

**STORAGE NAME:** h0093.rpp  
**DATE:** January 14, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
Real Property and Probate  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 93

**RELATING TO:** Title Insurance Reserve

**SPONSOR(S):** Representative Bob Starks

**COMPANION BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) Real Property and Probate
- (2)
- (3)
- (4)
- (5)

---

**I. SUMMARY:**

Current law requires a title insurer ["insurer"] to establish a guaranty fund or unearned premium reserve in addition to their reserve for outstanding losses. The unearned premium reserve cannot be used by the insurer for general purposes; must be held in trust in favor of the holders of title guarantees and policies; and, is to be held available for reinsurance of the title guarantees and policies in the event the insurer becomes insolvent. The insurer may invest the reserves, and the income from such investment must be included in the general income which the insurer may use for any lawful purpose.

Current law also provides that the unearned premium reserve shall consist of not less than: (a) the amount of the unearned premium reserve in existence on June 30, 1992; and (b) a sum equal to 30 cents for each \$1,000 of net retained liability under each title insurance policy on a single risk written on or after July 1, 1992. The adequacy of the reserve existing on December 31, 1992, must be determined in accordance with the reserve requirements existing on July 1, 1992. This bill changes the year from 1992 to 1999 with regard to the previously listed dates.

This bill also provides that unearned premium reserves be released and restored into the insurer's net profits over a period of 20 years, instead of the previous requirement that reserves be released in 12 equal annual installments. Reserves existing in the unearned premium reserve on December 31, 1999, and amounts reserved on or after January 1, 2000, are to be released pursuant to a variable schedule as defined in this bill.

The Department of Insurance has determined that this bill has no fiscal impact on the department, state agencies or on local government.

Several concerns arise regarding the clarity of the bill's provisions. See Comments section for further detail.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Statutory Law**

Under current statutory law, a title insurer ["insurer"] must maintain two types of reserves:

1. An insurer must retain adequate **loss reserves** sufficient to cover its unpaid losses, claims and expenses for which the insurer may be liable and for which the insurer has received notice by or on behalf of the insured.<sup>1</sup> See Fla. Stat. §§ 625.101; 625.111.<sup>2</sup>

2. In addition to the reserves required above, an insurer shall establish, segregate and maintain a guaranty fund or **unearned premium reserve** to be used for reinsurance in the event the insurer becomes insolvent. Fla. Stat. § 625.111.

Section 625.111, F.S., states in pertinent part that the **unearned premium reserve** must consist of not less than an amount computed as follows:

(a) The amount of the unearned premium reserve on June 30, 1992; and

(b) A sum equal to 30 cents for each \$1,000 of net retained liability under each title insurance policy on a single risk written on or after July 1, 1992.<sup>3</sup>

Accordingly, the amount in reserves for each insurer throughout the state is different depending upon the number of policies the company writes.

Section 625.111, F.S., further provides that the adequacy of the unearned premium reserve existing on December 31, 1992, must be determined in accordance with the

---

<sup>1</sup> The purpose of the reserves is to "cover all unpaid losses, claims and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches and guaranteed abstracts of title, and all unpaid losses, claims and allocated loss adjustment expenses for which the title insurer may be liable and for which the insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow or security depositor." Section 10, Title Insurers Model Act, April 1996.

<sup>2</sup> If an insurer's loss reserves are inadequate, the Department of Insurance must require the insurer to maintain a **supplemental loss reserve** in the additional amount, if needed, to make them adequate. Fla. Stat. § 625.101.

<sup>3</sup> In 1992, the Legislature changed the basis for determining the amount to be deposited into the unearned premium reserve to a percentage of the liability on the face of the policy instead of a percentage of the premiums collected during a calendar year. ch. 34, § 1(b), 1992 Fla. Laws, 389-390. This remains the law today. Fla. Stat. § 625.111(1)(a)(b).

**STORAGE NAME:** h0093

**DATE:** January 14, 1999

**PAGE 3**

unearned premium reserve requirements existing on July 1, 1992, and the reserves must be released in 12 equal annual installments (or approximately 8.34 percent) beginning with the calendar year 1993.<sup>4</sup> Fla. Stat. § 625.111(2)(a). With regard to amounts reserved on or after January 1, 1993, the insurer must release amounts reserved during a particular calendar year in 12 equal annual installments, beginning in the subsequent calendar year.

### ***Title Insurer's Model Act re: Reserving Funds***

The National Association of Insurance Commissioners (NAIC) drafted the Title Insurers Model Act in 1983 (revised April 1996). The NAIC suggests that when establishing an unearned premium reserve, one should keep in mind that there can be a wide difference among insurers as to the correct reserve requirement. NAIC Title Insurers Model Act, s. 10, B, fnt 2. Reserve requirements may change over time according to the insurer's varying exposure to risk. *Id.* Therefore, the reserve requirements are best determined by each state.<sup>5</sup>

The NAIC's Title Insurers Model Act does, however, provide in pertinent part, the following:

- (a) The amount of the statutory or unearned premium or reinsurance reserve on the effective date of this Act, which balance shall be released in accordance with the law in effect at the time such sums were added to the reserve; and
- (b) Out of total charges for policies of title insurance written or assumed commencing with the effective date of this Act, and until December 31, 1997, a title insurer shall add to and set aside in this reserve an amount equal to [insert amount] of the sum of the following items set forth in the title insurer's most recent annual statement on file with the commissioner:
  - i) Direct premiums written;
  - ii) Escrow and settlement service fees;
  - iii) Other title fees and service charges including fees for closing protection letters; and

---

<sup>4</sup> Prior to 1992, the unearned premium reserves were to be released at a rate of 5 percent of the original amount of such reserve for 20 years. Fla. Stat. § 625.111 (1991). In 1992, s. 625.111, F.S., was amended authorizing release of the reserves in 12 equal annual installments. ch. 34, § 1(b), 1992 Fla. Laws, 389-390.

<sup>5</sup> For example, other states set aside the following reserves on a \$100,000 policy: MO \$15 (\$.015 per \$1,000 liability); PA \$11 (\$1 per policy + \$.10 per \$1000 liability); TX \$25 (\$.25 per \$1000 liability); CA \$23 (4.5% of revenue); VA \$14 (\$1.50 per policy + \$.0125 per \$1000 liability); MN \$23 (10% of total premiums); and LA \$0. American Pioneer Title Insurance Company's Comparison of Statutory Premium Reserve (SPR) for a \$100,000 Policy, Florida Calculation vs. Calculation of Domiciliary State (12/31/98).

**STORAGE NAME:** h0093

**DATE:** January 14, 1999

**PAGE 4**

- iv) Premiums for reinsurance assumed less premiums for reinsurance ceded (transferred) during year.
- c) Additions to the reserve after January 1, 1998 shall be made out of the total charges for title insurance policies and guarantees written, equal to the sum of the following items, as set forth in the title insurer's most recent annual statement on file with the commissioner:
  - i) For each title insurance policy on a single risk written or assumed after January 1, 1998, [insert amount] per \$1,000 of net retained liability for policies under \$500,000 and [insert amount] per \$1,000 of net retained liability for policies of \$500,000 or greater; and
  - ii) [insert amount] of escrow, settlement and closing fees collected in contemplation of the issuance of title insurance policies or guarantees.

***Title Insurer's Model Act re: Releasing The Unearned Premium Reserve***

The NAIC's Title Insurers Model Act provides the following schedule with regard to the release of the unearned premium reserves to the net profit of the insurer:

thirty-five percent (35%) of the aggregate sum on July 1 of the year next succeeding the year of addition; fifteen percent (15%) of the aggregate sum on July 1 of each of the succeeding two (2) years; ten percent (10%) of the aggregate sum of July 1 of the next succeeding year; three percent (3%) of the aggregate sum on July 1 of each of the next three (3) succeeding years; two percent (2%) of the aggregate sum on July 1 of each of the next three (3) succeeding years; and one percent (1%) of the aggregate sum on July 1 of each of the next succeeding ten (10) years. Title Insurers Model Act, § 10 (B)(d), April 1996.

**B. EFFECT OF PROPOSED CHANGES:**

This bill changes the amount of the unearned premium reserves which are to be released to the insurer. December 31, 1999, reserve funds are to be released and restored to net profits beginning in the calendar year 2000, as follows:

- 30 percent of the aggregate sum on July 1, 2000;
- 15 percent of the aggregate sum on July 1, 2001;
- 10 percent of the aggregate sum on both July 1, 2002, and July 1, 2003;
- 5 percent of the aggregate sum on both July 1, 2004, and July 1, 2005;
- 3 percent of the aggregate sum on both July 1, 2006, and July 1, 2007;

- 2 percent of the aggregate sum on July 1 of 2008, 2009, 2010, 2011, 2012, 2013, and 2014; and
- 1 percent of the aggregate sum on July 1 of 2015, 2016, 2017, 2018, and 2019.

This bill also provides that those funds reserved on or after January 1, 2000, are to be released as follows:<sup>6</sup>

- 30 percent of the aggregate sum on July 1 of the subsequent year;
- 15 percent of the aggregate sum on July 1 of the next year;
- 10 percent of the aggregate sum on July 1 of the next 2 years;
- 5 percent of the aggregate sum on July 1 of the next 2 years;
- 3 percent of the aggregate sum on July 1 of the next 2 years;
- 2 percent of the aggregate sum on July 1 of the next 7 years; and
- 1 percent of the aggregate sum on July 1 of the next 5 years.

This release schedule is slightly less aggressive than the formula provided in the current NAIC Title Insurers Model Act.

Proponents of this bill include insurers which are domiciled in the State of Florida and conduct business nationwide. Proponents contend that this proposed legislation would have two effects on title insurance underwriters domiciled in the State of Florida doing business nationwide:<sup>7</sup>

**1. HB 93 would release more monies currently held in the unearned premium reserve on the front end of the policy.**

As a bill proponent, American Pioneer stated that it currently holds \$17 million in unearned premium reserves which, according to a study conducted by an actuarial firm pursuant to a contract with American Pioneer, is three times the actuary's recommended reserve level of \$5.5 million. *Id.* However, American Pioneer has not provided staff with written data confirming these reserve levels. American Pioneer contends that a majority of this surplus should be released back to the underwriter on the front end of the policy. *Id.*

HB 93 provides for the release of 30 percent of the reserves after the first year compared to the current law which authorizes the release of approximately 8.34 percent in the first year. Pursuant to this bill, in six years, a total of 60 percent of the reserves would be released compared to the current law which authorizes a release of a total of 50 percent of the reserves.

