

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 Banking and Insurance

BILL: SB 548

INTRODUCER: Senator Richter

SUBJECT: Title Insurance

DATE: November 17, 2015 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Pre-meeting
2.		AGG	
3.		AP	

I. Summary:

SB 548 allows a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. If the dollar amount of the risk exceeds the surplus as to policyholders, the excess must be reinsured by one or more authorized insurers. Current law limits the amount of risk assumed to one-half of the company's surplus as to policyholders.

Current law provides that any risk assumed in excess of the company's surplus as to policyholders must be reinsured by "approved" insurers but does not define the term "approved." This bill provides that reinsurance must be provided by "authorized" insurers. "Authorized" insurers are insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.

This bill also allows a title insurer to obtain reinsurance from an assuming insurer that has a financial strength rating of "A" or higher from A.M. Best Company or an assuming insurer that has an alternative rating from another rating organization which is approved and determined by the Commissioner of Insurance Regulation to be an equivalent rating.

This bill takes effect July 1, 2016.

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 the 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 (“OIR”).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders³ unless the excess is reinsured by one or more approved insurers.⁴ Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.⁵ A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.⁶ Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.⁷ Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected to be lower.⁸ Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.⁹ The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.¹⁰

Authorized Insurers

Section 627.778, F.S., references “approved” insurers. However, “approved” is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory

¹ See s. 624.608, F.S.

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

³ The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. See s. 627.778(2), F.S.

⁴ See s. 627.778(1), F.S.

⁵ According to one commenter, twenty states have no single risk limit for title insurance. See James L. Gosdin, *Title Insurance: A Comprehensive Overview*, pp. 458-60 (2007)

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).

⁶ See James L. Gosdin, *Title Insurance: A Comprehensive Overview*, p. 101 (2007)(

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).

¹⁰ See http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).

requirements.¹¹ Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an “accredited” reinsurer¹² or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.¹³

Rating Agencies

The A.M. Best Company is a company that issues financial strength ratings of insurance companies.¹⁴ The ratings range from “A+” to “D.”¹⁵ The opinions of rating agencies such as Standard & Poor’s, Moody’s Investors Service, Fitch Ratings, A.M. Best Company, and Demotech may be used in some instances by the OIR to determine whether reinsurance credit is allowed.¹⁶ The OIR is not involved in the rating of insurance companies by outside entities.

III. Effect of Proposed Changes:

This bill allows a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. If the dollar amount of the risk exceeds the surplus as to policyholders, the excess must be reinsured by one or more authorized insurers. Current law limits the amount of risk assumed to one-half of the company’s surplus as to policyholders.

Current law provides that any risk assumed in excess of the company’s surplus as to policyholders must be reinsured by “approved” insurers but does not define the term “approved.” This bill provides that reinsurance must be provided by “authorized” insurers. “Authorized” insurers are insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.¹⁷

This bill allows a title insurer to obtain reinsurance from an assuming insurer that has a financial strength rating of “A” or higher from the A.M. Best Company or has an alternative rating from another recognized rating organization which is determined by the commissioner to be an equivalent rating. This would have the effect of removing some solvency monitoring from the OIR and allowing private entities to determine the financial strength of companies providing reinsurance in large title insurance transactions. Title insurers could obtain reinsurers from “authorized” insurers or from insurers with an appropriate financial strength rating.

This bill takes effect on July 1, 2016.

¹¹ See s. 624.310(2), F.S.

¹² See s. 624.310(3)(b), F.S.

¹³ See s. 624.310(3)(c), F.S.

¹⁴ See <http://www.ambest.com/about/> (last visited on November 10, 2015).

¹⁵ See <http://www.ambest.com/ratings/guide.pdf>

¹⁶ See 624.610(3)(e), F.S.

¹⁷ See s. 624.09, F.S.

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:

Proponents of this bill argue that increasing the limit of risk will allow title insurers to insure larger commercial risks.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Lines 11-12 of the bill's title refer to the "Commissioner of the Office Insurance Regulation." Section 20.121, F.S., provides, "the head of the Office of Insurance Regulation is the Director of the Office of Insurance Regulation, who may also be known as the Commissioner of Insurance Regulation."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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