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Bill Analysis
Legislative Service Commission

S.B. 281

123rd General Assembly
(As Passed by the Senate)

Sens. Ray, Prentiss, Watts, Spada, Mumper

BILL SUMMARY

- Permits, under certain circumstances, "affiliated business arrangements" in the provision of title insurance business.
- Specifies that these circumstances relate to disclosure of the arrangement, provision of a written estimate of the charges, absence of restrictions on the use of specified title insurance agents or insurers, and the receipt of a return on an ownership interest.

CONTENT AND OPERATION

The bill amends two sections of the Title Insurance Law to allow, under specified circumstances, "affiliated business arrangements" in the provision of title insurance business.

Prohibition against acting as an agent for a title insurance company

Current law prohibits a bank, trust company, bank and trust company, or other lending institution, mortgage service, brokerage, mortgage guaranty company, escrow company, real estate company *or any subsidiaries thereof* or any individuals so engaged, from acting as an agent for a title insurance company. The bill removes the phrase "or any subsidiaries thereof," thereby eliminating the prohibition with respect to subsidiaries of the specified lending institutions and real estate related companies. The bill also specifies that nothing in this provision is to be construed as prohibiting any "affiliated business arrangement" in the provision of title insurance business that is authorized by the bill (see below). (R.C. 3953.21(B) and (C).)

Prohibition against providing consideration to induce title insurance business; "affiliated business arrangements"

Current law prohibits title insurance companies and title insurance agents from paying or giving to any applicant for title insurance, or to any other party acting

on behalf of the current or prospective owner, lessee, or mortgagee of real property, any commission, any part of its fees or charges, or any other consideration, as an inducement for, or as compensation for, any title insurance business (R.C. 3953.26).

The bill provides that this restriction is *not* to be construed as prohibiting "affiliated business arrangements" in the provision of title insurance business if certain conditions are met. ("**Affiliated business**" is defined as any portion of a title insurance agent's business written in Ohio that was referred to it by a producer of title insurance business where the producer has a financial interest in the agent. "**Referral**" means the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral. "**Producer**" is defined as a person, including any employee or independent contractor affiliated with a producer, engaged in Ohio in the trade, business, occupation, or profession of (1) buying or selling interests in real property, (2) making loans secured by interests in real property, or (3) acting as broker, agent, representative, or attorney of a person who buys or sells an interest in real property or who lends or borrows money with an interest in real property as security. A "**person**" is any natural person, partnership, association, cooperative, corporation, trust, or other legal entity.) (R.C. 3953.26(A) and (C).)

Under the bill, "affiliated business arrangements" in the provision of title insurance business are permissible *if all of the following conditions are met* (R.C. 3953.26(C)):

(1) The title insurance agent or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed.

(2) The person being referred is not required to use a specified title insurance agent or insurer. The bill defines "**required use**" as having the same meaning as in the federal Real Estate Settlement Procedures Act of 1974 and Regulation X (see **COMMENT 1**).

(3) The only thing of value that is received by the title insurance agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest. Under the bill, "**return on an ownership interest**" has the same meaning as in the federal Real Estate Settlement Procedures Act of 1974 and Regulation X (see **COMMENT 2**).

COMMENT

1. Under Regulation X, "required use" means

a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. (24 CFR 3500.2(b).)

2. In general, in an affiliated business arrangement, bona fide dividends, and capital or equity distributions, related to ownership interest between entities in an affiliate relationship, are permissible. Additionally, bona fide business loans, advances, and capital or equity contributions between entities in an affiliate relationship, are not prohibited, if they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees. (24 CFR 3500.15(b)(3)(i).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-29-00	p. 1542
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