

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Bernard offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 35 and 36, insert:

5 Section 1. Subsection (11) of section 215.5595, Florida
6 Statutes, is amended to read:

7 215.5595 Insurance Capital Build-Up Incentive Program.—

8 (11) For a surplus note issued under this section before
9 January 1, 2011, the insurer may request that the board
10 renegotiate terms of the note as provided in this subsection.
11 The request must be submitted to the board by January 1, 2012.
12 If the insurer agrees to accelerate the payment period of the
13 note by at least 5 years, the board shall agree to exempt the
14 insurer from the premium-to-surplus ratios required under
15 paragraph (2) (d). If the insurer requesting the renegotiation
16 agrees to an acceleration of the payment period of less than 5

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17 years, the board may, after consultation with the Office of
18 Insurance Regulation, agree to an appropriate revision of the
19 premium-to-surplus ratios required under paragraph (2)(d) for
20 the remaining term of the note. However, the revised ratios may
21 not be lower than a minimum writing ratio of net premium to
22 surplus of at least 1:1, and alternatively, a minimum writing
23 ratio of gross premium to surplus of at least 3:1 ~~On January 15,~~
24 ~~2009, the State Board of Administration shall transfer to~~
25 ~~Citizens Property Insurance Corporation any funds that have not~~
26 ~~been committed or reserved for insurers approved to receive such~~
27 ~~funds under the program, from the funds that were transferred~~
28 ~~from Citizens Property Insurance Corporation in 2008-2009 for~~
29 ~~such purposes.~~

30 Section 2. Paragraph (e) of subsection (3) of section
31 624.610, Florida Statutes, is amended to read:

32 624.610 Reinsurance.—

33 (3)

34 (e) If the reinsurance is ceded to an assuming insurer not
35 meeting the requirements of paragraph (a), paragraph (b),
36 paragraph (c), or paragraph (d), the commissioner may allow
37 credit, but only if the assuming insurer holds surplus in excess
38 of \$250 ~~\$100~~ million and has a secure financial strength rating
39 from at least two ~~nationally recognized~~ statistical rating
40 organizations deemed acceptable by the commissioner as having
41 experience and expertise in rating insurers doing business in
42 Florida, including, but not limited to, Standard & Poor's,
43 Moody's Investors Service, Fitch Ratings, A.M. Best Company, and

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44 Demotech. In determining whether credit should be allowed, the
45 commissioner shall consider the following:

46 1. The domiciliary regulatory jurisdiction of the assuming
47 insurer.

48 2. The structure and authority of the domiciliary
49 regulator with regard to solvency regulation requirements and
50 the financial surveillance of the reinsurer.

51 3. The substance of financial and operating standards for
52 reinsurers in the domiciliary jurisdiction.

53 4. The form and substance of financial reports required to
54 be filed by the reinsurers in the domiciliary jurisdiction or
55 other public financial statements filed in accordance with
56 generally accepted accounting principles.

57 5. The domiciliary regulator's willingness to cooperate
58 with United States regulators in general and the office in
59 particular.

60 6. The history of performance by reinsurers in the
61 domiciliary jurisdiction.

62 7. Any documented evidence of substantial problems with
63 the enforcement of valid United States judgments in the
64 domiciliary jurisdiction.

65 8. Any other matters deemed relevant by the commissioner.
66 The commissioner shall give appropriate consideration to insurer
67 group ratings that may have been issued. The commissioner may,
68 in lieu of granting full credit under this subsection, reduce
69 the amount required to be held in trust under paragraph (c).

70 Section 3. Section 631.400, Florida Statutes, is created
71 to read:

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72 631.400 Rehabilitation of title insurer.-

73 (1) After the entry of an order of rehabilitation, the
74 receiver shall review the condition of the insurer and file a
75 plan of rehabilitation for approval with the court. The plan of
76 rehabilitation shall provide:

77 (a) That policies on real property in this state issued by
78 the title insurer in rehabilitation shall remain in force unless
79 the receiver determines the assessment capacity provided by this
80 section is insufficient to pay claims in the ordinary course of
81 business.

82 (b) That policies on real property located outside the
83 this state may be canceled as of a date provided by the receiver
84 and approved by the court if the state in which the property is
85 located does not have statutory provisions to pay future losses
86 on those policies.

87 (c) A claims filing deadline for policies on real property
88 located outside this state which are canceled under paragraph
89 (b).

90 (d) A proposed percentage of the remaining estate assets
91 to fund out-of-state claims where policies have been canceled,
92 with any unused funds being returned to the general assets of
93 the estate.

