

1 A bill to be entitled

2 An act relating to title insurance; amending s. 626.84201,  
3 F.S.; providing additional requirements for nonresident  
4 title insurance agent licensure; amending s. 626.9541,  
5 F.S.; revising unlawful rebate specifications; amending s.  
6 627.7711, F.S.; revising definitions; amending s. 627.780,  
7 F.S.; providing an exception to a prohibition against  
8 dealing in certain premium; amending ss. 627.782 and  
9 627.783, F.S.; revising rate and rate deviation  
10 requirements; amending s. 627.7845, F.S.; revising  
11 determination of insurability and records retention  
12 requirements; amending s. 701.04, F.S.; revising  
13 requirements for an estoppel letter; amending s. 701.041,  
14 F.S.; revising definitions; providing for application to  
15 certain mortgages; providing liability for title insurance  
16 agents recording a certificate of release; repealing the  
17 authority of the Financial Services Commission to adopt  
18 rules regarding the charge for the certificate of release;  
19 providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Section 626.84201, Florida Statutes, is amended  
24 to read:

25 626.84201 Nonresident title insurance  
26 agents.--Notwithstanding s. 626.8414(2), the department, upon  
27 application and payment of the fees specified in s. 624.501, may  
28 issue a license as a nonresident title insurance agent to an

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29 individual not a resident of this state in the same manner  
30 applicable to the licensure of nonresident general lines agents  
31 under the provisions of s. 626.741, provided the individual  
32 passes the examination for licensure required under s. 626.221.  
33 Nonresident title insurance agents licensed pursuant to this  
34 section must complete the continuing education requirements of  
35 s. 626.2815 in the same manner as resident title insurance  
36 agents. Sections 626.742 and 626.743 apply to nonresident title  
37 insurance agents.

38 Section 2. Paragraph (h) of subsection (1) of section  
39 626.9541, Florida Statutes, is amended to read:

40 626.9541 Unfair methods of competition and unfair or  
41 deceptive acts or practices defined.--

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

45 (h) Unlawful rebates.--

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

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

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

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

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

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

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

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

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

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

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

103 b. Nothing in this subparagraph shall be construed as  
 104 prohibiting the payment of fees to attorneys at law duly  
 105 licensed to practice law in the courts of this state, for  
 106 professional services, or as prohibiting the payment of earned  
 107 portions of the premium to duly appointed agents or agencies who  
 108 actually perform services for the title insurer. Nothing in this  
 109 subparagraph shall be construed as prohibiting a rebate or  
 110 abatement of an attorney's fee charged for professional  
 111 services, or that portion of the premium that is not required to

112 be retained by the insurer pursuant to s. 627.782(1), or any  
 113 other agent charge or fee to the person responsible for paying  
 114 the premium, charge, or fee.

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

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

133 627.7711 Definitions.--As used in this part, the term:

134 (1) (a) "Closing Related title services" means services  
 135 performed by a licensed title insurer, ~~or~~ title insurance agent  
 136 or agency, or attorney agent in the agent's or agency's capacity  
 137 as such, including, but not limited to, ~~preparing or obtaining a~~  
 138 ~~title search, examining title, examining searches of the records~~  
 139 ~~of a Uniform Commercial Code filing office and such other~~

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140 ~~information as may be necessary,~~ preparing documents necessary  
141 to close the transaction, conducting the closing, or handling  
142 the disbursing of funds related to the closing in a real estate  
143 closing transaction in which a title insurance commitment or  
144 policy is to be issued. ~~The premium, together with the charge~~  
145 ~~for related title services, constitutes the regular title~~  
146 ~~insurance premium.~~

147 (b) "Primary title services" means conducting or obtaining  
148 a title search or a search of the records of a Uniform  
149 Commercial Code filing office and obtaining such other  
150 information as may be necessary to determine insurability,  
151 determining insurability in accordance with sound underwriting  
152 practices based upon evaluation of a reasonable title search ~~and~~  
153 ~~examination of the title~~ or a search of the records of a Uniform  
154 Commercial Code filing office and such other information as may  
155 be necessary, determination and clearance of underwriting  
156 objections and requirements to eliminate risk, preparation and  
157 issuance of a title insurance commitment setting forth the  
158 requirements to insure, and preparation and issuance of the  
159 policy. Such services do not include closing services for which  
160 a separate charge is or separate charges are made.

161 (4) "Title search" means the compiling of title  
162 information from official or public records.

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

165 627.780 Illegal dealings in ~~risk~~ premium.--

166 (1) A person may not knowingly quote, charge, accept,  
167 collect, or receive a premium for title insurance other than the

168 premium adopted by the commission, except as provided in s.  
 169 626.9541(1)(h)3.b.

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

172 627.782 Adoption of rates.--

173 (1) Subject to the rating provisions of this code, the  
 174 commission must adopt a rule specifying the premium to be  
 175 charged in this state by title insurers for the respective types  
 176 of title insurance contracts and, for policies issued through  
 177 agents or agencies, the percentage of such premium required to  
 178 be retained by the title insurer which shall not be less than 30  
 179 percent. However, in a transaction subject to the Real Estate  
 180 Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq.,  
 181 as amended, no portion of the premium attributable to providing  
 182 a primary title service shall be paid to or retained by any  
 183 person who does not actually perform or is not liable for the  
 184 performance of such service. ~~The commission may, by rule,~~  
 185 ~~establish limitations on related title services charges made in~~  
 186 ~~addition to the premium based upon the expenses associated with~~  
 187 ~~the services rendered and other relevant factors.~~

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

190 627.783 Rate deviation.--

191 (1) A title insurer may petition the office for an order  
 192 authorizing a specific deviation from the adopted premium, ~~and a~~  
 193 ~~title insurer or title insurance agent may petition the office~~  
 194 ~~for an order authorizing and permitting a specific deviation~~  
 195 ~~above the reasonable charge for related title services rendered~~

196 ~~specified in s. 627.782(1)~~. The petition shall be in writing and  
 197 sworn to and shall set forth allegations of fact upon which the  
 198 petitioner will rely, including the petitioner's reasons for  
 199 requesting the deviation. Any authorized title insurer, agent,  
 200 or agency may join in the petition for like authority to deviate  
 201 or may file a separate petition praying for like authority or  
 202 opposing the deviation. The office shall rule on all such  
 203 petitions simultaneously.

