

By Representative Byrd

1 A bill to be entitled
2 An act relating to title insurance; amending
3 ss. 626.841, 626.8411, 626.9541, 627.7711,
4 627.777, 627.7773, 627.7776, 627.780, 627.783,
5 627.7831, 627.784, 627.7841, 627.7842,
6 627.7845, 627.786, 627.791, and 627.792, F.S.;
7 revising and clarifying application of
8 provisions relating to title insurance agents,
9 policies, premiums, rates, contracts, charges,
10 and practices; amending s. 627.7711, F.S.;
11 revising definitions; amending s. 627.782,
12 F.S.; providing a limitation on payment of
13 portions of premiums for primary title
14 services; providing an effective date.

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

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18 Section 1. Section 626.841, Florida Statutes, is
19 amended to read:

20 626.841 Definitions.--The term:

21 (1) "Title insurance agent" means a person appointed
22 in writing by a title insurer to issue and countersign
23 commitments or binders, ~~commitments~~, policies of title
24 insurance, ~~or guarantees of title~~ in its behalf.

25 (2) "Title insurance agency" means an insurance agency
26 under which title insurance agents and other employees
27 determine insurability in accordance with underwriting rules
28 and standards prescribed by the title insurer represented by
29 the agency, and issue and countersign commitments binders,
30 ~~commitments of title insurance~~, endorsements, or policies

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1 ~~guarantees~~ of title insurance, on behalf of the appointing
2 title insurer. The term does not include a title insurer.

3 Section 2. Paragraph (c) of subsection (2) of section
4 626.8411, Florida Statutes, 1998 Supplement, is amended to
5 read:

6 626.8411 Application of Florida Insurance Code
7 provisions to title insurance agents or agencies.--

8 (2) The following provisions of part I do not apply to
9 title insurance agents or title insurance agencies:

10 (c) Section 626.572 ~~626.752~~, relating to rebating,
11 when allowed ~~exchange of business~~.

12 Section 3. Paragraph (h) of subsection (1) of section
13 626.9541, Florida Statutes, is amended to read:

14 626.9541 Unfair methods of competition and unfair or
15 deceptive acts or practices defined.--

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

19 (h) ~~Unlawful~~ Rebates.--

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

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

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

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

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

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

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

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

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

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

5 3.a. No title insurer, or any member, employee,
6 attorney, agent, agency, or solicitor thereof, shall pay,
7 allow, or give, or offer to pay, allow, or give, directly or
8 indirectly, as inducement to title insurance, or after such
9 insurance has been effected, any ~~unlawful~~ rebate or abatement
10 of the agent's, agency's, or title insurer's share of the
11 premium or any charge for related title services below the
12 cost for providing such services, or provide ~~charge made~~
13 ~~incident to the issuance of such insurance~~, any special favor
14 or advantage, or any monetary consideration or inducement
15 whatever. ~~The words "charge made incident to the issuance of~~
16 ~~such insurance" shall be construed to encompass underwriting~~
17 ~~premium, agent's commission, abstracting charges, title~~
18 ~~examination fee, and closing charges; however,~~ Nothing herein
19 contained shall preclude an abatement in an attorney's fee
20 charged for legal services rendered incident to the issuance
21 of such insurance.

22 b. Nothing in this subparagraph shall be construed as
23 prohibiting the payment of fees to attorneys at law duly
24 licensed to practice law in the courts of this state, for
25 professional services ~~in the actual examination of title to~~
26 ~~real property as a condition to the issuance of title~~
27 ~~insurance~~, or as prohibiting the payment of earned portions of
28 the premium commissions to duly appointed agents or agencies
29 who actually perform services for the title insurer ~~issue the~~
30 ~~policy of title insurance for the underwriting company~~.

