

**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 940

INTRODUCER: Senator Bradley

SUBJECT: Title Insurance

DATE: January 11, 2016

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

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

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**I. Summary:**

SB 940 changes the unearned premium reserve requirement for title insurers that are members of an insurance holding company system having \$1 billion or more in surplus as to policyholders and are rated "A-" or higher by A.M. Best Company. Such 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. Currently, only title insurers with a surplus in excess of \$50 million can use that formula to calculate required unearned premium reserve.

The bill removes the requirement that a title insurer that transfers its domicile to Florida release its unearned premium under the laws of its previous domicile state. The bill requires the title insurer to release the unearned premium reserve over 20 years at a rate not to exceed the following formula:

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

**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.<sup>1</sup> 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.<sup>2</sup> 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”).

### **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>3</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>4</sup>

Since 2014<sup>5</sup>, Florida has had different unearned premium reserve requirements depending on whether a title insurer has \$50 million or more in surplus.<sup>6</sup> For title insurers with less than \$50 million in surplus, 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, 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.<sup>7</sup>
- A total amount equal to 30 cents for each \$1,000 of net retained liability<sup>8</sup> for policies written or title liability assumed in reinsurance on or after July 1, 1999.<sup>9</sup>
- An additional amount, if deemed necessary by a qualified actuary.<sup>10</sup>

For title insurance with more than \$50 million in surplus, the unearned premium reserve must be the sum 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.<sup>11</sup>
- An additional amount, if deemed necessary by a qualified actuary.<sup>12</sup>

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<sup>1</sup> See s. 624.608, F.S.

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

<sup>3</sup> See ss. 625.041, 625.111, F.S.

<sup>4</sup> See s. 625.111, F.S.

<sup>5</sup> The reserve requirements were changed by 2014-132, L.O.F.

<sup>6</sup> The capital and surplus of an insurance company are sometimes referred to as surplus as regards to policyholders or policyholders’ surplus. Policyholders’ surplus is equal to net admitted assets, or admitted assets minus liabilities. See 627.778(2), F.S.

<sup>7</sup> See s. 625.111(1)(a), F.S.

<sup>8</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.” s. 625.111(6)(b), F.S.

<sup>9</sup> See s. 625.111(1)(b), F.S.

<sup>10</sup> See s. 625.111(1)(d), F.S.

<sup>11</sup> See s. 625.111(1)(c), F.S.

<sup>12</sup> See s. 625.111(1)(d), F.S.

According to the OIR, the changes to the reserve requirements made Florida “a more attractive place for title companies.” A large title company moved to Florida after the change in reserve requirements.<sup>13</sup>

### **Releasing Unearned Premium Reserve**

Section 625.111, F.S., sets the following schedule for release of reserves. Once the reserve money is released, it is available for use by the title insurer. 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.<sup>14</sup>

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.<sup>15</sup>

For companies with more than \$50 million in surplus, the title 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.<sup>16</sup> Thereafter, the title 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.<sup>17</sup>

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

A title insurer organized under the laws of another state that transfers its domicile to Florida has the same unearned premium reserve requirement as set by the laws of the title insurer’s former

<sup>13</sup> See <http://www.floir.com/pressreleases/viewmediarelease.aspx?id=2086> (last accessed January 6, 2016).

<sup>14</sup> See s. 625.111(2)(a), F.S.

<sup>15</sup> See s. 625.111(2)(b), F.S.

<sup>16</sup> See s. 625.111(2)(c), F.S.

<sup>17</sup> *Id.*

state of domicile. The reserve is released according to the requirements of law in effect in the former state at the time of domicile. For business written after January 1, 2014, the 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.<sup>18</sup>

### **Rating Agencies**

The A.M. Best Company is a company that issues financial strength ratings of insurance companies.<sup>19</sup> The ratings range from "A+" to "D."<sup>20</sup> 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.<sup>21</sup> The OIR is not involved in the rating of insurance companies by outside entities.

### **III. Effect of Proposed Changes:**

This bill allows title insurers that are members of an insurance holding company system having \$1 billion or more in surplus as to policyholders and is rated "A-" or higher by A.M. Best Company to set unearned premium reserve in the same manner as companies with \$50 million in surplus. This unearned premium reserve requirement will give smaller insurers access to additional capital if they are members of larger holding companies.

The bill removes the requirement that a title insurer that transfers its domicile to Florida release its unearned premium under the laws of its previous domicile state. The bill requires the title insurer to release the unearned premium reserve over 20 years at a rate not to exceed the following formula:

- 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; 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.

This could result in a faster release schedule if Florida's release schedule is faster than other states. A faster release of unearned premium reserve could increase a title insurer's surplus above \$50 million and allow it to use different reserve requirements. If a title insurer that transfers its domicile to Florida subsequently becomes insolvent, there could be less unearned premium reserve available to pay claims due to the faster release of reserve.<sup>22</sup>

<sup>18</sup> See s. 625.111(3), F.S.

<sup>19</sup> See <http://www.ambest.com/about/index.html> (last accessed January 6, 2016).

<sup>20</sup> See <http://www.ambest.com/ratings/guide.pdf> (last accessed January 6, 2016).

<sup>21</sup> See s. 624.610(3)(e), F.S. (last accessed January 6, 2016).

<sup>22</sup> See Department of Financial Services *SB 940 Bill Analysis* (January 7, 2016)(on file with the Senate Committee on Banking and Insurance).

This bill is effective July 1, 2016.

**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:

This bill could allow some title insurers to have access to additional capital due to different reserve requirements and more favorable release schedules.

C. Government Sector Impact:

The OIR does not anticipate a fiscal impact on the agency due to this bill.<sup>23</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 625.111 of the Florida Statutes.

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<sup>23</sup> Telephone conversation with OIR staff, January 7, 2016.

**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.

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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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