

1 A bill to be entitled
2 An act relating to title insurance; amending s.
3 626.8412, F.S.; specifying that title insurance may be
4 sold only by licensed and appointed agents and
5 agencies; amending s. 626.8413, F.S.; providing
6 additional limitations on the name that a title agent
7 or agency may adopt; providing for applicability;
8 amending s. 626.8417, F.S.; conforming provisions to
9 changes made by the act; amending s. 626.8418, F.S.;
10 revising the application requirements for a title
11 insurance agency license; requiring proof that the
12 agency name is properly registered and active with the
13 Division of Corporations; deleting certain bonding
14 requirements and procedures; amending s. 626.8419,
15 F.S.; revising requirements relating to the
16 appointment of a title insurance agency; amending s.
17 626.8437, F.S.; revising terms relating to grounds for
18 actions against a licensee or appointee; amending s.
19 627.778, F.S.; prohibiting a title insurer from
20 issuing a commitment of title insurance under certain
21 conditions; providing that the terms of a contract of
22 title insurance are an insured's sole remedy for
23 certain claims of loss; amending s. 627.7845, F.S.;
24 revising terms relating to determination of
25 insurability and preservation of evidence of title
26 search and examination; amending s. 627.786, F.S.;
27 providing a recourse for violation of certain actions
28 related to the transaction of insurance; providing an

29 effective date.

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

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33 Section 1. Paragraph (a) of subsection (1) of section
34 626.8412, Florida Statutes, is amended to read:

35 626.8412 License and appointments required.—

36 (1) Except as otherwise provided in this part:

37 (a) Title insurance may be sold only by a licensed and
38 appointed title insurance agent employed by a licensed and
39 appointed title insurance agency or employed by a title insurer.

40 Section 2. Section 626.8413, Florida Statutes, is amended
41 to read:

42 626.8413 Title insurance agents; certain names
43 prohibited.—After October 1, 1985, a title insurance agent as
44 defined in s. 626.841 may ~~shall~~ not adopt a name that ~~which~~
45 contains the words "title insurance," "title guaranty," or
46 "title guarantee," unless such words are followed by the word
47 "agent" or "agency" in the same size and type as the words
48 preceding them. This section does not apply to a title insurer
49 acting as an agent for another title insurer. After October 1,
50 2014, a title insurance agent or title insurance agency as
51 defined in s. 626.841 may not adopt a name that contains the
52 words "title insurance," "title company," "title guaranty," or
53 "title guarantee," unless such words are followed by the word
54 "agent" or "agency" in the same size and type as the words
55 preceding them. This section does not apply to a title insurer
56 acting as an agent for another title insurer when both insurers

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57 | hold active certificates of authority to transact title
58 | insurance business in this state and are acting under the names
59 | designated on such certificates of authority.

60 | Section 3. Section 626.8417, Florida Statutes, is amended
61 | to read:

62 | 626.8417 Title insurance agent licensure; exemptions.—

63 | (1) A person may not act as a title insurance agent as
64 | defined in s. 626.841 until a valid title insurance agent's
65 | license has been issued to that person by the department.

66 | (2) An application for license as a title insurance agent
67 | shall be filed with the department on ~~printed~~ forms furnished by
68 | the department.

69 | (3) The department may ~~shall~~ not grant or issue a license
70 | as a title insurance agent to any individual found by it to be
71 | untrustworthy or incompetent, who does not meet the
72 | qualifications for examination specified in s. 626.8414, or who
73 | does not meet the following qualifications:

74 | (a) Within the 4 years immediately preceding the date of
75 | the application for license, the applicant must have completed a
76 | 40-hour classroom course in title insurance, 3 hours of which
77 | shall be on the subject matter of ethics, as approved by the
78 | department, or must have had at least 12 months of experience in
79 | responsible title insurance duties, under the supervision of a
80 | licensed title insurance agent, title insurer, or attorney,
81 | while working in the title insurance business as a substantially
82 | full-time, bona fide employee of a title insurance agency, title
83 | insurance agent, title insurer, or attorney who conducts real
84 | estate closing transactions and issues title insurance policies

