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# **Government Operations Appropriations Subcommittee**

**Wednesday, April 13, 2011**

**8:00 AM – 8:15 AM**

**Morris Hall**

**Meeting Packet**

**Dean Cannon  
Speaker**

**Ed Hooper  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Appropriations Subcommittee

**Start Date and Time:** Wednesday, April 13, 2011 08:00 am  
**End Date and Time:** Wednesday, April 13, 2011 08:15 am  
**Location:** Morris Hall (17 HOB)  
**Duration:** 0.25 hrs

**Consideration of the following bill(s):**

CS/HB 1229 Title Insurance by Insurance & Banking Subcommittee, Holder

**NOTICE FINALIZED on 04/11/2011 16:23 by MRI**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1229 Title Insurance  
**SPONSOR(S):** Insurance & Banking Subcommittee, Holder  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee		Fox <i>RF</i>	Topp <i>BST</i>
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Title insurance protects owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. Currently, policies of an insurer in rehabilitation can only remain in force as long as the insurer has sufficient assets to avoid liquidation.

The bill requires the receiver of a title insurer in rehabilitation to file a rehabilitation plan that provides for the following:

- Title insurance policies on real property in Florida are to remain in force, unless assessments on other title insurers would be insufficient to pay the insurer's claims.
- Title insurance policies on real property in other states ("out-of-state policies") that do not statutorily provide for payment of future losses of title insurers in receivership may be cancelled as of a date approved by the court, with a claims filing deadline established.
- Separate allocations of remaining estate assets to fund claims made on out-of-state policies that, respectively, have been cancelled or remain in force, and a formula for determining funds to be allocated to these claims.

When a title insurer is ordered into rehabilitation, all remaining title insurers are liable for an assessment to pay outstanding claims on the insurer's policies covering real property in Florida and associated administrative expenses. Upon the receiver's request, the Office of Insurance Regulation (OIR) is required to order an annual assessment sufficient to pay such amounts, and an annual assessment in subsequent years until specified criteria are met. Assessments are to be based on each title insurer's pro-rata share of direct title insurance premiums written in Florida in the previous calendar year, and cannot exceed specified levels. When an assessment has been ordered, the insurer in rehabilitation cannot issue new policies and cannot be released from rehabilitation until all assessments have been repaid.

To reimburse insurers for assessments paid, the OIR is required to order a surcharge on all subsequently issued title insurance policies on Florida real property. The surcharge cannot exceed \$25 per transaction for each impaired title insurer and must be sufficient to repay all assessments within 7 years.

When a foreign title insurer with Florida policies is placed in receivership by its domiciliary state, the Department of Financial Services (DFS) is authorized to apply for a court order appointing it ancillary receiver for purposes of making assessments on the insurer's Florida policies.

The bill requires the DFS to review the regulatory structure of the title insurance industry in Florida and to submit its findings and recommendations to the Legislature by December 31, 2011.

To the extent that the bill continues in force title insurance policies on real property in Florida, it provides consumer protections to Florida policyholders.

The bill has no fiscal impact on state expenditures.

The bill is effective upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1229a.GOAS.DOCX

DATE: 4/11/2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.<sup>1</sup> Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Most lenders require title insurance when they underwrite loans for real property.<sup>2</sup>

Two state agencies provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS), which regulates title agents and agencies, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurers in Florida operate on a monocline basis, meaning that the insurer can only transact title insurance and no other type of insurance.<sup>3</sup>

#### Insurers in Receivership<sup>4</sup>

Insurance companies are exempted from federal bankruptcy jurisdiction and are instead subject to state law regarding receivership. Under Florida law, the Second Judicial Circuit Court in Leon County (the court) has oversight jurisdiction over insurance company receivership matters. In accordance with Part I of chapter 631, F.S., the "Insurers Rehabilitation and Liquidation Act," the DFS serves as receiver of any Florida insurer placed into receivership. The Division of Rehabilitation and Liquidation within DFS is responsible for performing the DFS's duties as receiver. The DFS as receiver administers the affairs of insurers placed into receivership by the court's conservation order,<sup>5</sup> rehabilitation order, or liquidation order.

