

The Florida Senate
PROFESSIONAL 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 2486

INTRODUCER: Senator Haridopolos

SUBJECT: Insurance Premium Taxes

DATE: April 3, 2007

REVISED: _____

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

I. Summary:

Senate Bill 2486 reduces the insurance premium tax liability for title insurance companies by allowing such companies to exempt up to 70 percent of total insurance premiums retained by or paid under contract to title insurance agents of the affiliated or nonaffiliated agencies. Currently, s. 624.509, F.S., imposes a tax of 1.75 percent on the gross amount (100 percent) 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 to or retained by 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 to the title agent for primary title services, which is the typical percentage currently paid.

The Revenue Estimating Conference considered the fiscal impact of Senate Bill 2486 at its meeting on March 17, 2007. The Conference adopted the low-range estimated impact to the General Revenue Fund of *negative* \$13.3 million in FY 2007-2008, *negative* \$13.9 million in FY 2008-2009, and *negative* \$14.6 million in FY 2009-2010.

This bill 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 written in Florida and paid by insurance companies to the Department of Revenue at the following rates:¹ 1.75 percent on gross property and casualty premiums minus reinsurance and return premiums, life premiums, accident and health premiums, and prepaid limited health premiums; 1 percent on annuity premiums; 1.6 percent on self-insurers; and 5 percent on surplus lines premiums and independently procured coverage. 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 Financial 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 a policy issued by a title insurer that, after performing a search of the title, represents the state of that title and insures the accuracy of its search against claims of title defects.³ It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others who claim to be the rightful owner of the property.⁴ Most lenders require title insurance when they underwrite loans for real property.⁵ Title insurance provides a duty to defend which is related to an adverse claim against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the title insurer.⁶

Like most insurance, title insurance is typically issued through an agent of the title insurer. The title insurance agent⁷ performs a number of services including determining the insurability of title based upon evaluation of a title search and determining and clearing underwriting objections

¹ Section 624.509, F.S.

² Section 624.608, F.S., Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of security interest in personal property under the Uniform Commercial Code.

³ BLACK'S LAW DICTIONARY (8th ed. 2004).

⁴ See e.g. American Land Title Association; <http://www.alta.org/consumer/questions.cfm> (last visited 4/2/07)

⁵ Id.

⁶ Id.

⁷ Part V of ch. 626, F.S., provides for the regulation of title insurance agents under the Department of Financial Services. A "title insurance agent" is a person appointed in writing by a title insurer to issue and countersign commitments or policies of title insurance in its behalf (s. 626.841(1), F.S.). A "title insurance agency" is an insurance agency under which title agents determine insurability in accordance with underwriting rules and standards prescribed by the title insurer represented by the agency, and issue policies of title insurance, on behalf of the appointing title insurer. The term does not include a title insurer (s. 626.841(2), F.S.). A "title insurer" is a company authorized to issue title insurance (s. 627.7711(3), F.S.).

to eliminate risk. 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.

Title Insurance in Florida - Regulation

Part XIII of ch. 627, F.S., governs title insurance contracts. Under current law, a title insurer charges a premium for title insurance that includes the charge for performance of “primary title services”⁸ by a title insurer or title insurance agent or agency, and incurs the risks incident to such policy. The percentage of such title insurance premium required to be retained by the title insurer cannot be less than 30 percent.⁹ Because of this limitation, a title insurer is allowed to pay the remaining 70 percent of premium to a title insurance agent for performing primary title services. A title agent also performs “related title services”¹⁰ and must charge at least the actual cost of these services to the customer pursuant to a rule promulgated by the Financial Services Commission.

The Financial Services Commission has adopted a rule which establishes 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.¹¹ According to the OIR, 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. 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 or retained by the insurance carrier, agent, or agency as a commission or as a fee for services, as for other types of insurance. Staff of the OIR report that commissions or fees paid to a title insurance

⁸ “Primary title services” means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable search and examination of the title or the records of a Uniform Commercial Code filing office and such other information as may be necessary, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy. Section 627.7711(1)(b), F.S.

⁹ Section 627.782(1), F.S.; Rule 690-186.003(9), F.A.C. This premium covers the risks and insures insurer solvency.

¹⁰ Rule 690-186.003(11)(a), F.A.C. “Related title services” means services performed by a title insurer or title insurance agent or agency, in the agent’s or agency’s capacity as such, including, but not limited to, preparing or obtaining a title search, examining title, examining searches of the records of a Uniform Commercial Code filing office and such other information as may be necessary, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued. The premium, together with the charge for related title services, constitutes the regular title insurance premium. Section 627.7711(1)(a), F.S.

¹¹ Id. As noted above, the percentage required to be retained by the title insurer cannot be less than 30 percent.

agent for primary title services 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 OIR, 22 title insurance companies sold title insurance in Florida in 2005 with total direct premiums written of \$2.4 billion. 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 four companies write 57 percent of premiums and eleven companies write 98 percent of premiums in 2005. Florida is also one of only three states in which title insurance rates are set by the regulator (OIR), the others being Texas and New Mexico.

According to proponents of the bill, nine states (California, Colorado, Hawaii, Idaho, Mississippi, Nebraska, New Jersey, Pennsylvania, and Texas) have a taxing arrangement similar to the taxing scheme contemplated under the bill. They argue that a large portion of the services title agents perform involve legal services which are not taxable in Florida. Proponents also argue that since the title insurance company is never in receipt of the title agents' 70 percent share of the premium (since it is retained by the agent), that the company should not be taxed on the entire premium.¹²

The Department of Revenue (DOR) is currently in litigation in the Second Judicial Circuit with a title company that has challenged Florida's law regarding the taxing of 100 percent of title insurance premiums. The majority of states tax 100 percent of title insurance premiums according to representatives with the DOR.

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. 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 above under 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 July 1, 2007.

¹² Under s. 624.509(1), F.S., insurers are taxed on premiums "received" for title insurance.

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 by 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 which is paid for the services of a insurance company, agent, or agency. According to the Office of Insurance Regulation, commissions or fees paid for title agent services 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:

On March 17, 2007, the Revenue Estimating Conference adopted the low-range estimated impact to the General Revenue Fund resulting from the implementation of SB 2486. The Conference projected that the bill would have a recurring *negative* fiscal impact to the General Revenue Fund for the following fiscal years:

- FY 2007-08 ---(\$13.3) million;
- FY 2008-09 ---(\$13.9) million;
- FY 2009-10 ---(\$14.6) million; and,
- FY 2010-11 ---(\$15.4) million.

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.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