85 but who is exempt from licensure pursuant to subsection (4)
 86 ~~paragraph (4)(a)~~. If an applicant's qualifications are based
 87 upon the periods of employment at responsible title insurance
 88 duties, the applicant must submit, with the application for
 89 license on a form prescribed by the department, the affidavit of
 90 the applicant and of the employer setting forth the period of
 91 such employment, that the employment was substantially full
 92 time, and giving a brief abstract of the nature of the duties
 93 performed by the applicant.

94 (b) The applicant must have passed any examination for
 95 licensure required under s. 626.221.

96 (4)~~(a)~~ Title insurers or attorneys duly admitted to
 97 practice law in this state and in good standing with The Florida
 98 Bar are exempt from the provisions of this chapter with regard
 99 to title insurance licensing and appointment requirements.

100 (5)~~(b)~~ An insurer may designate a corporate officer of the
 101 insurer to occasionally issue and countersign binders,
 102 commitments, and policies of title insurance ~~policies, or~~
 103 ~~guarantees of title~~. The A designated officer is exempt from ~~the~~
 104 ~~provisions of~~ this chapter with regard to title insurance
 105 licensing and appointment requirements while the officer is
 106 acting within the scope of the designation.

107 (6)~~(c)~~ If an attorney owns ~~or attorneys own~~ a corporation
 108 or other legal entity that ~~which~~ is doing business as a title
 109 insurance agency other than an entity engaged in the active
 110 practice of law, the agency must be licensed and appointed as a
 111 title insurance agent.

112 Section 4. Section 626.8418, Florida Statutes, is amended

113 to read:

114 626.8418 Application for title insurance agency license.-
 115 Before ~~Prior to~~ doing business in this state as a title
 116 insurance agency, ~~a title insurance agency must meet all of the~~
 117 ~~following requirements:~~

118 ~~(1)~~ the applicant must file with the department an
 119 application for a license as a title insurance agency, on
 120 ~~printed~~ forms furnished by the department, which ~~that~~ includes
 121 all of the following:

122 (1)(a) The name of each majority owner, partner, officer,
 123 and director of the title insurance agency.

124 (2)(b) The residence address of each person required to be
 125 listed under subsection (1) ~~paragraph (a)~~.

126 (3)(e) The name of the title insurance agency and its
 127 principal business address.

128 (4)(d) The location of each title insurance agency office
 129 and the name under which each title insurance agency office
 130 conducts or will conduct business.

131 (5)(e) The name of each title insurance agent to be in
 132 full-time charge of a title insurance ~~an~~ agency office and
 133 specification of that ~~which~~ office.

134 (6)(f) Such additional information as the department
 135 requires by rule to ascertain the trustworthiness and competence
 136 of persons required to be listed on the application and to
 137 ascertain that such persons meet the requirements of this code.

138 ~~(2) The applicant must have deposited with the department~~
 139 ~~securities of the type eligible for deposit under s. 625.52 and~~
 140 ~~having at all times a market value of not less than \$35,000. In~~

