SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 1714

INTRODUCER: Senator Wise

SUBJECT: Insurance Premium Tax-Title Insurance

DATE: April 5, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	**Favorable**
2.			GE	
3.			GA	
4.				
5.				
6.				

I. Summary:

Senate Bill 1714 reduces the insurance premium tax liability for title insurance companies by allowing such companies to exempt up to 70 percent of total insurance premium retained by or paid under contract to the affiliated or nonaffiliated agencies. Currently, s. 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance. Under this proposal, the 1.75 percent tax on title insurance is due only on that portion of the title insurance premium (30 percent) that is not paid as a commission to a title insurance agent. As a result, the premium tax base for a title insurer could be reduced from 100 to 30 percent of gross receipts on title insurance premium written if the insurer pays out 70 percent of the premium in commissions, which is the typical commission currently paid. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

The Revenue Estimating Conference considered the fiscal impact of SB 1714 at its meeting on February 24, 2006. The Conference adopted the mid-range estimated impact to the General Revenue Fund of *negative* $2.6 million in FY 2006-2007, *negative* $7.6 million in FY 2007-2008, and *negative* $11.3 million recurring in years thereafter.

This bill substantially amends sections 624.509 and 627.7711 of the Florida Statutes.

II. Present Situation:

Insurance Premium Tax

The insurance premium tax is imposed on insurance premiums and paid by insurance companies to the Department of Revenue at the following rates:[1] 1.75 percent on gross premiums minus reinsurance and return premiums; 1 percent on annuity premiums; 1.6 percent on self-insurers; and 5 percent on surplus lines premiums. Insurers are allowed certain credits and exemptions against this tax liability.

The proceeds from assessments for Police and Firefighter pension funds are passed to the Department of Management Services for distribution to local governments. Fire Marshal assessments, filing fees and $125,000 annually adjusted by the lesser of 20 percent or the growth in total retaliatory taxes are deposited into the Insurance Regulatory Trust Fund. The remainder of the premium tax is deposited into General Revenue. The tax on surplus lines and independently procured coverage is distributed 24.3 percent to the Insurance Regulatory Trust Fund and 75.7 percent to General Revenue.

Title Insurance Overview

Title insurance insures owners of real property against loss by encumbrance, defective titles, invalidity, or adverse claim to title.[2] Title insurance is different from traditional property and casualty (P&C) insurance in several ways, including the kind of risk insured and the relationship between losses and expenses. In traditional P&C insurance, the insurer accepts responsibility for certain risks that are out of its control and may occur in the future -- e.g., hurricanes, floods, and car accidents. In title insurance, the insurer insures against whether a past event has clouded the ownership interest or lien interest in real property that the insured believes to exist when the title insurance policy is issued.

Because of the difference in the type of risk insured, the relationship between losses and expenses in title insurance is also different from in traditional P&C insurance. In P&C insurance, insurers might ordinarily expend the majority of their revenues to pay for losses (claims) and loss adjustment while title insurers are likely to expend only a small portion of their revenues to pay for losses and loss adjustment. Conversely, P&C insurers might spend a small portion of revenues on non-loss expenses, while title insurers might expend the majority of its revenues on non-loss expenses.

The activities of title insurance agents include most of the same activities as P&C insurance agents, such as marketing and producing policies; however, title insurance agents perform other activities, such as conducting title searches and examinations, reviewing public documents, handling funds in escrow, preparing closing documents, and conducting closings. 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, thereby reducing the likelihood of loss by determining potential defects in the title prior to issuance of the policy.

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[1] Section 624.509, F.S.

[2] Section 624.608, F.S.

Title Insurance in Florida - Regulation
Part XIII of ch. 627, F.S., governs title insurance contracts. Title insurance is generally purchased as part of the initial purchase or refinance of real property. A title search examines ownership of a parcel of property through its years of ownership. Under the current law, the percentage of such title insurance premium required to be retained by the title insurer cannot be less than 30 percent.[3] Because of this limitation, a title insurer is allowed to pay the remaining 70 percent of the premium as a commission. The Financial Services Commission has adopted rules which establish the premium rates that can be charged in Florida for title insurance contracts and the minimum insurer premium retention for the risk associated with the title insurance.[4] The minimum amount of premium required to be retained by the insurer, as a percentage of total premium written, varies from 30 to 40 percent contingent upon the total dollar value of the title insurance written. For example, a title insurer is generally required to retain 30 percent of the premium if the amount of the written premium is $1 million or less.

