

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 853 Title Insurance  
**SPONSOR(S):** Ambler and others  
**TIED BILLS:** CS/HB 855, CS/HB 867 **IDEN./SIM. BILLS:** SB 1836

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Reilly	Cooper
2)	Criminal & Civil Justice Policy Council			
3)	Government Operations Appropriations Committee			
4)	General Government Policy Council			
5)				

### SUMMARY ANALYSIS

In 2008, the Legislature created the Florida Title Insurance Advisory Council, which was charged with undertaking a comprehensive examination of the title insurance delivery system and to make legislative recommendations. The Council held public hearings in 2008 and 2009 and published its final report and recommendations in December 2009.

The Council's recommendations included:

- Regulation of the title insurance industry by a single state agency, rather than the current system whereby agents and agencies are regulated by the Department of Financial Services and title insurers are regulated by the Office of Insurance Regulation
- Creation of a new stand-alone chapter of Florida law on title insurance.
- Maintaining promulgated premium rates.
- Creating a Guaranty Fund to ensure consumer protection in case of title insurer insolvency and providing an assessment mechanism.
- Requiring title insurance agencies to assign an agent in charge for each physical office location.
- Establishing standards for data collection.
- Providing regulatory oversight of funds held in escrow accounts.
- Requiring automatic suspension for licensees (title agents, title agencies, and others) convicted of a felony related to the insurance industry or mortgage fraud.
- Requiring that continuing education requirements for licensed title insurance agents be tailored specifically to title insurance.

The bill implements many of the Council's recommendations. In particular, it provides for unitary regulation of the title insurance industry under the Department of Financial Services; creates ch. 637, F.S., the Florida Title Insurance Act; provides for assessments against all insurers when a title insurer is in liquidation and for the policies of that title insurer to remain in force; and requires insurance agencies to designate an agent in charge for each physical office location.

The Department of Financial Services reports that there will be a significant negative financial impact.

The bill is effective October 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## 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.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.<sup>2</sup>

##### Regulatory Environment

Over the past several years, title insurance has been a topic of interest on both the state and national level. The market has been the topic of two studies by the United States Government Accountability Office (GAO): "Title Insurance. Preliminary Views and Issues for Further Study," published in April 2006, and "Title Insurance. Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers," published in April 2007.<sup>3</sup>

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<sup>1</sup> Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest 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 visited March 18, 2010). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

<sup>3</sup> The 2006 and 2007 studies are available at <http://www.gao.gov> (last accessed March 19, 2010).

The 2006 GAO report identified issues within the title insurance industry that required further study, including the extent to which:

- Premium rates reflect underlying costs.
- State regulators review the activities of title agents.
- A competitive market exists.
- Different regulatory entities coordinate their efforts.

The 2007 GAO study presented the following findings:

- The title insurance market in each state is generally dominated by a small number of insurers.
- Title insurance premiums vary among states.
- It is difficult for consumers to comparative shop, as they tend to select the title insurer suggested by the lender and are unfamiliar with title insurance.

The 2007 report concluded: “Given consumers’ weak position in the title insurance market, regulatory efforts to ensure reasonable prices and deter illegal marketing activities are critical.” However, the GAO further noted that state regulators, as a general rule, have not collected the data necessary for analysis of premium prices and underlying costs and that there is the potential for lack of coordination among regulatory agencies when multiple regulatory bodies oversee the title insurance market in a state.

## Title Insurance in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents. Under current law, two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage<sup>4</sup> and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).<sup>5</sup> Title insurers may deviate from the proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.<sup>6</sup>

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.<sup>7</sup> Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30%. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.<sup>8</sup>

In 2006, the OIR completed a multi-faceted review of the title insurance industry in Florida that focused on three areas: a financial analysis of the Florida title insurance industry, a review of the regulatory treatment of title insurance premiums and title insurance, and a comparison of what Florida consumers pay for title insurance compared to consumers in other states.<sup>9</sup> The study found that the Florida title insurance industry is overwhelmingly dominated by five large groups and that Floridians are paying more for comparable title insurance compared to consumers in other states. The study also found that the loss ratios for title insurance coverage are low relative to other states and recommended tying

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<sup>4</sup> Section 627.777, F.S.

<sup>5</sup> Section 627.782, F.S.

<sup>6</sup> Section 627.783, F.S.

<sup>7</sup> Section 627.786, F.S.

<sup>8</sup> Section 627.782, F.S.

<sup>9</sup> “An Analysis of Florida’s Title Insurance Market: Three Studies that Provide a Comprehensive, Multi-Faceted Review of the Florida Title Insurance Industry,” July 2006. Found at: <http://www.floir.com> (last accessed March 19, 2010).

premium rates to loss ratios, thereby making rates a reflection of the actual risks borne by the insurer. The OIR's findings are disputed by industry representatives.

