

SENATE BILL No. 127

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-1-15.6-4; IC 27-7-3.5.

Synopsis: Title insurance. 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. Requires the department of insurance to establish a title insurance enforcement unit to enforce title insurance law.

Effective: July 1, 2007.

Waltz

January 8, 2007, read first time and referred to Committee on Insurance and Financial Institutions.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 127



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-1-15.6-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) As used in this
3 section, "insurer" does not include an officer, director, employee,
4 subsidiary, or affiliate of an insurer.
5 (b) This chapter does not require an insurer to obtain an insurance
6 producer license.
7 (c) The following are not required to be licensed as an insurance
8 producer:
9 (1) An officer, director, or employee of an insurer or of an
10 insurance producer, if the officer, director, or employee does not
11 receive any commission on policies written or sold to insure risks
12 that reside, are located, or are to be performed in Indiana, and if:
13 (A) the officer, director, or employee's activities are executive,
14 administrative, managerial, clerical, or a combination of these,
15 and are only indirectly related to the sale, solicitation, or
16 negotiation of insurance;
17 (B) the officer, director, or employee's function relates to



1 underwriting, loss control, inspection, or the processing,
 2 adjusting, investigating, or settling of a claim on a contract of
 3 insurance; or
 4 (C) the officer, director, or employee is acting in the capacity
 5 of a special agent or agency supervisor assisting insurance
 6 producers and the officer, director, or employee's activities are
 7 limited to providing technical advice and assistance to
 8 licensed insurance producers and do not include the sale,
 9 solicitation, or negotiation of insurance.

10 (2) A person who secures and furnishes information for the
 11 purpose of:
 12 (A) group life insurance, group property and casualty
 13 insurance, group annuities, group or blanket accident and
 14 sickness insurance;
 15 (B) enrolling individuals under plans;
 16 (C) issuing certificates under plans or otherwise assisting in
 17 administering plans; or
 18 (D) performing administrative services related to mass
 19 marketed property and casualty insurance;
 20 where no commission is paid to the person for the service.

21 (3) A person identified in clauses (A) through (C) who is not in
 22 any manner compensated, directly or indirectly, by a company
 23 issuing a contract, to the extent that the person is engaged in the
 24 administration or operation of a program of employee benefits for
 25 the employer's or association's employees, or for the employees of
 26 a subsidiary or affiliate of the employer or association, that
 27 involves the use of insurance issued by an insurer:
 28 (A) An employer or association.
 29 (B) An officer, director, or employee of an employer or
 30 association.
 31 (C) The trustees of an employee trust plan.

32 (4) An:
 33 (A) employee of an insurer; or
 34 (B) organization employed by insurers;
 35 that is engaged in the inspection, rating, or classification of risks,
 36 or in the supervision of the training of insurance producers, and
 37 that is not individually engaged in the sale, solicitation, or
 38 negotiation of insurance.

39 (5) A person whose activities in Indiana are limited to advertising,
 40 without the intent to solicit insurance in Indiana, through
 41 communications in printed publications or other forms of
 42 electronic mass media whose distribution is not limited to

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- 1 residents of Indiana, provided that the person does not sell, solicit,
- 2 or negotiate insurance that would insure risks residing, located, or
- 3 to be performed in Indiana.
- 4 (6) A person who is not a resident of Indiana and who sells,
- 5 solicits, or negotiates a contract of insurance for commercial
- 6 property and casualty risks to an insured with risks located in
- 7 more than one (1) state insured under that contract, provided that:
- 8 (A) the person is otherwise licensed as an insurance producer
- 9 to sell, solicit, or negotiate the insurance in the state where the
- 10 insured maintains its principal place of business; and
- 11 (B) the contract of insurance insures risks located in that state.
- 12 (7) A salaried full-time employee who counsels or advises the
- 13 employee's employer about the insurance interests of the
- 14 employer or of the subsidiaries or business affiliates of the
- 15 employer, provided that the employee does not sell or solicit
- 16 insurance or receive a commission.
- 17 (8) An officer, employee, or representative of a rental company
- 18 (as defined in IC 24-4-9-7) who negotiates or solicits insurance
- 19 incidental to and in connection with the rental of a motor vehicle.
- 20 (9) An individual who:
- 21 (A) furnishes only title insurance rate information at the
- 22 request of a consumer; and
- 23 (B) does not discuss the terms or conditions of a title insurance
- 24 policy.
- 25 **(10) A licensed attorney when acting as a title insurance**
- 26 **producer (as defined in IC 27-7-3.5-16) or a title insurance**
- 27 **agent (as defined in IC 27-7-3.5-19).**

