

CHAPTER 2014-132

Committee Substitute for Committee Substitute for House Bill No. 805

An act relating to title insurer reserves; amending s. 625.041, F.S.; revising criteria with respect to liabilities charged against assets in determinations of financial condition; amending s. 625.111, F.S.; specifying the reserves certain title insurers must set aside after a certain date; specifying the manner in which reserves must be released; specifying which state law governs the amount of the reserve for a title insurer who transfers domicile to this state; providing that a domestic title insurer is not required to record separate bulk reserves; requiring a domestic title insurer to obtain approval from the Office of Insurance Regulation before using or recording a bulk reserve; revising and providing definitions; amending ss. 624.407 and 624.408, F.S.; conforming cross-references; amending s. 624.509, F.S.; revising provisions relating to premium taxes paid by insurers; providing that the tax does not apply to any portion of the premium retained by a title insurance agent or agency; providing legislative intent; requiring certified title insurers to add a specified number of jobs within a certain time; providing for expiration; amending s. 627.7711, F.S.; conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Section 625.041, Florida Statutes, is amended to read:

625.041 Liabilities, in general.—In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(1) The amount, estimated in accordance consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or before prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

(2) With respect to title insurance, the amount, estimated in accordance with this code, necessary to pay all of its known unpaid losses and claims incurred on or before the date of statement, together with the expenses of adjustment or settlement thereof. This requirement is in addition to the reserves required under s. 625.111.

(3)(2) With respect ~~reference~~ to life and health insurance and annuity contracts:

(a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto.

(b) Reserves for disability benefits, for both active and disabled lives.

(c) Reserves for accidental death benefits.

(d) Any additional reserves that may be required by the office in accordance consistent with practice formulated or approved by the National Association of Insurance Commissioners or its successor organization, on account of such insurance, including contract and premium deficiency reserves.

~~(4)(3)~~ With respect ~~reference~~ to insurance other than that specified in subsections subsection (2) and (3), and ~~other than title insurance~~, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this part.

~~(5)(4)~~ Taxes, expenses, and other obligations due or accrued at the date of the statement.

~~(6)(5)~~ An ~~Any~~ insurer in this state that writes workers' compensation insurance shall accrue a liability on its financial statements for all Special Disability Trust Fund assessments that are due within the current calendar year. ~~In addition,~~ Those insurers shall also disclose in the notes to the financial statements required to be filed pursuant to s. 624.424 an estimate of future Special Disability Trust Fund assessments, if the assessments are likely to occur and can be estimated with reasonable certainty.

Section 2. Section 625.111, Florida Statutes, is amended to read:

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims, as required under s. 625.041, a domestic title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. ~~The sums required under this section to be reserved for unearned premiums on title guarantees and policies at all times and for all purposes shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the such insurer in determining its financial condition. While Such sums are so reserved funds, they shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies in the event of the insolvency of the insurer. Nothing contained in This section does not shall preclude the such insurer from investing such reserve in investments authorized by law, for such an insurer and the income from such investments invested reserve shall be included in the general income of the insurer and may to be used by such insurer for any lawful purpose.~~

(1) For an unearned premium reserve reserves established on or after July 1, 1999, such ~~unearned premium reserve must be in~~ shall consist of ~~not less than~~ an amount at least equal to the sum of paragraphs (a), (b), and (d) for title insurers holding less than \$50 million in surplus as to policyholders

as of the previous year end and the sum of paragraphs (c) and (d) for title insurers holding \$50 million or more in surplus as to policyholders as of the previous year end:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with ~~provisions of law of this state law~~ in effect at the time the associated premiums were written or assumed and as amended ~~before~~ prior to July 1, 1999.

(b) A total amount equal to 30 cents for each \$1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of any liability ceded in reinsurance.

(c) On or after January 1, 2014, for title insurers holding \$50 million or more in surplus as to policyholders as of the previous year end, a minimum of 6.5 percent of the total of the following:

1. Direct premiums written; and

2. Premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the office with such reserve being subsequently released as provided in subsection (2). Title insurers with less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with paragraph (b).

