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CS/CS/HB 805, Engrossed 1

2014 Legislature

1
2 An act relating to title insurer reserves; amending s.
3 625.041, F.S.; revising criteria with respect to
4 liabilities charged against assets in determinations
5 of financial condition; amending s. 625.111, F.S.;
6 specifying the reserves certain title insurers must
7 set aside after a certain date; specifying the manner
8 in which reserves must be released; specifying which
9 state law governs the amount of the reserve for a
10 title insurer who transfers domicile to this state;
11 providing that a domestic title insurer is not
12 required to record separate bulk reserves; requiring a
13 domestic title insurer to obtain approval from the
14 Office of Insurance Regulation before using or
15 recording a bulk reserve; revising and providing
16 definitions; amending ss. 624.407 and 624.408, F.S.;
17 conforming cross-references; amending s. 624.509,
18 F.S.; revising provisions relating to premium taxes
19 paid by insurers; providing that the tax does not
20 apply to any portion of the premium retained by a
21 title insurance agent or agency; providing legislative
22 intent; requiring certified title insurers to add a
23 specified number of jobs within a certain time;
24 providing for expiration; amending s. 627.7711, F.S.;
25 conforming provisions to changes made by the act;



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26 providing effective dates.

27

28 Be It Enacted by the Legislature of the State of Florida:

29

30 Section 1. Section 625.041, Florida Statutes, is amended
31 to read:

32 625.041 Liabilities, in general.—In any determination of
33 the financial condition of an insurer, liabilities to be charged
34 against its assets ~~shall~~ include:

35 (1) The amount, estimated in accordance ~~consistent~~ with
36 ~~the provisions of~~ this code, necessary to pay all of its unpaid
37 losses and claims incurred on or before ~~prior to~~ the date of
38 statement, whether reported or unreported, together with the
39 expenses of adjustment or settlement thereof.

40 (2) With respect to title insurance, the amount, estimated
41 in accordance with this code, necessary to pay all of its known
42 unpaid losses and claims incurred on or before the date of
43 statement, together with the expenses of adjustment or
44 settlement thereof. This requirement is in addition to the
45 reserves required under s. 625.111.

46 (3)(2) With respect ~~reference~~ to life and health insurance
47 and annuity contracts:

48 (a) The amount of reserves on life insurance policies and
49 annuity contracts in force, valued according to the tables of
50 mortality, rates of interest, and methods adopted pursuant to



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51 | this code which are applicable thereto.

52 | (b) Reserves for disability benefits, for both active and
53 | disabled lives.

54 | (c) Reserves for accidental death benefits.

55 | (d) Any additional reserves that may be required by the
56 | office in accordance ~~consistent~~ with practice formulated or
57 | approved by the National Association of Insurance Commissioners
58 | or its successor organization, on account of such insurance,
59 | including contract and premium deficiency reserves.

60 | (4)~~(3)~~ With respect ~~reference~~ to insurance other than that
61 | specified in subsections ~~subsection~~ (2) and (3), ~~and other than~~
62 | ~~title insurance~~, the amount of reserves equal to the unearned
63 | portions of the gross premiums charged on policies in force,
64 | computed in accordance with this part.

65 | (5)~~(4)~~ Taxes, expenses, and other obligations due or
66 | accrued at the date of the statement.

67 | (6)~~(5)~~ An ~~Any~~ insurer in this state that writes workers'
68 | compensation insurance shall accrue a liability on its financial
69 | statements for all Special Disability Trust Fund assessments
70 | that are due within the current calendar year. ~~In addition,~~
71 | Those insurers shall also disclose in the notes to the financial
72 | statements required to be filed pursuant to s. 624.424 an
73 | estimate of future Special Disability Trust Fund assessments, ~~if~~
74 | the assessments are likely to occur and can be estimated with
75 | reasonable certainty.



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76 Section 2. Section 625.111, Florida Statutes, is amended
77 to read:

78 625.111 Title insurance reserve.—In addition to an
79 adequate reserve as to outstanding losses relating to known
80 claims, ~~as required under s. 625.041, a domestic title insurer~~
81 shall establish, segregate, and maintain a guaranty fund or
82 unearned premium reserve as provided in this section. The sums
83 ~~required under this section~~ to be reserved for unearned premiums
84 on title guarantees and policies ~~at all times and for all~~
85 ~~purposes~~ shall be considered and constitute unearned portions of
86 the original premiums and shall be charged as a reserve
87 liability of the ~~such~~ insurer in determining its financial
88 condition. ~~While Such sums are so reserved funds, they~~ shall be
89 withdrawn from the use of the insurer for its general purposes,
90 impressed with a trust in favor of the holders of title
91 guarantees and policies, and held available for reinsurance of
92 the title guarantees and policies in the event of the insolvency
93 of the insurer. ~~Nothing contained in This section~~ does not shall
94 preclude the ~~such~~ insurer from investing such reserve in
95 investments authorized by law, ~~for such an insurer~~ and the
96 income from such investments ~~invested reserve~~ shall be included
97 in the general income of the insurer and may ~~to~~ be used by such
98 insurer for any lawful purpose.

