

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 Committee on Banking and Insurance

BILL: SB 310

INTRODUCER: Senator Simpson

SUBJECT: Title Insurance

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			JU	
3.			CA	

I. Summary:

SB 310 changes the definition of the term “premium” in s. 627.7711, F.S. This bill provides that the term “premium” does not apply to payment for primary title services, title searches, closing services, or any component thereof performed by a title insurer, title insurance agent, or agency. Excluding such payment from the definition of premium would also exclude it from the premium tax under s. 624.509, F.S.

This bill takes effect July 1, 2014.

II. Present Situation:

Title Insurance

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.²

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

¹ See s. 624.608, F.S.

² See *Lawyers Title Insurance Co. v. Novastar Mortgage, Inc.*, 862 So.2d 793,797 (Fla. 4th DCA 2004).

Title Insurance Premiums

Part XIII of ch. 627, F.S., governs title insurance contracts. Premium is the charge made by a title insurer for a title insurance policy, including the charge for the performance of primary title services by a title insurer or agent, and incurring the risks incident to such policy, and upon which charge a premium tax is paid under s. 624.509, F.S.³ “Primary title services” means:

- Determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search 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.⁴

Primary title services do not include closing services⁵ or title searches.⁶

Section 627.782, F.S., requires the Financial Services Commission (FSC) to adopt a rule specifying the premium to be charged by title insurers and for the percentage of premium retained by title insurers if the policy is issued by agents or agencies. The percentage of such title insurance premium required to be retained by the title insurer cannot be less than 30 percent.⁷ A title insurer is allowed to pay the remaining 70 percent of premium to a title insurance agent or agency for performing primary title services.

In 1999, the Legislature froze title insurance rates at the 1992 level for three years.⁸ Rates have been unchanged since that time.⁹ Section 627.782(8), F.S., enacted in 2012,¹⁰ requires the FSC to adopt rules regarding the collection and analysis of data to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry. The FSC adopted rules in December, 2013, and has submitted one of the rules to the Legislature for consideration pursuant to s. 120.541(3), F.S. The rule would require title insurers and title insurance agents and agencies to submit data to the OIR for use in an analysis of title insurance premium rates.

³ See s. 627.7711(2), F.S.

⁴ See s. 627.7711(1)(b), F.S.

⁵ “Closing services” are services performed by a licensed title insurer, title insurance agent or agency, or attorney agent in the agent’s or agency’s capacity as such, including, but not limited to, 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. See s. 627.7711(a), F.S.

⁶ A “title search” is the compiling of title information from official or public records. See s. 627.7711(4), F.S.

⁷ Section 627.782(1), F.S.; Rule 690-186.003(9), F.A.C. The title insurer must retain a greater percentage of the premium if the policies have larger liability. See Rule 690-186(1), F.A.C.

⁸ See Office of Program Policy Analysis & Government Accountability, Florida Legislature, *Florida’s Current Regulatory Framework Creates Challenges for State’s Title Insurance Regulation*, Report 08-53 (September 2008) at p. 9.

⁹ See *Id.*

¹⁰ See ch. 2012-206, L.O.F.

Premium Tax

Section 624.509, F.S., requires insurers to pay a premium tax on premiums for title insurance received during the preceding calendar year. The tax is 1.75 percent of the gross amount of premium.¹¹ Sections 624.509(4)-(7), F.S., provide various credits and deductions to reduce the premium tax.

In *Fidelity National Title Insurance Company v. State of Florida, Department of Revenue*,¹² the court held that the charge for the performance of primary title services by a title insurance agent is included in the definition of premium in s. 627.7711(2), F.S. The court rejected Fidelity's argument that it was only required to pay the tax on the 30 percent of the premium remitted to it by the agents.¹³

III. Effect of Proposed Changes:

This bill changes the definition of the term "premium" in s. 627.7711, F.S. This bill provides that the term "premium" does not apply to payment for primary title services, title searches, closing services, or any component thereof performed by a title insurer, title insurance agent, or agency. This change would make payment for primary title services no longer subject to the premium tax in s. 624.509, F.S.¹⁴

This bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ See s. 624.509(2)(a), F.S.

¹² Case No. 09 CA 001708 (Fla. 2d Cir. September 20, 2013).

¹³ The case is currently on appeal to the First District Court of Appeal, Case No. 1D13-4992. Briefing is not yet completed.

¹⁴ It is not clear whether this bill would affect the litigation in *Fidelity v. Department of Revenue*. As a general rule, statutes are to be applied prospectively. See *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999) ("The general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively"). But see *Lowry v. Parole and Probation Com'n*, 473 So.2d 1248, 1250 (Fla. 1985) ("When... an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof").

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not analyzed SB 310. It analyzed a different bill with a similar change to the definition of premium. Assuming that premiums written before July 1, 2014, are unaffected by the change, the Revenue Estimating Conference estimated the following negative impact on general revenue:

2014-2015	(\$5.4 million)
2015-2016	(\$5.8 million)
2016-2017	(\$6.1 million)
2017-2018	(\$6.4 million)
2018-2019	(\$6.6 million) ¹⁵

B. Private Sector Impact:

The Department of Financial Services reports that this bill could negatively impact title insurance agents because insurers will no longer need title insurance agents and agencies to provide their products to consumers. The Department is also concerned that removing primary title insurance services from the definition of premium would cause more work of title insurance agents to be unregulated.¹⁶

C. Government Sector Impact:

The Department of Revenue (Department) reports that it uses direct written premium as reported by title insurers to the OIR and the National Association of Insurance Commissioners to calculate the premium tax due. According to the Department, it is unclear whether it would be able to use its current method of calculating tax due if this bill passes.

The Department of Revenue also notes that premium tax is reported and paid on a calendar year basis but this bill has a July 1, 2014, effective date. According to the Department, a mid-tax year change could cause difficulties for the Department and the insurers.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁵ Revenue Estimating Conference Analysis of HB 657 adopted February 17, 2014.

¹⁶ Department of Financial Services, *SB 310 Bill Analysis* (November 15, 2013).

¹⁷ Department of Revenue, *SB 310 Bill Analysis* (January 27, 2014).

VIII. Statutes Affected:

This bill substantially amends section 627.7711 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
