

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 758

INTRODUCER: Senator Lee

SUBJECT: Title Insurer Reserves

DATE: February 28, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____

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**I. Summary:**

SB 758 changes the 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. The bill does not remove the requirement that title insurers with a surplus of \$50 million or more also have a reserve 30 cents for each \$1,000 of net retained liability.<sup>1</sup> Title insurers with 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 over \$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. Release of reserve based on premium written after the insurer moves to Florida is governed by Florida law.

This bill takes effect upon becoming a law.

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<sup>1</sup> Requiring insurers with a surplus of more than \$50 million to have both a reserve of additional 6.5% of premium and a reserve of 30 cents per \$1,000 of net retained liability appears to be a drafting error. See Section VI of this analysis.

**II. Present Situation:**

**Title Insurance**

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.<sup>2</sup> 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.<sup>3</sup>

**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.<sup>4</sup> 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.<sup>5</sup>

Section 625.111, F.S., provides that the unearned premium reserve must consist of not less than 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 shall be calculated in accordance with provisions of law of this state 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 liability<sup>6</sup> 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.

**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.”<sup>7</sup> 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

<sup>2</sup> See s. 624.608, F.S.

<sup>3</sup> See *Lawyers Title Insurance Co.v.Novastar Mortgage, Inc.*, 862 So.2d 793,797 (Fla. 4th DCA 2004).

<sup>4</sup> See ss. 625.041, 625.111, F.S.

<sup>5</sup> See s. 625.111, F.S.

<sup>6</sup> “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.” § 625.11(4)(a), F.S.

<sup>7</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014)(on file with the Senate Committee on Banking and Insurance).

Nebraska	\$.17 per \$1,000 of net retained liability
Texas	\$.185 per \$1,000 of net retained liability. <sup>8</sup>

### 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.<sup>9</sup> 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
- 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 next succeeding 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
- 1 percent during each of the next succeeding 5 years.

### III. Effect of Proposed Changes:

#### Title Insurance Reserve Requirements

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 claims – claims where the loss has occurred but has not been reported – as a liability to be charged against a title insurers assets because unreported claims are accounted for in title insurance by the unearned premium reserve.<sup>10</sup>

This bill creates a new 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

<sup>8</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 2 (on file with the Senate Committee on Banking and Insurance).

<sup>9</sup> See Chapter 99-336, Laws of Florida.

<sup>10</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 2.

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 with 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 would be to reduce the reserve requirement for title insurers with more than \$50 million in surplus. This change would not have an immediate effect because there are no title insurers with \$50 million in surplus domiciled in Florida.<sup>11</sup> According to the OIR, reducing the statutory premium reserve requirement for larger title insurers could encourage foreign title insurers to re-domesticate to Florida.<sup>12</sup> Nationwide, seven title insurers have a surplus in excess of \$50 million.<sup>13</sup> The two Florida insurers placed in the rehabilitation since 2008 had less than \$50 in surplus prior to the entry rehabilitation order.<sup>14</sup> A third Florida insurer ceased writing new policies when its surplus dropped from \$27 million to \$6 million.<sup>15</sup>

The bill does not remove the requirement that title insurers with a surplus of \$50 million or more also reserve 30 cents for each \$1,000 of net retained liability.<sup>16</sup>

### **Releasing Unearned Premium Reserve**

This bill creates a schedule for the release of unearned premium reserve for companies with over \$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:

The insurer shall release 35 percent of the initial sum during the year following the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year.

Thereafter, this bill provides that the insurer shall release, on the same quarterly basis:

- 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
- 1 percent during each of the next succeeding 10 years.

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<sup>11</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 3.

<sup>12</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 3.

<sup>13</sup> *Demotech Performance of Title Insurance Companies 2013* at p. 253.

<sup>14</sup> See <http://www.myfloridacfo.com/Division/Receiver/Companies/KEL/default.htm#.UxD1zfUeE> and [http://www.myfloridacfo.com/Division/Receiver/Companies/National\\_Title/default.htm#.UxD2BPldUeF](http://www.myfloridacfo.com/Division/Receiver/Companies/National_Title/default.htm#.UxD2BPldUeF) (last accessed February 28, 2014).

<sup>15</sup> See <http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=0&refnum=14608> (last accessed February 28, 2014).

<sup>16</sup> Requiring insurers with a surplus of more than \$50 million to have both a reserve of additional 6.5% of premium and a reserve of 30 cents per \$1,000 of net retained liability appears to be a drafting error. See Section VI of this analysis.

### **Reserve Requirement When a Title Insurer Moves to Florida**

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. 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 as determined by the company's surplus.

### **Bulk Reserves**

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.

### **Effective Date**

This bill takes effect upon becoming a 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:**

None.

**B. Private Sector Impact:**

A bill analysis provided by the OIR stated that this bill could encourage foreign title insurers to re-domesticate to Florida which could increase business opportunities.<sup>17</sup> Concerns have been expressed that created the “two tier” reserve system could 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.<sup>18</sup>

**C. Government Sector Impact:**

A bill analysis provided by the OIR stated that this bill could encourage foreign title insurers to re-domesticate to Florida which could increase tax and fee revenues to state and local governments.<sup>19</sup>

**VI. Technical Deficiencies:**

This bill requires title insurers with a surplus of at least \$50 million to have a reserve 6.5 percent of direct premiums written and 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. In addition, this bill requires all title insurers to have a reserve 30 cents for each \$1,000 of net retained liability. The OIR bill analysis stated that the intention of the bill is to make the two sections alternatives to each other. A company would have to reserve either 30 cents for each \$1,000 of net retained liability *or* 6.5 percent of direct premium and premium for reinsurance assumed.<sup>20</sup> The bill’s requirement that certain insurers maintain both types of reserves appears to be a drafting error.

**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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>17</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 4.

<sup>18</sup> See Discussion Points provided by representatives at Westcor Land Title Insurance Company (on file with the Senate Committee on Banking and Insurance).

<sup>19</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 4.

<sup>20</sup> See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 5.

B. Amendments:

None.

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

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