**2. HB 93 would increase out of state competition.**

---

<sup>6</sup> Under the current law, s. 625.111(2)(a), F.S., provides that the unearned premium reserves shall be released in 12 equal annual installments, beginning with the calendar year 1993.

<sup>7</sup> Conference with Steve Rumsey, Senior Vice President and Chief Financial Officer of American Pioneer Title Insurance Company, in Tallahassee, Fl. ( December 28, 1998).

Proponents contend that HB 93 would increase their ability to compete in out-of-state markets. *Id.*<sup>8</sup> Florida insurers are bound by Florida reserve rates even when writing policies in other states. *Id.* Proponents suggest that Florida has one of the highest reserve rates in the country and therefore, it is hard to compete with out-of-state insurers. *Id.* Although this bill does not affect reserve rates, proponents suggest that having a more aggressive return rate of the reserve monies will effectively reduce their overall reserve requirement.

**See Comments section herein which addresses certain concerns regarding this bill.**

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

---

<sup>8</sup> One such proponent, Alliance Title of America ("Alliance"), which is domiciled in Florida, supports HB 93 and contends that it puts the smaller insurers in the same position as the insurers in other states. Alliance spoke with its actuarial firm, which also supports the bill. Telephone conversation with Kevin Thomas, General Counsel, Alliance Title of America, domiciled in Florida (December 29, 1998).

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.



(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

**D. STATUTE(S) AFFECTED:**

s. 625.111

**E. SECTION-BY-SECTION ANALYSIS:**

1. Section 1. Subsections (1) and (2) of s. 625.111, F.S., are amended as follows:

(1)(a) Changes the date only and provides that the unearned premium reserve shall consist of not less than the amount of the unearned premium reserve on June 30, 1999 [instead of 1992].

(1)(b) Changes the date only and provides that a sum equal to 30 cents for each \$1,000 of net retained liability under each title insurance policy on a single risk written on or after July 1, 1999 [instead of 1992].

(2)(a) Changes the date and provides that the adequacy of the unearned premium reserve on December 31, 1999, [instead of 1992] shall be determined in accordance with the reserve requirements existing on July 1, 1999 [instead of 1992].

In addition, this section adds that the reserves existing on December 31, 1999, shall be released "from the reserve and restored to net profits over a period of 20 years" [instead of the previous 12 equal annual installments].

This section also sets forth that the December 31, 1999, reserves shall be released according to the new graduated release schedule.

(2)(b) Provides that the amount of reserves acquired on or after January 1, 2000, shall be released over a period of 20 years [instead of the 12 equal annual installments] and restored to net profits.

This section also sets forth a new release schedule for all reserves acquired on or after January 1, 2000.

2. Section 2. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The private sector may be able to obtain title insurance at a lower premium from Florida domiciled title insurers.

3. Effects on Competition, Private Enterprise and Employment Markets:

This bill may increase competition for Florida domiciled title insurers doing out-of-state business.

D. FISCAL COMMENTS:

The Department of Insurance has determined that this bill will not have an economic impact on state agencies, state funds or local government.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

1. This bill states that the unearned premium reserves are to be "restored to net profits" which may imply that the proceeds were originally net profits prior to their deposit. (HB 93, Lines 11-13). This may raise accounting concerns as to whether the monies are in fact "profits." Simply stating that the reserves are to be "released from reserves" may avoid any accounting concerns. Proponents state that even companies that have a negative profit position still receive the release which increases their "profit" position. Therefore, this term does not restrict or limit the release of reserves.<sup>9</sup>
2. This bill states that the December 31, 1999, reserves are to be released "beginning with the calendar year 2000, as follows: 30 percent of the aggregate sum on July 1 of the year next succeeding the year of addition...." (HB 93, Lines 15-16). This release of reserves occurs over a certain term of specific years. The terminology: "the year next succeeding the year of addition" fails to identify with specificity the applicable years. The existing language is troublesome for two reasons:

---

<sup>9</sup> Conference with Steve Rumsey, Senior Vice President and Chief Financial Officer of American Pioneer Title Insurance Company, in Tallahassee, Fl. ( December 28, 1998).

**STORAGE NAME:** h0093

**DATE:** January 14, 1999

**PAGE 12**

1) there are no other funds being added to the reserves so as to calculate the "year next succeeding the year of addition," and

2) this disbursement is intended to occur over specific years. **Stating the specific years would add substantial clarity to the provisions.**

The proponents agreed that the existing language may need clarification.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Real Property and Probate:

Prepared by:

Staff Director:

---

Christine Hoke, J.D.

---

J. Marleen Ahearn, Ph.D., J.D.