

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 758

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Title Insurer Reserves

DATE: March 28, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 758 changes the unearned premium reserve requirement for title insurers holding \$50 million or more in surplus to policyholders. Those title insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, with certain adjustments. Title insurers having less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per \$1,000 of net retained liability).

This bill creates a schedule for the release of the unearned premium reserve over 20 years for companies with more than \$50 million in surplus, 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 next succeeding 3 years, and 1 percent during each of the next succeeding 10 years.

This bill allows a title insurer organized under the laws of another state that transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state. That reserve is released according to the requirements of law in effect in the former state at the time of domicile. The release of reserve based on premium written after the insurer moves to Florida is governed by Florida law.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.²

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation.

Title Insurance Reserve Requirements

Insurance companies must maintain cash or liquid assets on hand to pay claims and satisfy other liabilities. These are called reserves. A title insurer must maintain two types of reserves. First, a title insurer must maintain reserves sufficient to pay all of its unpaid losses.³ In addition, a title insurer must maintain a guaranty fund or unearned premium reserve to be used for reinsurance in the event the insurer becomes insolvent.⁴

Section 625.111, F.S., provides that the unearned premium reserve must consist of at least the sum of:

- A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums. For domestic title insurers subject to this section, such amounts must be calculated in accordance with Florida law in effect at the time the associated premiums were written or assumed and as amended prior to July 1, 1999.
- A total amount equal to 30 cents for each \$1,000 of net retained liability⁵ for policies written or title liability assumed in reinsurance on or after July 1, 1999.
- An additional amount, if deemed necessary by a qualified actuary.

¹ See s. 624.608, F.S.

² *Lawyers Title Insurance Co., Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793,797 (Fla. 4th DCA 2003).

³ See ss. 625.041 and 625.111, F.S.

⁴ See s. 625.111, F.S.

⁵ “Net retained liability” means the “total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.” s. 625.111(4)(a), F.S.

Title Insurance Unearned Premium Reserve Requirements in Other States

According to the Office of Insurance Regulation (OIR), Florida “has one of the highest statutory premium reserve requirements of all the states in which major title insurers are domiciled.”⁶ As examples, the OIR cited:

California	4.5% of premium and fees
Florida	\$.30 per \$1,000 of net retained liability
Minnesota	6.5% of premium and fees
Nebraska	\$.17 per \$1,000 of net retained liability
Texas	\$.185 per \$1,000 of net retained liability. ⁷

Releasing Unearned Premium Reserve

In 1999, the Legislature changed the law to require a domestic title insurer to release the reserve over a period of 20 years.⁸ Section 625.111, F.S., set the following schedule for release of reserves:

For policies written before July 1, 1999, an insurer shall release:

- 30 percent of the initial aggregate sum during 1999;
- 15 percent during calendar year 2000;
- 10 percent during each of calendar years 2001 and 2002;
- 5 percent during each of calendar years 2003 and 2004;
- 3 percent during each of calendar years 2005 and 2006;
- 2 percent during each of calendar years 2007-2013; and
- 1 percent during each of calendar years 2014-2018.

For policies written after July 1, 1999, an insurer shall release:

- 30 percent of the initial sum during calendar year following the year the premium was written;
- 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.

⁶ See OIR, *SB 758 2014 Agency Legislative Bill Analysis* (Feb.10, 2014) (on file with the Senate Banking and Insurance Committee).

⁷ *Id.* at p. 2.

⁸ See Ch. 99-336, L.O.F. The release of the reserve dollars is based on a reduction of liability that occurs with the passage of time. The release of the reserve makes those monies available for general use by the company.

III. Effect of Proposed Changes:

Title Insurance Reserve Requirements (Sections 1 & 2)

This bill provides that a title insurer must reserve the amount necessary to pay all of its known unpaid losses and claims incurred on or before the date of the financial statement, together with the expenses of adjustment or settlement. This requirement is in addition to the reserves required under s. 625.111, F.S. This bill removes references to unreported losses and claims, also known as Incurred But Not Reported (IBNR) losses, as a liability to be charged against a title insurer's assets because unreported claims are accounted for in title insurance by the unearned premium reserve.⁹

This bill creates a new unearned premium reserve requirement for title insurers holding \$50 million or more in surplus as to policyholders. Those insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the OIR. Title insurers having less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per \$1,000 of net retained liability).

