

1 HB267
2 126606-3
3 By Representative Hill
4 RFD: Insurance
5 First Read: 22-MAR-11

SYNOPSIS: Under existing law, title insurers are prohibited from transacting any other form of insurance.

This bill would permit title insurers to issue closing or settlement protection; would require closing or settlement protection forms to be approved by the Commissioner of Insurance; would specify the fees that may be charged for issuing closing or settlement protection; and would require notice to real estate purchasers of the availability of closing or settlement protection.

A BILL
TO BE ENTITLED
AN ACT

Relating to insurance; to permit title insurers to issue closing or settlement protection; to require closing or settlement protection forms to be approved by the Commissioner of Insurance; to specify the fees that may be charged by title

1 insurers for issuing closing or settlement protection; to
2 require notice to real estate purchasers of the availability
3 of closing or settlement protection; and for this purpose to
4 add Section 27-3-6.1 to the Code of Alabama 1975.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 27-3-6.1 is added to the Code of
7 Alabama 1975, to read as follows:

8 §27-3-6.1.

9 (a) Notwithstanding the provisions of subdivision
10 (3) of Section 27-3-6, Code of Alabama 1975, a title insurer
11 may issue closing or settlement protection to a person who is
12 a party to a transaction in which a title insurance policy
13 will be issued.

14 (b) The form of closing or settlement protection
15 shall be submitted to and approved by the commissioner.

16 (c) The closing or settlement protection may
17 indemnify a person only against loss of closing or settlement
18 funds because of one of the following acts of a settlement
19 agent, such as a title insurance agent or other settlement
20 service provider which has been approved by the title insurer
21 for such protection, under the terms and conditions of the
22 closing protection as approved by the commissioner:

23 (1) Theft or misappropriation of settlement funds in
24 connection with a transaction in which a title insurance
25 policy or title insurance policies will be issued by or on
26 behalf of the title insurer issuing the closing or settlement
27 protection, but only to the extent that the theft relates to

1 the status of the title to that interest in land or to the
2 validity, enforceability, and priority of the lien of the
3 mortgage on that interest in land.

4 (2) Failure to comply with the written closing
5 instructions when agreed to by the settlement agent, title
6 agent, or employee of the title insurer, but only to the
7 extent that the failure to follow the instructions relates to
8 the status of the title to that interest in land or the
9 validity, enforceability, and priority of the lien of the
10 mortgage on that interest in land.

11 (d) The fee charged by a title insurer for each
12 party receiving closing protection coverage shall be submitted
13 to and approved by the commissioner and shall not be subject
14 to any agreement requiring a division of fees or premiums
15 collected on behalf of the title insurer. The fee shall be not
16 less than twenty-five dollars (\$25) for each party receiving
17 the benefit of closing protection in the case of a buyer or
18 lender receiving a title insurance policy in connection with
19 the real property transaction giving rise to the issuance of
20 the closing or settlement protection. The fee shall be not
21 less than fifty dollars (\$50) in the case of a seller
22 conveying title or providing owner financing and not receiving
23 a loan policy of title insurance in connection with the real
24 property transaction giving rise to the issuance of the
25 closing or settlement protection.

26 (e) In connection with any transaction involving the
27 purchase or sale of a fee simple or possessory interest in

1 real property in this state in which closing or settlement
2 protection has not been requested by the lender prior to
3 closing, the title insurer shall obtain or cause its agent to
4 obtain, at or before the closing of settlement and
5 disbursement of any funds, a statement in writing from the
6 parties acknowledging that the parties have received a notice
7 that closing or settlement protection may be available in
8 accordance with the guidelines of the title insurer and that
9 the parties do or do not desire to purchase closing
10 protection. The written notice of availability of closing or
11 settlement protection shall contain all of the following:

12 (1) The address or legal description of the
13 property.

14 (2) A disclosure that closing protection may be
15 available in accordance with the guidelines of the title
16 insurer and the fee therefor.

17 (3) A space to indicate the desire of the purchaser
18 to either acquire or decline closing protection.

19 (4) The date the notice is executed by the
20 purchaser.

21 (5) The signature of the purchaser or purchasers.

22 (f) In the event that the statement required in this
23 subsection is not obtained from the purchaser at or before the
24 closing of settlement and disbursement of any funds, the
25 omission may be cured by the title agent or title insurer at
26 any time subsequent to the closing of settlement, but prior to
27 actual or constructive notice of a claim or possible claim

1 which would have been covered by closing or settlement
2 protection by sending a certified letter, return receipt
3 requested, to the last known address of the purchaser, which
4 includes the notification required in this section.

5 (g) A title insurer may not provide any other
6 coverage which purports to indemnify against improper acts or
7 omissions of a person with regard to settlement or closing
8 services.

9 Section 2. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.