28 SECTION 2. IC 27-7-3.5 IS ADDED TO THE INDIANA CODE
 29 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2007]:

31 **Chapter 3.5. Title Insurance**

32 **Sec. 1. As used in this chapter, "abstract of title" means a**
 33 **written history, synopsis, or summary of recorded instruments**
 34 **affecting the title to real property.**

35 **Sec. 2. As used in this chapter, "affiliated business" means a**
 36 **part of a title insurance agent's business written in Indiana that**
 37 **was referred to the title insurance agent by a producer of title**
 38 **insurance business or an associate of a producer of title insurance**
 39 **business, in circumstances in which the producer or the associate,**
 40 **or both, have a financial interest in the title insurance agent.**

41 **Sec. 3. As used in this chapter, "alien title insurer" means a title**
 42 **insurer that is incorporated or organized under the laws of a**

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foreign nation or a foreign province or territory.

Sec. 4. As used in this chapter, "associate" means the following:

- (1) A business organized for profit in which a producer of title insurance business is a director, an officer, a partner, an employee, or an owner of a financial interest in the business.**
- (2) An employee of a producer of title insurance business.**
- (3) A franchiser or franchisee of a producer of title insurance business.**
- (4) A spouse, parent, or child of a producer of title insurance business.**
- (5) A person, other than an individual, that controls, is controlled by, or is under common control with a producer of title insurance business.**
- (6) A person with whom a producer of title insurance business or an associate of a producer of title insurance business has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to the producer or associate for the referral of title insurance business.**

Sec. 5. As used in this chapter, "bona fide employee" means an individual:

- (1) who devotes substantially all of the individual's time to performing services on behalf of a title insurer or title insurance agent; and**
- (2) whose compensation for the services described in subdivision (1) is in the form of salary or the equivalent paid by the title insurer or title insurance agent.**

Sec. 6. As used in this chapter, "chattels real" means an interest in real estate that is less than a freehold or fee interest.

Sec. 7. As used in this chapter, "closing protection letter" means an indemnification of or undertaking to a party to a real estate transaction by a principal, such as a title insurance company, setting forth in writing the extent to which the principal is responsible for intentional or unintentional misconduct or errors of the principal's agent in closing the real estate transaction.

Sec. 8. As used in this chapter, "commissioner" means the insurance commissioner appointed under IC 27-1-1-2, the commissioner's representative, or the commissioner, director, or superintendent of insurance in another state.

Sec. 9. As used in this chapter, "department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 10. As used in this chapter, "escrow" means written

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1 instruments, money, or other items deposited by a party with a
2 depository, an escrow agent, or an escrowee for delivery to another
3 party upon the performance of a specified condition or the
4 happening of a certain event.

5 Sec. 11. As used in this chapter, "financial interest" means a:

- 6 (1) direct or indirect; and
- 7 (2) legal or beneficial;

8 interest in an entity, in which the holder of the interest is or will be
9 entitled to at least five percent (5%) of the net profits or net worth
10 of the entity.

11 Sec. 12. As used in this chapter, "foreign title insurer" means a
12 title insurer that is incorporated or organized under the laws of
13 another state, the District of Columbia, or another jurisdiction of
14 the United States.

15 Sec. 13. As used in this chapter, "person" means an individual,
16 a partnership, an association, a cooperative, a corporation, a trust,
17 a limited liability company, or another legal entity.

18 Sec. 14. As used in this chapter, "premium" means the charge:

- 19 (1) specified under a rule adopted by the commissioner;
- 20 (2) that is made by a title insurer for a title insurance policy,
21 including the charge for:

22 (A) performance of primary title services by a title insurer
23 or title insurance agent; and

24 (B) incurring the risks incident to the title insurance
25 policy;

26 under the several classifications of title insurance policies and
27 forms; and

28 (3) upon which a premium tax is paid.

