HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 805 Title Insurance Reserves
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Reilly	Cooper

SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. Title insurance is a policy issued by a title insurer that, after evaluating a search of title, would insure against certain covered risks including forgery, fraud, liens and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Title insurers formed under the laws of Florida (domestic title insurers) are required to set aside a statutory premium reserve of 30 cents per $1,000 of net retained liability. The Office of Insurance Regulation informs that this premium reserve is one of the highest of all states in which major title insurers are domiciled. Presently, Florida has no active domestic title insurers. The bill decreases the statutory premium reserve for domestic title insurers with at least $50 million in surplus to 6.5 percent of policy premium plus other earnings of the insurer. The current statutory premium reserve remains unchanged for domestic title insurers with less than $50 million in surplus.

Current law provides for the release of the statutory premium reserve to earned premium available for general use by a domestic title insurer over 20 years, with initial funds being released at a specified percentage each year. For domestic title insurers with a statutory surplus of at least $50 million, the bill amends the 20-year release schedule to permit greater percentages of initial funds to be released from reserves each year.

The bill distinguishes title insurance loss reserves from property and casualty loss reserves by requiring domestic title insurers to include in their liabilities the amount necessary to pay all *known* losses and claims. Currently, property and casualty loss reserves include unknown losses and claims [also known as Incurred but Not Reported losses]; information that domestic title insurers account for in their statutory premium reserve.

The bill also amends s. 625.111, F.S., to address the treatment of unearned premium reserves of foreign title insurers (title insurers organized under the laws of another state) that transfer domicile to Florida. In such circumstances, the statutory premium reserve is the amount required by the laws of the insurer's former state of domicile on the date that domicile is transferred and are to be released from reserves according to the requirements of law in effect in the former state at the time of domicile. Beginning January 1, 2014, Florida law applies to the statutory premium reserve for new business written after the effective date of the transfer of domicile to Florida.

The term "bulk reserve" is specific to title insurance and is not defined in Florida law. The bill defines bulk reserve to mean "provision for subsequent development on known claims" and addresses the treatment of such reserve. Title insurers are not required to set aside a separate bulk reserve. However, if they do, the statutory premium reserve will be reduced by the amount recorded for the bulk reserve.

As there are no active domestic title insurers at present, the bill will have no immediate fiscal impact.

Except as otherwise provided, the bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Title Insurance
Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, would insure against certain covered risks including forgery, fraud, liens and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[3] Pursuant to s. 627.782, F.S., the Financial Services Commission is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent.

Statutory Premium Reserve for Domestic Title Insurers[4]
Section 625.111, F.S., provides the required statutory premium reserve (also referred to as the unearned premium reserve) for title insurers formed under laws of Florida. For policies written or title liability assumed in reinsurance on or after July 1, 1999, the required reserve is 30 cents per $1,000 of net retained liability.[5, 6] According to the Office of Insurance Regulation (OIR), this is one of the highest statutory premium reserve requirements of all states in which major title insurers are domiciled.[7] As comparative examples, OIR reports the required reserves in Minnesota (6.5 percent of premium and fees); California (4.5 percent of premium and fees); Texas ($.185 per $1,000 of net retained liability); and Nebraska ($.17 per $1,000 of net retained liability). Currently, Florida has no active domestic title insurers.

Beginning January 1, 2014, the bill decreases the statutory reserve requirement for domestic title insurers with at least $50 million in surplus, requiring such insurers to maintain a premium reserve of 6.5 percent of policy premium plus other earnings of the insurer.[8] Domestic title insurers with a statutory surplus of less than $50 million remain subject to the current statutory premium reserve requirement.

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[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.
[2] See, e.g., the website of the American Land Title Association (ALTA), http://www.alta.org (Last accessed: February 27, 2014). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.
[3] Section 627.786, F.S.
[4] Section 624.06, F.S., defines domestic insurer as an insurer formed under the laws of Florida.
[5] Section 625.111(1), F.S., provides that premium reserves cannot not be less than an amount equal to the sum of: (a) reserves for title insurance policies or title liability assumed in reinsurance before July 1, 1999, (b) 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, and (c) any additional amount, if deemed necessary by a qualified actuary (supplemental reserve).
[6] It is commonly understood that the statutes of an insurer's home state take precedence with regard to reserving and other financial matters.
[7] Correspondence from OIR dated February 10, 2014, on file with the Insurance & Banking Subcommittee.
[8] These insurers will also need set aside an additional amount (supplemental reserve), if deemed necessary by a qualified actuary.

