

1 A bill to be entitled
2 An act relating to title insurance; stating legislative
3 intent that the Department of Financial Services review
4 the current regulatory structure of the title insurance
5 industry and make recommendations to the Legislature;
6 repealing s. 627.7865, F.S.; repealing certain assessments
7 against title insurers; creating s. 631.400, F.S.;
8 requiring rehabilitation plans for title insurers in
9 receivership to provide for specified matters; providing
10 that title insurance policies on real estate within the
11 state remain in force when the insurer is in
12 rehabilitation under certain conditions; authorizing
13 cancellation of title insurance policies on property in
14 other states when the insurer is in rehabilitation as
15 specified; requiring rehabilitation plans for title
16 insurers in receivership to allocate a percentage of
17 estate assets to pay claims on policies in other states
18 that are cancelled and to allocate a percentage of
19 remaining estate funds to pay claims on out-of-state
20 policies that remain in force; providing a methodology for
21 determining the funds to be allocated to pay claims on
22 policies located in other states; establishing procedures
23 and requirements for the imposition of assessments, and
24 emergency assessments, by the Office of Insurance
25 Regulation and the payment of assessments by all title
26 insurers relating to the rehabilitation of other title
27 insurers; establishing a methodology for determining
28 assessment amounts; requiring cessation of assessments

29 upon certain events; providing exemptions from or
 30 limitations upon the assessment amount otherwise payable
 31 by a title insurer under specified circumstances;
 32 authorizing the receiver of a title insurer in
 33 rehabilitation to use proceeds of an assessment to keep in
 34 force policies issued by the title insurer in
 35 rehabilitation or otherwise provide for the assumption of
 36 policy obligations by another insurer; requiring the
 37 receiver to make available information regarding unpaid
 38 claims on a quarterly basis; barring a title insurer's
 39 release from rehabilitation until all contributing title
 40 insurers have recovered assessments paid; prohibiting
 41 insurers in rehabilitation, when an assessment has been
 42 ordered, from issuing new policies until released from
 43 rehabilitation; creating s. 631.401, F.S., providing
 44 procedures, requirements, and criteria relating to the
 45 recovery of assessments for insurers in rehabilitation by
 46 contributing title insurers through surcharges on title
 47 insurance policies; specifying that surcharges are to be
 48 considered governmental assets to be separately stated on any
 49 settlement statement; prohibiting any insurer from retaining
 50 surcharges in excess of the assessment amount the insurer
 51 paid; providing for surcharges collected in excess of the
 52 amount assessed to be paid to the Insurance Regulatory Trust
 53 Fund; creating s. 631.402, F.S., providing procedures and
 54 requirements relating to foreign title insurers placed in
 55 receivership; providing an effective date.
 56

57 Be It Enacted by the Legislature of the State of Florida:

58
 59 Section 1. It is the intent of the Legislature that the
 60 Department of Financial Services undertake a review of the
 61 regulatory structure of the title insurance industry in Florida,
 62 whereby title insurance agents and agencies are regulated by the
 63 Department of Financial Services and title insurance companies
 64 are regulated by the Office of Insurance Regulation. The
 65 Department of Financial Services is to determine whether
 66 effective and efficient oversight may be provided under the
 67 existing regulatory structure, or if consolidation of all
 68 aspects of title insurance regulation under the Department of
 69 Financial Services provides a viable and more effective method
 70 of regulation. The Office of Insurance Regulation shall
 71 cooperate with the Department of Financial Services in this
 72 undertaking. The Department of Financial Services shall submit
 73 its findings and recommendations to the Speaker of the House of
 74 Representatives and the President of the Senate by December 31,
 75 2011.

76 Section 2. Section 627.7865, Florida Statutes, is
 77 repealed.

78 Section 3. Section 631.400, Florida Statutes, is created
 79 to read:

80 631.400 Rehabilitation of title insurer.-

81 (1) After the entry of an order of rehabilitation the
 82 receiver shall review the condition of the insurer and file a
 83 plan of rehabilitation for approval with the court. Such plan of
 84 rehabilitation shall provide:

85 (a) that policies on real property in Florida issued by the
 86 title insurer in rehabilitation shall remain in force unless the
 87 receiver determines the assessment capacity provided by this
 88 section is insufficient to pay claims in the ordinary course of
 89 business;

90 (b) that policies on real property located outside the
 91 state of Florida may be cancelled as of a date provided by the
 92 receiver and approved by the court if the state in which the
 93 property is located does not have statutory provisions to pay
 94 future losses on these policies;

95 (c) a claims filing deadline for policies on real property
 96 located outside the state of Florida which are cancelled
 97 pursuant to paragraph (b);

98 (d) a proposed percentage of the remaining estate assets to
 99 fund out-of-state claims where policies have been cancelled,
 100 with any unused funds returned to the general assets of the
 101 estate;

102 (e) a proposed percentage of the remaining estate assets to
 103 fund out-of-state claims where policies remain in force; and

104 (f) that the funds allocated to pay claims on policies
 105 located outside of Florida shall be based on the pro-rata share
 106 of premiums written in each state over each of the 5 calendar
 107 years preceding the date of an order of rehabilitation.

108 (2) As a condition of doing business in this state, each
 109 title insurer shall be liable for an assessment to pay all
 110 unpaid title insurance claims and expenses of administering and
 111 settling those claims on real property in Florida for any title
 112 insurer that is ordered into rehabilitation.