99 (1) For an unearned premium reserve ~~reserves~~ established
100 on or after July 1, 1999, such ~~unearned premium~~ reserve must be



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101 in shall consist of not less than an amount at least equal to
102 the sum of paragraphs (a), (b), and (d) for title insurers
103 holding less than \$50 million in surplus as to policyholders as
104 of the previous year end and the sum of paragraphs (c) and (d)
105 for title insurers holding \$50 million or more in surplus as to
106 policyholders as of the previous year end:

107 (a) A reserve with respect to unearned premiums for
108 policies written or title liability assumed in reinsurance
109 before July 1, 1999, equal to the reserve established on June
110 30, 1999, for those unearned premiums with such reserve being
111 subsequently released as provided in subsection (2). For
112 domestic title insurers subject to this section, such amounts
113 shall be calculated in accordance with ~~provisions of law of this~~
114 state law in effect at the time the associated premiums were
115 written or assumed and as amended before ~~prior to~~ July 1, 1999.

116 (b) A total amount equal to 30 cents for each \$1,000 of
117 net retained liability for policies written or title liability
118 assumed in reinsurance on or after July 1, 1999, with such
119 reserve being subsequently released as provided in subsection
120 (2). For the purpose of calculating this reserve, the total of
121 the net retained liability for all simultaneous issue policies
122 covering a single risk shall be equal to the liability for the
123 policy with the highest limit covering that single risk, net of
124 any liability ceded in reinsurance.

125 (c) On or after January 1, 2014, for title insurers



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126 holding \$50 million or more in surplus as to policyholders as of
127 the previous year end, a minimum of 6.5 percent of the total of
128 the following:

- 129 1. Direct premiums written; and
130 2. Premiums for reinsurance assumed, plus other income,
131 less premiums for reinsurance ceded as displayed in Schedule P
132 of the title insurer's most recent annual statement filed with
133 the office with such reserve being subsequently released as
134 provided in subsection (2). Title insurers with less than \$50
135 million in surplus as to policyholders must continue to record
136 unearned premium reserve in accordance with paragraph (b).

137 (d)~~(e)~~ An additional amount, if deemed necessary by a
138 qualified actuary, to ~~which shall~~ be subsequently released as
139 provided in subsection (2). Using financial results as of
140 December 31 of each year, all domestic title insurers shall
141 obtain a Statement of Actuarial Opinion from a qualified actuary
142 regarding the insurer's loss and loss adjustment expense
143 reserves, including reserves for known claims, ~~adverse~~
144 ~~development on known claims,~~ incurred but not reported claims,
145 and unallocated loss adjustment expenses. The actuarial opinion
146 must ~~shall~~ conform to the annual statement instructions for
147 title insurers adopted by the National Association of Insurance
148 Commissioners and ~~shall~~ include the actuary's professional
149 opinion of the insurer's reserves as of the date of the annual
150 statement. If the amount of the reserve stated in the opinion



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151 and displayed in Schedule P of the annual statement for that
152 reporting date is greater than the sum of the known claim
153 reserve and unearned premium reserve as calculated under this
154 section, as of the same reporting date and including any
155 previous actuarial provisions added at earlier dates, the
156 insurer shall add to the insurer's unearned premium reserve an
157 actuarial amount equal to the reserve shown in the actuarial
158 opinion, minus the known claim reserve and the unearned premium
159 reserve, as of the current reporting date and calculated in
160 accordance with this section, but not ~~in no event~~ calculated as
161 of any date before ~~prior to~~ December 31, 1999. The comparison
162 shall be made using that line on Schedule P displaying the Total
163 Net Loss and Loss Adjustment Expense which is comprised of the
164 Known Claim Reserve, and any associated Adverse Development
165 Reserve, the reserve for Incurred But Not Reported Losses, and
166 Unallocated Loss Adjustment Expenses.