29 Sec. 15. As used in this chapter, "primary title services" means
30 the following services:

31 (1) Evaluation of a title search or an abstract of title to
32 determine the insurability of title.

33 (2) Clearance of underwriting objections.

34 (3) Issuance and assumption of responsibility for the issuance
35 of a title insurance policy.

36 (4) Issuance of a closing protection letter.

37 Sec. 16. (a) As used in this chapter, "producer" means a person,
38 including an officer, director, or owner of five percent (5%) or
39 more of the equity or capital of a person, that is engaged in Indiana
40 in the trade, business, occupation, or profession of:

- 41 (1) buying or selling interests in real property;
- 42 (2) making loans secured by interests in real property; or

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1 (3) acting as a broker, an agent, or a representative of a
2 person who:

- 3 (A) buys or sells an interest in real property; or
- 4 (B) lends or borrows money using an interest in real
5 property as security for the loan.

6 (b) The term does not include an insurance producer or a
7 limited lines producer (both as defined in IC 27-1-15.6-2).

8 Sec. 17. As used in this chapter, "referral" means the direction
9 or the exercise of a power or influence over the direction of title
10 insurance business, regardless of whether the consent or approval
11 of another person is sought or obtained with respect to the
12 direction or exercise.

13 Sec. 18. As used in this chapter, "security deposit" means funds
14 or other property received by a title insurance agent as collateral
15 to secure an indemnitor's obligation under an indemnity agreement
16 under which a title insurer:

- 17 (1) agrees to provide coverage:
 - 18 (A) under a title insurance policy; and
 - 19 (B) that would otherwise be excluded under a specific
20 exception to coverage; and
- 21 (2) is granted a perfected security interest in the collateral in
22 exchange for agreeing to provide the coverage described in
23 subdivision (1).

24 Sec. 19. (a) As used in this chapter, "title insurance agent"
25 means an authorized person, other than a bona fide employee of a
26 title insurer or an attorney licensed to practice law in Indiana,
27 who:

- 28 (1) is licensed as a limited lines producer under IC 27-1-15.6;
29 and
- 30 (2) on behalf of a title insurer performs the following acts in
31 conjunction with the issuance of a title insurance report or
32 title insurance policy:
 - 33 (A) Determines insurability and issues a title insurance
34 report or a title insurance policy, or both, based on the
35 performance or review of a title search, an examination of
36 title, or an abstract of title.
 - 37 (B) Performs one (1) or more of the following functions:
 - 38 (i) Collection or disbursement of premiums, escrow,
39 security deposits, or other funds.
 - 40 (ii) Management of escrow, settlement, or closing.
 - 41 (iii) Solicitation or negotiation of title insurance business.

42 (b) The term includes a title agency.

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1 **Sec. 20. As used in this chapter, "title insurance business"**
 2 **means any of the following:**

3 **(1) Issuing or offering to issue, as a title insurer, a title**
 4 **insurance policy.**

5 **(2) Transacting or proposing to transact, as a title insurance**
 6 **agent or title insurer, any of the following activities when**
 7 **conducted or performed in contemplation of or in conjunction**
 8 **with the issuance of a title insurance policy:**

9 **(A) Solicitation or negotiation of the issuance of a title**
 10 **insurance policy.**

11 **(B) Guaranteeing, warranting, or otherwise insuring the**
 12 **correctness of a title search for instruments affecting the**
 13 **title to any of the following:**

14 **(i) Real property.**

15 **(ii) Chattels real.**

16 **(iii) Cooperative units.**

17 **(iv) Proprietary leases.**

18 **(v) Liens or charges affecting property described in**
 19 **items (i) through (iv).**

20 **(C) Management of escrow, settlement, or closing.**

21 **(D) Execution of title insurance policies.**

22 **(E) Effectuation of contracts of reinsurance.**

23 **(F) Abstraction, searches, or examination of titles.**

24 **(G) Issuance of closing protection letters.**

25 **(3) Guaranteeing, warranting, or insuring searches or**
 26 **examinations of title to real property or chattels real.**

27 **(4) Guaranteeing or warranting the status of title concerning:**

28 **(A) ownership of; or**

29 **(B) liens on;**

30 **real property and chattels real by a person other than a**
 31 **principal to a transaction related to issuance of a title**
 32 **insurance policy.**

