title insurance agents.

Section 626.8411(2), F.S., is amended to remove section 626.752, Florida Statutes.

Section 2

The change in law provided in HB 1609 operates retroactively.

Section 3

HB 1609 provides the act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Assuming that title insurance agents are currently permitted to rebate, HB 1609 will not allow title insurance agents to pass on savings in the form of rebates to consumers.

2. Direct Private Sector Benefits:

Where commissions are relatively certain, agents and agencies must compete with respect to product quality, rather than rebating.

3. Effects on Competition, Private Enterprise and Employment Markets:

HB 1609 would appear to restrict free trade by precluding rebating by title insurance agents or agencies.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

STORAGE NAME: h1609a.rpp

DATE: April 14, 1997

PAGE 8

V. COMMENTS:

The Department of Insurance is neutral regarding HB 1609.

HB 1609 contains a provision that the law will operate retroactively. It is unclear what affect this will have regarding fully executed contracts. Article 1, Section 10, of the State Constitution states "No bill of attainder, ex post facto law, or **law impairing the obligation of contracts shall be passed.**"

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON Real Property & Probate:
Prepared by:

Legislative Research Director:

Kurt Bauerle

P.K. Jameson