

HCS SS SCS SB 953 -- TITLE INSURANCE AND SERVICE CONTRACTS

SPONSOR: Engler (Dempsey)

COMMITTEE ACTION: Voted "do pass" by the Committee on Insurance Policy by a vote of 13 to 0.

This substitute changes the laws regarding the enforcement powers of the Department of Insurance and service contracts and establishes the Missouri Title Insurance Act.

ENFORCEMENT POWERS OF THE DEPARTMENT OF INSURANCE

The substitute:

(1) Revises the department's enforcement procedures for various violations of the state insurance code. If the director determines that a person has violated or is attempting to violate a provision of the code, the director may:

(a) Issue an order directing the person to cease and desist;

(b) Issue a curative order or order directing the person to take other necessary action to comply with the insurance laws;

(c) Order a civil penalty or forfeiture; and

(d) Award reasonable costs of the investigation.

(2) Requires the director, unless summary action is needed to protect consumers, to provide notice of intent to issue an order. The notice will specify the reasons for the action, and the director will schedule a hearing at least 10 days after the notice;

(3) Changes the maximum penalty for violating a cease and desist order from a \$1,000 fine and up to one year in jail to a \$100,000 fine and up to 10 years in jail;

(4) Allows the director to revoke a corporation's or insurer's certificate of authority for violations of Missouri's insurance laws or for a felony or misdemeanor conviction;

(5) Allows the director to maintain an action in county circuit courts to issue injunctions, freeze assets, or take other appropriate or ancillary relief. The Consumer Restitution Fund is created to make restitution to aggrieved consumers of funds obtained through enforcement proceedings;

(6) Classifies various violations of insurance laws into five

categories from level one through level five. Maximum fines are established at each level with level one being the least and level five the highest. All fines collected will go to fund public schools as required by Article IX, Section 7, of the Missouri Constitution; and

(7) Allows any applicant who is refused a license to file a petition with the Administrative Hearing Commission. The director will have the burden of proof for the refusal.

MISSOURI TITLE INSURANCE ACT

The substitute establishes the Missouri Title Insurance Act. In its main provisions, the substitute:

(1) Requires a title insurer or title agent issuing a lender's title insurance policy, when no owner's policy has been requested, to give written notice to a purchaser/mortgagor that the lender's policy does not protect the purchaser;

(2) Requires a written contract specifying the responsibilities between a title insurer and a title insurance agent and the title insurer's supervisory responsibilities regarding title insurance agents;

(3) Allows a title insurer or title insurance agent to operate as an escrow, security, settlement, or closing agent if certain listed requirements are met;

(4) Requires title insurers to conduct on-site reviews at least annually on the practices and procedures of title insurance agencies or agents with which they contract. Reports will be maintained for at least four years and made available to the director upon request;

(5) Prohibits any title agency or agent not affiliated with an agency to deny reasonable access or fail to cooperate with its underwriters in the title insurers' review of its accounts;

(6) Prohibits title insurers, agencies, agents, or other persons from receiving any consideration for the referral of any title services provided;

(7) Requires settlement agents to record all deeds and security instruments within five business days after completion;

(8) Specifies that a title insurer is liable for the conversion or misappropriation of funds held in trust by a licensed title insurance agent or agency who is acting as an agent for the insurer. If more than one title insurer is involved, the insurer

or insurers having coverage prior to the illegal act will be liable;

(9) Prohibits title insurers or agents from participating in transactions in which they know the loan producer requires a party to obtain title insurance from a particular insurer or agent. Offering payments or rebates as an inducement to contract for title insurance is also prohibited;

(10) Requires title insurers to file all premium rates and supplementary rate information with the director before the rates become effective. If any rates are found to be excessive, inadequate, or unfairly discriminatory, the director can disapprove the rate. If an insurer's rates are disapproved, he or she may request a hearing. Rate information is a public record;

(11) Requires that no title insurance policy be written until a title search has been completed and the property found insurable. Once completed, all required outstanding, enforceable recorded liens, or other interests against the title must be shown;

(12) Allows the director, if it is determined that a person has or may engage in a violation of title insurance laws, to issue administrative orders as authorized under Section 374.046, RSMo, to suspend or revoke the license of a producer or the certificate of authority of any title insurer for the violations and bring action in court to enjoin violations of the Real Estate Settlement Procedures Act;