#### Rehabilitation

The receiver of an impaired insurer, as the rehabilitator, prepares a plan to assist an insurer to resolve its difficulties, and is responsible for taking actions necessary to correct the conditions that necessitated the receivership as the court may direct. Generally, the receiver suspends all powers of the company's directors, officers, and managers.

By statute and court order:

- The receiver is authorized to conduct all business of the insurer.
- The receiver may direct, manage, hire, and discharge employees.
- The receiver is authorized to manage the property and assets of the insurer as it deems necessary.
- The receiver may file for release of the company from receivership if rehabilitation efforts are successful and grounds for receivership no longer exist.

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<sup>1</sup> Section 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.

<sup>2</sup> See, e.g., the website of the American Land Title Association, <http://www.alta.org> (last accessed March 27, 2011). ALTA is the national trade association of the abstract and title insurance industry.

<sup>3</sup> Section 627.786, F.S.

<sup>4</sup> An overview of the receivership process, including rehabilitation and liquidation, is available from the Department of Financial Services' website at <http://www.myfloridacfo.com/Receiver/>. Additional information is provided in the "2010 Annual Report of the Division of Rehabilitation and Liquidation," also available at this website.

<sup>5</sup> Conservation is the regulatory process by which an insurance company's affairs are administered to preserve the company's assets.

If the receiver determines that further attempts to rehabilitate the insurer are futile or if continued rehabilitation would increase the risk of loss to policyholders, the receiver may file for liquidation of the insurer.

## **Liquidation**

When the DFS determines that a Florida-domiciled insurer is insolvent or is operating in a financially hazardous manner, it petitions the court for an order requiring the insurer to show cause why it should not be placed into liquidation.<sup>6</sup> If the insurer's board of directors either joins in the petition or consents, a liquidation order is issued appointing DFS as receiver to liquidate the insurer; otherwise, a hearing is held to determine whether the petition should be granted.

Under the court's supervision, the receiver as liquidator is charged with gathering (marshaling) the company's assets, converting them into cash, and distributing the cash to the insurer's claimants in accordance with the priority for claims payment established by statute.

After issuance of the liquidation order, the DFS takes possession of the insurer's offices, equipment, records and assets, and notice of the liquidation is sent to all potential claimants advising them of the liquidation and the process to follow to perfect their claim against the insurer's estate. All property and casualty insurance policies are cancelled within 30 days of the liquidation order.

After all assets have been converted to cash, claims prioritized and valued, and any objections to the valuation of claims resolved, the receiver will file a petition with the court asking for authority to distribute the cash according to the priority scheme in statute.

## **Effect of the Bill**

### **Title Insurers Ordered into Rehabilitation**

The bill requires the receiver of a title insurer in rehabilitation to review the insurer's condition, and file a rehabilitation plan, subject to court approval, that provides for the following:

- Title insurance policies covering real property in Florida are to remain in force, unless assessments on other title insurers would be insufficient to pay the insurer's claims in the ordinary course of business.
- Title insurance policies covering real property in other states ("out-of-state policies") that do not statutorily provide for payment of future losses of title insurers in receivership may be cancelled as of a date proposed by the receiver (if approved by the court); with a claims filing deadline proposed for out-of-state policies that are cancelled.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies have been cancelled, with any unused funds returned to the general assets of the insurer's estate.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- That funds allocated to pay claims on out-of-state policies are to be based on the pro-rata share of premiums written in each state over each of the 5 calendar years preceding the date of the order of rehabilitation.

## **Assessments**

As a condition of doing business in the state, Florida title insurers are liable for an assessment to pay all unpaid title insurance claims on policies covering real property in Florida, and the expenses of administering and settling such claims, of a title insurer ordered into rehabilitation. The OIR, upon request of the receiver, is required to order an annual assessment in an amount the receiver considers

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<sup>6</sup> The grounds for liquidation are set forth in s. 631.061, F.S.

sufficient to pay known claims, loss adjustment expenses, and the cost of administration of rehabilitation expenses. In requesting an assessment, the receiver is required to consider the remaining assets of the insurer in receivership. Annual assessments may be made until the insurer in rehabilitation does not have any policies in force or the potential for future liability has been satisfied. Assessments are to be based on each title insurer's pro-rata share of direct title insurance premiums written in Florida in the previous calendar year as reported to the OIR.

