

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1136

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Title Insurance

DATE: April 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Favorable</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1136 revises procedures for dealing with insolvent title insurers. There is no guaranty fund for title insurers in Florida. If funds are necessary to pay the claims of title insurers in rehabilitation, all title insurers doing business in Florida are liable for an assessment to pay those claims. The Department of Financial Services (DFS or receiver) and Office of Insurance Regulation (OIR) determine the amount of money necessary and order an assessment. The title insurers recover the assessment by collecting a surcharge on each title policy issued in Florida. To prevent an insurer from gaining a competitive advantage, each title insurer is required to continue to collect the surcharge until all title insurers have recovered their assessments. Current law provides that surcharges collected in excess of the assessment amount are paid to the state.

This bill creates a mechanism for using excess surcharges to reduce the time that surcharges are collected. It provides that when a company has collected surcharges in excess of the amount it was assessed, the company shall pay the excess to the receiver. The receiver must maintain the money in an excess surcharge account and may use the excess surcharges only:

- To reduce or eliminate the amount of a future assessment for a title insurer currently in receivership or that later enters receivership; or
- To reduce the amount of time that consumers in the state are subject to surcharges by transferring the excess to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments they paid pursuant to s. 631.400 F.S.

If the receiver has no active title insurer receiverships for 12 consecutive months or there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver must be paid to the Insurance Regulatory Trust Fund within the DFS.

The bill also allows the OIR to order an additional surcharge in situations where a surcharge is being collected.

The Insurance Regulatory Trust Fund will receive an indeterminate amount of additional funds based on the requirement that excess surcharges held by DFS be deposited into the trust fund.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>1</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.<sup>2</sup> Title insurance agents and agencies are licensed and regulated by the DFS while title insurance companies are licensed and regulated by the OIR.

### Rehabilitation of a Title Insurer

Chapter 631, F.S., relates to insurer insolvency. Sections 631.400 and 631.401, F.S., specifically govern title insurer insolvency. If the OIR believes an insurer is impaired or insolvent, it notifies the DFS and provides supporting information.<sup>3</sup> The DFS through its Division of Rehabilitation and Liquidation (receiver) may commence a proceeding in circuit court for an order directing that it liquidate or rehabilitate the insurer.<sup>4</sup> Once the court enters an order directing the receiver to rehabilitate a title insurer, the receiver reviews the condition of the insurer and files a plan of rehabilitation with the court for approval.<sup>5</sup> The rehabilitation plan provides that policies on properties located in Florida will remain in force subject the ability to assess other title insurers<sup>6</sup> and provides a mechanism for canceling policies on out of state properties.<sup>7</sup>

### Assessments

There is no guaranty fund for title insurers in Florida. All title insurers doing business in Florida are liable for an assessment to pay unpaid title insurance claims and expenses for any title insurer

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<sup>1</sup> Section 624.608, F.S.

<sup>2</sup> See *Lawyers Title Insurance Co. Inc., v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4<sup>th</sup> DCA 2003).

<sup>3</sup> See s. 631.031, F.S.

<sup>4</sup> See generally ss. 631.031-631.152, F.S.

<sup>5</sup> See s. 631.400(1), F.S.

<sup>6</sup> See s. 631.400(1)(a), F.S.

<sup>7</sup> See s. 631.400(1)(b)-(f), F.S.

ordered into rehabilitation.<sup>8</sup> Before an assessment is ordered, the receiver reviews the condition of the insurer to determine the amount necessary for the payment of known claims, loss adjustment expenses, and the cost of the administration of the rehabilitation expenses.<sup>9</sup> If insurer funds are not sufficient to cover the necessary amount, the receiver requests that the OIR order an assessment.<sup>10</sup> The OIR orders other title insurers<sup>11</sup> to pay assessments based on a pro rata share of the total direct written premium in Florida.<sup>12</sup> The assessment must be paid to the receiver within 90 days.<sup>13</sup>

### **Recovery of the Assessments**

Section 631.401, F.S., provides a mechanism for title insurers to recoup the assessments. When the OIR orders an assessment, it also orders a surcharge on each title policy issued thereafter.<sup>14</sup> The surcharge amount is estimated to allow insurers to recover the assessment amount in not more than seven years.<sup>15</sup> A title insurer cannot retain more in surcharges for an assessment than the amount paid.<sup>16</sup> Section 631.401(1), F.S., allows the OIR to increase the surcharge if additional insurers become impaired but does not allow the OIR to increase the surcharge if additional assessments are needed for one insurer. The OIR reports that the inability to increase the surcharge can result in accounting difficulties for the OIR and the insurers.<sup>17</sup>

Each title insurer is required to continue to collect the surcharge until all title insurers have recovered their assessments.<sup>18</sup> This prevents a title insurer from gaining a competitive advantage by selling policies without a surcharge while other title insurance continue to collect a surcharge.<sup>19</sup> Each title insurer is required to notify the OIR when it has recovered its assessed amount and the OIR notifies all companies to cease collecting surcharges once each company has recovered its assessed amount.<sup>20</sup>

Any surcharges collected in excess of the amount assessed are paid to the Insurance Regulatory Trust Fund.<sup>21</sup>

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<sup>8</sup> See s. 631.400(2), F.S.