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1 c. No insured named in a policy, or any other person
2 directly or indirectly connected with the transaction
3 involving the issuance of such policy, including, but not
4 limited to, any mortgage broker, real estate broker, builder,
5 or attorney, any employee, agent, agency, representative, or
6 solicitor thereof, or any other person whatsoever, shall
7 knowingly receive or accept, directly or indirectly, any
8 ~~unlawful~~ rebate or abatement of said charge, or any monetary
9 consideration or inducement, other than as set forth in
10 sub-subparagraph b.

11 Section 4. Subsections (1) and (2) of section
12 627.7711, Florida Statutes, are amended to read:

13 627.7711 Definitions.--As used in this part, the term:

14 (1)(a) "Related title services" means services
15 performed by a title insurer or title insurance agent or
16 agency, in the agent's or agency's capacity as such,
17 including, but not limited to, preparing or obtaining a title
18 search, examining title information, preparing documents
19 necessary to close the transaction, conducting the closing, or
20 handling the disbursing of funds related to the closing in a
21 real estate closing transaction in which a title insurance
22 ~~binder, commitment, or~~ policy is to be issued. The ~~risk~~
23 premium, together with the charge for related title services,
24 constitutes the regular title insurance premium.

25 (b) "Primary title services" means determining
26 insurability in accordance with sound underwriting practices
27 based upon evaluation of a reasonable search and examination
28 of the title, determination and clearance of underwriting
29 objections and requirements to eliminate risk, preparation and
30 issuance of a title insurance commitment setting forth the

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1 requirements to insure, and preparation and issuance of the
2 policy.

3 (2) "~~Risk~~ Premium" means the charge, as specified by
4 rule of the department, that is made by a title insurer for a
5 title insurance policy, including the charge for performance
6 of primary title services by a title insurer or title
7 insurance agent or agency, and incurring the risks incident to
8 such policy ~~the assumption of the risk~~, under the several
9 classifications of title insurance contracts and forms, and
10 upon which charge a premium tax is paid under s. 624.509. As
11 used in this part or in any other law, with respect to title
12 insurance, the word ~~words~~ "premium" does ~~or "risk premium"~~
13 ~~mean only the risk premium as defined in this section and do~~
14 ~~not include a commission any other charge incidental to title~~
15 ~~insurance.~~

16 Section 5. Section 627.777, Florida Statutes, is
17 amended to read:

18 627.777 Approval of forms.--A title insurer may not
19 issue or agree to issue any form of ~~title insurance binder,~~
20 title insurance commitment, ~~preliminary report,~~title
21 insurance policy, other contract of title insurance, or
22 related form until it is filed with and approved by the
23 department. The department may not disapprove a title
24 guarantee or policy form on the ground that it has on it a
25 blank form for an attorney's opinion on the title.

26 Section 6. Section 627.7773, Florida Statutes, is
27 amended to read:

28 627.7773 Accounting and auditing of forms by title
29 insurers.--

30 (1) Each title insurer authorized to do business in
31 this state shall, at least once during each calendar year,

1 require of each of its title insurance agents or agencies
2 accountings of all outstanding forms in the agent's or
3 agency's possession of the types that are specified in s.
4 627.777.

5 (2) If the department has reason to believe that an
6 audit of outstanding forms should be required of any title
7 insurer as to a title insurance agent or agency, the
8 department may require the title insurer to make a special
9 audit of the forms. The title insurer shall complete the
10 audit not later than 60 days after the request is received
11 from the department, and shall report the results of the
12 special audit to the department no later than 90 days after
13 the request is received.

14 Section 7. Section 627.7776, Florida Statutes, is
15 amended to read:

16 627.7776 Furnishing of supplies; civil liability.--

17 (1) A title insurer may not furnish to any person any
18 blank forms, applications, stationery, or other supplies to be
19 used in soliciting, negotiating, or effecting contracts of
20 title insurance on its behalf until that person has received
21 from the insurer a contract to act as a title insurance agent
22 or agency and has been licensed by the department, if required
23 by s. 626.8417.