The assessment levied against a title insurer cannot exceed 3 percent of an insurer's surplus to policyholders at the end of the previous calendar year or 10 percent of an insurer's surplus to policyholders over any consecutive 5-year period. The 10 percent limitation is to be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years. An emergency assessment may also be ordered, if requested by the receiver. However, the total of the emergency assessment and any annual assessment to be paid by a title insurer in a single calendar year cannot exceed the cap applicable to the annual assessment alone. The OIR may exempt a title insurer from, or limit payment of, the assessment when such payment would reduce the insurer's surplus to policyholders below the minimum required for the insurer to maintain its certificate of authority in another state. Assessments are payable within 90 days or under a quarterly installment plan approved by the receiver, accompanied by applicable finance charges.

Proceeds of assessments may be used by the receiver in an effort to keep in force title policies on Florida real property, including purchasing reinsurance or otherwise providing for the assumption of policy obligations by another insurer. When an assessment has been ordered, the insurer in rehabilitation is barred from issuing new title insurance policies until it is released from rehabilitation. An insurer may not be released from rehabilitation until all title insurers have received full reimbursement for assessments paid.

### **Surcharges**

To reimburse title insurers for assessments paid, the OIR is required to order a surcharge on all subsequently issued title insurance policies on Florida real property. The surcharge cannot exceed \$25 per transaction for each impaired title insurer and the surcharge must be in an amount estimated to be sufficient to recover all amounts assessed within 7 years. If additional title insurers become impaired, the OIR is required to order an increase in the surcharge amount to reflect the aggregate surcharge. The surcharge is to be paid by the party responsible for payment of the title insurance premium, unless otherwise agreed between the parties. Title insurance agents and agencies are required to collect and remit the surcharges to the title insurer upon which a policy is written within 30 days. No surcharge is due or owing as to any policy of insurance issued at the simultaneous issue rate. The surcharge is to be considered a separate governmental assessment to be separately stated on any settlement statement, and is not subject to premium tax or reserve requirements. Title insurers are required to provide the OIR with an accounting, by March 1<sup>st</sup> of each year, of assessments paid and surcharges collected during the previous calendar year. Any surcharges collected by an insurer in excess of the assessment paid are to be paid into the Insurance Regulatory Trust Fund.

### **Foreign Title Insurers in Receivership<sup>7</sup>**

When a foreign title insurer with policies in Florida is placed in receivership by its domiciliary state, the DFS may apply to the court for an order appointing it as ancillary receiver for the purpose of making assessments. The proceeds of such assessments may be used for the payment of claims, to acquire reinsurance, or otherwise provide for the assumption of Florida policy obligations by another insurer. If the assets in Florida are insufficient to pay the administrative costs of the ancillary receivership, the receiver may request additional funds from the Insurance Regulatory Trust Fund.

The bill is effective upon becoming law.

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<sup>7</sup> "Foreign insurer" is defined in s. 624.06, F.S., as an insurer formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.

**B. SECTION DIRECTORY:**

**Section 1:** Sets forth the Legislature's intent that the Department of Financial Services reviews the regulatory structure of the title insurance industry in Florida and submits findings and recommendations by December 31, 2011.

**Section 2:** Repeals s. 627.7865, F.S., which provides for assessments against title insurers when a title insurer is liquidated with unpaid outstanding claims.

**Section 3:** Creates s. 631.400, F.S., providing for assessments (and emergency assessments) against title insurers when a title insurer is ordered into liquidation.

**Section 4:** Creates s. 631.401, F.S., providing for surcharges on title insurance policies to reimburse insurers for assessments paid as a result of an insurer being ordered into rehabilitation.

**Section 5:** Creates s. 631.402, F.S., concerning receivership of foreign title insurers.

**Section 6:** Amends s. 627.782, F.S., making a conforming change.

**Section 7:** Amends s. 701.041, F.S., making a conforming change.

**Section 8:** Provides that the bill is effective upon becoming a law.

**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:**

Florida title insurers will be liable for assessments to pay all outstanding title insurance claims and expenses of administering and settling claims on real property in Florida when a title insurer is ordered into liquidation. Except as otherwise provided, title insurance policies on real property in Florida, will remain in force when the insurer that issued the policy is ordered into rehabilitation. The bill clarifies that the title insurer's expenses and loss adjustment expenses would be part of the assessment. The financial impact of an assessment would be offset by the ability of the title insurers to collect surcharge on future policies until it had recovered the amount of the assessment paid.<sup>8</sup> The surcharge cannot exceed \$25 per transaction for each impaired title insurer and must be sufficient to repay all assessments within 7 years.