(13) Prohibits an insurer that transacts any other class, type, or kind of business from obtaining a title insurance license, except that a title insurer can issue closing or settlement protection;

(14) Requires title insurers to maintain at least \$800,000 each of paid-in capital and surpluses;

(15) Prohibits the net retained liability of a title insurer for a single risk from exceeding 50% of the surplus of all risks insured;

(16) Requires that when determining the financial condition of a title insurer the general investment provisions of Sections 379.080 to 379.082 will apply except that an investment in a title plant equal to the cost will be allowed as long as the aggregate amount of all investments does not exceed 20% of the surplus to policyholders;

(17) Prohibits the use of certain title insurance forms unless

the forms have been approved by the director;

(18) Allows the director to establish a policy issuance fee, not to exceed \$2, on each title insurance policy;

(19) Requires all title insurance agents to be licensed, lists their responsibilities and obligations for licensure, and specifies the title insurance continuing education requirements;

(20) Allows the director to inspect the records of title agencies, insurance agencies, and agents; and

(21) Requires titled insurers, agencies, or agents to disclose and provide required information on any affiliated businesses involved in the transaction prior to commencing the transaction.

MOTOR VEHICLE SERVICE CONTRACTS

The substitute:

(1) Defines "fronting company" as a dealer that authorizes a third-party administrator or provider to use its name or business to evade or circumvent a sale, an offer for sale, or a solicitation of a sale of a service contract to a consumer;

(2) Prohibits an unlicensed motor vehicle or boat dealer from selling a motor vehicle service contract to a consumer;

(3) Prohibits a dealer from acting as a fronting company; and

(4) Creates penalties for violation of these provisions.

PRODUCT SERVICE AGREEMENT

The substitute:

(1) Prohibits any person from issuing or selling a product service contract without registering and paying a fee with the Director of the Department of Insurance;

(2) Requires providers of service contracts to maintain at least one of the following:

(a) A funded reserve account of at least 40% of gross consideration received less claims paid;

(b) A financial security deposit with the director of at least 5% of the gross consideration received less claims paid;

(c) A net worth of \$100 million; or

(d) A reimbursement insurance policy covering 100% of the service contract obligations;

(3) Prohibits provider fees collected from being subject to premium taxes and exempts the person selling the contract from other state licensing laws if all requirements are met;

(4) Requires providers of service contracts to furnish a written statement to the consumer outlining their obligations and conveying terms and restrictions. Misleading advertising is prohibited;

(5) Requires providers of service contracts to maintain accurate records of every transaction for a period of at least three years after the specified period of coverage has expired. Records must be made available to the department upon request;

(6) Prohibits insurers who issue reimbursement insurance policies from terminating a policy without notifying the director. Insurers have the right to seek indemnification against a provider if the insurer pays amounts under the service contract that the provider was obligated to pay; and

(7) Creates penalties for violation of the provisions of the substitute.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown less than \$100,000 in FY 2007, FY 2008, and FY 2009. Estimated Effect on Other State Funds of a cost of \$259,442 to an income of Unknown in FY 2007, a cost of \$303,257 to an income of Unknown in FY 2008, and a cost of \$311,859 to an income of Unknown in FY 2009.

PROPOSERS: Supporters say that the bill is needed to regulate the title insurance industry. In the last few years, three title companies have gone out of business because there was no regulation. Consumers are being overcharged, and they need to be able to know the exact cost of the insurance.

Testifying for the bill were Senator Engler; Department of Insurance; U. S. Title; Cendant Corporation; Missouri Land Title Association; Missouri Association of Realtors; Coldwell Banker; Century 21; ERA Real Estate; Missouri Bankers Association; Brad Goss; and Missouri Title Legislative Study Group, Incorporated.

OPPOSERS: Those who oppose the bill say that they are against the rate setting component of the bill, and the rate portion of the bill needs to be amended. Consumers need to be allowed to shop for the best rate.

Testifying against the bill were Carpenters' District Council of Kansas City; Carpenters' District Council of Greater St. Louis; Home Builders Association of Greater St. Louis; St. Louis Home Builders Association; and Home Builders Association of Missouri.

OTHERS: Others testifying on the bill say the Department of Insurance wants to be recorded as being neutral on the rate portion of the bill.

Others testifying on the bill were Mortgage Bankers Association of Missouri; and Department of Insurance.

Marc Webb, Legislative Analyst