24 (2) A title insurer or title insurance agent or agency
25 that furnishes any supplies to a person not authorized by the
26 title insurer as provided in subsection (1) is subject to
27 civil liability to any insured of the title insurer to the
28 same extent and in the same manner as if the person had been
29 appointed or authorized by the title insurer to act in its
30 behalf.

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1 Section 8. Section 627.780, Florida Statutes, is
2 amended to read:

3 627.780 Illegal dealings in risk premium.--

4 (1) A person may not knowingly quote, charge, accept,
5 collect, or receive a ~~risk~~ premium for title insurance other
6 than the ~~risk~~ premium adopted by the department.

7 (2) A title insurer may not knowingly accept, collect,
8 or receive any sum as ~~risk~~ premium for title insurance, if the
9 title insurance is not then provided or is not to be provided,
10 subject to acceptance of the risk, in due course, unless the
11 title insurer promptly enters the sum on its books of account
12 as premium collected in advance.

13 Section 9. Section 627.782, Florida Statutes, is
14 amended to read:

15 627.782 Adoption of rates.--

16 (1) Subject to the rating provisions of this code, the
17 department must adopt a rule specifying the ~~risk~~ premium to be
18 charged in this state by title insurers for the respective
19 types of title insurance contracts and, for policies issued
20 through agents or agencies, the percentage of such premium
21 required to be retained by the title insurer which shall and
22 ~~services incident thereto. The department may, by rule,~~
23 ~~establish limitations on such reasonable charges made in~~
24 ~~addition to the risk premium based upon the expenses~~
25 ~~associated with the services rendered and other relevant~~
26 ~~factors. The department must also adopt rules incident to the~~
27 ~~applicability of the risk premium, including the percentage or~~
28 ~~amount of the risk premium required to be maintained by the~~
29 ~~title insurer, and related rules to ensure that the amounts~~
30 ~~required to be maintained by the insurer are not be less than~~
31 30 percent of the risk premium for policies sold by agents.

1 However, in a transaction subject to the Real Estate
2 Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as
3 amended, no portion of the premium attributable to providing a
4 primary title service shall be paid to or retained by any
5 person who does not actually perform or is not liable for the
6 performance of such service.

7 (2) In adopting premium rates, the department must
8 give due consideration to the following:

9 (a) The title insurers' loss experience and
10 prospective loss experience under ~~insured~~ closing protection
11 ~~service~~ letters, ~~search and examination services~~, and policy
12 liabilities.

13 (b) A reasonable margin for underwriting profit and
14 contingencies, including contingent liability under s.
15 627.7865, sufficient to allow title insurers, ~~and~~ agents, and
16 agencies to earn a rate of return on their capital that will
17 attract and retain adequate capital investment in the title
18 insurance business and maintain the title insurance delivery
19 system.

20 (c) Past expenses and prospective expenses for
21 administration and handling of risks.

22 (d) Liability for defalcation.

23 (e) Other relevant factors.

24 (3) Rates may be grouped by classification or schedule
25 and may differ as to class of risk assumed.

26 (4) Rates may not be excessive, inadequate, or
27 unfairly discriminatory.

28 (5) The ~~risk~~ premium applies to each \$100 of insurance
29 issued to an insured.

30 (6) The ~~risk~~ premium rates apply throughout this
31 state.

1 (7) The department shall, in accordance with the
2 standards provided in subsection (2), review the ~~risk~~ premium
3 ~~and the related title services rate~~ as needed, but not less
4 frequently than once every 3 years, and shall, based upon the
5 review required by this subsection, revise the ~~risk~~ premium
6 ~~and the related title services rate~~ if the results of the
7 review so warrant.

8 (8) The department may, by rule, require licensees
9 under this part to annually submit statistical information,
10 including loss and expense data, as the department determines
11 to be necessary to analyze ~~risk~~ premium ~~and related title~~
12 ~~services~~ rates, retention rates, and the condition of the
13 title insurance industry.

