HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 805	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Moraitis	115 **Y's**	0 **N's**
COMPANION BILLS:	CS/SB 758	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 805 passed the House on April 22, 2014. The bill was amended by the Senate on May 1, 2014, and subsequently passed the House on May 2, 2014. Part of the bill also passed the House and Senate in CS/CS/HB 321 on April 11, 2014. The bill makes changes to the laws governing title insurance.

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. Title insurers formed under the laws of Florida (domestic title insurers) are required to set aside a statutory premium reserve of 30 cents per $1,000 of net retained liability. The Office of Insurance Regulation (OIR) informs that this is one of the highest statutory premium reserves of all states in which major title insurers are domiciled. Presently, Florida has no active domestic title insurers. The bill decreases the statutory premium reserve for domestic title insurers with at least $50 million in surplus to 6.5 percent of policy premium plus other earnings of the insurer. The current statutory premium reserve remains unchanged for domestic title insurers with less than $50 million in surplus.

Current law provides for the release of the statutory premium reserve to earned premium available for general use by a domestic title insurer over 20 years, with initial funds being released at a specified percentage each year. For domestic title insurers with a statutory surplus of at least $50 million, the bill amends the 20-year release schedule to permit greater percentages of initial funds to be released from reserves each year.

Presently, domestic title insurers account for unknown losses and claims [also known as Incurred But Not Reported (IBNR) losses] in both their liabilities and statutory premium reserve. The bill eliminates this duplication by requiring domestic title insurers to account for IBNR only through their statutory premium reserve.

The bill also addresses the treatment of unearned premium reserves of foreign title insurers (title insurers organized under the laws of another state) that transfer domicile to Florida. In such circumstances, the statutory premium reserve is the amount required by the laws of the insurer's former state of domicile on the date that domicile is transferred and is to be released from reserves according to the requirements of law in effect in the former state at the time of domicile. Beginning January 1, 2014, Florida law applies to the statutory premium reserve for new business written after the effective date of the transfer of domicile to Florida.

The bill provides a premium tax exemption for title insurers on all portions of title insurance premiums retained by title insurance agents and agencies. It states the Legislature's intent that continuation of the exemption is contingent on title insurers adding Florida-based employees and requires that at least 600 such employees be added between July 1, 2014 and July 1, 2016. The exemption sunsets on December 31, 2017, unless reenacted by the Legislature.

As there are no active domestic title insurers at present, the bill will have no immediate fiscal impact.

The bill was approved by the Governor on June 13, 2014, ch. 2014-132, L.O.F., and became effective on that date, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Overview of Title Insurance
Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, would insure against certain covered risks including forgery, fraud, liens and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[3] Pursuant to s. 627.782, F.S., the Financial Services Commission is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent.

Statutory Premium Reserve for Domestic Title Insurers[4]
Section 625.111, F.S., provides the required statutory premium reserve (also referred to as the unearned premium reserve) for title insurers formed under the laws of Florida. For policies written or title liability assumed in reinsurance on or after July 1, 1999, the required reserve is 30 cents per $1,000 of net retained liability.[5,6] According to the Office of Insurance Regulation (OIR), this is one of the highest statutory premium reserve requirements of all states in which major title insurers are domiciled.[7] As comparative examples, OIR reports the required reserves in Minnesota (6.5 percent of premium and fees); California (4.5 percent of premium and fees); Texas ($.185 per $1,000 of net retained liability); and Nebraska ($.17 per $1,000 of net retained liability). Currently, Florida has no active domestic title insurers.

Beginning January 1, 2014, the bill decreases the statutory reserve requirement for domestic title insurers with at least $50 million in surplus, requiring such insurers to maintain a premium reserve of 6.5 percent of policy premium plus other earnings of the insurer.[8] Domestic title insurers with a

---

[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.
[2] See, e.g., the website of the American Land Title Association (ALTA), http://www.alta.org (Last accessed: March 28, 2014). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.
[3] Section 627.786, F.S.
[4] Section 624.06, F.S., defines domestic insurer as an insurer formed under the laws of Florida.
[5] Section 625.111(1), F.S., provides that premium reserves cannot be less than an amount equal to the sum of: (a) reserves for title insurance policies or title liability assumed in reinsurance before July 1, 1999, (b) 30 cents for each $1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, and (c) any additional amount, if deemed necessary by a qualified actuary (supplemental reserve).
[6] It is commonly understood that the statutes of an insurer's home state take precedence with regard to reserving and other financial matters.
[7] Correspondence from OIR dated February 10, 2014, on file with the Insurance & Banking Subcommittee.
[8] These insurers will also need to set aside an additional amount (supplemental reserve), if deemed necessary by a qualified actuary.

statutory surplus of less than $50 million remain subject to the current statutory premium reserve requirement.

Release of the Reserve

With respect to policies written or title liability assumed in reinsurance on or after July 1, 1999, current law provides for the release of the statutory premium reserve to earned premium available for general use by a title insurer over 20 years, as follows: 30 percent of the initial sum during the year next succeeding the year the premium was written or assumed;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.[9]

For domestic title insurers with a surplus of at least $50 million, the bill amends the above-presented 20-year schedule to provide for the release of the statutory premium reserve to earned premium, 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 succeeding 3 years; and 1 percent during each of the next succeeding 10 years.

Liabilities Charged Against Assets

The bill amends s. 625.041, F.S., concerning insurer liabilities. Presently, domestic title insurers account for unknown losses and claims [also known as Incurred But Not Reported (IBNR) losses] in both their liabilities and statutory premium reserve. The bill eliminates this duplication by requiring domestic title insurers to account for IBNR only through their statutory premium reserve.

Title Insurers that Transfer Domicile to Florida

The bill amends s. 625.111, F.S., to address the treatment of unearned premium reserves of foreign title insurers that transfer domicile to Florida. Under the bill, the statutory premium reserve for such insurers is the amount required by the laws of the title insurer's former state of domicile on the date that domicile is transferred to Florida. Additionally, the statutory premium reserve is to be released according to the laws of the former state of domicile in effect at the time of domicile. Beginning January 1, 2014, Florida law applies to the statutory premium reserve for new business written after the move to Florida.

Bulk Reserve

Bulk reserve is a term that is specific to title insurance and is not defined in Florida law. The bill defines bulk reserve to mean "provision for subsequent development on known claims" and addresses the treatment of a separate bulk reserve. Title insurers are not required to set aside a separate bulk reserve. However, if they do, the statutory premium reserve will be reduced by the amount recorded for the bulk reserve. Domestic title insurers must obtain approval from the OIR before using or recording a bulk reserve.

Title Insurance Premium Taxes

Pursuant to s. 627.782, F.S., the Financial Services Commission is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent.

The bill provides a premium tax exemption for title insurers on all portions of title insurance premiums retained by title insurance agents and agencies. It states the Legislature's intent that continuation of the exemption is contingent on title insurers adding Florida-based employees and requires that at least 600 such employees be added between July 1, 2014 and July 1, 2016. The exemption sunsets on December 31, 2017, unless reenacted by the Legislature.

[9] The funds are released on a quarterly basis.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, there are no active Florida-domiciled title insurers. Thus, the bill will not have any immediate fiscal impact.

D. FISCAL COMMENTS:

Lowering the statutory premium reserve for larger title insurers may encourage foreign title insurers to re-domesticate in Florida. Maintaining the current reserve formula for title insurers with less than $50 million in surplus could protect insureds against the consequences of the failure of a Florida-domiciled title insurer. However, it could discourage the creation of new smaller domestic title insurers in Florida or having smaller established title insurers re-domesticate in Florida.