

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 548

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Richter

SUBJECT: Title Insurance

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier/Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently, the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

There is no fiscal impact to state funds.

This bill takes effect July 1, 2016.

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.¹ Title insurance

¹ See s. 624.608, F.S.

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.² Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (DFS) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (OIR).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders³ unless the excess is reinsured by one or more approved insurers.⁴ Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.⁵ A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.⁶ Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.⁷ Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected to be lower.⁸ Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.⁹ The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.¹⁰

Authorized Insurers

Section 627.778, F.S., references “approved” insurers. However, “approved” is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.¹¹ Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when

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

³ The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. See s. 627.778(2), F.S.

⁴ See s. 627.778(1), F.S.

⁵ According to one commenter, twenty states have no single risk limit for title insurance. See James L. Gosdin, *Title Insurance: A Comprehensive Overview*, pp. 458-60 (2007)

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gb_s_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).

⁶ See James L. Gosdin, *Title Insurance: A Comprehensive Overview*, p. 101 (2007)(

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gb_s_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).

¹⁰ See http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).

¹¹ See s. 624.310(2), F.S.

the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when reinsurance is ceded to an “accredited” reinsurer¹² or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.¹³

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.¹⁴ Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer¹⁵ for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.¹⁶ Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;¹⁷ or
- A reinsurer that maintains a trust fund¹⁸ in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.¹⁹ The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of \$250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.²⁰

III. Effect of Proposed Changes:

This bill increases the limit of risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit of risk is one-half of the company’s surplus as to policyholders.

If the limit of risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company’s surplus as to policyholders must be reinsured by “approved” insurers but does not define the term “approved.”

¹² See s. 624.310(3)(b), F.S.

¹³ See s. 624.310(3)(c), F.S.

¹⁴ “Reinsurance,” *Merriam-Webster.com*, <http://www.merriam-webster.com/dictionary/reinsurance> (last accessed Nov. 17, 2015).

¹⁵ The insurer purchasing reinsurance and thus ceding risk to the other insurer.

¹⁶ See s. 624.610(2), F.S.

¹⁷ See s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state’s authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than \$20 million.

¹⁸ See s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.

¹⁹ See s. 624.610(2)(d), F.S.

²⁰ See s. 624.610(2)(e)-(g), F.S.

The bill provides that reinsurance must be provided by “authorized” insurers, which are defined in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.²¹

This bill takes effect on July 1, 2016.

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:

Proponents of CS/CS/SB 548 state that increasing the limit of risk will allow title insurers to insure larger commercial risks without purchasing as much reinsurance which would lower costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

²¹ See s. 624.09, F.S.

IX. Additional Information:

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

CS/CS by Appropriations on February 18, 2016:

The CS makes adds technical, clarifying language to include authorized reinsurers that provide reinsurance in addition to authorized insurers.

CS by Banking and Insurance on November 17, 2015:

The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of “A” or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

- B. **Amendments:**

None.