Release of the Reserve

With respect to policies written or title liability assumed in reinsurance on or after July 1, 1999, current law provides for the release of the statutory premium reserve to earned premium available for general use by a title insurer over 20 years, as follows: 30 percent of the initial sum during the year next succeeding the year the premium was written or assumed;15 percent during the next succeeding year; 10 percent during each of the next succeeding 2 years; 5 percent during each of the next succeeding 2 years; 3 percent during each of the next succeeding 2 years; 2 percent during each of the next succeeding 7 years; and 1 percent during each of the next succeeding 5 years.[9]

For domestic title insurers with a surplus of at least $50 million, the bill amends the above-presented 20-year schedule to provide for the release of the statutory premium reserve to earned premium, as follows: 35 percent of the initial sum during the year following the year the premium was written or assumed; 15 percent during each year of the next succeeding 2 years; 10 percent during the next succeeding year; 3 percent during each of the next succeeding 3 years; 2 percent during each of the succeeding 3 years; and 1 percent during each of the next succeeding 10 years.

Liabilities Charged Against Assets

The bill amends s. 625.041, F.S., concerning insurer liabilities, to distinguish title insurance loss reserves from loss reserves for property and casualty insurers. Currently, property and casualty loss reserves include unknown losses and claims [also known as Incurred but Not Reported (IBNR) losses]. Domestic title insurers account for IBNR in both their liabilities and statutory premium reserve. The bill eliminates this duplication. It requires domestic title insurers to include in their liabilities the amount necessary to pay all *known* losses and claims. These insurers will continue to account for IBNR through their statutory premium reserve.

Title Insurers that Transfer Domicile to Florida

The bill amends s. 625.111, F.S., to address the treatment of unearned premium reserves of foreign title insurers that transfer domicile to Florida. Under the bill, the statutory premium reserve for such insurers is the amount required by the laws of the title insurer's former state of domicile on the date that domicile is transferred to Florida. Additionally, the statutory premium reserve is to be released according to the laws of the former state of domicile in effect at the time of domicile. Beginning January 1, 2014, Florida law applies to the statutory premium reserve for new business written after the move to Florida.

Bulk Reserve

Bulk reserve is a term that is specific to title insurance and is not defined in Florida law. The bill defines bulk reserve to mean "provision for subsequent development on known claims" and addresses the treatment of a separate bulk reserve. Title insurers are not required to set aside a separate bulk reserve. However, if they do, the statutory premium reserve will be reduced by the amount recorded for the bulk reserve.

B. SECTION DIRECTORY:

Section 1. Amends s. 625.041, F.S., relating to insurer liabilities.
Section 2. Amends s. 625.111, F.S., relating to title insurance reserves.
Section 3. Amends s. 624.407, F.S., relating to required surplus for new insurers.
Section 4. Amends s. 624.408, F.S., relating to surplus required for current insurers.
Section 5. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[9] The funds are released on a quarterly basis.

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, there are no active Florida-domiciled title insurers. Thus, the bill will not have any immediate fiscal impact.

D. FISCAL COMMENTS:

Lowering the statutory premium reserve for larger title insurers may encourage foreign title insurers to re-domesticate in Florida. Maintaining the current reserve formula for title insurers with less than $50 million in surplus could protect insureds against the consequences of the failure of a Florida-domiciled title insurer. However, it could discourage the creation of new smaller domestic title insurers in Florida or having smaller established title insurers re-domesticate in Florida.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill decreases the statutory premium reserve for larger domestic title insurers (title insurers with $50 million or more in surplus) and maintains the current reserve requirement for all other domestic title insurers. It is unclear whether a lower surplus requirement could adequately protect policyholders and further encourage the creation of new domestic title insurers or, for foreign title insurers, the transfer of domicile to Florida.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES