

By Senator Lee

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1                                   A bill to be entitled  
2       An act relating to title insurer reserves; amending s.  
3       625.041, F.S.; specifying that a title insurer is  
4       liable for all of its unpaid losses and claims;  
5       amending s. 625.111, F.S.; specifying the reserves  
6       certain title insurers must set aside after a certain  
7       date; specifying how such reserves will be released;  
8       specifying which state law governs the amount of the  
9       reserve when a title insurer transfers its domicile to  
10      this state; defining "bulk reserve"; amending ss.  
11      624.407 and 624.408, F.S.; conforming cross-  
12      references; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16       Section 1. Section 625.041, Florida Statutes, is amended to  
17       read:

18       625.041 Liabilities, in general.—In any determination of  
19       the financial condition of an insurer, liabilities to be charged  
20       against its assets ~~shall~~ include:

21       (1) The amount, estimated in accordance ~~consistent with the~~  
22       ~~provisions of~~ this code, necessary to pay all of its unpaid  
23       losses and claims incurred on or prior to the date of statement,  
24       whether reported or unreported, together with the expenses of  
25       adjustment or settlement thereof.

26       (2) With respect to title insurance, the amount, estimated  
27       in accordance with this code, necessary to pay all of its known  
28       unpaid losses and claims incurred on or before the date of  
29       statement, together with the expenses of adjustment or

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30 settlement thereof. This requirement is in addition to the  
31 reserves required under s. 625.111.

32 (3)~~(2)~~ With respect ~~reference~~ to life and health insurance  
33 and annuity contracts:

34 (a) The amount of reserves on life insurance policies and  
35 annuity contracts in force, valued according to the tables of  
36 mortality, rates of interest, and methods adopted pursuant to  
37 this code which are applicable thereto.

38 (b) Reserves for disability benefits, for both active and  
39 disabled lives.

40 (c) Reserves for accidental death benefits.

41 (d) Any additional reserves that may be required by the  
42 office in accordance ~~consistent~~ with practice formulated or  
43 approved by the National Association of Insurance Commissioners  
44 or its successor organization, on account of such insurance,  
45 including contract and premium deficiency reserves.

46 (4)~~(3)~~ With respect ~~reference~~ to insurance other than that  
47 specified in subsections (2) and (3) ~~subsection (2), and other~~  
48 ~~than title insurance~~, the amount of reserves equal to the  
49 unearned portions of the gross premiums charged on policies in  
50 force, computed in accordance with this part.

51 (5)~~(4)~~ Taxes, expenses, and other obligations due or  
52 accrued at the date of the statement.

53 (6)~~(5)~~ An ~~Any~~ insurer in this state that writes workers'  
54 compensation insurance shall accrue a liability on its financial  
55 statements for all Special Disability Trust Fund assessments  
56 that are due within the current calendar year. ~~In addition,~~  
57 Those insurers shall also disclose in the notes to the financial  
58 statements required to be filed pursuant to s. 624.424 an

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59 estimate of future Special Disability Trust Fund assessments, if  
60 the assessments are likely to occur and can be estimated with  
61 reasonable certainty.

62 Section 2. Section 625.111, Florida Statutes, is amended to  
63 read:

64 625.111 Title insurance reserve.—In addition to an adequate  
65 reserve as to outstanding losses relating to known claims, as  
66 required under s. 625.041, a title insurer shall establish,  
67 segregate, and maintain a guaranty fund or unearned premium  
68 reserve as provided in this section. The sums ~~required under~~  
69 ~~this section~~ to be reserved for unearned premiums on title  
70 guarantees and policies ~~at all times and for all purposes~~ shall  
71 be considered and constitute unearned portions of the original  
72 premiums and shall be charged as a reserve liability of the ~~such~~  
73 insurer in determining its financial condition. ~~While~~ Such ~~sums~~  
74 ~~are so~~ reserved funds, ~~they~~ shall be withdrawn from the use of  
75 the insurer for its general purposes, impressed with a trust in  
76 favor of the holders of title guarantees and policies, and held  
77 available for reinsurance of the title guarantees and policies  
78 in the event of the insolvency of the insurer. ~~Nothing contained~~  
79 ~~in~~ This section does not ~~shall~~ preclude the ~~such~~ insurer from  
80 investing such reserve in investments authorized by law, ~~for~~  
81 ~~such an insurer~~ and the income from such investments ~~invested~~  
82 ~~reserve~~ shall be included in the general income of the insurer  
83 and may ~~to~~ be used by such insurer for any lawful purpose.