33 **Sec. 21. As used in this chapter, "title insurance policy" means**
 34 **a contract insuring or indemnifying the owner of, or another**
 35 **person that is lawfully interested in, real or personal property or**
 36 **chattels real, against loss or damage arising from any of the**
 37 **following conditions existing on or before the title insurance policy**
 38 **date and not excepted or excluded:**

39 **(1) Defects in or liens or encumbrances on the insured title.**

40 **(2) Unmarketability of the insured title.**

41 **(3) Invalidity, lack of priority, or unenforceability of liens or**
 42 **encumbrances on the property.**

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- (4) Lack of legal right of access to real property.
 - (5) Unenforceability of rights in title to real property.
- Sec. 22. As used in this chapter, "title insurance report" means a preliminary report, commitment, or binder:
- (1) issued before the issuance of a title insurance policy; and
 - (2) containing the terms, conditions, exceptions, and other matters incorporated by reference under which a title insurer will issue a title insurance policy.
- Sec. 23. (a) As used in this chapter, "title insurance subagent" means a person, other than a bona fide employee of a title insurance agent, who on behalf of a title insurance agent determines insurability and issues a title insurance report or title insurance policy, or both, based on the performance or review of a title search or an abstract of title.
- (b) The term does not include a licensed attorney that performs legal services, including title examination or closing services.
- Sec. 24. As used in this chapter, "title insurer" means the following:
- (1) A company organized under Indiana law to transact title insurance business.
 - (2) A foreign title insurer or an alien title insurer that is licensed in Indiana to transact title insurance business.
- Sec. 25. As used in this chapter, "underwrite" means to accept or reject risk:
- (1) on behalf of a title insurer; and
 - (2) under authority granted by the title insurer.
- Sec. 26. (a) The commissioner shall adopt rules under IC 4-22-2 to establish criteria and a process for licensure of the following:
- (1) A title agency.
 - (2) A title insurance agent.
- (b) A license may be issued under this section if each person named on the license possesses all qualifications determined appropriate by the commissioner.
 - (c) A person shall not act as a title agency or title insurance agent, and a title insurer may not contract with a person to act as a title agency or title insurance agent, with respect to risks located in Indiana, unless the person is licensed under this section as a title agency, title insurance agent, or licensed attorney in Indiana.
 - (d) An individual:
 - (1) employed by or contracted by a title agency, title insurance agent, or title insurer;
 - (2) to whom the title agency, title insurance agent, or title

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1 insurer delegates authority to act on the title agency's, title
 2 insurance agent's, or title insurer's behalf; and
 3 (3) who engages in title insurance business;
 4 shall be individually licensed under this section. This subsection
 5 does not require licensure of an individual who performs only
 6 clerical or administrative functions, including quoting title
 7 insurance fees.

8 (e) An applicant for a title agency license or title insurance agent
 9 license under this section must also satisfy the requirements of
 10 IC 27-1-15.6 that apply to the title agency or title insurance agent.

11 (f) A title insurer that engages or employs a title agency shall file
 12 with the department, on a form prescribed by the department, an
 13 application certifying that the proposed title agency meets both of
 14 the following requirements:

15 (1) The title agency has obtained a fidelity bond in an amount
 16 that is acceptable to the title insurer, but not less than fifty
 17 thousand dollars (\$50,000).

18 (2) The title agency has obtained an errors and omissions
 19 insurance policy:

- 20 (A) that provides coverage for an opinion of title;
- 21 (B) from an insurer that is acceptable to the title insurer;
- 22 and
- 23 (C) in an amount acceptable to the title insurer, but not
 24 less than two hundred fifty thousand dollars (\$250,000) per
 25 claim with an aggregate limit.

26 The department shall adopt rules under IC 4-22-2 to specify an
 27 alternative method of compliance with subdivisions (1) and (2) if a
 28 fidelity bond or errors and omissions insurance is generally
 29 unavailable.

30 (g) A title agency shall provide to a title insurer with which the
 31 title agency places title insurance business, in a timely manner,
 32 information requested by the title insurer to comply with reporting
 33 requirements of the department.

