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FISCAL IMPACT STATEMENT

LS 6206
BILL NUMBER: SB 127

NOTE PREPARED: Dec 11, 2006
BILL AMENDED:

SUBJECT: Title Insurance.

FIRST AUTHOR: Sen. Waltz
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: This bill specifies requirements for the conduct of a title insurance agent or title agency, including licensure, continuing education, placement of title insurance business, record keeping, reporting, and management and use of funds. The bill requires the Department of Insurance (DOI) to establish a title insurance enforcement unit to enforce title insurance law.

Effective Date: July 1, 2007.

Explanation of State Expenditures: P.L.171-2006, SEC.5, established the Title Insurance Enforcement Fund to provide supplemental funding for DOI operations that are related to title insurance and to pay the costs of hiring and employing staff in the area of enforcement of the title insurance law. The DOI plans to hire 7 staff. Costs for staff, equipment, and operating costs are estimated at \$378,381 for FY 2008 and \$400,000 for FY 2009 and FY 2010.

The DOI commissioner administers the fund. Expenses of administering the fund must be paid from money in the fund. The following are deposited in the fund:

- (1) Policy reporting fees remitted by title insurers to the commissioner.
- (2) All fines, monetary penalties, and costs imposed upon persons by the DOI pertaining to title insurance.
- (3) Other amounts remitted to the commissioner or the DOI that are required by law to be deposited into the fund.

A person that purchases a title insurance policy pays to the title insurer a fee of \$5. The insurer pays \$3 of this fee to the DOI for deposit in the fund. The amount of revenue that will be generated for the fund is

unknown. Approximately 200,000 sales disclosure forms are filed annually with the Department of Local Government Finance. If 200,000 sales occur each year and title insurance is purchased for each sale, a maximum of \$600,000 would be deposited in the Title Insurance Enforcement Fund. However, fee collections began in September 2006. The fund balance as of 11/30/06 was \$66,355. The balance represents less than 3 months of collections. If this balance were multiplied by 4 in order to estimate annual collections, total annual collections would equal approximately \$265,000, assuming that applications are evenly distributed throughout the year. Expenses to-date have equaled \$5,197.

DOI Title Insurance Licensure Responsibilities. Staff identified above would assist the DOI commissioner in the following administrative duties related to the licensure of title insurance agents and agencies. The commissioner must adopt rules and prescribe forms to establish criteria and a process for licensure of a title agency or title insurance agent. A title agency or title insurance agent is not required to be licensed until July 1, 2008. A title insurer that engages or employs a title agency must file with the DOI, on a form prescribed by the DOI, an application certifying that the proposed title agency meets requirements.

To obtain an initial license, a title agency must deposit with the DOI securities of not less than \$10,000 or post a bond of not less than \$10,000. If a properly documented claim is timely filed with the DOI by a person damaged by a title insurance agency's violation of the law, the DOI may remit to the person in payment of the claim an appropriate amount of the securities or bonds or proceeds thereof. If there are no claims outstanding against the deposit or bond one year after termination of all title agency appointments, the DOI must return the deposit or bond and any accrued interest to the title agency.

A continuing education course must be approved by the DOI commissioner. Approval of a continuing education course must be for not more than two years. The DOI commissioner must adopt rules to establish procedures for approving continuing education courses. The DOI may grant an individual waiver of the continuing education requirements under specified circumstances. An individual must furnish, in a manner satisfactory to the DOI, certification of the individual's completion of the requirement.

In addition, the commissioner may require a title insurance agent to maintain in amounts commensurate with the title insurance agent's average exposure and the volume and nature of the title insurance agent's business, a sufficient net worth to ensure the title insurance agent's solvency.

The commissioner may prescribe specific record entries and documents that must be maintained and the length of time for which the records and documents must be maintained.

Other State Agencies: The following entities may cooperate with the title insurance enforcement unit, including sharing information that is otherwise confidential, to enforce compliance:

- (1) the Professional Licensing Agency and appropriate licensing boards;
- (2) the Department of Financial Institutions;
- (3) the Securities Division of the Office of the Secretary of State;
- (4) the Supreme Court Disciplinary Commission, with respect to attorney misconduct;
- (5) the Housing and Community Development Authority;
- (6) the Department of State Revenue;
- (7) the State Police Department;
- (8) a prosecuting attorney;
- (9) local law enforcement agencies;
- (10) the Indiana Real Estate Commission.

The DOI commissioner may file a complaint with any of the above entities to enforce the title insurance law.

Civil Action: The commissioner or Attorney General may bring an action in a court with jurisdiction to enjoin violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.). Expenses associated with any future civil action are unknown. Presumably, the entities will be able to cover these expenses.

Civil Penalties: If the DOI commissioner determines that a person has violated a provision pertaining to the licensure of agents and agencies, the commissioner may impose a civil penalty of not more than \$10,000 for each violation. If the person is a title insurance agent, the commissioner may order revocation or suspension of the title insurance agent's license.

Penalties. If a title insurance agent or title agency defalcates, converts, or misappropriates funds held in trust by the title insurance, the agent or title agency commits a Class D felony. A title insurance agent, an officer, a director, or an employee of a title insurance agent, or a person associated with a title insurance agent or an officer, a director, or an employee of a title insurance agent, who is an independent contractor for bookkeeping or similar purposes who knowingly or intentionally converts or misappropriates funds received or held in escrow or in trust by the title insurance agent or a person who knowingly or intentionally receives or conspires to receive funds commits a Class D felony.

With respect to the above violations, the offense is a Class C felony if the amount of money converted, misappropriated, or received, or for which there is a conspiracy is more than \$10,000 but less than \$100,000. The offense is a Class B felony if the amount of money involved is over \$100,000.

A Class B felony is punishable by a prison term ranging from 6 to 20 years, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years. A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$22,734 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Explanation of State Revenues: A prospective provider of a continuing education course must pay

- (1) a \$40 fee for each course submitted for approval of the commissioner; or
- (2) an annual fee of \$500, which entitles the prospective provider to submit an unlimited number of courses for approval.

The commissioner may waive all or a portion of the fee for a course submitted under a reciprocity agreement with another state. Fees collected must be deposited in the DOI fund which is used to finance DOI operating expenses. The amount of revenue that will be generated by this provision is indeterminable.

Civil Penalties. If the commissioner, after notice and hearing, determines that a person has violated the provisions of the bill, the commissioner may impose a civil penalty of not more than \$10,000 for each violation. It is unknown how much this provision will generate, if any.

Criminal Penalties. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class B felony is \$10,000, for a Class C felony is \$10,000, and for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Criminal Penalties.* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Criminal Penalties.* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: DOI, Department of Correction, Professional Licensing Agency, the Department of Financial Institutions, the Securities Division of the Office of the Secretary of State, the Supreme Court Disciplinary Commission, the Housing Finance Authority, the Department of State Revenue, the State Police Department, the Lieutenant Governor, and the Indiana Real Estate Commission.

Local Agencies Affected: Prosecuting attorneys, trial courts, and local law enforcement agencies.

Information Sources: Amy Strati, DOI, 317-232-0143; Barb Hayes Lowman, Controller, DOI, 317-232-2405; Indiana Sheriffs' Association; Department of Correction.

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