113 (3) The office shall order an assessment, if requested by
 114 the receiver, on an annual basis in an amount that the receiver
 115 deems sufficient for the payment of known claims, loss
 116 adjustment expenses, and the cost of administration of the
 117 rehabilitation expenses. The receiver shall consider the
 118 remaining assets of the insurer in receivership when making its
 119 request to the office. Annual assessments may be made until no
 120 more policies of the title insurer in rehabilitation are in
 121 force or the potential future liability has been satisfied. The
 122 office may exempt or limit the assessment of a title insurer if
 123 such assessment would result in a reduction to surplus as to
 124 policyholders below the minimum required to maintain the
 125 insurer's certificate of authority in any state.

126 (4) Assessments shall be based on the total of direct title
 127 insurance premiums written in this state as reported to the
 128 office for the most recent calendar year. Each title insurer
 129 doing business in this state shall be assessed on a pro-rata
 130 share basis of the total direct title insurance premiums written
 131 in this state.

132 (5) Title insurers doing business in this state writing no
 133 premiums in the prior calendar year shall collect the same per
 134 transaction surcharge as provided by s. 631.401. Such surcharge
 135 collected shall be paid to the receiver within 60 days of
 136 receipt from the title agent or agency.

137 (6) Assessments shall be paid to the receiver within 90
 138 days of notice of the assessment or pursuant to a quarterly
 139 installment plan approved by the receiver. Any insurer that

140 elects to pay an assessment on an installment plan shall also
 141 pay a financing charge to be determined by the receiver.

142 (7) The office shall order an emergency assessment if
 143 requested by the receiver. The total of any emergency
 144 assessment, when added to any annual assessment in a single
 145 calendar year, may not exceed the limitation in subsection (8).

146 (8) No title insurer shall be required to pay an assessment
 147 in any one year that exceeds 3 percent of its surplus to
 148 policyholders as of the end of the previous calendar year or
 149 more than 10 percent of its surplus to policyholders over any
 150 consecutive five year period. The 10 percent limitation shall be
 151 calculated as the sum of the percentages of surplus to
 152 policyholders assessed in each of those five years.

153 (9) Assessments and emergency assessments once ordered by
 154 the office shall be considered assets of the estate and subject
 155 to the provisions of s. 631.154.

156 (10) In an effort to keep in force the policies on real
 157 property issued by the title insurer in rehabilitation, the
 158 receiver may use the proceeds of an assessment to acquire
 159 reinsurance or otherwise provide for the assumption of policy
 160 obligations by another insurer.

161 (11) The receiver shall make available information
 162 regarding unpaid claims on a quarterly basis.

163 (12) A title insurer in rehabilitation may not be released
 164 from rehabilitation until all of the assessed insurers have
 165 recovered the amount assessed either through surcharges
 166 collected pursuant to s. 631.401 or payments from the insurer in
 167 rehabilitation.

168 (13) A title insurer in rehabilitation for which an
 169 assessment has been ordered pursuant to this section shall not
 170 issue any new policies until released from rehabilitation.

171 Section 4. Section 631.401, Florida Statutes, is created
 172 to read:

173 631.401 Recovery of assessments and assumed policy
 174 obligations.-

175 (1) Upon the making of any assessment allowed by s.
 176 631.400, the office shall order a surcharge on each title
 177 insurance policy thereafter issued insuring an interest in
 178 Florida real property. The office shall set the per transaction
 179 surcharge at an amount estimated to generate sufficient funds to
 180 recover the amount assessed over a period of not more than seven
 181 years. The amount of the surcharge ordered under this section
 182 shall not exceed 25 dollars per transaction for each impaired
 183 title insurer. If additional surcharges are occasioned by
 184 additional title insurers becoming impaired, the office shall
 185 order an increase in the amount of the surcharge to reflect the
 186 aggregate surcharge.

187 (2) The party responsible for payment of the title
 188 insurance premium, unless otherwise agreed between the parties,
 189 shall be responsible for the payment of the surcharge. No
 190 surcharge will be due or owing as to any policy of insurance
 191 issued at the simultaneous issue rate. For all other purposes,
 192 the surcharge will be considered a governmental assessment to be
 193 separately stated on any settlement statement. The surcharge is
 194 not subject to premium tax or reserve requirements under chapter
 195 625.

196 (3) Each title insurance agent or agency shall collect the
 197 surcharge as to each title insurance policy written and remit
 198 those surcharges within 30 days to the title insurer on which
 199 the policy was written.

200 (4) No title insurer may retain more in surcharges for an
 201 ordered assessment than the amount of assessment that title
 202 insurer paid.

203 (5) No later than March 1 of each year, each title insurer
 204 shall provide the office with an accounting of assessments paid
 205 and surcharges collected during the previous calendar year. Any
 206 surcharges collected in excess of the amount assessed shall be
 207 paid to the Insurance Regulatory Trust Fund.

208 Section 5. Section 631.402, Florida Statutes, is created
 209 to read:

210 631.402 Receivership of foreign title insurer.-

211 (1) After a foreign title insurer with policies in Florida
 212 is placed into receivership by its domiciliary state, the
 213 department may apply to the court for an order appointing it as
 214 ancillary receiver for the purpose of making an assessment
 215 pursuant to s. 631.400. The receiver may use the proceeds of the
 216 assessment for the payment of claims, to acquire reinsurance or
 217 otherwise provide for the assumption of Florida policy
 218 obligations by another insurer.

219 (2) In the event that the assets located in Florida are
 220 insufficient to pay the administrative costs of the ancillary
 221 receivership, the receiver may request additional funds as
 222 provided by s. 631.141(7)(b).

223 Section 6. This act shall take effect upon becoming law.