

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1115

Short Title: Title Insurance.

(Public)

Sponsors: Senator Sands.

Referred to: Insurance.

May 11, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT CREATING ARTICLE 27A OF THE INSURANCE LAWS RELATING TO  
3 TITLE INSURANCE TO CLARIFY AND STRENGTHEN THE PROHIBITIONS  
4 AGAINST KICKBACKS, REBATES, AND CONTROLLED BUSINESS AND  
5 DENOMINATING THESE PRACTICES AS UNFAIR METHODS OF  
6 COMPETITION.

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 58 of the General Statutes is amended by adding a new  
9 Article to read:

10 **"ARTICLE 27A.**  
11 **"TITLE INSURANCE.**

12 **"§ 58-27A-1. Definitions.**

13 As used in this Article, the following definitions apply:

14 (1) 'Associate' means any:

- 15 a. Business organized for profit in which a producer of title  
16 business is a director, officer, partner, employer, or owner of  
17 one percent (1%) or more of the equity capital or issued shares  
18 thereof;  
19 b. Employer of a producer of title business;  
20 c. Person, other than a natural person, that controls, is controlled  
21 by, or is under common control with, a producer of title  
22 business;  
23 d. Person with whom a producer of title business or any associate  
24 of that producer has any arrangement, agreement, or

- 1                   understanding or pursues any course of conduct, the purpose or  
2                   substantial effect of which is to evade the provisions of this  
3                   Article.
- 4           (2)   'Controlled business' means any portion of a title insurer's or title  
5           agent's business of title insurance in this State, referred to it by any  
6           producer of title business or an associate of that producer where the  
7           producer of title business, the associate, or both, have a financial  
8           interest in the title insurer or title agent to which business is referred.
- 9           (3)   'Financial interest' means any interest, legal or beneficial, that entitles  
10           the holder, directly or indirectly, to one percent (1%) or more of the  
11           net profits or net worth of the entity in which the interest is paid.
- 12           (4)   'Gross operating revenue' means all premiums received by a title  
13           insurer or title insurance agent.
- 14           (5)   'Person' means any natural person, partnership, association,  
15           cooperative, corporation, trust, or other legal entity.
- 16           (6)   'Premium' means fees for:
- 17           a.     Issuing a title insurance policy, including any service charge for  
18           the issuance of a title insurance policy;
- 19           b.     Preparing or issuing preliminary reports, property profiles,  
20           commitments, binders, or the like; or
- 21           c.     Assuming liability under a contract of reinsurance.
- 22           (7)   'Producer of title business' or 'producer' means any person, including  
23           any officer, director, or owner of five percent (5%) or more of the  
24           equity or capital of any person or entity engaged in this State in the  
25           business, trade, occupation, or profession of:
- 26           a.     Buying or selling of interests in real property;
- 27           b.     Making loans secured by interests in real property; or
- 28           c.     Acting as broker, agent, or representative of a person who buys  
29           or sells any interest in real property or who borrows money with  
30           that interest as security.
- 31           (8)   'Title insurance agent' means any person duly licensed pursuant to G.S.  
32           58-33-25 and designated in writing by a title insurer to:
- 33           a.     Solicit title insurance business;
- 34           b.     Collect premiums;
- 35           c.     Determine insurability in accordance with underwriting rules  
36           and standards prescribed by the title insurance business; or
- 37           d.     Issue policies of the title insurer.
- 38           The term 'title insurance agent' does not include approved  
39           attorneys, officers, or employees of a title insurer.
- 40           (9)   'Title insurance business' means:
- 41           a.     Issuing as insurer or offering to issue as title insurer a title  
42           insurance policy, binders, and endorsements;
- 43           b.     Soliciting or negotiating the issuance of a title policy, binder, or  
44           endorsement;

- 1           c.     Passing upon and making title insurance underwriting decisions  
2                 on title risks;  
3           d.     Guaranteeing, warranting, or otherwise insuring the title to real  
4                 property;  
5           e.     Executing policies of title insurance;  
6           f.     Effecting contracts of reinsurance on real property titles; or  
7           g.     Doing or proposing to do any business in substance equivalent  
8                 to any of the foregoing in a manner designed to evade the  
9                 provisions of this Article.

10 **"§ 58-27A-5. Prohibitions against kickbacks, rebates, and controlled business.**

11       (a)   No person, title insurance agent, agency, lender, or other entity shall:

- 12           (1)   Pay directly or indirectly, or receive any part of its premium or fees or  
13                 any other consideration as inducements or compensation for the  
14                 referral of title business; or  
15           (2)   Issue any title policy or perform any service in connection with any  
16                 transaction in which it has paid or intends to pay any commission,  
17                 rebate, or inducement which it knows, or reasonably should know, is  
18                 in violation of this Article.

19       (b)   No insurer named in a title insurance policy, no producer of title business, no  
20 associate of a producer, nor any other person may knowingly receive or accept, directly  
21 or indirectly, any commission, rebate, or inducement referred to in subsection (a) of this  
22 section.

23       (c)   No title insurer or title agency may accept an order for title insurance  
24 business, issue a title insurance policy or binder, or receive or retain any premium or fee  
25 in connection with any transaction if:

- 26           (1)   The title insurer knows or reasonably should know that the transaction  
27                 will constitute controlled business for that title insurer or title agent;  
28                 and  
29           (2)   Twenty percent (20%) or more of the gross operating revenue of that  
30                 title insurer or title agent in the calendar year in which the transaction  
31                 takes place is derived from controlled business.

32 Provided further, every licensed title insurance agent applying for the renewal of his or  
33 her title insurance license shall certify to the Department of Insurance, upon an  
34 application form provided by the Department of Insurance, that no more than twenty  
35 percent (20%) of gross premiums written in the preceding year by that agent was written  
36 for controlled business risks. In computing premiums for the purpose of this subsection,  
37 a simultaneously issued policy issued for a single premium shall be treated as a single  
38 issuance of a title insurance policy.

39       (d)   No producer of title insurance, associate, or lender engaged in lending money  
40 on the security of real property shall employ or use any method or business practice,  
41 directly or indirectly, which specifies or designates any particular title insurer or  
42 indicates that the producer, associate, or lender favors a particular title insurer.  
43 Provided, once the borrower has indicated the title insurer selected, the lender may

1 disapprove the insurer on a nondiscriminatory basis related to the solvency of the  
2 insurer.

3 **"§ 58-27A-10. Violation of this Article deemed unfair trade practices.**

4 The violation of any of the provisions of this Article is an unfair method of  
5 competition and an unfair trade practice within the meaning of Article 63 of this  
6 Chapter, and Article 1 of Chapter 75 of the General Statutes."

7       Sec. 2. Nothing in this act shall be construed to repeal or modify the  
8 provisions of G.S. 75-17, which shall remain in full force and effect.

9       Sec. 3. This act is effective upon ratification.