~~(d)(e)~~ An additional amount, if deemed necessary by a qualified actuary, ~~to which shall be~~ subsequently released as provided in subsection (2). Using financial results as of December 31 of each year, all domestic title insurers shall obtain a Statement of Actuarial Opinion from a qualified actuary regarding the insurer's loss and loss adjustment expense reserves, including reserves for known claims, ~~adverse development on known claims~~, incurred but not reported claims, and unallocated loss adjustment expenses. The actuarial opinion ~~must shall~~ conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. If the amount of the reserve stated in the opinion and displayed in Schedule P of the annual statement for that reporting date is greater than the sum of the known claim reserve and unearned premium reserve as calculated under this section, as of the same reporting date and including any previous actuarial provisions added at earlier dates, the insurer shall add to the insurer's unearned premium

reserve an actuarial amount equal to the reserve shown in the actuarial opinion, minus the known claim reserve and the unearned premium reserve, as of the current reporting date and calculated in accordance with this section, but not in no event calculated as of any date before prior to December 31, 1999. The comparison shall be made using that line on Schedule P displaying the Total Net Loss and Loss Adjustment Expense which is comprised of the Known Claim Reserve, and any associated Adverse Development Reserve, the reserve for Incurred But Not Reported Losses, and Unallocated Loss Adjustment Expenses.

(2)(a) With respect to reserves ~~the reserve~~ established in accordance with:

(a) Paragraph (1)(a), the domestic title insurer shall release the reserve over the subsequent ~~a period of 20 subsequent~~ years as provided in this paragraph. The insurer shall release 30 percent of the initial aggregate sum during 1999, with one quarter of that amount being released on March 31, June 30, September 30, and December 31, 1999, with the March 31 and June 30 releases to be retroactive and reflected on the September 30 financial statements. Thereafter, the insurer shall release, on the same quarterly basis as specified for reserves released during 1999, a percentage of the initial aggregate sum as follows: 15 percent during calendar year 2000, 10 percent during each of calendar years 2001 and 2002, 5 percent during each of calendar years 2003 and 2004, 3 percent during each of calendar years 2005 and 2006, 2 percent during each of calendar years 2007-2013, and 1 percent during each of calendar years 2014-2018.

(b) ~~With respect to reserves established in accordance with Paragraph (1)(b),~~ the unearned premium for policies written or title liability assumed during a particular calendar year shall be earned, and released from reserve, over the subsequent ~~a period of 20 subsequent~~ years as provided in this paragraph. The insurer shall release 30 percent of the initial sum during the year following next ~~succeeding~~ the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year. Thereafter, the insurer shall release, on the same quarterly basis as specified for reserves released during the year following first ~~succeeding~~ the year the premium was written or assumed, a percentage of the initial sum as follows: 15 percent during the next succeeding year, 10 percent during each of the next succeeding 2 years, 5 percent during each of the next succeeding 2 years, 3 percent during each of the next succeeding 2 years, 2 percent during each of the next succeeding 7 years, and 1 percent during each of the next succeeding 5 years.

(c) Paragraph (1)(c), the unearned premium for policies written or title liability assumed during a particular calendar year shall be earned, and released from reserve, over the subsequent 20 years at an amortization rate not to exceed the formula in this paragraph. The insurer shall release 35 percent of the initial sum during the year following the year the premium was written or assumed, with one quarter of that amount being released on

March 31, June 30, September 30, and December 31 of such year. Thereafter, the insurer shall release, on the same quarterly basis, as specified for reserve released during the year following the year the premium was written or assumed, a percentage of the initial sum as follows: 15 percent during each year of the next succeeding 2 years, 10 percent during the next succeeding year, 3 percent during each of the next succeeding 3 years, 2 percent during each of the succeeding 3 years, and 1 percent during each of the next succeeding 10 years.

~~(d)(e)~~ With respect to reserves established in accordance with Paragraph (1)(d) (1)(e), any additional amount established in any calendar year shall be released in the years subsequent to its establishment as provided in paragraph (c) (b), with the timing and percentage of releases being in all respects identical to those of unearned premium reserves that are calculated as provided in paragraph (c) (b) and established with regard to premiums written or liability assumed in reinsurance in the same year as the year in which any additional amount was originally established.