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

169 (a) Paragraph (1) (a), the domestic title insurer shall
170 release the reserve over the subsequent ~~a period of~~ 20
171 ~~subsequent~~ years as provided in this paragraph. The insurer
172 shall release 30 percent of the initial aggregate sum during
173 1999, with one quarter of that amount being released on March
174 31, June 30, September 30, and December 31, 1999, with the March
175 31 and June 30 releases to be retroactive and reflected on the



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176 September 30 financial statements. Thereafter, the insurer shall
177 release, on the same quarterly basis as specified for reserves
178 released during 1999, a percentage of the initial aggregate sum
179 as follows: 15 percent during calendar year 2000, 10 percent
180 during each of calendar years 2001 and 2002, 5 percent during
181 each of calendar years 2003 and 2004, 3 percent during each of
182 calendar years 2005 and 2006, 2 percent during each of calendar
183 years 2007-2013, and 1 percent during each of calendar years
184 2014-2018.

185 (b) ~~With respect to reserves established in accordance~~
186 ~~with~~ Paragraph (1) (b), 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 the subsequent
189 ~~a period of 20 subsequent~~ years as provided in this paragraph.
190 The insurer shall release 30 percent of the initial sum during
191 the year following ~~next succeeding~~ the year the premium was
192 written or assumed, with one quarter of that amount being
193 released on March 31, June 30, September 30, and December 31 of
194 such year. Thereafter, the insurer shall release, on the same
195 quarterly basis as specified for reserves released during the
196 year following ~~first succeeding~~ the year the premium was written
197 or assumed, a percentage of the initial sum as follows: 15
198 percent during the next succeeding year, 10 percent during each
199 of the next succeeding 2 years, 5 percent during each of the
200 next succeeding 2 years, 3 percent during each of the next



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201 succeeding 2 years, 2 percent during each of the next succeeding
202 7 years, and 1 percent during each of the next succeeding 5
203 years.

204 (c) Paragraph (1)(c), the unearned premium for policies
205 written or title liability assumed during a particular calendar
206 year shall be earned, and released from reserve, over the
207 subsequent 20 years at an amortization rate not to exceed the
208 formula in this paragraph. The insurer shall release 35 percent
209 of the initial sum during the year following the year the
210 premium was written or assumed, with one quarter of that amount
211 being released on March 31, June 30, September 30, and December
212 31 of such year. Thereafter, the insurer shall release, on the
213 same quarterly basis, as specified for reserve released during
214 the year following the year the premium was written or assumed,
215 a percentage of the initial sum as follows: 15 percent during
216 each year of the next succeeding 2 years, 10 percent during the
217 next succeeding year, 3 percent during each of the next
218 succeeding 3 years, 2 percent during each of the succeeding 3
219 years, and 1 percent during each of the next succeeding 10
220 years.

221 (d)(e) With respect to reserves established in accordance
222 with Paragraph (1)(d) ~~(1)(e)~~, any additional amount established
223 in any calendar year shall be released in the years subsequent
224 to its establishment as provided in paragraph (c) ~~(b)~~, with the
225 timing and percentage of releases being in all respects



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226 identical to those of unearned premium reserves that are
227 calculated as provided in paragraph (c) ~~(b)~~ and established with
228 regard to premiums written or liability assumed in reinsurance
229 in the same year as the year in which any additional amount was
230 originally established.

231 (3) If a title insurer that is organized under the laws of
232 another state transfers its domicile to this state, the
233 statutory or unearned premium reserve shall be the amount
234 required by the laws of the state of the title insurer's former
235 state of domicile as of the date of transfer of domicile and
236 shall be released from reserve according to the requirements of
237 law in effect in the former state at the time of domicile. On or
238 after January 1, 2014, for new business written after the
239 effective date of the transfer of domicile to this state, the
240 domestic title insurer shall add to and set aside in the
241 statutory or unearned premium reserve such amount as provided in
242 subsection (1).

243 (4) ~~(3)~~ At any reporting date, the amount of the required
244 releases of existing unearned premium reserves under subsection
245 (2) shall be calculated and deducted from the total unearned
246 premium reserve before any additional amount is established for
247 the current calendar year in accordance with ~~the provisions of~~
248 paragraph (1) (d) ~~(1) (e)~~.

249 (5) A domestic title insurer is not required to record a
250 separate bulk reserve. However, if a separate bulk reserve is



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251 | recorded, the statutory premium reserve must be reduced by the
252 | amount recorded for such bulk reserve. A domestic title insurer
253 | must obtain approval from the office before using or recording a
254 | bulk reserve.

255 | (6) (4) As used in this section, the term:

256 | (a) "Bulk reserve" means provision for subsequent
257 | development on known claims.

258 | (b) (a) "Net retained liability" means the total liability
259 | retained by a title insurer for a single risk, after taking into
260 | account the deduction for ceded liability, if any.