In August 2007, OIR held a public hearing on title insurance. Testimony was provided by representatives of several members of the title insurance industry, who appeared pursuant to subpoena.<sup>10</sup> The topics discussed included the cost of producing title insurance policies and how these costs relate to insurance premiums; procedures used by companies to audit agents; methods of conducting title searches; use of affiliated business arrangements; use of reinsurance contracts; and efforts to educate and protect consumers.

## **Final Report and Recommendations of the Florida Title Insurance Study Advisory Council**

In 2008, the Florida Legislature enacted CS/HB 937, which was signed into law by Governor Crist (Ch. 2008-198, L.O.F.). The legislation created the Title Insurance Study Advisory Council (the Council) to undertake a comprehensive examination of the title insurance delivery system in Florida and to make recommendations for legislation to promote a sound and stable title delivery system and the safety of property transfers.

The Council, chaired by the Lieutenant Governor, and including representatives from government, title insurers, insurance agents, the banking and real estate industries, and attorneys, heard expert testimony and received comments from the public at a series of public meetings. On December 31, 2009, the Council published its final report and recommendations, which contained the following key findings:<sup>11</sup>

- Title insurance promotes investments in property by protecting owners and lenders against discrepancies or defects in the ownership rights to real property.
- The recent downturn in the economy makes title insurance more important than ever to ensure consumer's investments are protected.
- Title insurance is different from other forms of insurance in many respects, including scope of coverage, policy term, role of the agent, and level of competition.
- Florida statutes require the Financial Services Commission to adopt a rule specifying the premium to be charged for title insurance and specify that no less than 30% of the premium charged must be retained by the insurer.
- The current regulatory dichotomy that has the Department of Financial Services regulating title insurance agents and the Office of Insurance Regulation regulating title insurance companies creates uncertainty and ambiguity for consumers, agents, and insurers.
- No standard data collection methodology for rate determination has been implemented or enforced.
- Title insurance agents are inextricably linked to the delivery and execution of the title insurance product, and some closings are more complicated than others.
- Laws relating to title insurance need to be unified in a single chapter in statute to ensure uniform and unambiguous regulation.
- As of November 2008, there were 6,918 licensed title agents and 2,573 licensed title agencies in Florida.
- Six title insurers write approximately 80% of title insurance policies in the state.

The Council made legislative recommendations pertaining to:

- Regulatory Structure.
- Premium Rating Structure.

<sup>10</sup> A videotape of the meeting is available on the OIR's website: <http://floir.com> (last accessed March 19, 2010).

<sup>11</sup> 2009 Title Insurance Study Advisory Council, "Final Report and Recommendations" (December 2009). Available at: <http://www.flgov.com/2008titleinsurancestudyadvisorycouncil> (last accessed March 10, 2010).

- Continuing Education (for title insurance agents).
- Real Estate Closing.
- Data Collection.
- Insolvency.

Specific recommendations included:

- Consolidating all laws relating to title insurance into a single stand-alone chapter.
- Consolidating title insurance regulation under a single title insurance regulator.
- Maintaining premium rate determination through a promulgated rule.
- Providing for a Guaranty Fund to ensure consumer protection in case of title insurer insolvency and providing a statutory assessment mechanism.
- Establishing standards for data collection, data collection methodologies, and timelines for collecting data.
- Requiring title insurance agencies to assign an agent in charge for each physical office location.
- Setting statutory time limits for delivery, issuance, and recordation of documents.
- Providing regulatory oversight of funds held in escrow accounts.
- Requiring automatic suspensions for licensees convicted of a felony related to the insurance industry or mortgage fraud.
- Requiring that continuing education requirements for all licensed title insurance agents be tailored specifically to title insurance.

## Effect of the Bill

The bill implements many of the recommendations of the Title Insurance Advisory Council. It also amends the definition of title insurance provided in s. 624.608, F.S. Under current law, title insurance is defined in part as “insurance of owners and secured parties of the *existence*, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.” The bill amends the definition to remove the word “existence” to eliminate problems resulting from an interpretation by the Office of Insurance Regulation that current language requires policy forms to insure the “existence of the collateral” in a Uniform Commercial Code context.<sup>12</sup>

## Consolidation of Title Insurance Laws

The bill creates ch. 637, F.S., the Florida Title Insurance Act, consisting of new laws as well as existing statutory provisions on title insurance that have been transferred (with and without amendment) and renumbered in the new chapter. The following analysis provides an overview of title insurance regulation under ch. 637, F.S., and coverage of significant changes made by the bill.

