

HB 805

2014

1 A bill to be entitled

2 An act relating to title insurance; amending s.  
3 625.041, F.S.; revising provisions relating to the  
4 determination of title insurance liabilities; amending  
5 s. 625.111, F.S.; revising the formula for releasing  
6 unearned premium reserves; providing requirements for  
7 releasing unearned premium reserves for domestic title  
8 insurers and title insurers transferring domicile to  
9 this state; providing that a domestic title insurer is  
10 not required to record separate bulk reserves under  
11 certain conditions; amending ss. 624.407 and 624.408,  
12 F.S.; conforming cross-references; providing a  
13 directive to the Division of Law Revision and  
14 Information; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 625.041, Florida Statutes, is amended  
19 to read:

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

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

27 or settlement thereof.

28 (2) With reference to title insurance, the amount,  
 29 estimated consistent with the provisions of the code, necessary  
 30 to pay all of its known unpaid losses and claims incurred on or  
 31 before the date of the statement, together with the expenses of  
 32 adjustment or settlement thereof.

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

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

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

41 (c) Reserves for accidental death benefits.

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

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

52 (5)~~(4)~~ Taxes, expenses, and other obligations due or

53 accrued at the date of the statement.

54 (6)~~(5)~~ Any insurer in this state that writes workers'  
55 compensation insurance shall accrue a liability on its financial  
56 statements for all Special Disability Trust Fund assessments  
57 that are due within the current calendar year. In addition,  
58 those insurers shall also disclose in the notes to the financial  
59 statements required to be filed pursuant to s. 624.424 an  
60 estimate of future Special Disability Trust Fund assessments, if  
61 the assessments are likely to occur and can be estimated with  
62 reasonable certainty.

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

65 625.111 Title insurance reserve.—In addition to an  
66 adequate reserve as to outstanding losses relating to known  
67 claims, as required under s. 625.041, a title insurer shall  
68 establish, segregate, and maintain a guaranty fund or unearned  
69 premium reserve as provided in this section. The sums required  
70 under this section to be reserved for unearned premiums on title  
71 guarantees and policies at all times and for all purposes shall  
72 be considered and constitute unearned portions of the original  
73 premiums and shall be charged as a reserve liability of such  
74 insurer in determining its financial condition. While such sums  
75 are so reserved, they shall be withdrawn from the use of the  
76 insurer for its general purposes, impressed with a trust in  
77 favor of the holders of title guarantees and policies, and held  
78 available for reinsurance of the title guarantees and policies

79 | in the event of the insolvency of the insurer. Nothing contained  
80 | in this section shall preclude such insurer from investing such  
81 | reserve in investments authorized by law for such an insurer and  
82 | the income from such invested reserve shall be included in the  
83 | general income of the insurer to be used by such insurer for any  
84 | lawful purpose.

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

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 in effect at the time the associated premiums were written  
96 | or assumed and as amended prior to July 1, 1999.

97 |       (b) A total amount equal to 30 cents for each \$1,000 of  
98 | net 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) Effective on the effective date of this act, for title  
 107 insurers holding, as of the previous year end, \$50 million or  
 108 more in surplus as to policyholders, a sum equal to a minimum of  
 109 6.5 percent of the total of the following:

- 110 1. Direct risk premiums written; and  
 111 2. Premiums for reinsurance assumed, plus other income,  
 112 less premiums for reinsurance ceded as set forth 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).

116  
 117 Title insurers holding less than \$50 million in surplus as to  
 118 policyholders shall continue to record unearned premium reserve  
 119 in accordance with paragraph (b).

120 (d)~~(e)~~ An additional amount, if deemed necessary by a  
 121 qualified actuary, which shall be subsequently released as  
 122 provided in subsection (2). Using financial results as of  
 123 December 31 of each year, all domestic title insurers shall  
 124 obtain a Statement of Actuarial Opinion from a qualified actuary  
 125 regarding the insurer's loss and loss adjustment expense  
 126 reserves, including reserves for known claims, adverse  
 127 development on known claims, incurred but not reported claims,  
 128 and unallocated loss adjustment expenses. The actuarial opinion  
 129 shall conform to the annual statement instructions for title  
 130 insurers adopted by the National Association of Insurance

131 Commissioners and shall include the actuary's professional  
132 opinion of the insurer's reserves as of the date of the annual  
133 statement. If the amount of the reserve stated in the opinion  
134 and displayed in Schedule P of the annual statement for that  
135 reporting date is greater than the sum of the known claim  
136 reserve and unearned premium reserve as calculated under this  
137 section, as of the same reporting date and including any  
138 previous actuarial provisions added at earlier dates, the  
139 insurer shall add to the insurer's unearned premium reserve an  
140 actuarial amount equal to the reserve shown in the actuarial  
141 opinion, minus the known claim reserve and the unearned premium  
142 reserve, as of the current reporting date and calculated in  
143 accordance with this section, but in no event calculated as of  
144 any date prior to December 31, 1999. The comparison shall be  
145 made using that line on Schedule P displaying the Total Net Loss  
146 and Loss Adjustment Expense which is comprised of the Known  
147 Claim Reserve, and any associated Adverse Development Reserve,  
148 the reserve for Incurred But Not Reported Losses, and  
149 Unallocated Loss Adjustment Expenses.