14 Section 10. Section 627.783, Florida Statutes, is
15 amended to read:

16 627.783 Rate deviation.--

17 (1) A title insurer may petition the department for an
18 order authorizing a specific deviation from the adopted ~~risk~~
19 premium, and a title insurer or title insurance agent may
20 petition the department for an order authorizing and
21 permitting a specific deviation above the reasonable charge
22 for other services rendered specified in s. 627.782(1). The
23 petition shall be in writing and sworn to and shall set forth
24 allegations of fact upon which the petitioner will rely,
25 including the petitioner's reasons for requesting the
26 deviation. Any authorized title insurer, ~~or~~ agent, or agency
27 may join in the petition for like authority to deviate or may
28 file a separate petition praying for like authority or
29 opposing the deviation. The department shall rule on all such
30 petitions simultaneously.

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1 (2) If, in the judgment of the department, the
2 requested deviation is not justified, the department may enter
3 an order denying the petition. An order granting a petition
4 constitutes an amendment to the adopted ~~risk~~ premium as to the
5 petitioners named in the order, and is subject to s. 627.782.

6 Section 11. Section 627.7831, Florida Statutes, is
7 amended to read:

8 627.7831 ~~Title binders and~~ Commitments; charges;
9 collection.--

10 (1) When a title insurance ~~binder or a~~ commitment to
11 insure a title or risk is issued at the request of the insured
12 or the insured's representative, or agent, or agency, a
13 portion of the ~~risk~~ premium must be charged for the ~~binder or~~
14 commitment when issued. The portion of the ~~risk~~ premium
15 charged for the ~~binder or~~ commitment must be credited to the
16 ~~risk~~ premium due upon issuance of the title insurance policy.

17 (2) The amount charged under subsection (1) must be
18 collected no later than the date of the closing or 12 months
19 after the date of the commitment ~~or binder~~, whichever occurs
20 earlier, or another date agreed to in writing at the time of
21 issuance of the ~~binder or~~ commitment.

22 (3) This section does not apply to a transaction
23 involving a residential property.

24 Section 12. Section 627.784, Florida Statutes, is
25 amended to read:

26 627.784 Casualty title insurance prohibited.--A title
27 insurance policy or guarantee of title may not be issued
28 without regard ~~with disregard~~ to the possible existence of
29 adverse matters or defects of title.

30 Section 13. Section 627.7841, Florida Statutes, is
31 amended to read:

1 627.7841 Insurance against adverse matters or defects
2 in the title.--If a title insurer issuing a ~~binder,~~
3 commitment, policy of title insurance, or guarantee of title
4 upon an estate, lien, or interest in property located in this
5 state through its officers, employees, ~~or agents,~~ or agencies
6 disburses settlement or closing funds, the title insurer shall
7 insure against the possible existence of adverse matters or
8 defects in the title which are recorded during the period of
9 time between the effective date of the ~~binder or~~ commitment
10 and the date of recording of the document creating the estate
11 or interest to be insured, except as to matters of which the
12 insured has knowledge.

13 Section 14. Subsection (2) of section 627.7842,
14 Florida Statutes, is amended to read:

15 627.7842 Policy exceptions.--

16 (2) The title insurer, ~~or agent,~~ or agency issuing the
17 title policy may except from coverage the items specified in
18 subsection (1) if the title insurer, ~~or agent,~~ or agency has
19 knowledge of facts requiring the exceptions, notwithstanding
20 the survey or affidavits, if the insurer, ~~or agent,~~ or agency
21 discloses such facts to the proposed insured.

22 Section 15. Section 627.7845, Florida Statutes, is
23 amended to read:

24 627.7845 Determination of insurability required;
25 preservation of evidence of title search and examination.--

26 (1) A title insurer may not issue a title insurance
27 ~~binder,~~ commitment, endorsement, title insurance policy, or
28 guarantee of title until the title insurer has caused to be
29 conducted a reasonable search and examination of the title and
30 of such other information as may be necessary, and has caused
31 to be made a determination of insurability of title, including

1 endorsement coverages, in accordance with sound underwriting
2 practices.

