

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 Banking and Insurance Committee

BILL: SB 826

INTRODUCER: Senator Bennett

SUBJECT: Title Insurance Claims

DATE: January 16, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill requires title insurance companies to pay full policy limits within 90 days after a challenge to title is filed or cover all additional costs that are incurred by the insured while a dispute to title is being cured, including attorney fees and costs. The bill applies to all title claims filed on or after the bill's effective date of July 1, 2012.

This bill creates the following section of the Florida Statutes: 627.7832.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.¹ Title insurance is a policy issued by a title insurer² that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the

¹ Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

² 627.7711(3), F.S.

policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

In Florida, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage³ and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).⁴

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged 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. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.⁵ Title insurers may deviate from the prescribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.⁶ In Florida, title insurers can only transact title insurance and cannot transact any other type of insurance.⁷

There are no set timeframes in statute as to when disputes to a title of real property must be cured by a title insurance company. The insurance company's primary objective in a dispute is to validate the policy as issued. If a challenge to title is brought, the title insurance company can settle with the challenging parties, challenge the dispute in court or tender partial or full policy limits for any damages occurred to the insured from the partial or total loss of title. Often time's disputes to title of real property can be settled between the parties involved without the involvement of the courts, thus cutting down on the time it takes for a challenge to title to be cured.

III. Effect of Proposed Changes:

Section 1. The bill creates 627.7832, F.S., which requires title insurance companies to fully pay policy limits within 90 days after a challenge to title is filed or to cover all additional costs that are incurred by the insured until the cure is finalized, including attorney fees and costs. The bill applies to all title claims filed on or after the bill's effective date of July 1, 2012.

Section 2. The bill is effective July 1, 2012.

³ Section 627.777, F.S.

⁴ Section 627.782, F.S.

⁵ Section 627.782, F.S.

⁶ Section 627.783, F.S.

⁷ Section 627.786, F.S.

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:

Title insurance companies would be subject to additional costs when trying to cure a challenge to title.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.