150 (2) (a) With respect to the reserve established in  
151 accordance with paragraph (1) (a), the domestic title insurer  
152 shall release the reserve over a period of 20 subsequent years  
153 as provided in this paragraph. The insurer shall release 30  
154 percent of the initial aggregate sum during 1999, with one  
155 quarter of that amount being released on March 31, June 30,  
156 September 30, and December 31, 1999, with the March 31 and June

157 30 releases to be retroactive and reflected on the September 30  
158 financial statements. Thereafter, the insurer shall release, on  
159 the same quarterly basis as specified for reserves released  
160 during 1999, a percentage of the initial aggregate sum as  
161 follows: 15 percent during calendar year 2000, 10 percent during  
162 each of calendar years 2001 and 2002, 5 percent during each of  
163 calendar years 2003 and 2004, 3 percent during each of calendar  
164 years 2005 and 2006, 2 percent during each of calendar years  
165 2007-2013, and 1 percent during each of calendar years 2014-  
166 2018.

167 (b) With respect to reserves established in accordance  
168 with paragraph (1) (b), the unearned premium for policies written  
169 or title liability assumed during a particular calendar year  
170 shall be earned, and released from reserve, over a period of 20  
171 subsequent years as provided in this paragraph. The insurer  
172 shall release 30 percent of the initial sum during the year next  
173 succeeding the year the premium was written or assumed, with one  
174 quarter of that amount being released on March 31, June 30,  
175 September 30, and December 31 of such year. Thereafter, the  
176 insurer shall release, on the same quarterly basis as specified  
177 for reserves released during the year first succeeding the year  
178 the premium was written or assumed, a percentage of the initial  
179 sum as follows: 15 percent during the next succeeding year, 10  
180 percent during each of the next succeeding 2 years, 5 percent  
181 during each of the next succeeding 2 years, 3 percent during  
182 each of the next succeeding 2 years, 2 percent during each of

183 the next succeeding 7 years, and 1 percent during each of the  
184 next succeeding 5 years.

185 (c) With respect to reserves established in accordance  
186 with paragraph (1)(c), the unearned premium for policies written  
187 or title liability assumed during a particular calendar year  
188 shall be earned, and released from reserve, over a period of 20  
189 subsequent years as provided in this paragraph. The insurer  
190 shall release 35 percent of the initial sum during the year next  
191 succeeding the year during which the premium was written or  
192 assumed, with one quarter of that amount being released on March  
193 31, June 30, September 30, and December 31 of that year.  
194 Thereafter, the insurer shall release, on the same quarterly  
195 basis, a percentage of the initial sum as follows: 15 percent  
196 during each of the next succeeding 2 years, 10 percent during  
197 the next succeeding year, 3 percent during each of the next  
198 succeeding 3 years, 2 percent during each of the next succeeding  
199 3 years, and 1 percent during each of the next succeeding 10  
200 years.

201 (d)(e) With respect to reserves established in accordance  
202 with paragraph (1)(d) ~~(1)(e)~~, any additional amount established  
203 in any calendar year shall be released in the years subsequent  
204 to its establishment as provided in paragraph (c) ~~(b)~~, with the  
205 timing and percentage of releases being in all respects  
206 identical to those of unearned premium reserves that are  
207 calculated as provided in paragraph (c) ~~(b)~~ and established with  
208 regard to premiums written or liability assumed in reinsurance



209 in the same year as the year in which any additional amount was  
210 originally established.

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

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

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

233 (6)-(4) As used in this section:

234 (a) "Net retained liability" means the total liability

235 retained by a title insurer for a single risk, after taking into  
236 account the deduction for ceded liability, if any.

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

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

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

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

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

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

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

268 624.407 Surplus required; new insurers.—

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

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

276 624.408 Surplus required; current insurers.—

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

282 Section 5. The Division of Law Revision and Information is  
 283 directed to replace the phrase "the effective date of this act"  
 284 wherever it occurs in this act with such date.

285 Section 6. This act shall take effect upon becoming a law.