34 Sec. 27. (a) To obtain an initial license under section 26 of this
 35 chapter, a title agency shall:

- 36 (1) have deposited with the department securities that are of
 37 the type described in IC 27-1-13-3(b) and have at all times a
 38 market value of not less than ten thousand dollars (\$10,000);
 39 or
- 40 (2) post a surety bond of not less than ten thousand dollars
 41 (\$10,000) payable to the department;

42 to secure the title agency's performance of the title agency's duties

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1 and responsibilities under the contract described in section 30 of
2 this chapter and entered into between the title agency and each title
3 insurer for which the title agency is appointed. If a surety bond is
4 generally unavailable, the department may adopt rules under
5 IC 4-22-2 to establish alternative methods by which a title agency
6 may comply with this subsection.

7 (b) The deposit made or bond posted under subsection (a) is for
8 the benefit of a person insured under a title insurance policy and
9 damaged by the title agency's violation of this chapter or of a
10 contractual duty or responsibility described in subsection (a).

11 (c) A title insurer may not, directly or indirectly on behalf of a
12 title agency, provide a deposit or bond required under subsection
13 (a).

14 (d) A title agency may:
15 (1) exchange or substitute securities:
16 (A) described in IC 27-1-13-3(b); and
17 (B) of like quality and value;
18 for securities on deposit;
19 (2) receive interest and other income accruing on securities
20 deposited; and
21 (3) at reasonable times, inspect a deposit of securities made;
22 under subsection (a)(1).

23 (e) If a properly documented claim is timely filed with the
24 department by a person described in subsection (b), the
25 department may remit to the person in payment of the claim an
26 appropriate amount of:

- 27 (1) a deposit made under subsection (a); or
- 28 (2) proceeds that are received from the surety.

29 (f) A deposit or bond described in subsection (a) must remain
30 unimpaired while the title agency continues in business in Indiana
31 and for one (1) year after termination of all title agency
32 appointments held by the title agency. If there are no claims
33 outstanding against the deposit or bond one (1) year after
34 termination of the appointments, the department shall return the
35 deposit or bond and any accrued interest to the title agency.

36 Sec. 28. (a) A title agency or title insurance agent that is licensed
37 under section 26 of this chapter shall comply with the requirements
38 of IC 27-1-15.7 that apply to the title agency or title insurance
39 agent.

40 (b) A continuing education course must be approved under
41 IC 27-1-15.7-4.

42 (c) An individual who teaches an approved course of instruction

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1 or lectures at an approved seminar qualifies for the same number
 2 of continuing education hours as would be granted to an individual
 3 who takes and successfully completes the course or seminar.
 4 (d) The department may grant an individual waiver of the
 5 continuing education requirements of IC 27-1-15.7 upon a showing
 6 by a licensee that it is not feasible for the licensee to satisfy the
 7 requirements before the licensee's license renewal date for an
 8 acceptable reason, including the licensee's:
 9 (1) serious physical injury or illness; or
 10 (2) active duty in the armed services for an extended period.
 11 (e) An individual who is subject to this section shall furnish, in
 12 a manner satisfactory to the department, certification of the
 13 individual's completion of courses, programs, or seminars required
 14 by this section.
 15 Sec. 29. (a) In addition to the requirements of sections 26(f) and
 16 27 of this chapter, the commissioner may require a title insurance
 17 agent to maintain, for the benefit of a title insurer, an insured, or
 18 a depositor, under terms and conditions to be prescribed by the
 19 commissioner, in amounts commensurate with the title insurance
 20 agent's average exposure and the volume and nature of the title
 21 insurance agent's business, a sufficient net worth to ensure the title
 22 insurance agent's solvency and commitment to the purpose of
 23 being a title insurance agent.
 24 (b) In determining the precise amount and terms and conditions
 25 described in subsection (a), the commissioner may adopt rules
 26 under IC 4-22-2 that:
 27 (1) specify acceptable alternatives to the net worth
 28 requirements described in subsection (a); and
 29 (2) exempt certain persons from complying with all or part of
 30 the net worth requirements described in subsection (a) or
 31 specified alternatives to the net worth requirements by virtue
 32 of:
 33 (A) the person's actual or expected volume of business; or
 34 (B) individual circumstances that show that the
 35 requirements would pose an undue hardship on the title
 36 insurance agent and the title insurance agent's services will
 37 be needed by and desirable to insureds.
 38 (c) The commissioner may adopt rules under IC 4-22-2 to
 39 specify information that must be provided to evidence sufficiency
 40 of a title insurance agent's net worth as described in subsection (a).
 41 (d) Financial information provided to evidence sufficiency of a
 42 title insurance agent's net worth under this section is confidential.