204 Section 7. Subsections (1), (2), and (3) of section  
 205 627.7845, Florida Statutes, are amended to read:

206 627.7845 Determination of insurability required;  
 207 preservation of evidence of title search and examination.--

208 (1) A title insurer may not issue a title insurance  
 209 commitment, endorsement, or title insurance policy until the  
 210 title insurer has caused to be made ~~conducted~~ a determination of  
 211 insurability based upon the evaluation of a reasonable title  
 212 search and examination of the title or a search of the records  
 213 of a Uniform Commercial Code filing office, as applicable, has  
 214 examined such other information as may be necessary, and has  
 215 caused to be made a determination of insurability of title or  
 216 the existence, attachments, perfection, and priority of a  
 217 Uniform Commercial Code security interest, including endorsement  
 218 coverages, in accordance with sound underwriting practices.

219 (2) The title insurer shall cause the evidence of the  
 220 determination of insurability and the reasonable title search  
 221 and examination of the title or search of the records of a  
 222 Uniform Commercial Code filing office to be preserved and  
 223 retained in its files or in the files of its title insurance



224 agent or agency for a period of not less than 7 years after the  
 225 title insurance commitment, title insurance policy, or guarantee  
 226 of title was issued. The title insurer or agent or agency must  
 227 produce the evidence required to be maintained by this  
 228 subsection at its offices upon the demand of the office. Instead  
 229 of retaining the original evidence, the title insurer or the  
 230 title insurance agent or agency may, in the regular course of  
 231 business, establish a system under which all or part of the  
 232 evidence is recorded, copied, or reproduced by any photographic,  
 233 photostatic, microfilm, microcard, miniature photographic, or  
 234 other process which accurately reproduces or forms a durable  
 235 medium for reproducing the original.

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

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

244 701.04 Cancellation of mortgages, liens, and judgments.--

245 (1) Within 14 days after receipt of the written request of  
 246 a mortgagor, the holder of a mortgage shall deliver to the  
 247 mortgagor at a place designated in the written request an  
 248 estoppel letter setting forth the unpaid ~~principal~~ balance of  
 249 the loan secured by the mortgage, including principal, interest,  
 250 and any other charges properly due under or secured by the  
 251 mortgage and interest on a per-day basis for the unpaid balance

252 ~~due, and the per diem rate.~~ Whenever the amount of money due on  
 253 any mortgage, lien, or judgment shall be fully paid to the  
 254 person or party entitled to the payment thereof, the mortgagee,  
 255 creditor, or assignee, or the attorney of record in the case of  
 256 a judgment, to whom such payment shall have been made, shall  
 257 execute in writing an instrument acknowledging satisfaction of  
 258 said mortgage, lien, or judgment and have the same acknowledged,  
 259 or proven, and duly entered of record in the book provided by  
 260 law for such purposes in the proper county. Within 60 days of  
 261 the date of receipt of the full payment of the mortgage, lien,  
 262 or judgment, the person required to acknowledge satisfaction of  
 263 the mortgage, lien, or judgment shall send or cause to be sent  
 264 the recorded satisfaction to the person who has made the full  
 265 payment. In the case of a civil action arising out of the  
 266 provisions of this section, the prevailing party shall be  
 267 entitled to attorney's fees and costs.

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

272 701.041 Title insurer; mortgage release certificate.--

273 (1) DEFINITIONS.--For purposes of this section:

274 (a) "Estoppel letter" means a statement of the amount of:

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

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

279 ~~"Mortgage" means a mortgage or mortgage lien on an interest in~~

280 ~~real property in this state, including any modifications~~  
 281 ~~thereof, given to secure a loan in the principal amount of~~  
 282 ~~\$500,000 or less, other than a mortgage securing an open end or~~  
 283 ~~revolving credit agreement.~~

284 (b) "Mortgagee" means:

- 285 1. The grantee of a mortgage; or
- 286 2. If a mortgage has been assigned of record, the last  
 287 person to whom the mortgage has been assigned of record.

288 (c) "Mortgage servicer" means the last person to whom a  
 289 mortgagor or the mortgagor's successor in interest has been  
 290 instructed by a mortgagee to send payments on a loan secured by  
 291 a mortgage. A person transmitting an estoppel letter ~~a payoff~~  
 292 ~~statement~~ is the mortgage servicer for the mortgage described in  
 293 the estoppel letter ~~payment statement~~.

294 (d) "Mortgagor" means the grantor of a mortgage.

295 ~~(e) "Payoff statement" means a statement of the amount of:~~

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

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

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

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

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

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

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

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

322 (6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE  
 323 AGENT.--

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

331 (c) The title insurer and title insurance agent shall have  
 332 no liability under this subsection if the title insurer or title  
 333 insurance agent shows that payment in full of the unpaid balance  
 334 of the loan secured by the mortgage was made in accordance with

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335 the estoppel letter ~~payoff statement~~ furnished by the mortgagee  
336 or the mortgage servicer.

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

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

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