94 (e) A proposed percentage of the remaining estate assets
95 to fund out-of-state claims where policies remain in force.

96 (f) That the funds allocated to pay claims on policies
97 located outside of this state shall be based on the pro rata
98 share of premiums written in each state over each of the 5
99 calendar years preceding the date of an order of rehabilitation.

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100 (2) As a condition of doing business in this state, each
101 title insurer shall be liable for an assessment to pay all
102 unpaid title insurance claims and expenses of administering and
103 settling those claims on real property in this state for any
104 title insurer that is ordered into rehabilitation.

105 (3) The office shall order an assessment if requested by
106 the receiver on an annual basis in an amount that the receiver
107 deems sufficient for the payment of known claims, loss
108 adjustment expenses, and the cost of administration of the
109 rehabilitation expenses. The receiver shall consider the
110 remaining assets of the insurer in receivership when making its
111 request to the office. Annual assessments may be made until no
112 more policies of the title insurer in rehabilitation are in
113 force or the potential future liability has been satisfied. The
114 office may exempt or limit the assessment of a title insurer if
115 such assessment would result in a reduction to surplus as to
116 policyholders below the minimum required to maintain the
117 insurer's certificate of authority in any state.

118 (4) Assessments shall be based on the total of the direct
119 title insurance premiums written in this state as reported to
120 the office for the most recent calendar year. Each title insurer
121 doing business in this state shall be assessed on a pro rata
122 share basis of the total direct title insurance premiums written
123 in this state.

124 (5) Assessments shall be paid to the receiver within 90
125 days after notice of the assessment or pursuant to a quarterly
126 installment plan approved by the receiver. Any insurer that

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127 elects to pay an assessment on an installment plan shall also
128 pay a financing charge to be determined by the receiver.

129 (6) The office shall order an emergency assessment if
130 requested by the receiver. The total of any emergency
131 assessment, when added to any annual assessment in a single
132 calendar year, may not exceed the limitation in subsection (7).

133 (7) No title insurer shall be required to pay an
134 assessment in any one year that exceeds 3 percent of its surplus
135 to policyholders as of the end of the previous calendar year or
136 more than 10 percent of its surplus to policyholders over any
137 consecutive 5-year period. The 10 percent limitation shall be
138 calculated as the sum of the percentages of surplus to
139 policyholders assessed in each of those 5 years.

140 (8) Assessments and emergency assessments once ordered by
141 the office shall be considered assets of the estate and subject
142 to the provisions of s. 631.154.

143 (9) In an effort to keep in force the policies on real
144 property located in this state issued by the title insurer in
145 rehabilitation, the receiver may use the proceeds of an
146 assessment to acquire reinsurance or otherwise provide for the
147 assumption of policy obligations by another insurer.

148 (10) The receiver shall make available information
149 regarding unpaid claims on a quarterly basis.

150 (11) A title insurer in rehabilitation may not be released
151 from rehabilitation until all of the assessed insurers have
152 recovered the amount assessed either through surcharges
153 collected pursuant to s. 631.401 or payments from the insurer in
154 rehabilitation.

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155 (12) A title insurer in rehabilitation for which an
156 assessment has been ordered pursuant to this section may not
157 issue any new policies until released from rehabilitation and it
158 shall have received approval from the office to resume issuing
159 policies.

160 (13) Officers, directors, and shareholders of a title
161 insurer who served in that capacity within the 2-year period
162 prior to the date the title insurer was ordered into
163 rehabilitation or liquidation may not thereafter serve as an
164 officer, director, or shareholder of an insurer authorized in
165 this state unless the officer, director, or shareholder
166 demonstrates to the office for the 2-year period immediately
167 preceding the receivership that:

168 (a) His or her personal actions or omissions were not a
169 significant contributing cause to the receivership;

170 (b) He or she did not willfully violate any order of the
171 office;

172 (c) He or she did not receive directly or indirectly any
173 distribution of funds from the insurer in excess of amounts
174 authorized in writing by the office;

175 (d) The financial statements filed with the office were
176 true and correct statements of the title insurer's financial
177 contribution;

178 (e) He or she did not engage in any business practices
179 which were hazardous to the policyholders, creditors, or the
180 public; and

181 (f) He or she at all times acted in the best interests of
182 the title insurer.

