

CHAPTER 2014-112

Committee Substitute for Committee Substitute for House Bill No. 321

An act relating to title insurance; 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 that 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; revising and providing definitions; amending ss. 624.407 and 624.408, F.S.; conforming cross-references; amending s. 626.8412, F.S.; specifying that only a licensed and appointed agent or agency is authorized to sell title insurance; amending s. 626.8413, F.S.; providing additional limitations on the name that a title agent or agency may adopt; providing applicability; amending s. 626.8417, F.S.; conforming provisions to changes made by the act; amending s. 626.8418, F.S.; revising the application requirements for a title insurance agency license; deleting certain bonding requirements and procedures; amending s. 626.8419, F.S.; conforming provisions to changes made by the act; amending s. 626.8437, F.S.; revising terms relating to grounds for actions against a licensee or appointee; amending s. 627.778, F.S.; limiting the remedies available for the breach of duty arising from a title insurance contract; amending s. 627.782, F.S.; revising the date by which certain information relating to title insurance rates must be submitted to the Office of Insurance Regulation by title insurance agencies and insurers; amending s. 627.7845, F.S.; revising terms relating to determination of insurability and preservation of evidence of title search and examination; providing an effective date.

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~~ 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-fourth 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. Paragraph (a) of subsection (1) of section 626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(a) Title insurance may be sold only by a licensed and appointed title insurance agent employed by a licensed and appointed title insurance agency or employed by a title insurer.

Section 6. Section 626.8413, Florida Statutes, is amended to read:

626.8413 Title insurance agents; certain names prohibited.—After October 1, ~~2014~~ 1985, a title insurance agent or title insurance agency may as defined in s. 626.841 shall not adopt a name that which contains the words “title insurance,” “title company,” “title guaranty,” or “title guarantee,” unless such words are followed by the word “agent” or “agency” in the same size and type as the words preceding ~~it them~~. This section does not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance business in this state and both are acting under the names designated on such certificates.

Section 7. Section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(1) A person may not act as a title insurance agent ~~as defined in s. 626.841~~ until a valid title insurance agent’s license has been issued to that person by the department.

(2) An application for license as a title insurance agent shall be filed with the department on ~~printed~~ forms furnished by the department.

(3) The department ~~may~~ shall not grant or issue a license as a title insurance agent to an any individual who is found by the department ~~it~~ to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a 40-hour classroom course in title insurance, 3 hours of which are ~~shall be~~ on the subject matter of ethics, as approved by the department, or must have had at least 12 months of

experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4) pursuant to paragraph (4)(a). If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the license application for license on a form prescribed by the department, an the affidavit of the applicant and of the employer affirming setting forth the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

(b) The applicant must have passed any examination for licensure required under s. 626.221.

(4)(a) Title insurers or attorneys duly admitted to practice law in this state and in good standing with The Florida Bar are exempt from the provisions of this chapter relating with regard to title insurance licensing and appointment requirements.

(5)(b) An insurer may designate a corporate officer of the insurer to occasionally issue and countersign binders, commitments, and policies of title insurance policies, or guarantees of title. The A designated officer is exempt from the provisions of this chapter relating with regard to title insurance licensing and appointment requirements while the officer is acting within the scope of the designation.

(6)(e) If an attorney owns or ~~attorneys own~~ a corporation or other legal entity that which is doing business as a title insurance agency, other than an entity engaged in the active practice of law, the agency must be licensed and appointed as a title insurance agent.

Section 8. Section 626.8418, Florida Statutes, is amended to read:

626.8418 Application for title insurance agency license.—~~Before~~ Prior to doing business in this state as a title insurance agency, a title insurance agency must meet all of the following requirements:

(1) the applicant must file with the department an application for a license as a title insurance agency, on ~~printed~~ forms furnished by the department, which ~~that~~ includes all of the following:

(1)(a) The name of each majority owner, partner, officer, and director of the title insurance agency.

(2)(b) The residence address of each person required to be listed under subsection (1) ~~paragraph (a)~~.

(3)(e) The name of the title insurance agency and its principal business address.

(4)(d) The location of each title insurance agency office and the name under which each agency office conducts or will conduct business.

(5)(e) The name of each title insurance agent to be in full-time charge of a title insurance an agency office and specification of which office.

(6)(f) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code.