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<sup>8</sup> Florida Department of Financial Services, Analysis of HB 1229 dated 4/11/2011, on file with the Government Operations Appropriations Subcommittee.

**D. FISCAL COMMENTS:**

To the extent that a surcharge will be placed on title insurance policies after a title insurer has been ordered into rehabilitation and assessments have been paid by insurers, the cost of title insurance may increase for Florida consumers.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2011, the Insurance & Banking Subcommittee heard a proposed committee substitute and reported the proposed committee substitute favorably. The analysis was updated to reflect adoption of the proposed committee substitute



1 A bill to be entitled

2 An act relating to title insurance; providing legislative  
3 intent; requiring the Department of Financial Services to  
4 review the regulatory structure of the title insurance  
5 industry and submit findings and recommendations to the  
6 Legislature; repealing s. 627.7865, F.S., relating to  
7 assessments against title insurers; creating s. 631.400,  
8 F.S.; requiring rehabilitation plans for title insurers in  
9 receivership to provide for specified matters; requiring a  
10 plan to provide that title insurance policies on real  
11 property in this state remain in force under certain  
12 circumstances; requiring a plan to authorize cancellation  
13 of title insurance policies on real property in other  
14 states under certain circumstances; requiring a  
15 rehabilitation plan for title insurers in receivership to  
16 allocate a percentage of estate assets to pay claims on  
17 certain in-state and out-of-state policies; providing a  
18 methodology for the allocation of funds to pay claims on  
19 out-of-state policies; providing procedures and  
20 requirements for the imposition and payment of assessments  
21 by title insurers relating to the rehabilitation of other  
22 title insurers; providing a methodology for determining  
23 assessment amounts; providing exemptions and limitations  
24 relating to assessments otherwise payable by a title  
25 insurer under certain circumstances; authorizing a  
26 receiver of a title insurer in rehabilitation to use  
27 assessment proceeds for certain purposes relating to  
28 policy obligations; requiring the receiver to make

Page 1 of 9

29 available certain information quarterly; barring a title  
 30 insurer's release from rehabilitation until the recovery  
 31 of assessments by contributing title insurers; prohibiting  
 32 the release of insurers in rehabilitation and the issuance  
 33 of new policies under certain circumstances; creating s.  
 34 631.401, F.S.; providing procedures, requirements, and  
 35 criteria relating to the recovery of assessments by  
 36 contributing title insurers through surcharges on  
 37 policies; specifying that surcharges are governmental  
 38 assets and are to be separately stated on any settlement  
 39 statement; prohibiting an insurer from retaining  
 40 surcharges in excess of the assessments paid; providing  
 41 for payment of excess surcharges to the Insurance  
 42 Regulatory Trust Fund; creating s. 631.402, F.S.;

43 providing procedures and requirements relating to foreign  
 44 title insurers placed in receivership; amending ss.  
 45 627.782 and 701.041, F.S.; conforming cross-references;  
 46 providing an effective date.

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

Section 1. It is the intent of the Legislature that the  
Department of Financial Services undertake a review of the  
regulatory structure of the title insurance industry in this  
state, whereby title insurance agents and agencies are regulated  
by the Department of Financial Services and title insurance  
companies are regulated by the Office of Insurance Regulation.  
The Department of Financial Services is to determine whether

57 effective and efficient oversight may be provided under the  
 58 existing regulatory structure or whether consolidation of all  
 59 aspects of title insurance regulation under the Department of  
 60 Financial Services will provide a more effective and viable  
 61 method of regulation. The Office of Insurance Regulation shall  
 62 cooperate with the Department of Financial Services in this  
 63 undertaking. The Department of Financial Services shall submit a  
 64 report of its findings and recommendations to the Speaker of the  
 65 House of Representatives and the President of the Senate by  
 66 December 31, 2011.