84 (1) For an unearned premium reserve ~~reserves~~ established on  
85 or after July 1, 1999, such ~~unearned premium~~ reserve must be in  
86 ~~shall consist of not less than~~ an amount at least equal to the  
87 sum of:

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88 (a) A reserve with respect to unearned premiums for  
89 policies written or title liability assumed in reinsurance  
90 before July 1, 1999, equal to the reserve established on June  
91 30, 1999, for those unearned premiums with such reserve being  
92 subsequently released as provided in subsection (2). For  
93 domestic title insurers subject to this section, such amounts  
94 shall be calculated in accordance with ~~provisions of law of this~~  
95 state law in effect at the time the associated premiums were  
96 written or assumed and as amended before ~~prior to~~ July 1, 1999.

97 (b) A total amount equal to 30 cents for each \$1,000 of net  
98 retained liability for policies written or title liability  
99 assumed in reinsurance on or after July 1, 1999, with such  
100 reserve being subsequently released as provided in subsection  
101 (2). For the purpose of calculating this reserve, the total of  
102 the net retained liability for all simultaneous issue policies  
103 covering a single risk shall be equal to the liability for the  
104 policy with the highest limit covering that single risk, net of  
105 any liability ceded in reinsurance.

106 (c) On or after January 1, 2014, for title insurers holding  
107 \$50 million or more in surplus as to policyholders as of the  
108 previous year-end, a minimum of 6.5 percent of the total of the  
109 following:

110 1. Direct premiums written; and

111 2. Premiums for reinsurance assumed, plus other income,  
112 less premiums for reinsurance ceded as displayed in Schedule P  
113 of the title insurer's most recent annual statement filed with  
114 the office with such reserve being subsequently released as  
115 provided in subsection (2). Title insurers with less than \$50  
116 million in surplus as to policyholders must continue to record

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117 unearned premium reserve in accordance with paragraph (b).

118 (d)~~(e)~~ An additional amount, if deemed necessary by a  
119 qualified actuary, to ~~which shall~~ be subsequently released as  
120 provided in subsection (2). Using financial results as of  
121 December 31 of each year, all domestic title insurers shall  
122 obtain a Statement of Actuarial Opinion from a qualified actuary  
123 regarding the insurer's loss and loss adjustment expense  
124 reserves, including reserves for known claims, ~~adverse~~  
125 ~~development on known claims,~~ incurred but not reported claims,  
126 and unallocated loss adjustment expenses. The actuarial opinion  
127 must ~~shall~~ conform to the annual statement instructions for  
128 title insurers adopted by the National Association of Insurance  
129 Commissioners and ~~shall~~ include the actuary's professional  
130 opinion of the insurer's reserves as of the date of the annual  
131 statement. If the amount of the reserve stated in the opinion  
132 and displayed in Schedule P of the annual statement for that  
133 reporting date is greater than the sum of the known claim  
134 reserve and unearned premium reserve as calculated under this  
135 section, as of the same reporting date and including any  
136 previous actuarial provisions added at earlier dates, the  
137 insurer shall add to the insurer's unearned premium reserve an  
138 actuarial amount equal to the reserve shown in the actuarial  
139 opinion, minus the known claim reserve and the unearned premium  
140 reserve, as of the current reporting date and calculated in  
141 accordance with this section, but not ~~in no event~~ calculated as  
142 of any date before ~~prior to~~ December 31, 1999. The comparison  
143 shall be made using that line on Schedule P displaying the Total  
144 Net Loss and Loss Adjustment Expense which is comprised of the  
145 Known Claim Reserve, and any associated Adverse Development

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146 Reserve, the reserve for Incurred But Not Reported Losses, and  
147 Unallocated Loss Adjustment Expenses.