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183 Section 4. Section 631.401, Florida Statutes, is created
184 to read:

185 631.401 Recovery of assessments and assumed policy
186 obligations.-

187 (1) Upon the making of any assessment allowed by s.
188 631.400, the office shall order a surcharge on each title
189 insurance policy thereafter issued insuring an interest in real
190 property in this state. The office shall set the per transaction
191 surcharge at an amount estimated to generate sufficient funds to
192 recover the amount assessed over a period of not more than 7
193 years. The amount of the surcharge ordered under this section
194 may not exceed \$25 per transaction for each impaired title
195 insurer. If additional surcharges are occasioned by additional
196 title insurers becoming impaired, the office shall order an
197 increase in the amount of the surcharge to reflect the aggregate
198 surcharge.

199 (2) The party responsible for payment of title insurance
200 premium, unless otherwise agreed between the parties, shall be
201 responsible for the payment of the surcharge. No surcharge will
202 be due or owing as to any policy of title insurance issued at
203 the simultaneous issue rate. For all other purposes, the
204 surcharge will be considered a governmental assessment to be
205 separately stated on any settlement statement. The surcharge is
206 not subject to premium tax or reserve requirements under chapter
207 625.

208 (3) Title insurers doing business in this state writing no
209 premiums in the prior calendar year shall collect the same per
210 transaction surcharge as provided by this section. Such

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211 surcharges collected shall be paid to the receiver within 60 days
212 after receipt from the title agent or agency.

213 (4) Each title insurance agent, agency, or direct title
214 operation shall collect the surcharge as to each title insurance
215 policy written and remit those surcharges along with the
216 policies and premiums within 60 days to the title insurer on
217 whom the policy was written.

218 (5) A title insurer may not retain more in surcharges for
219 an ordered assessment than the amount of assessment that title
220 insurer paid.

221 (6) Each title insurer collecting surcharges shall
222 promptly notify the office when it has collected surcharges
223 equal to the amount of the assessment paid pursuant to s.
224 631.400. The office shall notify all companies, including those
225 collecting surcharges as required by subsection (3), to cease
226 collecting surcharges when notified that all assessments have
227 been recovered.

228 (7) In conjunction with the filing of each quarterly
229 financial statement, each title insurer shall provide the office
230 with an accounting of assessments paid and surcharges collected
231 during the period. Any surcharges collected in excess of the
232 amount assessed shall be paid to the Insurance Regulatory Trust
233 Fund.

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235
236 **T I T L E A M E N D M E N T**

237 Remove line 2 and insert:

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238 An act relating to insurer insolvency; amending s.
239 215.5595, F.S., relating to the Insurance Capital Build-Up
240 Incentive Program; providing for renegotiation of surplus
241 notes issued before a specified date; providing for an
242 exemption from certain premium-to-surplus ratios in certain
243 circumstances; amending s. 624.610, F.S.; revising surplus
244 requirements for assuming insurers in connection with
245 reinsurance credits; specifying rating agencies that may
246 rate such assuming insurers; creating s. 631.400, F.S.;
247 providing for rehabilitation plans for title insurers;
248 providing that each title insurer doing business in this
249 state is liable for an assessment for claims against title
250 insurers ordered into rehabilitation; providing for an
251 annual assessment upon request of a receiver; providing for
252 emergency assessments in certain circumstances; providing
253 limits on the amount of an assessment; providing that
254 assessments are considered an asset of the estate and
255 subject to specified provisions; providing for use of
256 assessment proceeds; providing for availability of
257 information concerning unpaid claims; specifying
258 circumstances for release of title insurers from
259 rehabilitation; prohibiting a title insurer in
260 rehabilitation from issuing new policies until released
261 from rehabilitation and permission to issue new policies
262 granted; providing that officers, directors, and
263 shareholders of a title insurer who served in that capacity
264 within the 2-year period prior to the date the insurer was
265 ordered into rehabilitation or liquidation may not

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266 thereafter serve in that capacity unless the officer,
267 director, and shareholder meets specified criteria;
268 creating s. 631.401, F.S.; providing for surcharges on
269 title insurance policies to collect the amount needed to
270 cover an assessment for an insolvent insurer; providing for
271 a maximum period for a surcharge; providing a maximum for a
272 surcharge; providing for responsibility for payment of a
273 surcharge; providing for collection of surcharges by a
274 title insurer doing business in the state writing no
275 premiums in the prior calendar year; providing for
276 remission and collection of surcharges within a specified
277 period; specifying a limit on the amount in surcharges that
278 may be retained by a title insurer; requiring notification
279 when the collection of an assessment is completed;
280 requiring an accounting of assessments paid and surcharges
281 collected; providing for disposition of surcharges
282 collected in excess of the amount assessed; amending s.