~~(2)—The applicant must have deposited with the department securities of the type eligible for deposit under s. 625.52 and having at all times a market value of not less than \$35,000. In place of such deposit, the title insurance agency may post a surety bond of like amount payable to the department for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. If a properly documented claim is timely filed with the department by a damaged title insurer, the department may remit an appropriate amount of the deposit or the proceeds that are received from the surety in payment of the claim. The required deposit or bond must be made by the title insurance agency, and a title insurer may not provide the deposit or bond directly or indirectly on behalf of the title insurance agency. The deposit or bond must secure the performance by the title insurance agency of its duties and responsibilities under the issuing agency contracts with each title insurer for which it is appointed. The agency may exchange or substitute other securities of like quality and value for securities on deposit, may receive the interest and other income accruing on such securities, and may inspect the deposit at all reasonable times. Such deposit or bond must remain unimpaired as long as the title insurance agency continues in business in this state and until 1 year after termination of all title insurance agency appointments held by the title insurance agency. The title insurance agency is entitled to the return of the deposit or bond together with accrued interest after such year has passed, if no claim has been made against the deposit or bond. If a surety bond is unavailable generally, the department may adopt rules for alternative methods to comply with this subsection. With respect to such alternative methods for compliance, the department must be guided by the past business performance and good reputation and character of the proposed title insurance agency. A surety bond is deemed to be unavailable generally if the prevailing annual premium exceeds 25 percent of the principal amount of the bond.~~

Section 9. Paragraphs (a), (b), and (c) of subsection (1) of section 626.8419, Florida Statutes, are amended to read:

626.8419 Appointment of title insurance agency.—

(1) The title insurer engaging or employing the title insurance agency must file with the department, on forms furnished by the department, an application certifying that the proposed title insurance agency meets all of the following requirements:

(a) The title insurance agency has ~~must have~~ obtained a fidelity bond in an amount of at least, ~~not less than~~ \$50,000, acceptable to the insurer appointing the agency. If a fidelity bond is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods to comply with this paragraph.

(b) The title insurance agency must have obtained errors and omissions insurance in an amount acceptable to the insurer appointing the agency. The amount of the coverage must be at least ~~may not be less than~~ \$250,000 per claim and an aggregate limit with a deductible no greater than \$10,000. If errors and omissions insurance is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods that ~~to~~ comply with this paragraph.

(c) ~~Notwithstanding s. 626.8418(2),~~ The title insurance agency must have obtained a surety bond in an amount of at least ~~not less than~~ \$35,000 made payable to the title insurer or title insurers appointing the agency. The surety bond must be for the benefit of any appointing title insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer. If the surety bond is payable to multiple title insurers, the surety bond must provide that each title insurer is to be notified if ~~in the~~ event a claim is made upon the surety bond or the bond is terminated.

Section 10. Subsections (3) and (4) of section 626.8437, Florida Statutes, are amended to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(3) Willful misrepresentation of any title insurance policy, ~~guarantee of title, binder, or commitment,~~ or willful deception with regard to any such policy, ~~guarantee, binder, or commitment,~~ done either in person or by any form of dissemination of information or advertising.

(4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments or ~~binders,~~ policies of title insurance, ~~or guarantees of title.~~

Section 11. Subsection (3) is added to section 627.778, Florida Statutes, to read:

627.778 Limit of risk.—

(3) Only contractual remedies are available for a breach of a duty which arises solely from the terms of a contract of title insurance or an instrument issued pursuant to s. 627.786(3).

Section 12. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer’s direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. ~~Such~~ This information shall ~~must~~ be transmitted to the office annually by ~~May~~ March 31 of the year after the reporting year. The commission shall adopt rules relating to ~~regarding~~ the collection and analysis of the data from the title insurance industry.

Section 13. Subsection (2) of section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(2) The title insurer shall cause the evidence of the determination of insurability and the reasonable title search or search of the records of a Uniform Commercial Code filing office to be preserved and retained in its files or in the files of its title insurance agent or agency for at least a period of ~~not less than~~ 7 years after the title insurance commitment ~~or~~, title insurance policy, ~~or guarantee of title~~ was issued. The title insurer or ~~its~~ agent or agency must produce the evidence required to be maintained under ~~by~~ this subsection at its offices upon the demand of the office. Instead of retaining the original evidence, the title insurer or ~~its~~ ~~the title insurance~~ agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process ~~that which~~ that accurately reproduces or forms a durable medium for reproducing the original.

Section 14. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.