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141 ~~place of such deposit, the title insurance agency may post a~~
142 ~~surety bond of like amount payable to the department for the~~
143 ~~benefit of any appointing insurer damaged by a violation by the~~
144 ~~title insurance agency of its contract with the appointing~~
145 ~~insurer. If a properly documented claim is timely filed with the~~
146 ~~department by a damaged title insurer, the department may remit~~
147 ~~an appropriate amount of the deposit or the proceeds that are~~
148 ~~received from the surety in payment of the claim. The required~~
149 ~~deposit or bond must be made by the title insurance agency, and~~
150 ~~a title insurer may not provide the deposit or bond directly or~~
151 ~~indirectly on behalf of the title insurance agency. The deposit~~
152 ~~or bond must secure the performance by the title insurance~~
153 ~~agency of its duties and responsibilities under the issuing~~
154 ~~agency contracts with each title insurer for which it is~~
155 ~~appointed. The agency may exchange or substitute other~~
156 ~~securities of like quality and value for securities on deposit,~~
157 ~~may receive the interest and other income accruing on such~~
158 ~~securities, and may inspect the deposit at all reasonable times.~~
159 ~~Such deposit or bond must remain unimpaired as long as the title~~
160 ~~insurance agency continues in business in this state and until 1~~
161 ~~year after termination of all title insurance agency~~
162 ~~appointments held by the title insurance agency. The title~~
163 ~~insurance agency is entitled to the return of the deposit or~~
164 ~~bond together with accrued interest after such year has passed,~~
165 ~~if no claim has been made against the deposit or bond. If a~~
166 ~~surety bond is unavailable generally, the department may adopt~~
167 ~~rules for alternative methods to comply with this subsection.~~
168 ~~With respect to such alternative methods for compliance, the~~

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169 | ~~department must be guided by the past business performance and~~
170 | ~~good reputation and character of the proposed title insurance~~
171 | ~~agency. A surety bond is deemed to be unavailable generally if~~
172 | ~~the prevailing annual premium exceeds 25 percent of the~~
173 | ~~principal amount of the bond.~~

174 | Section 5. Paragraphs (a), (b), and (c) of subsection (1)
175 | of section 626.8419, Florida Statutes, are amended to read:

176 | 626.8419 Appointment of title insurance agency.—

177 | (1) The title insurer engaging or employing the title
178 | insurance agency must file with the department, on forms
179 | furnished by the department, an application certifying that the
180 | proposed title insurance agency meets all of the following
181 | requirements:

182 | (a) The title insurance agency has ~~must have~~ obtained a
183 | fidelity bond in an amount of at least, ~~not less than~~ \$50,000,
184 | acceptable to the insurer appointing the agency. If a fidelity
185 | bond is unavailable generally, the department shall ~~must~~ adopt
186 | rules for alternative methods to comply with this paragraph.

187 | (b) The title insurance agency must have obtained errors
188 | and omissions insurance in an amount acceptable to the insurer
189 | appointing the agency. The amount of the coverage must be at
190 | least ~~may not be less than~~ \$250,000 per claim and an aggregate
191 | limit with a deductible no greater than \$10,000. If errors and
192 | omissions insurance is unavailable generally, the department
193 | shall ~~must~~ adopt rules for alternative methods that comply ~~to~~
194 | ~~comply~~ with this paragraph.

195 | (c) ~~Notwithstanding s. 626.8418(2),~~ The agency must have
196 | obtained a surety bond in an amount not less than \$35,000 made

197 payable to the title insurer or title insurers appointing the
 198 agency. The surety bond must be for the benefit of any
 199 appointing title insurer damaged by a violation by the title
 200 insurance agency of its contract with the appointing title
 201 insurer. If the surety bond is payable to multiple title
 202 insurers, the surety bond must provide that each title insurer
 203 is to be notified in the event a claim is made upon the surety
 204 bond or the bond is terminated.

205 Section 6. Subsections (3) and (4) of section 626.8437,
 206 Florida Statutes, are amended to read:

207 626.8437 Grounds for denial, suspension, revocation, or
 208 refusal to renew license or appointment.—The department shall
 209 deny, suspend, revoke, or refuse to renew or continue the
 210 license or appointment of any title insurance agent or agency,
 211 and it shall suspend or revoke the eligibility to hold a license
 212 or appointment of such person, if it finds that as to the
 213 applicant, licensee, appointee, or any principal thereof, any
 214 one or more of the following grounds exist:

215 (3) Willful misrepresentation of any title insurance
 216 policy, ~~guarantee of title, binder,~~ or commitment, or willful
 217 deception with regard to any such policy, ~~guarantee, binder,~~ or
 218 commitment, done either in person or by any form of
 219 dissemination of information or advertising.