## Regulatory Overview

### Unitary Regulation under the Department of Financial Services

The bill provides for unitary regulation of the title insurance industry (agents, agencies, and title insurers) by a type two transfer from the Financial Services Commission and the Office of Insurance Regulation to the Department of Financial Services (DFS), which is given comprehensive authority to regulate the title insurance industry.<sup>13</sup>

<sup>12</sup> Correspondence between representatives of Old Republic National Title Insurance Company (Jim Russick) and Insurance, Business & Financial Affairs Policy Committee (IBFA) staff. On file with the IBFA Policy Committee.

<sup>13</sup> On October 1, 2010, rules of the Financial Services Commission and the Office of Insurance Regulation relating to the regulation of title insurance will become rules of the DFS. Additionally, all statutory power, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of chs. 624, 626, and 627, F.S., related to title insurance will be transferred via a type two transfer from the Financial Services Commission and the Office of Insurance Regulation to the DFS.

The DFS is provided broad authority to implement ch. 637, F.S. Among its powers, the DFS is authorized to:

- Adopt implementing rules.
- Institute legal proceedings.
- Issue and serve cease and desist orders.
- Examine authorized title insurers as often as it deems advisable (domestic insurers must be examined at least every 5 years).
- Conduct market conduct examinations of licensed rating organizations, advisory organizations, organizations that engage in joint underwriting or joint reinsurance, and authorized title insurance companies.
- Conduct investigations as it deems necessary of the accounts, records, documents, and transactions of any title insurance agent, title insurance agency, or other person subject to its jurisdiction.
- Examine and investigate the affairs of every person involved in the business of insurance in Florida to determine whether such person is engaged in any unfair method of competition or in any unfair or deceptive act or practice.
- Hold hearings.
- Suspend or revoke a certificate of authority, license, or eligibility for any certificate of authority for misconduct and/or assess administrative penalties.

In exercising its authority, the DFS is to be guided by the title insurance policyholder's bill of rights created by ch. 637, F.S., which includes the right to competitive pricing; to comprehensive coverage; to an insurance company that is financially stable; and to be serviced by competent and honest agents and brokers.

### Promulgation of Rates

Authority to adopt rules specifying the premium<sup>14</sup> to be charged by Florida title insurers for the respective types of title insurance contracts is transferred from the Financial Services Commission to the DFS. In addition to promulgated rates, also continued are the ability of an insurer to petition for a deviation from the adopted premium and the requirements that rates be reviewed at least every three years and that the insurer retain at least 30% of the premium on policies issued through agents or agencies.

In adopting rates, the DFS must consider title insurers' loss experience and prospective loss experience; past and prospective expenses for administration and handling of risks; liability for defalcation; and other relevant factors.

### Authorization of Title Insurers

Incorporated stock insurers, incorporated mutual insurers, and reciprocal insurers that are in compliance with ch. 637, F.S., and with its own charter powers may be authorized to transact title insurance in Florida. Financial institutions may conduct title insurance transactions only through Florida-licensed title insurance agents representing Florida-authorized title insurers. Title insurers must satisfy requisite surplus requirements when applying for their original certificate of authority and thereafter maintain specified surplus levels.

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<sup>14</sup> The bill retains the definition of premium for title insurance currently found in s. 627.7711, F.S., with the exception that the charge will now be pursuant to DFS rule: Premium is the charge, as specified by DFS rule, 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, F.S. With respect to title insurance, the word premium does not include a commission.

A certificate of authority remains in force as long as the insurer remains in compliance with the provisions of ch. 637, F.S., and until suspended, revoked, or terminated at the insurer's request. Compliance includes, but is not limited to, maintenance of the required minimum surplus; payment of the annual license fee, quarterly estimated taxes, and taxes on premiums received for the previous year; and timely filing of reports (accompanied by payment of applicable fees), including an annual statement, quarterly financial statements, and an annual audited financial report by an independent certified public accountant. Certificates that are not continued expire on the May 31<sup>st</sup> following the insurer's failure to continue it in force.

Suspension (or revocation) of a certificate of authority must be by order of the DFS, and is for a specific period of time (up to 2 years) or until the occurrence of a specified event. In such circumstances, the insurer generally is prohibited from soliciting or writing any new or renewal business.

The DFS is required to suspend or revoke a certificate of authority when an insurer:

- Is in unsound financial condition.
- Is engaging in practices that make its continued transaction of insurance hazardous to policyholders or the public.
- Has failed to pay a final judgment within 60 days.
- No longer meets the requirements for the authority that was granted.