3 (2) The title insurer shall cause the evidence of the
4 reasonable search and examination of the title to be preserved
5 and retained in its files or in the files of its title
6 insurance agent or agency for a period of not less than 7
7 years after the title insurance ~~binder~~, commitment, title
8 insurance policy, or guarantee of title was issued. The title
9 insurer or agent or agency must produce the evidence required
10 to be maintained by this subsection at its offices upon the
11 demand of the department. Instead of retaining the original
12 evidence, the title insurer or the title insurance agent or
13 agency may, in the regular course of business, establish a
14 system under which all or part of the evidence is recorded,
15 copied, or reproduced by any photographic, photostatic,
16 microfilm, microcard, miniature photographic, or other process
17 which accurately reproduces or forms a durable medium for
18 reproducing the original.

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

25 (4) This section does not apply to an insurer assuming
26 no primary liability in a contract of reinsurance or to an
27 insurer acting as a coinsurer if any other coinsuring insurer
28 has complied with this section.

29 Section 16. Subsection (3) of section 627.786, Florida
30 Statutes, is amended to read:

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1 627.786 Transaction of title insurance and any other
2 kind of insurance prohibited.--

3 (3) Subsection (1) does not preclude a title insurer
4 from providing instruments to any prospective insured, in the
5 form and content approved by the department, under which the
6 title insurer assumes liability for loss due to the fraud of,
7 dishonesty of, misappropriation of funds by, or failure to
8 comply with written closing instructions by, its contract
9 agents, agencies, or approved attorneys in connection with a
10 real property transaction for which the title insurer is to
11 issue a title insurance policy ~~or guarantee of title~~.

12 Section 17. Section 627.791, Florida Statutes, is
13 amended to read:

14 627.791 Penalties against title insurers for
15 violations by persons or entities not licensed.--A title
16 insurer is subject to the penalties in ss. 624.418(2) and
17 624.4211 for any violation of a lawful order or rule of the
18 department, or for any violation of this code, committed by:

19 (1) A person, firm, association, corporation,
20 cooperative, joint-stock company, or other legal entity not
21 licensed under this part when issuing and countersigning
22 ~~binders, commitments~~ or, policies of title insurance, ~~or~~
23 ~~guarantees of title~~ on behalf of the title insurer.

24 (2) An attorney when issuing and countersigning
25 ~~binders, commitments~~ or, policies of title insurance, ~~or~~
26 ~~guarantees of title~~ on behalf of the title insurer.

27 Section 18. Section 627.792, Florida Statutes, is
28 amended to read:

29 627.792 Liability of title insurers for defalcation by
30 title insurance agents or agencies.--A title insurer is liable
31 for the defalcation, conversion, or misappropriation by a

1 licensed title insurance agent or agency of funds held in
2 trust by the agent or agency pursuant to s. 626.8473. If the
3 agent or agency is an agent or agency for licensed by two or
4 more title insurers, any liability shall be borne by the title
5 insurer upon which a title insurance ~~binder, commitment or,~~
6 policy, ~~or title guarantee~~ was issued prior to the illegal
7 act. If no ~~binder, commitment or,~~ policy, ~~or guarantee~~ was
8 issued, each title insurer represented by the agent or agency
9 at the time of the illegal act shares in the liability in the
10 same proportion that the premium remitted to it by the agent
11 or agency during the 1-year period before the illegal act
12 bears to the total premium remitted to all title insurers by
13 the agent or agency during the same time period.

14 Section 19. This act shall take effect July 1, 1999.

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16 HOUSE SUMMARY

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18 Generally revises and clarifies provisions relating to
19 title insurance agents, policies, premiums, rates,
20 contracts, charges, and practices.
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