

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/HB 1007 — Insurer Insolvency

by Insurance and Banking Subcommittee; Reps Bernard; Julien; Cruz and others (CS/CS/SB 1568 by Budget Committee; Banking and Insurance Committee and Senator Montford)

The bill contains numerous provisions.

Relating to the State Board of Administration

- The bill allows an insurer to request that the State Board of Administration renegotiate the terms of a surplus note issued before January 1, 2011 under the Insurance Capital Build-Up Incentive Program.
- The bill increases the surplus requirements from \$100 million to \$250 million for foreign insurers in order to receive credit for reinsurance ceded to these foreign insurers.
- The bill expands the list of nationally recognized statistical rating organizations that may be utilized to provide a secure financial rating.

Relating to Title Insurers

- The bill requires that after an order of rehabilitation has been entered, the receiver shall review the condition of the title insurer and file a plan of rehabilitation for approval with the court.
- The bill requires that policies on real property in this state issued by the title insurer in rehabilitation shall remain in force unless the receiver determines the assessment capacity provided by this section is insufficient to pay claims in the ordinary course of business.
- The bill allows policies on real property located outside the this state may be canceled as of a date provided by the receiver and approved by the court, if the state in which the property is located does not have statutory provisions to pay future losses on those policies.
- The bill requires the establishment of a claims filing deadline for policies on real property located outside this state that have been canceled.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims when policies have been canceled, with any unused funds being returned to the general assets of the estate.
- The bill requires the receiver to establish a proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- The bill requires that funds allocated to pay claims on policies located outside of this state shall be based on the pro rata share of premiums written in each state over each of the 5 calendar years preceding the date of an order of rehabilitation.
- The bill requires each title insurer shall be liable for an assessment to pay all unpaid title insurance claims and expenses of administering and settling those claims on real property in this state for any title insurer that is ordered into rehabilitation.
- The bill states that the Office of Insurance Regulation (office) shall order an assessment if requested by the receiver on an annual basis in an amount that the receiver deems sufficient for the payment of known claims, loss adjustment expenses, and the cost of

administration of the rehabilitation expenses. The receiver shall consider the remaining assets of the insurer in receivership when making its request to the office. Annual assessments may be made until no more policies of the title insurer in rehabilitation are in force or the potential future liability has been satisfied. The office may exempt or limit the assessment of a title insurer if such assessment would result in a reduction to surplus as to policyholders below the minimum required to maintain the insurer's certificate of authority in any state.

- The bill requires that the assessments shall be based on the total of the direct title insurance premiums written in this state as reported to the office for the most recent calendar year. Each title insurer doing business in this state shall be assessed on a pro rata share basis of the total direct title insurance premiums written in this state.
- The bill requires that assessments be paid to the receiver within 90 days after notice of the assessment or pursuant to a quarterly installment plan approved by the receiver. Any insurer that elects to pay an assessment on an installment plan shall also pay a financing charge to be determined by the receiver.
- The bill requires that the office shall order an emergency assessment if requested by the receiver. The total of any emergency assessment, when added to any annual assessment in a single calendar year, may not exceed 3 percent of an insurer's surplus to policyholders as of the end of the previous calendar year or more than 10 percent of its surplus to policyholders over any consecutive 5-year period. The 10 percent limitation shall be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years.
- The bill allows the receiver to use the proceeds of an assessment to acquire reinsurance or otherwise provide for the assumption of policy obligations by another insurer.
- The bill requires that the receiver shall make available information regarding unpaid claims on a quarterly basis.
- The bill requires a title insurer in rehabilitation may not be released from rehabilitation until all of the assessed insurers have recovered the amount assessed either through surcharges collected or payments from the insurer in rehabilitation.
- The bill prohibits a title insurer in rehabilitation, for which an assessment has been ordered, from issuing any new policies until the insurer has been released from rehabilitation and has received approval from the office to resume issuing policies.
- The bill prohibits officers, directors, and shareholders of a title insurer ordered into rehabilitation or liquidation from serving as an officer, director, or shareholder of another insurer authorized in this state unless the officer, director, or shareholder demonstrates to the office for a 2-year period immediately preceding the receivership that: his or her personal actions or omissions were not a significant contributing cause to the receivership; he or she did not willfully violate any order of the office; he or she did not receive directly or indirectly any distribution of funds from the insurer in excess of amounts authorized in writing by the office; the financial statements filed with the office were true and correct statements of the title insurer's financial contrition; he or she did not engage in any business practices which were hazardous to the policyholders, creditors, or the public; and he or she at all times acted in the best interests of the title insurer.

- The bill requires upon the making of any assessment, the office shall order a surcharge on each title insurance policy issued thereafter, which insures an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed \$25 per transaction for each impaired title insurer. If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.
- The bill states the party responsible for payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance issued at the simultaneous issue rate. For all other purposes, the surcharge will be considered a governmental assessment to be separately stated on any settlement statement. The surcharge is not subject to premium tax or reserve requirements.
- The bill requires that a title insurer doing business in this state which wrote no premiums in the prior calendar year shall collect the same per transaction surcharge. Such surcharge collected shall be paid to the receiver within 60 days after receipt from the title agent or agency.
- The bill states that each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance policy written and remit those surcharges along with the policies and premiums within 60 days to the title insurer on whom the policy was written.
- The bill prohibits a title insurer from retaining more in surcharges for an ordered assessment than the amount of assessment that title insurer paid.
- The bill requires each title insurer collecting surcharges to promptly notify the office when it has collected surcharges equal to the amount of the assessments paid. The office shall notify all companies, including those collecting surcharges to cease collecting surcharges when notified that all assessments have been recovered.
- The bill requires that when filing each quarterly financial statement, a title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period. Any surcharges collected in excess of the amount assessed shall be paid to the Insurance Regulatory Trust Fund.

Relating to the Department of Financial Services

- The bill allows the Department of Financial Services to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- The bill provides for the State Risk Management Trust Fund to cover employees, officers, and agents at the department for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by the department while acting as a receiver.
- The bill requires the Insurance Regulation Trust Fund to cover all unreimbursed costs when opening ancillary delinquency proceedings for the purposes of obtaining records.
- The bill further clarifies the department's power to obtain records from third-party administrators.

Relating to Florida's Insurance Guaranty Associations

- The bill makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.
- The bill amends qualifications of FIGA and FWCIGA board members representing, or employed by, an insurer in receivership.
- The bill clarifies FIGA's obligation to pay valid claims after an independent review of policies and claims has been presented to it.

This bill substantially amends the following sections of the Florida Statutes: 215.5595, 624.610, 631.152, 631.2715, 631.391, 631.400, 631.401, 631.54, 631.56, 631.717, 631.904, and 631.912.

The bill creates section 631.2715, Florida Statutes.

If approved by the Governor, these provisions take effect July 1, 2011.

Vote: Senate 34-0; House 115-0