220 (4) Demonstrated lack of fitness or trustworthiness to
 221 represent a title insurer in the issuance of its commitments or
 222 ~~, binders,~~ policies of title insurance, ~~or guarantees of title.~~

223 Section 7. Paragraph (a) of subsection (1) of section
 224 627.778, Florida Statutes, is amended, and subsection (3) is

225 | added to that section, to read:

226 | 627.778 Limit of risk.—

227 | (1) (a) A title insurer may not issue any contract of title
228 | insurance, either as a primary insurer or as a coinsurer or
229 | reinsurer, upon an estate, lien, or interest in property located
230 | in this state unless:

231 | 1. The contract shows on its face the dollar amount of the
232 | risk assumed; and

233 | 2. The dollar amount of the risk assumed does not exceed
234 | one-half of its surplus as to policyholders, unless the excess
235 | is simultaneously reinsured in one or more approved insurers.

236 | (3) The terms of a contract of title insurance constitute
237 | an insured's sole remedy for any claim of loss against a title
238 | insurer, an agent issuing the title insurance contract, or an
239 | abstractor providing a title search for the contract, arising
240 | out of the status of title to the estate or interest covered by
241 | the contract.

242 | Section 8. Subsections (1) and (2) of section 627.7845,
243 | Florida Statutes, are amended to read:

244 | 627.7845 Determination of insurability required;
245 | preservation of evidence of title search and examination.—

246 | (1) A title insurer may not issue a title insurance
247 | commitment, endorsement, or title insurance policy until the
248 | title insurer has caused to be made a determination of
249 | insurability based upon the evaluation of a reasonable title
250 | search or a search of the records of a Uniform Commercial Code
251 | filing office, as applicable, has examined such other
252 | information as may be necessary, and has caused to be made a

253 | determination of insurability of title or the existence,
 254 | attachments, perfection, and priority of a Uniform Commercial
 255 | Code security interest, including endorsement coverages, in
 256 | accordance with sound underwriting practices.

257 | (2) The title insurer shall cause the evidence of the
 258 | determination of insurability and the reasonable title search or
 259 | search of the records of a Uniform Commercial Code filing office
 260 | to be preserved and retained in its files or in the files of its
 261 | title insurance agent or agency for a period of not less than 7
 262 | years after the title insurance commitment or, title insurance
 263 | policy, ~~or guarantee of title~~ was issued. The title insurer or
 264 | agent or agency must produce the evidence required to be
 265 | maintained by this subsection at its offices upon the demand of
 266 | the office. Instead of retaining the original evidence, the
 267 | title insurer or the title insurance agent or agency may, in the
 268 | regular course of business, establish a system under which all
 269 | or part of the evidence is recorded, copied, or reproduced by
 270 | any photographic, photostatic, microfilm, microcard, miniature
 271 | photographic, or other process which accurately reproduces or
 272 | forms a durable medium for reproducing the original.

273 | Section 9. Subsection (3) of section 627.786, Florida
 274 | Statutes, is amended to read:

275 | 627.786 Transaction of title insurance and any other kind
 276 | of insurance prohibited.—

277 | (3) Subsection (1) does not preclude a title insurer from
 278 | providing instruments to any prospective insured, in the form
 279 | and content approved by the office, under which the title
 280 | insurer assumes liability for loss due to the fraud of,

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281 | dishonesty of, misappropriation of funds by, or failure to
282 | comply with written closing instructions by, its contract
283 | agents, agencies, or approved attorneys in connection with a
284 | real property transaction for which the title insurer is to
285 | issue a title insurance policy. An issued instrument is the
286 | insured's sole remedy for any liability assumed pursuant to this
287 | section.

288 | Section 10. This act shall take effect July 1, 2014.