Section 627.7711, F.S., defines the word “premium” to mean the charge made by a title insurer for a title insurance policy, including the charge for the performance of primary title services by a title insurer or agent, and the assumption of the risks associated with such a policy, and upon which charge a premium tax is paid under s. 624.509, F.S. However, the definition also provides that with respect to any law, “the word ‘premium’ does not include a commission.” However, for purposes of the premium tax, the law has historically been interpreted as including the gross amount collected for title insurance, without deduction for any portion of the premium paid to the insurance carrier, agent, or agency as a commission, as for other types of insurance. Staff of the OIR report that commissions paid to a title insurance agent are typically 70 percent of the total price paid for such insurance, i.e., the maximum amount allowable by law.

According to representatives with the Office of Insurance Regulation (OIR), 23 insurers sold title insurance in Florida in 2004. Title insurance total direct premiums in Florida have increased approximately 310 percent to $1.80 billion from 1995 to 2004. The method of delivering title insurance in Florida has not changed appreciably over the past decade and non-affiliated agencies write an estimated 85 percent of title insurance. Title insurance in this state is highly concentrated in that two companies wrote 50 percent of premiums and six companies wrote 99 percent of premiums in 2004. Florida is also one of three states in which title insurance rates are set by the regulator (OIR), the others being Texas and New Mexico.

Staff with the Department of Revenue (DOR) state that nine states have a title insurance premium taxing scheme similar to Florida’s in that they tax 100 percent of gross title insurance premiums. These states are New York, Missouri, Minnesota, Virginia, North Carolina, South Carolina, Tennessee, Texas and Arizona. Three states (California, Pennsylvania, and Colorado) have a taxing arrangement similar to the taxing scheme contemplated under the bill. The DOR is currently in litigation in the Second Judicial Circuit involving several title companies which have challenged Florida’s law regarding the taxing of 100 percent of title insurance premiums.

[3] Section 627.782, F.S.
[4] Rule 69O-186, F.A.C.

III. Effect of Proposed Changes:

Section 1. Amends s. 624.509, F.S., pertaining to Florida's insurance premium tax, to revise the calculation of the tax as applied to title insurance companies. The bill provides that the 1.75 percent premium tax would no longer apply to the portion of the gross receipts retained by or paid under contract to the affiliated and nonaffiliated title insurance agents. However, the deduction for this amount may not exceed the following percentages of the total title insurance premium gross receipts received by the insurer through affiliated and nonaffiliated agencies:

For 2007, 20 percent;
For 2008, 45 percent; and
For 2009 and subsequent years, 70 percent.

Currently, 100 percent of the total title insurance premium gross receipts are subject to the insurance premium tax prior to any credits.

The effect of this provision reduces the premium tax base for a title insurer to 30 percent of the gross receipts on title insurance premium.

Section 2 Amends s. 627.7711, F.S., to revise the definition of "premium" for purposes of title insurance contracts. The bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by section 1, since the title insurance company is allowed to exempt up to 70 percent of the insurance premium gross receipts from the premium tax.

Section 3 provides that the bill takes effect January 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Title insurance companies would benefit in the reduction of the premium tax base since they would no longer be required to pay a 1.75-percent insurance premium tax on 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. According to the Office of Insurance Regulation, commissions paid to agents are typically 70 percent of the total price charged to consumers for title insurance, and the title insurance company retains the remaining 30 percent of the premium to cover the title risk.

C. Government Sector Impact:

The bill reduces the amount of taxable title insurance gross premiums written through affiliated and nonaffiliated agencies provides for the reduction in the insurer's total amount of title insurance premium gross receipts received through affiliated and nonaffiliated agencies may not exceed 20 percent for 2007, 45 percent for 2008, and 70 percent for 2009 and thereafter. The Revenue Estimating Conference adopted the mid-range estimated impact to the General Revenue Fund resulting from the implementation of SB 1714. The Conference projected that the *negative* impact to the General Revenue Fund would be the following:[5]

- $2.6 million for 2007 (20 percent);
- $7.6 million for 2008 (45 percent); and
- $11.3 million for 2009 and subsequent years (70 percent).

This estimate is based on the Department of Revenue's (DOR) insurance premium tax returns for 23 insurers that sold title insurance in Florida in calendar year 2004 and their direct written premiums from affiliated and non-affiliated agencies.

The 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[5] The Revenue Estimating Conference assumes that half of the calendar year 2007 impact is in the April and June estimated payments.

VIII. Summary of Amendments:

None.