<sup>9</sup> See s. 631.400(3), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> According to information provided by the DFS, there are 18 title insurers authorized to do business in Florida.

<sup>12</sup> See s. 631.400(4), F.S.

<sup>13</sup> See s. 631.400(5), F.S. The statute also allows companies to pay the receiver through an installment plan.

<sup>14</sup> See s. 631.401(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> See s. 631.401(5), F.S.

<sup>17</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

<sup>18</sup> See s. 631.401(6), F.S.

<sup>19</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

<sup>20</sup> See s. 631.401(6), F.S.

<sup>21</sup> See s. 631.401(7), F.S.

### **Experience with Title Insurers in Receivership**

Sections 631.400 and 631.401, F.S., were enacted in 2011.<sup>22</sup> Since the enactment of the statutes, assessments and surcharges have been ordered for two title insurer receiverships.<sup>23</sup> There is currently a \$3.28 surcharge on title insurance policies that has been in effect since September 2014.<sup>24</sup> Excess surcharges have not been collected thus far but it is anticipated that excess surcharges will be collected in the future.

### **III. Effect of Proposed Changes:**

This bill amends s. 631.401(1), F.S., to allow the OIR to order an additional surcharge in situations where a surcharge is currently in effect but the OIR determines that an additional surcharge is necessary. According to the OIR, this will reduce accounting problems that could arise in situations where multiple surcharges are imposed.<sup>25</sup>

This bill provides a mechanism in s. 631.401(6), F.S., for dealing with the collection of excess surcharges. It provides that when a company has collected surcharges in excess of the amount it was assessed, the company shall pay the excess to the receiver. The receiver must maintain the money in an excess surcharge account and may use the excess surcharges only:

- To reduce or eliminate the amount of a future assessment for a title insurer currently in receivership or that later enters receivership; or
- To reduce the amount of time that consumers in the state are subject to surcharges by transferring excess surcharges to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments they paid pursuant to s. 631.400, F.S.

If the receiver has no active title insurer receiverships for 12 consecutive months or if there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver shall be paid to the Insurance Regulatory Trust Fund.

The bill also amends the following subsections of s. 631.401, F.S., to revise and clarify the title insurance assessment process:

- Section 631.401(5), F.S., to provide that a title insurer may not retain more in surcharges than the amount of aggregate assessments paid by that insurer. Any surcharges collected in excess of the amount of the aggregate assessments paid by a title insurer must be paid to the receiver.
- Section 631.401(2), F.S., to provide that the surcharge will be listed on the settlement statement as a “surcharge” and clarify that the surcharge is not premium and is not subject to premium tax.
- Section 631.401(3), F.S., to provide that title insurers not subject to a particular assessment must still collect the surcharge and remit the surcharge to the receiver.

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<sup>22</sup> See ch. 2011-226, L.O.F.

<sup>23</sup> See *In re: 2012 Title Insurance Assessment for the Rehabilitation of National Title Insurance Company*, OIR Case No. 127302-12 (September 4, 2012) and *In re: 2014 Title Insurance Assessment for the Rehabilitation of K.E.L. Title Insurance Company*, OIR Case No. 150289-14 (June 5, 2014).

<sup>24</sup> Interview with the staff of the DFS and the OIR.

<sup>25</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

- Section 631.401(4), F.S., to provide that surcharges do not need to be remitted by agents to insurers with the premium. This is to avoid co-mingling of premium and surcharge funds.
- Section 631.401(9), F.S., to provide that the Financial Services Commission may adopt rules specifying procedures for the collection, use, and transfer of surcharges, including excess surcharges and the DFS may adopt rules for claiming, distributing, and using excess surcharge funds held by the receiver.

This bill provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

CS/SB 1136 could have the effect of reducing the time that surcharges are collected. This would reduce the amount paid by purchasers of title insurance.

##### **C. Government Sector Impact:**

The Insurance Regulatory Trust Fund will receive an indeterminate amount of additional funds based upon the requirement for excess surcharges held by the DFS to be deposited into the trust fund.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 631.401 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment that:

- Revised current law to allow the OIR to end the collection of assessment recovery surcharges once all active title insurers have recovered their assessment payment, rather than continuing the surcharges until all title insurers that paid the assessment have recovered their payment.
- Clarified a provision to provide that excess surcharges can only be used to fund the claims and expenses of insolvent title insurers or to fund the unpaid assessment recovery balance of title insurers that are slow to recover their assessment payments.
- Corrected the entity receiving rulemaking authority under the bill to reflect the Financial Services Commission as the agency head of the OIR and added rulemaking authority for the DFS to allow it to create a process to claim against and distribute funds from the excess surcharge account created by the bill.
- Revised the condition precedent to paying the excess surcharges held by the receiver into the Insurance Regulatory Trust Fund.

- B. **Amendments:**

None.