

SECOND REGULAR SESSION

# HOUSE BILL NO. 2026

## 93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KRATKY.

Read 1st time March 16, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5203L.01I

## AN ACT

To amend chapter 381, RSMo, by adding thereto four new sections relating to title insurance.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 381, RSMo, is amended by adding thereto four new sections, to be  
2 known as sections 381.023, 381.024, 381.027, and 381.113, to read as follows:

**381.023. 1. A title insurer shall, at least annually, conduct an onsite review of the**  
2 **underwriting, claims, and escrow practices of the title insurance agency or agent with**  
3 **which it has a contract. If the title insurance agency or agent does not maintain separate**  
4 **fiduciary trust accounts for each title insurer it represents, the title insurer shall verify that**  
5 **the funds held on its behalf are reasonably ascertainable from the books of account and**  
6 **records of the title insurance agency or agent.**

7 **2. Each title insurer authorized to do business in Missouri shall adopt and utilize**  
8 **the following standards and procedures for the on-site review of title insurance agents and**  
9 **agencies. On-site review documentation, work papers, summaries, and reports shall be**  
10 **maintained by each title insurer for a period of at least four years and shall be made**  
11 **available to the director for examination upon request. A report shall be prepared by the**  
12 **title insurer at the completion of the on-site review setting forth the title insurer's findings.**  
13 **On-site review findings shall include, but not be limited to, the following:**

14 **(1) A review of contracts between the title insurer and the title insurance agency**  
15 **or agent;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           (2) A statement of financial condition of the title insurance agency or agent,  
17 certified by the title insurance agent or designated agent of the agency under oath or by  
18 affirmation as being a true and accurate representation of financial condition;

19           (3) A review of management practices related to conflicts of interest, affiliated  
20 business arrangements, and regulatory compliance;

21           (4) Reconciliation of orders with commitments, title searches, title policies, and  
22 collection of premiums;

23           (5) A review of the procedures for tracking issued commitments;

24           (6) A review of the practices to cancel commitments on transactions that do not  
25 close;

26           (7) A review of the procedures for follow-up after closing to track status of  
27 outstanding conditions required for timely issuance of policies;

28           (8) A review of the procedures for voiding policies;

29           (9) A review of the tracking of open escrow, security, settlement or closing files;

30           (10) A review of issued policy reports to the title insurer by the title insurance  
31 agency or agent;

32           (11) A review of any files awaiting policy issuance that includes a determination of  
33 the average length of time between closing and the issuance of the title policy; and

34           (12) A review of a three-way reconciliation of bank balance, book balance and  
35 escrow trial balance for each individual escrow bank account.

36           3. If the agent or agency is an agent or agency for two or more title insurers, the  
37 title insurers may cooperate in complying with the requirements of this section.

38           4. The title insurer shall provide a copy of the report of each such review it  
39 performs to the director. The director may promulgate rules setting forth the minimum  
40 threshold level at which a review would be required, the standards thereof and the form  
41 of report required.

42           5. A violation of any provision under this section is a level two violation under  
43 section 374.049, RSMo.

381.024. 1. It is unlawful for any title agency or title agent not affiliated with an  
2 agency to deny reasonable access or in any manner fail to cooperate with its underwriters  
3 in the title insurers' reviews of the agency's or agent's escrow, settlement, closing and  
4 security deposit accounts.

5           2. It is unlawful for any title agency or title agent not affiliated with an agency,  
6 appointed by two or more title insurers, to deny any of the title insurers reasonable access  
7 to the fiduciary trust accounts in connection with providing escrow or closing settlement

8 services, and any or all of the supporting account information in order to ascertain the  
9 safety and security of the funds held by the title agency or title agent.

10 3. A violation of any provision under this section is a level two violation under  
11 section 374.049, RSMo.

381.027. A title insurer is liable for the defalcation, conversion, or misappropriation  
2 by a licensed title insurance agent or agency of funds held in trust by the agent or agency  
3 under section 381.022. If the agent or agency is an agent or agency for two or more title  
4 insurers, any liability shall be borne by the title insurer upon which a title insurance  
5 commitment or policy was issued prior to the illegal act. If no commitment or policy was  
6 issued, each title insurer represented by the agent or agency at the time of the illegal act  
7 shares in the liability in the same proportion that the premium remitted to it by the agent  
8 or agency during the one-year period before the illegal act bears to the total premium  
9 remitted to all title insurers by the agent or agency during the same time period.

381.113. 1. A policy issuance fee to be established by rule of the director, but no  
2 more than two dollars, is imposed on each title insurer for every title insurance policy  
3 issued in the state of Missouri. The policy fee is not a tax and shall be reported and paid  
4 separately from premium and retaliatory taxes.

5 2. All funds received under the provisions of this section shall be transmitted by the  
6 director of the department of insurance to the department of revenue for deposit in the  
7 state treasury to the credit of the department of insurance dedicated fund established  
8 under section 374.150, RSMo. Expenditures necessitated by this act may be paid from  
9 funds appropriated from the department of insurance dedicated fund by the general  
10 assembly.

11 3. The director may promulgate rules setting forth the standards for remittance of  
12 the policy fees. Any rule or portion of a rule, as that term is defined in section 536.010,  
13 RSMo, that is created pursuant to the authority delegated in this section shall become  
14 effective only if it complies with and is subject to all of the provisions of chapter 536,  
15 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
16 nonseverable and if any of the powers vested with the general assembly pursuant to  
17 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule  
18 are subsequently held unconstitutional, then the grant of rulemaking authority and any  
19 rule proposed or adopted after August 28, 2006, shall be invalid and void.

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