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1 (e) A title insurance agent shall perform, through the title
2 insurance agent's bona fide employees, primary title services to
3 receive compensation for the services the title insurance agent
4 renders.

5 Sec. 30. (a) A person, firm, association, or corporation that acts
6 as a title insurance agent may not place title insurance business
7 with a title insurer unless a written contract is in force between the
8 title insurance agent and the title insurer that:

- 9 (1) specifies the responsibilities of each party;
- 10 (2) if both parties share responsibility for a particular
- 11 function, specifies the division of the responsibilities; and
- 12 (3) contains the following minimum provisions:

13 (A) The title insurer may terminate the contract upon
14 written notice if one (1) of the following occurs:

- 15 (i) Fraud.
- 16 (ii) Insolvency.
- 17 (iii) Appointment of a receiver or conservator.
- 18 (iv) Bankruptcy.
- 19 (v) Cancellation of the title insurance agent's license to
- 20 do title insurance business.
- 21 (vi) The commencement of legal proceedings by the state
- 22 of domicile of the title insurance agent that, if successful,
- 23 will lead to cancellation of the title insurance agent's
- 24 license to do title insurance business.
- 25 (vii) Material breach of a provision of the contract.
- 26 (viii) Notice of cancellation is provided in accordance
- 27 with contract termination requirements.

28 (B) Upon notice of termination, the title insurance agent
29 shall immediately discontinue all underwriting on behalf
30 of the title insurer.

31 This subdivision does not relieve a title insurance agent or
32 title insurer of a contractual obligation not specified in this
33 subdivision.

34 (b) A title insurance agent shall render accounts detailing all
35 transactions, and remit all funds, due to a title insurer under the
36 contract described in subsection (a) to the title insurer before the
37 later of the following:

- 38 (1) Forty-five (45) days after the end of the month of the
- 39 effective date of the title insurance policy.
- 40 (2) Within the time specified by the underwriting contract.

41 (c) Funds collected by a title insurance agent for the account of
42 a title insurer:

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1 (1) must be held in a fiduciary capacity in a bank that is a
2 qualified financial institution; and
3 (2) are the property of the title insurer for whom the funds
4 are collected.
5 (d) A title insurance agent shall keep records concerning funds
6 described in subsection (c) in a manner that permits identification
7 of funds that belong to a particular title insurer.
8 (e) At a title insurer's request, a title insurance agent or a title
9 insurance agent's successor in interest, transferee, or receiver shall
10 provide access to and the right to copy all escrow files and
11 underwriting files involving a transaction in which a title insurance
12 report or title insurance policy is issued or will be issued by the
13 title insurance agent.
14 (f) A title insurance agent shall provide to a title insurer access
15 to and a right to copy accounts and records maintained by the title
16 insurance agent with respect to title insurance business placed with
17 the title insurer.
18 (g) A contract described in subsection (a) may not be assigned
19 in whole or in part by a title insurance agent without the expressed
20 written consent of the title insurer.
21 (h) It is the duty of a title insurance agent to immediately report
22 and forward to a title insurer all title related escrow claims and
23 title claims reported to the title insurance agent by a policyholder
24 or another person. However, if the contract described in subsection
25 (a) permits the title insurance agent to settle claims on behalf of the
26 title insurer:
27 (1) the title insurance agent shall send a copy of the claim file
28 to the title insurer at the title insurer's request or as soon as
29 the title insurance agent is aware that the claim:
30 (A) has the potential to exceed a certain amount
31 established by the title insurer;
32 (B) involves a coverage dispute;
33 (C) may exceed the title insurance agent's claims
34 settlement authority;
35 (D) is open for more than six (6) months; or
36 (E) is closed by payment exceeding a certain amount
37 established by the title insurer;
38 (2) files related to title and title related escrow claims settled
39 by the title insurance agent are the property of the title
40 insurer; and
41 (3) the title insurer may:
42 (A) suspend a settlement authority granted to the title

