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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/18/2011	.	
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The Committee on Budget (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 106 and 107

insert:

Section 4. Section 631.400, Florida Statutes, is created to read:

631.400 Rehabilitation of title insurer.-

(1) After the entry of an order of rehabilitation, the receiver shall review the condition of the insurer and file a plan of rehabilitation with the court for approval. The plan must provide:

(a) That policies on real property in this state issued by a title insurer in rehabilitation remain in force, unless the



814928

14 receiver determines that the assessment capacity provided by
15 this section is insufficient to pay claims in the ordinary
16 course of business.

17 (b) That policies on real property located outside this
18 state may be canceled on a date specified by the receiver and
19 approved by the court if the state where the property is located
20 does not have statutory provisions to pay future losses on such
21 policies.

22 (c) A claims filing deadline for policies on real property
23 located outside this state which are canceled under paragraph
24 (b).

25 (d) A proposed percentage of the remaining estate assets to
26 fund out-of-state claims where policies have been canceled, with
27 any unused funds returned to the general assets of the estate.

28 (e) A proposed percentage of the remaining estate assets to
29 fund out-of-state claims where policies remain in force.

30 (f) That the funds allocated to pay claims on policies
31 located outside this state be based on the pro rata share of
32 premiums written in each state over each of the 5 calendar years
33 before the date of an order of rehabilitation.

34 (2) As a condition of doing business in this state, each
35 title insurer is liable for an assessment to pay all unpaid
36 title insurance claims and expenses for administering and
37 settling the unpaid claims on real property in this state for
38 any title insurer that is ordered into rehabilitation.

39 (3) If requested by the receiver, the office shall order an
40 assessment on an annual basis in an amount the receiver deems
41 sufficient for the payment of known claims, loss adjustment
42 expenses, and the cost of administering the rehabilitation



814928

43 expenses. The receiver shall consider the remaining assets of
44 the insurer in receivership when making a request for an
45 assessment order. Annual assessments may continue until no more
46 policies of the title insurer in rehabilitation are in force or
47 the potential future liability has been satisfied. The office
48 may exempt or limit the assessment of a title insurer if such
49 assessment would result in a reduction to surplus as to
50 policyholders below the minimum required to maintain the
51 insurer's certificate of authority in any state.

52 (4) Assessments must be based on the total of direct title
53 insurance premiums written in this state as reported to the
54 office for the most recent calendar year. Each title insurer
55 doing business in this state shall be assessed on a pro rata
56 share basis of the total direct title insurance premiums written
57 in this state.

58 (5) Assessments shall be paid to the receiver within 90
59 days after notice of the assessment or pursuant to a quarterly
60 installment plan approved by the receiver. An insurer that
61 elects to pay an assessment on an installment plan must also pay
62 a financing charge as determined by the receiver.

63 (6) The office shall order an emergency assessment if
64 requested by the receiver. The total of any emergency
65 assessment, when added to any annual assessment in a single
66 calendar year, may not exceed the limitation in subsection (7).

67 (7) A title insurer is not required to pay an assessment in
68 any year which exceeds 3 percent of the insurer's surplus to
69 policyholders as of the end of the previous calendar year or
70 more than 10 percent of the insurer's surplus to policyholders
71 over any consecutive 5-year period. The 10 percent limitation



814928

72 shall be calculated as the sum of the percentages of surplus to
73 policyholders assessed in each of those 5 years.

74 (8) Assessments and emergency assessments ordered by the
75 office are assets of the estate and subject to s. 631.154.

76 (9) In an effort to keep in force policies on real property
77 located in this state issued by the title insurer in
78 rehabilitation, the receiver may use the proceeds of an
79 assessment to acquire reinsurance or otherwise provide for the
80 assumption of policy obligations by another insurer.

81 (10) The receiver shall make available information
82 regarding unpaid claims on a quarterly basis.

83 (11) A title insurer in rehabilitation may not be released
84 from rehabilitation until all of the assessed insurers have
85 recovered the amount assessed through surcharges collected
86 pursuant to s. 631.401 or payments from the insurer in
87 rehabilitation.

88 (12) A title insurer in rehabilitation for which an
89 assessment has been ordered under this section may not issue any
90 new policies until it is released from rehabilitation and
91 receives approval from the office to resume issuing policies.

92 (13) In carrying out its duties under this section and ss.
93 631.401 and 631.402, the receiver may contract with a not-for-
94 profit entity or guaranty fund that has experience in adjusting
95 and paying the claims of insolvent insurers in this state.

96 Section 5. Section 631.401, Florida Statutes, is created to
97 read:

98 631.401 Recovery of assessments and assumed policy
99 obligations.-

100 (1) Upon making an assessment pursuant to s. 631.400, the



814928

101 office shall order a surcharge on each title insurance policy
102 thereafter issued insuring an interest in real property in this
103 state. The office shall set the per transaction surcharge in an
104 amount estimated to generate sufficient funds to recover the
105 amount assessed within 7 years. The amount of the surcharge may
106 not exceed \$25 per transaction for each impaired title insurer.
107 If additional surcharges are needed due to additional title
108 insurers becoming impaired, the office shall order an increase
109 in the amount of the surcharge to reflect the aggregate amount
110 of surcharges needed.

111 (2) The party responsible for payment of the title
112 insurance premium, unless otherwise agreed to by the parties, is
113 responsible for the payment of the surcharge. A surcharge is not
114 due or owing on any policy of insurance issued at the
115 simultaneous issue rate. For all other purposes, the surcharge
116 is considered a governmental assessment to be separately stated
117 on any settlement statement. The surcharge is not subject to
118 premium tax or reserve requirements under chapter 625.