67 Section 2. Section 627.7865, Florida Statutes, is  
 68 repealed.

69 Section 3. Section 631.400, Florida Statutes, is created  
 70 to read:

71 631.400 Rehabilitation of title insurer.—

72 (1) After the entry of an order of rehabilitation, the  
 73 receiver shall review the condition of the insurer and file a  
 74 plan of rehabilitation with the court for approval. The plan of  
 75 rehabilitation shall provide:

76 (a) That policies on real property in this state issued by  
 77 the title insurer in rehabilitation shall remain in force,  
 78 unless the receiver determines the assessment capacity provided  
 79 by this section is insufficient to pay claims in the ordinary  
 80 course of business.

81 (b) That policies on real property located outside this  
 82 state may be canceled on a date specified by the receiver and  
 83 approved by the court if the state where the property is located

84 does not have statutory provisions to pay future losses on such  
 85 policies.

86 (c) A claims filing deadline for policies on real property  
 87 located outside this state that are canceled under paragraph  
 88 (b).

89 (d) A proposed percentage of the remaining estate assets  
 90 to fund out-of-state claims where policies have been canceled,  
 91 with any unused funds returned to the general assets of the  
 92 estate.

93 (e) A proposed percentage of the remaining estate assets  
 94 to fund out-of-state claims where policies remain in force.

95 (f) That the funds allocated to pay claims on policies  
 96 located outside this state shall be based on the pro rata share  
 97 of premiums written in each state over each of the 5 calendar  
 98 years before the date of an order of rehabilitation.

99 (2) As a condition of doing business in this state, each  
 100 title insurer shall be liable for an assessment to pay all  
 101 unpaid title insurance claims and expenses for administering and  
 102 settling the unpaid claims on real property in this state for  
 103 any title insurer that is ordered into rehabilitation.

104 (3) The office shall order an assessment, if requested by  
 105 the receiver, on an annual basis in an amount that the receiver  
 106 deems sufficient for the payment of known claims, loss  
 107 adjustment expenses, and the cost of administering the  
 108 rehabilitation expenses. The receiver shall consider the  
 109 remaining assets of the insurer in receivership when making a  
 110 request for an assessment order to the office. Annual  
 111 assessments may continue until no more policies of the title

112 insurer in rehabilitation are in force or the potential future  
 113 liability has been satisfied. The office may exempt or limit the  
 114 assessment of a title insurer if such assessment would result in  
 115 a reduction to surplus as to policyholders below the minimum  
 116 required to maintain the insurer's certificate of authority in  
 117 any state.

118 (4) Assessments shall be based on the total of direct  
 119 title insurance premiums written in this state as reported to  
 120 the office for the most recent calendar year. Each title insurer  
 121 doing business in this state shall be assessed on a pro rata  
 122 share basis of the total direct title insurance premiums written  
 123 in this state.

124 (5) Title insurers doing business in this state writing no  
 125 premiums in the previous calendar year shall collect the same  
 126 per transaction surcharge as provided by s. 631.401. The  
 127 surcharge collected shall be paid to the receiver within 60 days  
 128 after the title insurer receives the surcharge from the title  
 129 agent or agency.

130 (6) Assessments shall be paid to the receiver within 90  
 131 days after notice of the assessment or pursuant to a quarterly  
 132 installment plan approved by the receiver. Any insurer that  
 133 elects to pay an assessment on an installment plan shall also  
 134 pay a financing charge that is determined by the receiver.

135 (7) The office shall order an emergency assessment if  
 136 requested by the receiver. The total of any emergency  
 137 assessment, when added to any annual assessment in a single  
 138 calendar year, may not exceed the limitation in subsection (8).

139       (8) A title insurer is not required to pay an assessment  
 140 in any one year which exceeds 3 percent of the insurer's surplus  
 141 to policyholders as of the end of the previous calendar year or  
 142 more than 10 percent of the insurer's surplus to policyholders  
 143 over any consecutive 5-year period. The 10 percent limitation  
 144 shall be calculated as the sum of the percentages of surplus to  
 145 policyholders assessed in each of the 5 years comprising the  
 146 period.

147       (9) Assessments and emergency assessments ordered by the  
 148 office are assets of the estate and subject to s. 631.154.

149       (10) In an effort to keep in force the policies on real  
 150 property issued by the title insurer in rehabilitation, the  
 151 receiver may use the proceeds of an assessment to acquire  
 152 reinsurance or otherwise provide for the assumption of policy  
 153 obligations by another insurer.