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1 insurance agent during a pending dispute regarding a
 2 cause for termination of the contract described in
 3 subsection (a); or
 4 (B) upon:
 5 (i) the title insurer's written notice to the title insurance
 6 agent; or
 7 (ii) the termination of the contract described in
 8 subsection (a);
 9 immediately terminate a settlement authority granted to
 10 the title insurance agent.
 11 This subdivision does not relieve a title insurance agent or
 12 title insurer of any other contractual obligation.
 13 (i) If electronic claims files exist in the records of a title
 14 insurance agent, the contract described in subsection (a) must
 15 address the immediate transmission of the data contained in the
 16 electronic claims files.
 17 (j) A title insurance agent may not:
 18 (1) bind reinsurance or retrocession on behalf of a title
 19 insurer; or
 20 (2) appoint a title insurance subagent, without the expressed
 21 written consent of the title insurance underwriter that
 22 provides underwriting services under a contract with a title
 23 insurer.
 24 (k) The contract described in subsection (a) must include
 25 specific terms of a title insurance agent's compensation.
 26 (l) A title insurance agent shall maintain an inventory of title
 27 insurance policy forms or title insurance policy numbers assigned
 28 to the title insurance agent by a title insurer.
 29 (m) A title insurance agent shall:
 30 (1) annually;
 31 (2) within a time specified by the contract described in
 32 subsection (a); or
 33 (3) concurrent with the renewal date of the title insurance
 34 agent's contract with a title insurer;
 35 furnish a title insurer with proof that the title insurance agent is in
 36 compliance with section 26 of this chapter.
 37 (n) A:
 38 (1) title insurer; or
 39 (2) title insurance agent on behalf of a title insurer;
 40 shall issue a title insurance policy not later than sixty (60) days
 41 after all conditions or requirements specified in the title insurance
 42 report have been satisfied. However, if a title insurance policy

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1 cannot be issued within the period set forth in this subsection due
2 to an act of God or war, the title insurance policy must be issued
3 within a reasonable period determined by the department.

4 **Sec. 31. (a) If:**

5 (1) a title insurance agent or title insurer provides settlement
6 services and issues a lender's title insurance policy in
7 conjunction with a mortgage loan made simultaneously with
8 the purchase of all or part of residential real estate securing
9 the loan; and

10 (2) an owner's title insurance policy has not been requested;
11 the title insurance agent or title insurer shall, at the time the title
12 insurance report is prepared, provide written notice described in
13 subsection (b) to the purchaser-mortgagor or the
14 purchaser-mortgagor's representative.

15 (b) Notice provided under subsection (a) must explain:

16 (1) that a lender's title insurance policy will be issued to
17 protect the mortgage lender;

18 (2) that the lender's title insurance policy does not provide
19 title insurance protection to the purchaser-mortgagor as the
20 owner of the property being purchased;

21 (3) what possible risks exist for the purchaser-mortgagor that
22 could be insured against through the purchase of an owner's
23 title insurance policy; and

24 (4) that the purchaser-mortgagor may obtain an owner's title
25 insurance policy protecting the property owner for an
26 additional cost.

27 (c) A title insurer or title insurance agent shall, at the time the
28 title insurance report is prepared, provide written notice to all
29 parties that receive the title insurance report that a closing
30 protection letter may be purchased.

31 (d) The department shall adopt rules under IC 4-22-2 to specify
32 the content of each notice required under this section.

33 **Sec. 32. (a)** A title insurance agent shall maintain sufficient
34 records of the title insurance agent's affairs, including the title
35 insurance agent's escrow operations and escrow trust accounts, to
36 allow the commissioner to adequately ensure that the title
37 insurance agent is in compliance with this chapter.

38 (b) The commissioner may prescribe:

39 (1) specific record entries and documents that must be
40 maintained under subsection (a); and

41 (2) the length of time for which the records and documents
42 must be maintained.

