

1 A bill to be entitled
2 An act relating to title insurance; providing legislative
3 intent; requiring the Department of Financial Services to
4 review the regulatory structure of the title insurance
5 industry and submit findings and recommendations to the
6 Legislature; repealing s. 627.7865, F.S., relating to
7 assessments against title insurers; creating s. 631.400,
8 F.S.; requiring rehabilitation plans for title insurers in
9 receivership to provide for specified matters; requiring a
10 plan to provide that title insurance policies on real
11 property in this state remain in force under certain
12 circumstances; requiring a plan to authorize cancellation
13 of title insurance policies on real property in other
14 states under certain circumstances; requiring a
15 rehabilitation plan for title insurers in receivership to
16 allocate a percentage of estate assets to pay claims on
17 certain in-state and out-of-state policies; providing a
18 methodology for the allocation of funds to pay claims on
19 out-of-state policies; providing procedures and
20 requirements for the imposition and payment of assessments
21 by title insurers relating to the rehabilitation of other
22 title insurers; providing a methodology for determining
23 assessment amounts; providing exemptions and limitations
24 relating to assessments otherwise payable by a title
25 insurer under certain circumstances; authorizing a
26 receiver of a title insurer in rehabilitation to use
27 assessment proceeds for certain purposes relating to
28 policy obligations; requiring the receiver to make

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29 available certain information quarterly; barring a title
30 insurer's release from rehabilitation until the recovery
31 of assessments by contributing title insurers; prohibiting
32 the release of insurers in rehabilitation and the issuance
33 of new policies under certain circumstances; creating s.
34 631.401, F.S.; providing procedures, requirements, and
35 criteria relating to the recovery of assessments by
36 contributing title insurers through surcharges on
37 policies; specifying that surcharges are governmental
38 assets and are to be separately stated on any settlement
39 statement; prohibiting an insurer from retaining
40 surcharges in excess of the assessments paid; providing
41 for payment of excess surcharges to the Insurance
42 Regulatory Trust Fund; creating s. 631.402, F.S.;
43 providing procedures and requirements relating to foreign
44 title insurers placed in receivership; amending ss.
45 627.782 and 701.041, F.S.; conforming cross-references;
46 providing an effective date.

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48 Be It Enacted by the Legislature of the State of Florida:

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50 Section 1. It is the intent of the Legislature that the
51 Department of Financial Services undertake a review of the
52 regulatory structure of the title insurance industry in this
53 state, whereby title insurance agents and agencies are regulated
54 by the Department of Financial Services and title insurance
55 companies are regulated by the Office of Insurance Regulation.
56 The Department of Financial Services is to determine whether

57 effective and efficient oversight may be provided under the
 58 existing regulatory structure or whether consolidation of all
 59 aspects of title insurance regulation under the Department of
 60 Financial Services will provide a more effective and viable
 61 method of regulation. The Office of Insurance Regulation shall
 62 cooperate with the Department of Financial Services in this
 63 undertaking. The Department of Financial Services shall submit a
 64 report of its findings and recommendations to the Speaker of the
 65 House of Representatives and the President of the Senate by
 66 December 31, 2011.

67 Section 2. Section 627.7865, Florida Statutes, is
 68 repealed.

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

71 631.400 Rehabilitation of title insurer.—

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

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

81 (b) That policies on real property located outside this
 82 state may be canceled on a date specified by the receiver and
 83 approved by the court if the state where the property is located

84 does not have statutory provisions to pay future losses on such
 85 policies.

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

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

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

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

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

104 (3) The office shall order an assessment, if requested by
 105 the receiver, on an annual basis in an amount that the receiver
 106 deems sufficient for the payment of known claims, loss
 107 adjustment expenses, and the cost of administering the
 108 rehabilitation expenses. The receiver shall consider the
 109 remaining assets of the insurer in receivership when making a
 110 request for an assessment order to the office. Annual
 111 assessments may continue until no more policies of the title

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112 insurer in rehabilitation are in force or the potential future
113 liability has been satisfied. The office may exempt or limit the
114 assessment of a title insurer if such assessment would result in
115 a reduction to surplus as to policyholders below the minimum
116 required to maintain the insurer's certificate of authority in
117 any state.

118 (4) Assessments shall be based on the total of 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) Title insurers doing business in this state writing no
125 premiums in the previous calendar year shall collect the same
126 per transaction surcharge as provided by s. 631.401. The
127 surcharge collected shall be paid to the receiver within 60 days
128 after the title insurer receives the surcharge from the title
129 agent or agency.

130 (6) Assessments shall be paid to the receiver within 90
131 days after notice of the assessment or pursuant to a quarterly
132 installment plan approved by the receiver. Any insurer that
133 elects to pay an assessment on an installment plan shall also
134 pay a financing charge that is determined by the receiver.

135 (7) The office shall order an emergency assessment if
136 requested by the receiver. The total of any emergency
137 assessment, when added to any annual assessment in a single
138 calendar year, may not exceed the limitation in subsection (8).

