

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 413 Title Insurance

SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Hager

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee	17 Y, 0 N, As CS	Lloyd	Hamon

SUMMARY ANALYSIS

Purchasers of real property and lenders utilize title insurance to protect their interests against claims by others to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend against adverse claims on the subject property's 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 insurer.

Title insurers are regulated by the Office of Insurance Regulation (OIR). Among other things, Florida law provides that a title insurer cannot assume a risk that exceeds one half of its surplus. However, the title insurer may underwrite a risk that exceeds this limit if it simultaneously reinsures the excess amount. They must do this using one or more approved title insurers. There are 42 jurisdictions that have higher or no limits (21 states) related to a single title insurance risk.

Insurers purchase insurance of their own, which is known as reinsurance. Through reinsurance a reinsurer assumes a certain amount of the risk underwritten by the primary insurer in exchange for a share of the premium of the underlying policy. This spreads risks across the industry and provides the primary insurer with access to additional capital. The reinsurance market is global; however, in regard to title insurance, reinsurance may only be purchased from other title insurers in the state.

The bill increases the limit that a single title insurer can assume, whether as a primary risk or as assumed reinsurance or coinsurance, from one half of the dollar value of its surplus to the full amount of its surplus. It also allows the title insurer to purchase reinsurance for any amounts underwritten in excess of their statutory risk limitation from any eligible reinsurer. This expands the number of insurers that may provide title insurance reinsurance from only Florida's title insurers to the many reinsurers participating in the Florida market.

The bill has no fiscal impact on state or local government. It has an indeterminate positive impact on the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by: encumbrance; defective title; invalidity; or adverse claim to title.¹ Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including: forgery; fraud; liens; and encumbrances on a title. 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 to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty by the title insurer to defend against adverse claims on the subject property's 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 insurer.²

Title insurers are regulated by the Office of Insurance Regulation (OIR) and are subject to the provisions of ch. 627, F.S., Part XIII, Title Insurance Contracts. Section 627.778, F.S., among other things, limits the amount of risk that a title insurer can assume in coverage of an estate, lien, or interest in property in the state.³ The title insurer cannot assume a risk that exceeds one half of its surplus.⁴ However, the title insurer may underwrite a risk that exceeds this limit if they simultaneously reinsure the amount of the risk in excess of the limit. They must do this using one or more approved title insurers.^{5, 6} This results in the primary and reinsurance title insurance risks competing in the same market with a limited number of insurers.⁷

Florida is among the minority of states with a single risk limit at this level or that are more restrictive. Forty-two states, including the District of Columbia, have higher or no single risk limits (21 states have no limitation in this regard). While Florida's risk limit is similar to the single risk limit found in the National Association of Insurance Commissioners Title Insurers Model Act,⁸ Florida's single risk limit does not take statutory premium reserves into account, which could significantly increase the allowable single risk retention, if utilized.⁹

¹ s. 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

² See, e.g., AMERICAN LAND TITLE ASSOCIATION (ALTA), <http://www.alta.org> (last visited Nov. 10, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies. AMERICAN LAND TITLE ASSOCIATION, *Title Insurance: A Comprehensive Overview*, <http://www.alta.org/about/TitleInsuranceOverview.pdf> (last visited Nov. 10, 2015).

³ This limitation is applicable to both primary risk assumed by the title insurer and any reinsurance or coinsurance it issues to other title insurers. s. 627.778(1), F.S.

⁴ "Surplus" is the amount by which assets exceed liabilities. BEST'S INSURANCE RESOURCES, *Glossary of Insurance Terms*, <http://www.ambest.com/resource/glossary.html> (last visited Nov. 13, 2015).

⁵ The Insurance Code does not define or commonly use the term "approved insurer." This term is conventionally accepted to mean "authorized insurer," which is defined under section 624.09, F.S., and means an insurer that holds a certificate of authority issued by the OIR.

⁶ Title insurance is a mono-line product, meaning that an insurer is prohibited from transacting title insurance in combination with any other line of insurance. s. 627.786, F.S. Since title insurance is a mono-line risk, only other authorized title insurers may be used to reinsure or coinsure title insurance risks.

⁷ There are 18 title insurance companies participating in the state according to the OIR web site. FLORIDA OFFICE OF INSURANCE REGULATION, *Active Company Search*, <http://www.floir.com/CompanySearch/> (last visited Nov. 13, 2015), "Company Type" search term limited to "Title Insurance."

⁸ "The net retained liability of a title insurer for a single risk in regard to property, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent (50%) of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the commissioner." Section 8. A. Single Risk Limit, Title Insurers Model Act, MDL-628, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, *Products & Services*, <http://www.naic.org/store/free/MDL-628.pdf> (last visited Nov. 16, 2015).

⁹ According to financial data published by the ALTA, nationwide aggregate statutory surplus is approximately \$3.81 billion and statutory reserve is \$3.76 billion. AMERICAN LAND TITLE ASSOCIATION (ALTA), *Industry Financial Data*, <http://www.alta.org/industry/financial.cfm> (last visited Nov. 16, 2015).

Reinsurance

An insurer limits their risk of loss by purchasing insurance of their own. This is known as reinsurance.¹⁰ Through reinsurance a reinsurer assumes a certain amount of the risk underwritten by the primary insurer in exchange for a share of the premium of the underlying policy. This spreads risks across the industry and provides the primary insurer with access to additional capital. The reinsurance market is global;¹¹ however, in regard to title insurance, reinsurance may only be purchased from other title insurers in the state.¹² Reinsurers do not pay claims directly to policyholders; rather, the reinsurer reimburses the primary insurer for excess benefits paid.

Effect of the Bill

The bill increases the limit that a single title insurer can assume, whether as a primary risk or as assumed reinsurance or coinsurance, from one half of the dollar value of its surplus to the full amount of its surplus. It also allows the title insurer to purchase reinsurance for any amounts underwritten in excess of their statutory risk limitation from any eligible reinsurer. This expands the number of insurers that may provide title insurance reinsurance from only Florida's title insurers to the many reinsurers participating in the Florida market.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.778, F.S., relating to limit of risk.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands the amount of risk that a single title insurer can underwrite and allows reinsurance to be obtained from a larger class of insurers. This should benefit the private sector to the extent that it reduces the burdens on consumers and title insurance companies when they are attempting to

¹⁰ INSURANCE INFORMATION INSTITUTE, *Glossary*, <http://www.iii.org/services/glossary> (last viewed Nov. 19, 2015).

¹¹ Section 624.610, F.S., establishes certain criteria related to reinsurers that allow the OIR to grant accounting credit for premiums ceded to reinsurers. The OIR reports that 19 reinsurers have established their eligibility pursuant to statute. FLORIDA OFFICE OF INSURANCE REGULATION, *Eligible Reinsurers*, <http://www.floir.com/sections/pandc/eligiblereinsurers.aspx> (last viewed Nov. 19, 2015).

¹² See footnote 6, above.

underwrite high value risks and it allows title insurers access to more capital when they are required to place excess risk with a reinsurer.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment removed a proposed exception allowing title insurance reinsurance to be purchased from reinsurers with a specified financial strength rating. Instead, it allows title insurance reinsurance to be obtained from any eligible reinsurer.

On January 14, 2016, the Regulatory Affairs Committee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment made a technical change and revised an additional portion of the same subsection of law to make a parallel reference consistent with the language and purpose of the bill.

The staff analysis has been updated to reflect the committee substitute.