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1 **Sec. 33. (a) A title insurance agent, an officer, a director, or an**
2 **employee of a title insurance agent, or a person associated with a**
3 **title insurance agent, an officer, a director, or an employee of a title**
4 **insurance agent, who:**

5 **(1) is an independent contractor for bookkeeping or similar**
6 **purposes; and**

7 **(2) knowingly or intentionally converts or misappropriates**
8 **funds received or held in escrow or in trust by the title**
9 **insurance agent;**

10 **or a person who knowingly or intentionally receives or conspires**
11 **to receive funds described in subdivision (2) commits an offense**
12 **described in IC 35-43-9-7.**

13 **(b) If a title insurance agent or title agency defalcates, converts,**
14 **or misappropriates funds held by the title insurance agent or title**
15 **agency and the title insurance agent or title agency is convicted of**
16 **an offense under IC 35-43-9-7, the following apply:**

17 **(1) The title insurer is liable for the defalcation, conversion, or**
18 **misappropriation by the title insurance agent or title agency.**

19 **(2) If the title insurance agent or title agency is a title**
20 **insurance agent or title agency for two (2) or more title**
21 **insurers, the liability must be borne by the title insurer upon**
22 **which a title insurance report or title insurance policy was**
23 **issued before the illegal act.**

24 **However, a title insurer's liability under this subsection is limited**
25 **to the amount payable under a title insurance policy issued or**
26 **committed, or a closing protection letter issued, in connection with**
27 **the real estate closing or escrow in relation to which the**
28 **defalcation, conversion, or misappropriation is committed, plus**
29 **reasonable attorney's fees.**

30 **(c) A title insurer shall, at least annually, conduct an on-site**
31 **review of the underwriting, claims, and escrow practices of a title**
32 **insurance agent, including a review of the title insurance agent's**
33 **title insurance policy blank inventory and processing operations.**
34 **If the title insurance agent does not maintain separate bank or**
35 **trust accounts for each title insurer that the title insurance agent**
36 **represents, the title insurer shall verify that the funds held on the**
37 **title insurer's behalf are reasonably ascertainable from the books**
38 **of account and records of the title insurance agent.**

39 **Sec. 34. (a) The commissioner shall establish a title insurance**
40 **enforcement unit to enforce this chapter.**

41 **(b) The title insurance enforcement unit shall do the following:**

42 **(1) Investigate deceptive acts in connection with title**

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insurance.

(2) Investigate violations of this chapter.

(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of:

(A) deceptive acts in connection with title insurance; and

(B) violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(c) The following may cooperate with the title insurance enforcement unit, including sharing information that is otherwise confidential, to enforce compliance with this chapter:

(1) The professional licensing agency and appropriate licensing boards with respect to a person licensed under IC 25.

(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.

(d) The commissioner may file a complaint with an entity specified in subsection (c) to enforce this chapter.

(e) This section does not limit the jurisdiction of an entity described in subsection (c).

Sec. 35. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 36. (a) If the commissioner, after notice and hearing under IC 4-21.5, determines that a person has violated this chapter, the commissioner may:

(1) impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation; and

(2) if the person is a title insurance agent, order revocation or suspension of the title insurance agent's license.

(b) If an order of rehabilitation or liquidation of a title insurer has been entered under IC 27-9 and:

(1) the receiver appointed under the order determines that a title insurance agent or another person has violated this chapter; and

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1 **(2) the title insurer has suffered a resulting loss or damage;**
2 **the receiver may maintain a civil action for recovery of damages**
3 **or other appropriate sanctions for the benefit of the title insurer**
4 **and the title insurer's policyholders and creditors.**

5 **(c) This section does not:**
6 **(1) affect the right of the commissioner to impose another**
7 **penalty under this title; or**
8 **(2) limit or restrict the rights of policyholders, claimants, or**
9 **creditors.**

10 **Sec. 37. The commissioner or attorney general may bring an**
11 **action in a court with jurisdiction to enjoin violations of the federal**
12 **Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).**

13 **SECTION 3. [EFFECTIVE JULY 1, 2007] (a) The definitions in**
14 **IC 27-7-3.5, as added by this act, apply throughout this SECTION.**

15 **(b) Notwithstanding IC 27-7-3.5-26, as added by this act, a title**
16 **agency or title insurance agent is not required to be licensed under**
17 **IC 27-7-3.5-26, as added by this act, until July 1, 2008.**

18 **(c) This SECTION expires June 30, 2011.**

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