(3) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the statutory or unearned premium reserve shall be the amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile and shall be released from reserve according to the requirements of law in effect in the former state at the time of domicile. On or after January 1, 2014, for new business written after the effective date of the transfer of domicile to this state, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subsection (1).

~~(4)(3)~~ At any reporting date, the amount of the required releases of existing unearned premium reserves under subsection (2) shall be calculated and deducted from the total unearned premium reserve before any additional amount is established for the current calendar year in accordance with the provisions of paragraph (1)(d) (1)(e).

(5) A domestic title insurer is not required to record a separate bulk reserve. However, if a separate bulk reserve is recorded, the statutory premium reserve must be reduced by the amount recorded for such bulk reserve. A domestic title insurer must obtain approval from the office before using or recording a bulk reserve.

~~(6)(4)~~ As used in this section, the term:

(a) "Bulk reserve" means provision for subsequent development on known claims.

(b)(a) "Net retained liability" means the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.

~~(c)(b)~~ “Qualified actuary” means a person who is, as detailed in the National Association of Insurance Commissioners’ Annual Statement Instructions:

1. A member in good standing of the Casualty Actuarial Society;
2. A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or
3. A person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days before ~~prior to the~~ filing of its annual statement, the insurer must request ~~approval~~ that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners’ Biographical Form and a list of all loss reserve opinions issued in the last 3 years by this person.

~~(d)(e)~~ “Single risk” means the insured amount of a ~~any~~ title insurance policy, except that where two or more title insurance policies are issued simultaneously covering different estates in the same real property, “single risk” means the sum of the insured amounts of all such ~~title insurance~~ policies. A ~~Any~~ title insurance policy insuring a mortgage interest, a claim payment under which reduces the insured amount of a fee or leasehold title insurance policy, shall be excluded in computing the amount of a single risk to the extent that the insured amount of the mortgage title insurance policy does not exceed the insured amount of the fee or leasehold title insurance policy.

Section 3. Subsection (5) of section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required; new insurers.—

(5) For the purposes of this section, liabilities do not include liabilities required under s. 625.041(5) ~~625.041(4)~~. For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities include liabilities required under s. 625.041(5) ~~625.041(4)~~.

Section 4. Subsection (2) of section 624.408, Florida Statutes, is amended to read:

624.408 Surplus required; current insurers.—

(2) For purposes of this section, liabilities do not include liabilities required under s. 625.041(5) ~~625.041(4)~~. For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities include liabilities required under s. 625.041(5) ~~625.041(4)~~.

Section 5. Effective January 1, 2015, subsection (8) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(8) ~~From and after July 1, 1980,~~ The premium tax authorized by this section ~~may shall~~ not be imposed ~~on: upon~~

(a) Any portion of the title insurance premium, as defined in s. 627.7711, retained by a title insurance agent or agency. It is the intent of the Legislature that the continuation of this exemption be contingent on title insurers adding employees to their payroll. Between July 1, 2014, and July 1, 2016, title insurers currently holding a valid certificate of authority from this state shall, in the aggregate, add a minimum of 600 Florida-based employees to their payroll, as verified by the Department of Economic Opportunity. The department shall submit such verification to the President of the Senate and the Speaker of the House of Representatives by October 1, 2016. This paragraph expires December 31, 2017, unless reenacted by the Legislature before that date; or

(b) Receipts of annuity premiums or considerations paid by holders in this state if the tax savings derived are credited to the annuity holders. Upon request by the Department of Revenue, an any insurer availing itself of this provision shall submit to the department evidence that which establishes that the tax savings derived have been credited to annuity holders. As used in this paragraph subsection, the term “holders” includes shall be deemed to include employers contributing to an employee’s pension, annuity, or profit-sharing plan.

Section 6. Subsection (2) of section 627.7711, Florida Statutes, is amended to read:

627.7711 Definitions.—As used in this part, the term:

(2) “Premium” means the charge, as specified by rule of the commission, which that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy, under the several classifications of title insurance contracts and forms, ~~and upon which charge a premium tax is paid under s. 624.509.~~ As used in this part or in any other law, with respect to title insurance, the word “premium” does not include a commission.

Section 7. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.