The effect of this change will reduce the unearned premium reserve requirement for title insurers having more than \$50 million in surplus. This change will not have an immediate effect because there are no title insurers with \$50 million in surplus domiciled in Florida.¹⁰ According to the OIR, reducing the statutory premium reserve requirement for larger title insurers could encourage foreign title insurers to re-domesticate to Florida.¹¹ The two Florida insurers placed in the rehabilitation since 2008 had less than \$50 million in surplus prior to the entry of the rehabilitation orders.¹² A third Florida insurer ceased writing new policies when its surplus dropped from \$27 million to \$6 million.¹³

Releasing Unearned Premium Reserve (Section 2)

This bill creates a schedule for the release of unearned premium reserve for companies with more than \$50 million in surplus. This bill provides that the unearned premium for policies written or title liability assumed during a particular calendar year shall be released from reserve as follows:

- 35 percent of the initial sum during the calendar 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;

⁹ OIR, *SB 758 2014 Agency Legislative Bill Analysis* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² DFS, Division of Rehabilitation and Liquidation, *available at*

<http://www.myfloridacfo.com/Division/Receiver/Companies/KEL/default.htm#.UxD1zfIdUeE> and

http://www.myfloridacfo.com/Division/Receiver/Companies/National_Title/default.htm#.UxD2BPldUeF (last visited Mar.

19, 2014). The information may be found by reviewing the NAIC financial statements submitted by the companies.

¹³ Press Release, A.M. Best, *A.M. Best Withdraws Ratings of Attorneys' Title Insurance Fund Inc.* (Aug. 20, 2009), *available at* <http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=0&refnum=14608> (last visited Mar. 19, 2014).

- 3 percent during each of the next succeeding 3 years;
- 2 percent during each of the next succeeding 3 years; and
- 1 percent during each of the next succeeding 10 years.

Reserve Requirement When a Title Insurer Moves to Florida (Section 2)

Currently, no title insurers are domiciled in Florida. If a title insurer moves to the state, it must immediately comply with Florida's reserve requirements. However, this bill allows a title insurer organized under the laws of another state that transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state of domicile. The reserve is released according to the requirements of law in effect in the former state at the time of domicile.

This bill requires that, for new business written after the effective date of the transfer of domicile to Florida, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve the appropriate amount under Florida law as determined by the company's surplus.

Bulk Reserves (Section 2)

This bill provides that a domestic title insurer is not required to record a separate bulk reserve. "Bulk reserve" means provision for subsequent development on known claims. This bill further provides that if a separate bulk reserve is recorded, the statutory premium reserve must be reduced by the amount recorded for such bulk reserve.

Sections 3 and 4 correct cross-references.

Section 5 provides that the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

According to the OIR, this bill may encourage foreign title insurers to re-domesticate to Florida which could increase tax and fee revenues to state and local governments.¹⁴

B. Private Sector Impact:

According to the OIR, this bill may encourage foreign title insurers to re-domesticate to Florida which may increase business opportunities.¹⁵ Concerns have been expressed that the “two tier” reserve system created by the bill may disadvantage smaller title insurers. First, there is concern that lenders could use \$50 million as a benchmark for acceptable surplus. Finally, there is concern that smaller title insurers would be at a disadvantage when offering reissue rates to consumers.¹⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.041, 625.111, 624.407, and 624.408.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on March 5, 2014:**

The committee adopted an amendment to correct a drafting error and provide that title insurers with surplus greater than \$50 million would have a different reserve requirement than title insurers with surplus less than \$50 million.

¹⁴ OIR, *SB 758 2014 Agency Legislative Bill Analysis*.

¹⁵ *Id.*

¹⁶ Discussion points provided by representatives at Westcor Land Title Insurance Company (on file with the staff of the Senate Banking and Insurance Committee).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