119 (3) Title insurers doing business in this state who wrote
120 no premiums in the prior calendar year shall collect the same
121 per transaction surcharge as provided in s. 631.401. The
122 surcharge collected shall be paid to the receiver within 60 days
123 after receipt from the title agent or agency.

124 (4) Each title insurance agent, agency, or direct title
125 operation shall collect the surcharge as to each title insurance
126 policy written and remit the surcharges, along with the policies
127 and premiums, within 60 days to the title insurer on which the
128 policy was written.

129 (5) A title insurer may not retain more in surcharges for



814928

130 an ordered assessment than the amount of assessment paid by that
131 title insurer.

132 (6) Each title insurer collecting surcharges shall promptly
133 notify the office when it has collected surcharges equal to the
134 amount of the assessment paid pursuant to s. 631.400. The office
135 shall notify all companies, including those collecting
136 surcharges as required under subsection (3), to cease collecting
137 surcharges when notified that all assessments have been
138 recovered.

139 (7) In conjunction with filing each quarterly financial
140 statement, each title insurer shall provide the office with an
141 accounting of assessments paid and surcharges collected during
142 the period. Any surcharges collected in excess of the amount
143 assessed shall be paid to the Insurance Regulatory Trust Fund.

144 Section 6. Section 631.402, Florida Statutes, is created to
145 read:

146 631.402 Receivership of foreign title insurer.-

147 (1) After a foreign title insurer with policies in this
148 state is placed into receivership by its domiciliary state, the
149 Department of Financial Services may apply to the court for an
150 order appointing the department as ancillary receiver for the
151 purpose of making an assessment pursuant to s. 631.400. The
152 receiver may use the proceeds of the assessment to pay claims,
153 acquire reinsurance, or otherwise provide for the assumption of
154 policy obligations in this state by another insurer.

155 (2) If the assets located in this state are insufficient to
156 pay the administrative costs of the ancillary receivership, the
157 receiver may request additional funds under s. 631.141(7)(b).
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814928

159 Between lines 184 and 185

160 insert:

161 Section 8. Section 627.7865, Florida Statutes, is repealed.

162 Section 9. Paragraph (b) of subsection (2) of section
163 627.782, Florida Statutes, is amended to read:

164 627.782 Adoption of rates.—

165 (2) In adopting premium rates, the commission must give due
166 consideration to the following:

167 (b) A reasonable margin for underwriting profit and
168 contingencies, including contingent liability ~~under s. 627.7865,~~
169 sufficient to allow title insurers, agents, and agencies to earn
170 a rate of return on their capital that will attract and retain
171 adequate capital investment in the title insurance business and
172 maintain an efficient title insurance delivery system.

173 Section 10. Paragraph (d) of subsection (6) of section
174 701.041, Florida Statutes, is amended to read:

175 701.041 Title insurer; mortgage release certificate.—

176 (6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE AGENT.—

177 (d) Liability of a title insurer pursuant to this section
178 shall be considered to be a title insurance claim on real
179 property in this state ~~pursuant to s. 627.7865.~~

180
181 ===== T I T L E A M E N D M E N T =====

182 And the title is amended as follows:

183 Delete line 15

184 and insert:

185 providing records; creating s. 631.400, F.S.;

186 requiring receivers of title insurers in

187 rehabilitation to file a plan for rehabilitation with



814928

188 the court; requiring the plan to provide that title
189 insurance policies on real property in this state
190 remain in force under certain circumstances; requiring
191 a plan to authorize cancellation of title insurance
192 policies on real property in other states under
193 certain circumstances; requiring the plan to allocate
194 a percentage of estate assets to pay claims on certain
195 in-state and out-of-state policies; providing a
196 methodology for the allocation of funds to pay claims
197 on out-of-state policies; providing procedures and
198 requirements for the imposition and payment of
199 assessments by title insurers relating to the
200 rehabilitation of other title insurers; providing a
201 methodology for determining assessment amounts;
202 providing exemptions and limitations relating to
203 assessments otherwise payable by a title insurer under
204 certain circumstances; authorizing a receiver of a
205 title insurer in rehabilitation to use assessment
206 proceeds for certain purposes relating to policy
207 obligations; requiring the receiver to make available
208 certain information quarterly; barring a title
209 insurer's release from rehabilitation until the
210 recovery of assessments by contributing title
211 insurers; prohibiting the release of insurers in
212 rehabilitation and the issuance of new policies under
213 certain circumstances; creating s. 631.401, F.S.;;
214 providing procedures, requirements, and criteria
215 relating to the recovery of assessments by
216 contributing title insurers through surcharges on



814928

217 policies; specifying that surcharges are governmental
218 assets and are to be separately stated on any
219 settlement statement; prohibiting an insurer from
220 retaining surcharges in excess of the assessments
221 paid; providing for payment of excess surcharges to
222 the Insurance Regulatory Trust Fund; creating s.
223 631.402, F.S.; providing procedures and requirements
224 relating to foreign title insurers placed in
225 receivership; amending s. 631.54, F.S.; revising

226

227 Delete line 32

228 and insert:

229 date; repealing s. 627.7865, F.S., relating to
230 assessments against title insurers; amending ss.
231 627.782 and 701.041, F.S.; conforming cross-
232 references; providing an effective date.