139 (8) A title insurer is not required to pay an assessment
140 in any one year which exceeds 3 percent of the insurer's surplus
141 to policyholders as of the end of the previous calendar year or
142 more than 10 percent of the insurer's surplus to policyholders
143 over any consecutive 5-year period. The 10 percent limitation
144 shall be calculated as the sum of the percentages of surplus to
145 policyholders assessed in each of the 5 years comprising the
146 period.

147 (9) Assessments and emergency assessments ordered by the
148 office are assets of the estate and subject to s. 631.154.

149 (10) In an effort to keep in force the policies on real
150 property issued by the title insurer in rehabilitation, the
151 receiver may use the proceeds of an assessment to acquire
152 reinsurance or otherwise provide for the assumption of policy
153 obligations by another insurer.

154 (11) The receiver shall make available information
155 regarding unpaid claims on a quarterly basis.

156 (12) A title insurer in rehabilitation may not be released
157 from rehabilitation until all of the assessed insurers have
158 recovered the amount assessed either through surcharges
159 collected pursuant to s. 631.401 or payments from the insurer in
160 rehabilitation.

161 (13) A title insurer in rehabilitation for which an
162 assessment has been ordered under this section may not issue any
163 new policies until released from rehabilitation.

164 Section 4. Section 631.401, Florida Statutes, is created
165 to read:

166 631.401 Recovery of assessments and assumed policy
167 obligations.—

168 (1) Upon the making of any assessment allowed by s.
169 631.400, the office shall order a surcharge on each title
170 insurance policy thereafter issued insuring an interest in real
171 property in this state. The office shall set the per transaction
172 surcharge in an amount estimated to generate sufficient funds to
173 recover the amount assessed over a period not to exceed 7 years.
174 The amount of the surcharge ordered under this section may not
175 exceed \$25 per transaction for each impaired title insurer. If
176 additional surcharges are needed due to additional title
177 insurers becoming impaired, the office shall order an increase
178 in the amount of the surcharge to reflect the aggregate amount
179 of surcharges needed.

180 (2) The party responsible for payment of the title
181 insurance premium, unless otherwise agreed to by the parties, is
182 responsible for the payment of the surcharge. A surcharge shall
183 not be due or owing as to any policy of insurance issued at the
184 simultaneous issue rate. For all other purposes, the surcharge
185 shall be considered a governmental assessment to be separately
186 stated on any settlement statement. The surcharge is not subject
187 to premium tax or reserve requirements under chapter 625.

188 (3) Each title insurance agent or agency shall collect the
189 surcharge as to each title insurance policy written and remit
190 those surcharges within 60 days to the title insurer on which
191 the policy was written.

192 (4) A title insurer may not retain more in surcharges for
 193 an ordered assessment than the amount of assessment that title
 194 insurer paid.

195 (5) No later than March 1 of each year, each title insurer
 196 shall provide the office with an accounting of assessments paid
 197 and surcharges collected during the previous calendar year. Any
 198 surcharges collected in excess of the amount assessed shall be
 199 paid to the Insurance Regulatory Trust Fund.

200 Section 5. Section 631.402, Florida Statutes, is created
 201 to read:

202 631.402 Receivership of foreign title insurer.-

203 (1) After a foreign title insurer with policies in this
 204 state is placed into receivership by its domiciliary state, the
 205 department may apply to the court for an order appointing the
 206 department as ancillary receiver for the purpose of making an
 207 assessment pursuant to s. 631.400. The receiver may use the
 208 proceeds of the assessment to pay claims, acquire reinsurance,
 209 or otherwise provide for the assumption of policy obligations in
 210 this state by another insurer.

211 (2) If the assets located in this state are insufficient
 212 to pay the administrative costs of the ancillary receivership,
 213 the receiver may request additional funds under s.
 214 631.141(7)(b).

215 Section 6. Paragraph (b) of subsection (2) of section
 216 627.782, Florida Statutes, is amended to read:

217 627.782 Adoption of rates.-

218 (2) In adopting premium rates, the commission must give
 219 due consideration to the following:

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220 (b) A reasonable margin for underwriting profit and
 221 contingencies, including contingent liability ~~under s. 627.7865,~~
 222 sufficient to allow title insurers, agents, and agencies to earn
 223 a rate of return on their capital that will attract and retain
 224 adequate capital investment in the title insurance business and
 225 maintain an efficient title insurance delivery system.

226 Section 7. Paragraph (d) of subsection (6) of section
 227 701.041, Florida Statutes, is amended to read:

228 701.041 Title insurer; mortgage release certificate.—

229 (6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE AGENT.—

230 (d) Liability of a title insurer pursuant to this section
 231 shall be considered to be a title insurance claim on real
 232 property in this state ~~pursuant to s. 627.7865.~~

233 Section 8. This act shall take effect upon becoming a law.