148 (2)~~(a)~~ With respect to reserves ~~the reserve~~ established in  
149 accordance with:

150 (a) Paragraph (1) (a), the domestic title insurer shall  
151 release the reserve over the subsequent ~~a period of~~ 20  
152 ~~subsequent~~ years as provided in this paragraph. The insurer  
153 shall release 30 percent of the initial aggregate sum during  
154 1999, with one quarter of that amount being released on March  
155 31, June 30, September 30, and December 31, 1999, with the March  
156 31 and June 30 releases to be retroactive and reflected on the  
157 September 30 financial statements. Thereafter, the insurer shall  
158 release, on the same quarterly basis as specified for reserves  
159 released during 1999, a percentage of the initial aggregate sum  
160 as follows: 15 percent during calendar year 2000, 10 percent  
161 during each of calendar years 2001 and 2002, 5 percent during  
162 each of calendar years 2003 and 2004, 3 percent during each of  
163 calendar years 2005 and 2006, 2 percent during each of calendar  
164 years 2007-2013, and 1 percent during each of calendar years  
165 2014-2018.

166 ~~(b) With respect to reserves established in accordance with~~  
167 Paragraph (1) (b), the unearned premium for policies written or  
168 title liability assumed during a particular calendar year shall  
169 be earned, and released from reserve, over the subsequent ~~a~~  
170 ~~period of~~ 20 ~~subsequent~~ years as provided in this paragraph. The  
171 insurer shall release 30 percent of the initial sum during the  
172 year following ~~next succeeding~~ the year the premium was written  
173 or assumed, with one quarter of that amount being released on  
174 March 31, June 30, September 30, and December 31 of such year.

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175 Thereafter, the insurer shall release, on the same quarterly  
176 basis as specified for reserves released during the year  
177 following first succeeding the year the premium was written or  
178 assumed, a percentage of the initial sum as follows: 15 percent  
179 during the next succeeding year, 10 percent during each of the  
180 next succeeding 2 years, 5 percent during each of the next  
181 succeeding 2 years, 3 percent during each of the next succeeding  
182 2 years, 2 percent during each of the next succeeding 7 years,  
183 and 1 percent during each of the next succeeding 5 years.

184 (c) ~~With respect to reserves established in accordance with~~  
185 Paragraph (1)(c), the unearned premium for policies written or  
186 title liability assumed during a particular calendar year shall  
187 be earned, and released from reserve, over the subsequent 20  
188 years at an amortization rate not to exceed the formula in this  
189 paragraph. The insurer shall release 35 percent of the initial  
190 sum during the year following the year the premium was written  
191 or assumed, with one quarter of that amount being released on  
192 March 31, June 30, September 30, and December 31 of such year.  
193 Thereafter, the insurer shall release, on the same quarterly  
194 basis as specified for reserve released during the year  
195 following the year the premium was written or assumed, a  
196 percentage of the initial sum as follows: 15 percent during each  
197 year of the next succeeding 2 years, 10 percent during the next  
198 succeeding year, 3 percent during each of the next succeeding 3  
199 years, 2 percent during each of the next succeeding 3 years, and  
200 1 percent during each of the next succeeding 10 years.

201 (d) Paragraph (1)(d), any additional amount established in  
202 any calendar year shall be released in the years subsequent to  
203 its establishment as provided in paragraph (c) ~~(b)~~, with the

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204 timing and percentage of releases being in all respects  
205 identical to those of unearned premium reserves that are  
206 calculated as provided in paragraph (c) ~~(b)~~ and established with  
207 regard to premiums written or liability assumed in reinsurance  
208 in the same year as the year in which any additional amount was  
209 originally established.

