

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1653 w/CS Insurance Premium Tax (Tax Reduction; Title Insurance)
SPONSOR(S): Mahon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	9 Y, 2 N	Tinney	Cooper
2) Insurance	17 Y, 0 N w/CS	Tinney	Cooper
3) Finance & Tax			
4) Commerce & Local Affairs Approp. (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

Regulation of the insurance industry by the Department of Financial Services (DFS) is paid, in part, by a 1.75-percent tax on the gross receipts of most insurance premiums collected in Florida. Under current law in s. 624.509, F.S., the 1.75-percent tax is levied per calendar year and is payable to the Department of Revenue (DOR) by March 1 annually.

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter governs title insurance contracts specifically. Title insurance is sold as part of the initial purchase or refinance of real property. A title search generally is conducted by an attorney or other qualified person.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" is defined to mean the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. This definition of the word premium, as the gross receipts for a policy without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance.

Current law is amended by the bill to exempt title insurance policies from the 1.75-percent tax due on gross receipts for sales of such insurance. The same law is further amended to clarify that the 1.75-percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent, up to 70 percent of the total price paid for the title insurance. A cross-reference to section 624.509, F.S., the law describing the 1.75-percent tax due for insurance premium gross receipts is deleted.

The Revenue Estimating Conference considered the fiscal impact of HB 1653 at its meeting on Friday, March 19, 2004. The Conference adopted a projected impact to the General Revenue Fund of minus \$7.4 million each for FY 2004-05 and FY 2005-06.

The bill becomes effective January 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1653b.in.doc
DATE: April 8, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

i.

B. EFFECT OF PROPOSED CHANGES:

Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

Regulation of the insurance industry by the state is paid, in part, by a 1.75-percent tax on the gross receipts of all insurance premiums collected in Florida. Under current law in s. 624.509, F.S., the 1.75-percent tax is levied per calendar year and is payable to the Department of Revenue (DOR) by March 1 annually and through regular payments on April 15, June 15, and October 15 of each year.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insurance agents, agencies, and carriers are required by law to report their gross earning to DFS annually, although taxes are payable to DOR. Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state’s General Revenue Fund pursuant to rules of DOR.

Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word “premium” means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word “premium” as used throughout part XIII of the law governing title insurance includes the imposition of the 1.75-percent tax; however, the law states that the definition of premium as it relates to title insurance does not include a commission.

As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

Title insurance is different in some respects from many other types of insurance. Property, health, life, and casualty insurance generally protect the policy owner against the possibility of an unknown future risk. Title insurance, because it requires a review of the historical records relating to real property, protects the owner or borrower from a known risk, i.e. that the parcel of property is free of liens encumbrances, and other defects and is therefore available for sale. There is generally an additional measure of security inherent in title insurance, because most real estate has been sold previously and, thus, its title has been researched each time the property has been sold.

Changes Proposed by the Bill

Section 624.509, F.S., is amended to exempt title insurance policies from the 1.75-percent tax due on gross receipts for sales of such insurance. The same law is further amended to clarify that the 1.75-percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill specifies that the commission, and thus the portion of the title insurance premium that is exempt from the premium tax, may not exceed 70 percent of the total price paid for the title insurance.

Section 627.7711, F.S., the law containing the definitions relating to title insurance, is also amended. A cross-reference to section 624.509, F.S., the law describing the 1.75-percent tax due for insurance premium gross receipts, is deleted. This change conforms the law to the other changes proposed by the bill.

C. SECTION DIRECTORY:

Section 1 Amends s. 624.509, F.S., a part of the Florida Insurance Code, to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75-percent tax due on all insurance premiums, except annuity policies and contracts. The bill specifies that up to 70 percent of title insurance gross receipts are exempt from the general tax on insurance premiums if that money is retained by or paid under contract to an insurance agent, i.e., as a commission.

Section 2 Amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. The bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by **Section 1**.

Section 3 Provides that the bill takes effect January 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Both DOR and DFS provided information relating to the fiscal impact of the bill. DFS collects information annually from licensed insurers relating to the total premiums collected by the insurers throughout the calendar year. DOR is assigned by law to collect insurance premium taxes and to ensure, through periodic audit, that the premium amounts collected and reported are accurate.

DFS reports that title insurance premiums rose in Florida by 33 percent from calendar year 2002 to 2003. This increase was due in large part to historically low interest rates, historically high rates of mortgages that were refinanced, and a high growth rate in the residential construction industry.

The Revenue Estimating Conference considered the fiscal impact of HB 1653 at its meeting on Friday, March 19, 2004. Information provided both by DFS and DOR was considered by the Revenue Estimating Conference at this meeting.

The Revenue Estimating Conference considered projections of a negative impact to the General Revenue Fund ranging from a low estimate of \$7 million to a high estimate of \$9.58 million in FY 2004-05 as a result of the bill. For FY 2005-06, the estimated impact ranges from a low of \$7.4 million to a high estimate of \$12.46 million less that will be deposited into the General Revenue Fund. The high figures assume an annual growth rate of 30 percent in title insurance premiums; the low estimates assume an annual growth rate of 6 percent in title insurance premiums.

The Revenue Estimating Conference adopted the mid-range estimated impact to the General Revenue Fund resulting from the implementation of HB 1353. That figure assumes a growth rate of 10 percent in title insurance premiums for both calendar years 2004 and 2005. The mid-range figure also considers the effect of retaliatory taxes imposed on Florida-based insurers who sell policies in other states. Based on the growth and retaliatory tax assumptions, the projected impact to the General Revenue Fund in FY 2004-05 and FY 2005-06 is minus \$7.4 million each year.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, agents that sell title insurance are not required to pay a 1.75-percent tax on an amount less than or equal to 70 percent of the gross receipts from the sale of title insurance. The exempted percentage of title insurance premiums is an allowance for that portion of the title insurance premium paid as commission to an insurance company, agent, or agency. DFS reports that the commissions paid to title insurance agents ranges from 60-80 percent of the price charged to consumers for title insurance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 1, 2004, the Committee on Insurance adopted an amendment to change the effective date of the bill to January 1, 2005, rather than upon the bill becoming a law.