261 | (c) (b) "Qualified actuary" means a person who is, as
262 | detailed in the National Association of Insurance Commissioners'
263 | Annual Statement Instructions:

264 | 1. A member in good standing of the Casualty Actuarial
265 | Society;

266 | 2. A member in good standing of the American Academy of
267 | Actuaries who has been approved as qualified for signing
268 | casualty loss reserve opinions by the Casualty Practice Council
269 | of the American Academy of Actuaries; or

270 | 3. A person who otherwise has competency in loss reserve
271 | evaluation as demonstrated to the satisfaction of the insurance
272 | regulatory official of the domiciliary state. In such case, at
273 | least 90 days before ~~prior to the filing of~~ its annual
274 | statement, the insurer must request ~~approval~~ that the person be
275 | deemed qualified and that request must be approved or denied.



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276 The request must include the National Association of Insurance
277 Commissioners' Biographical Form and a list of all loss reserve
278 opinions issued in the last 3 years by this person.

279 (d)~~(e)~~ "Single risk" means the insured amount of a ~~any~~
280 title insurance policy, except that where two or more title
281 insurance policies are issued simultaneously covering different
282 estates in the same real property, "single risk" means the sum
283 of the insured amounts of all such ~~title insurance~~ policies. A
284 ~~Any~~ title insurance policy insuring a mortgage interest, a claim
285 payment under which reduces the insured amount of a fee or
286 leasehold title insurance policy, shall be excluded in computing
287 the amount of a single risk to the extent that the insured
288 amount of the mortgage title insurance policy does not exceed
289 the insured amount of the fee or leasehold title insurance
290 policy.

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

293 624.407 Surplus required; new insurers.—

294 (5) For the purposes of this section, liabilities do not
295 include liabilities required under s. 625.041(5) ~~625.041(4)~~. For
296 purposes of computing minimum surplus as to policyholders
297 pursuant to s. 625.305(1), liabilities include liabilities
298 required under s. 625.041(5) ~~625.041(4)~~.

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



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301 624.408 Surplus required; current insurers.—

302 (2) For purposes of this section, liabilities do not
303 include liabilities required under s. 625.041(5) ~~625.041(4)~~. For
304 purposes of computing minimum surplus as to policyholders
305 pursuant to s. 625.305(1), liabilities include liabilities
306 required under s. 625.041(5) ~~625.041(4)~~.

307 Section 5. Effective January 1, 2015, subsection (8) of
308 section 624.509, Florida Statutes, is amended to read:

309 624.509 Premium tax; rate and computation.—

310 (8) ~~From and after July 1, 1980,~~ The premium tax
311 authorized by this section may ~~shall~~ not be imposed on: ~~upon~~

312 (a) Any portion of the title insurance premium, as defined
313 in s. 627.7711, retained by a title insurance agent or agency.

314 It is the intent of the Legislature that the continuation of
315 this exemption be contingent on title insurers adding employees
316 to their payroll. Between July 1, 2014, and July 1, 2016, title
317 insurers currently holding a valid certificate of authority from
318 this state shall, in the aggregate, add a minimum of 600
319 Florida-based employees to their payroll, as verified by the
320 Department of Economic Opportunity. The department shall submit
321 such verification to the President of the Senate and the Speaker
322 of the House of Representatives by October 1, 2016. This
323 paragraph expires December 31, 2017, unless reenacted by the
324 Legislature before that date; or

325 (b) Receipts of annuity premiums or considerations paid by



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326 holders in this state if the tax savings derived are credited to
327 the annuity holders. Upon request by the Department of Revenue,
328 an ~~any~~ insurer availing itself of this provision shall submit to
329 the department evidence that ~~which~~ establishes that the tax
330 savings derived have been credited to annuity holders. As used
331 in this paragraph ~~subsection~~, the term "holders" includes ~~shall~~
332 ~~be deemed to include~~ employers contributing to an employee's
333 pension, annuity, or profit-sharing plan.

334 Section 6. Subsection (2) of section 627.7711, Florida
335 Statutes, is amended to read:

336 627.7711 Definitions.—As used in this part, the term:

337 (2) "Premium" means the charge, as specified by rule of
338 the commission, which ~~that~~ is made by a title insurer for a
339 title insurance policy, including the charge for performance of
340 primary title services by a title insurer or title insurance
341 agent or agency, and incurring the risks incident to such
342 policy, under the several classifications of title insurance
343 contracts and forms, ~~and upon which charge a premium tax is paid~~
344 ~~under s. 624.509~~. As used in this part or in any other law, with
345 respect to title insurance, the word "premium" does not include
346 a commission.

347 Section 7. Except as otherwise expressly provided in this
348 act, this act shall take effect upon becoming a law.