210 (3) If a title insurer that is organized under the laws of  
211 another state transfers its domicile to this state, the  
212 statutory or unearned premium reserve shall be the amount  
213 required by the laws of the title insurer's former state of  
214 domicile as of the date of transfer of domicile and shall be  
215 released from reserve according to the requirements of law in  
216 effect in the former state at the time of domicile. On or after  
217 January 1, 2014, for new business written after the effective  
218 date of the transfer of domicile to this state, the domestic  
219 title insurer shall add to and set aside in the statutory or  
220 unearned premium reserve such amount as provided in paragraph  
221 (1) (c).

222 (4) ~~(3)~~ At any reporting date, the amount of the required  
223 releases of existing unearned premium reserves under subsection  
224 (2) shall be calculated and deducted from the total unearned  
225 premium reserve before any additional amount is established for  
226 the current calendar year in accordance with ~~the provisions of~~  
227 paragraph (1) (d) ~~(1) (e)~~.

228 (5) A domestic title insurer is not required to record a  
229 separate bulk reserve. However, if a separate bulk reserve is  
230 recorded, the statutory premium reserve must be reduced by the  
231 amount recorded for such bulk reserve.

232 (6) ~~(4)~~ As used in this section, the term:



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233       (a) "Bulk reserve" means provision for subsequent  
234 development on known claims.

235       (b)~~(a)~~ "Net retained liability" means the total liability  
236 retained by a title insurer for a single risk, after taking into  
237 account the deduction for ceded liability, if any.

238       (c)~~(b)~~ "Qualified actuary" means a person who is, as  
239 detailed in the National Association of Insurance Commissioners'  
240 Annual Statement Instructions:

241           1. A member in good standing of the Casualty Actuarial  
242 Society;

243           2. A member in good standing of the American Academy of  
244 Actuaries who has been approved as qualified for signing  
245 casualty loss reserve opinions by the Casualty Practice Council  
246 of the American Academy of Actuaries; or

247           3. A person who otherwise has competency in loss reserve  
248 evaluation as demonstrated to the satisfaction of the insurance  
249 regulatory official of the domiciliary state. In such case, at  
250 least 90 days before ~~prior to the filing of~~ its annual  
251 statement, the insurer must request ~~approval~~ that the person be  
252 deemed qualified and that request must be approved or denied.  
253 The request must include the National Association of Insurance  
254 Commissioners' Biographical Form and a list of all loss reserve  
255 opinions issued in the last 3 years by this person.

256       (d)~~(c)~~ "Single risk" means the insured amount of a ~~any~~  
257 title insurance policy, except that where two or more title  
258 insurance policies are issued simultaneously covering different  
259 estates in the same real property, "single risk" means the sum  
260 of the insured amounts of all such ~~title insurance~~ policies. A  
261 ~~Any~~ title insurance policy insuring a mortgage interest, a claim

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262 payment under which reduces the insured amount of a fee or  
263 leasehold title insurance policy, shall be excluded in computing  
264 the amount of a single risk to the extent that the insured  
265 amount of the mortgage title insurance policy does not exceed  
266 the insured amount of the fee or leasehold title insurance  
267 policy.

268 Section 3. Subsection (5) of section 624.407, Florida  
269 Statutes, is amended to read:

270 624.407 Surplus required; new insurers.-

271 (5) For the purposes of this section, liabilities do not  
272 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.  
273 For purposes of computing minimum surplus as to policyholders  
274 pursuant to s. 625.305(1), liabilities include liabilities  
275 required under s. 625.041(5) ~~s. 625.041(4)~~.

276 Section 4. Subsection (2) of section 624.408, Florida  
277 Statutes, is amended to read:

278 624.408 Surplus required; current insurers.-

279 (2) For purposes of this section, liabilities do not  
280 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.  
281 For purposes of computing minimum surplus as to policyholders  
282 pursuant to s. 625.305(1), liabilities include liabilities  
283 required under s. 625.041(5) ~~s. 625.041(4)~~.

284 Section 5. This act shall take effect upon becoming a law.