154       (11) The receiver shall make available information  
 155 regarding unpaid claims on a quarterly basis.

156       (12) A title insurer in rehabilitation may not be released  
 157 from rehabilitation until all of the assessed insurers have  
 158 recovered the amount assessed either through surcharges  
 159 collected pursuant to s. 631.401 or payments from the insurer in  
 160 rehabilitation.

161       (13) A title insurer in rehabilitation for which an  
 162 assessment has been ordered under this section may not issue any  
 163 new policies until released from rehabilitation.

164       Section 4. Section 631.401, Florida Statutes, is created  
 165 to read:

166       631.401 Recovery of assessments and assumed policy  
 167 obligations.-  
 168       (1) Upon the making of any assessment allowed by s.  
 169 631.400, the office shall order a surcharge on each title  
 170 insurance policy thereafter issued insuring an interest in real  
 171 property in this state. The office shall set the per transaction  
 172 surcharge in an amount estimated to generate sufficient funds to  
 173 recover the amount assessed over a period not to exceed 7 years.  
 174 The amount of the surcharge ordered under this section may not  
 175 exceed \$25 per transaction for each impaired title insurer. If  
 176 additional surcharges are needed due to additional title  
 177 insurers becoming impaired, the office shall order an increase  
 178 in the amount of the surcharge to reflect the aggregate amount  
 179 of surcharges needed.  
 180       (2) The party responsible for payment of the title  
 181 insurance premium, unless otherwise agreed to by the parties, is  
 182 responsible for the payment of the surcharge. A surcharge shall  
 183 not be due or owing as to any policy of insurance issued at the  
 184 simultaneous issue rate. For all other purposes, the surcharge  
 185 shall be considered a governmental assessment to be separately  
 186 stated on any settlement statement. The surcharge is not subject  
 187 to premium tax or reserve requirements under chapter 625.  
 188       (3) Each title insurance agent or agency shall collect the  
 189 surcharge as to each title insurance policy written and remit  
 190 those surcharges within 30 days to the title insurer on which  
 191 the policy was written.

192       (4) A title insurer may not retain more in surcharges for  
 193 an ordered assessment than the amount of assessment that title  
 194 insurer paid.

195       (5) No later than March 1 of each year, each title insurer  
 196 shall provide the office with an accounting of assessments paid  
 197 and surcharges collected during the previous calendar year. Any  
 198 surcharges collected in excess of the amount assessed shall be  
 199 paid to the Insurance Regulatory Trust Fund.

200       Section 5. Section 631.402, Florida Statutes, is created  
 201 to read:

202       631.402 Receivership of foreign title insurer.-

203       (1) After a foreign title insurer with policies in this  
 204 state is placed into receivership by its domiciliary state, the  
 205 department may apply to the court for an order appointing the  
 206 department as ancillary receiver for the purpose of making an  
 207 assessment pursuant to s. 631.400. The receiver may use the  
 208 proceeds of the assessment to pay claims, acquire reinsurance,  
 209 or otherwise provide for the assumption of policy obligations in  
 210 this state by another insurer.

211       (2) If the assets located in this state are insufficient  
 212 to pay the administrative costs of the ancillary receivership,  
 213 the receiver may request additional funds under s.  
 214 631.141(7)(b).

215       Section 6. Paragraph (b) of subsection (2) of section  
 216 627.782, Florida Statutes, is amended to read:

217       627.782 Adoption of rates.-

218       (2) In adopting premium rates, the commission must give  
 219 due consideration to the following:



220 (b) A reasonable margin for underwriting profit and  
 221 contingencies, including contingent liability ~~under s. 627.7865,~~  
 222 sufficient to allow title insurers, agents, and agencies to earn  
 223 a rate of return on their capital that will attract and retain  
 224 adequate capital investment in the title insurance business and  
 225 maintain an efficient title insurance delivery system.

226 Section 7. Paragraph (d) of subsection (6) of section  
 227 701.041, Florida Statutes, is amended to read:

228 701.041 Title insurer; mortgage release certificate.—

229 (6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE AGENT.—

230 (d) Liability of a title insurer pursuant to this section  
 231 shall be considered to be a title insurance claim on real  
 232 property in this state ~~pursuant to s. 627.7865.~~

233 Section 8. This act shall take effect upon becoming a law.