

## HB 1480 -- Title Insurance

Sponsor: Dempsey

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

### ENFORCEMENT POWERS OF THE DEPARTMENT OF INSURANCE

The bill:

(1) Revises the department's enforcement procedures for various violations of the state insurance code. If the department 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 penalty for violating a cease and desist order from a maximum \$1,000 fine and up to one year in jail to a maximum \$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 bill establishes the Missouri Title Insurance Act. In its main provisions, the bill:

(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) Permits 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) Makes it unlawful for 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 when determining the financial condition of a title insurer that 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 listed 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.