Under the bill, DFS also has discretion to suspend or revoke a certificate (or impose administrative fines) in certain circumstances, such as when the insurer violates a DFS order or rule; refuses to produce records and files for examination; or enters a plea of nolo contendere to an insurance-related felony in Florida or another state.

The DFS may, without prior notice or the opportunity for a hearing, immediately suspend an insurer's certificate of authority if it determines that the insurer is impaired, insolvent or is the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings by the chief insurance regulator of any state.

An insurer that seeks to surrender its certificate of authority, withdraw from the state, or discontinue writing title insurance must give 90 days' notice in writing to the DFS and submit a plan for withdrawal. The request will be approved upon determination that the withdrawal plan makes adequate provision to satisfy the insurer's obligations and is not hazardous to the public.

### *Title Insurance Agencies*

Title insurance agencies must be licensed by the DFS and are separately appointed<sup>15</sup> by each title insurer they represent. Applicants must complete and file a form that includes the name of:

- Each majority owner, partner, officer, and director of the agency and their home addresses.
- The agency and its principal place of business.
- The agent to be in full-time charge of the title insurance agency.

The bill clarifies existing law pertaining to branch agencies.<sup>16</sup> It requires each location of a title insurance agency or insurer at which disbursement of escrow funds or policy issuance services are performed to have an agent in charge,<sup>17</sup> who is responsible for the operation and management of the location at which he/she is situated. Such designation(s) must be provided to the DFS. An attorney

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<sup>15</sup> An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.

<sup>16</sup> See s. 626.747, F.S.

<sup>17</sup> The bill defines agent in charge of a title insurance agency as an attorney or a licensed and appointed title insurance agent who is responsible for escrow and policy issuance services of a title insurance agency location.

licensed by the Florida Bar may also serve as an agent in charge. If an attorney owns a legal entity doing business as a title insurance agency that is not engaged in the active practice of law, the agency must be licensed and appointed as a title insurance agency with an agent in charge or an attorney as designated for the agency.

### *Title Insurance Agents*

To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling. A passing grade on an examination is valid for 1 year.

Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee.

The bill tailors continuing education requirements for title insurance agents to title insurance-related courses. Generally, insurance agents are required to take courses relating to any insurance products sold in Florida. The change in the curriculum for title insurance agents (who must take 10 hours of continuing education courses every 2 years) is reflective of the fact that title insurance agents are prohibited from selling products in any other line of insurance. The bill also creates a continuing education advisory board, whose members are to be appointed by the Chief Financial Officer, and requires education providers to be approved by the DFS.

Current law requires only the deposit, but not the retention of, escrow funds by agents in a government-insured account. Thus, agents can use sweep accounts, which are not government insured, overnight to earn interest. The bill requires agents to deposit and retain escrow funds in a government-insured account.<sup>18</sup>

Title insurance agents must be separately appointed by each insurer they represent.

### **Administrative Authority over Licenses and Appointments**

The DFS is required to suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency (or eligibility to hold a license or appointment) upon various grounds, including a finding that the person (or principal):

- Lacks any of the qualifications for appointment.
- Made a material misstatement or committed fraud in obtaining a license or appointment.
- Willfully misrepresented any title insurance policy, guarantee of title, or commitment.
- Misappropriated, converted, or unlawfully withheld funds belonging to others.

Licenses and appointments held by a person who is convicted of a violation of ch. 637, F.S., or a felony must be immediately revoked by the DFS. If the revocation is challenged and a hearing requested, the only issue to be determined at the hearing is whether or not the person was in fact convicted of a violation of ch. 637, F.S., or a felony.

The DFS also has discretionary authority to suspend or revoke a license or appointment in specified circumstances, such as a person's failure to:

- Pay funds owed to the title insurer upon demand.

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<sup>18</sup> Correspondence between representatives of Old Republic National Title Insurance Company (Jim Russick) and IBFA Policy Committee staff. On file with the IBFA Policy Committee.

- Maintain the insurer's position in escrow.
- Account or deliver property in the agency's hands that it is not entitled to retain.

## Real Estate

The bill amends current law relating to closing statements for purchase and sale transactions subject to the Real Estate Settlement and Procedures Act of 1974. When title insurance premiums are to be disbursed, the closing statement must include the names of the title insurer and the title insurance agent or agency. Further, a copy of the closing statement must be delivered to the buyer and the seller. Under the bill, all funds held as part of a real estate transaction are considered unclaimed if the owner does not claim the money within 2 years after the closing date.

## Financial Issues

### Deterioration of Financial Condition

If it is determined that a title insurer's financial condition has deteriorated or that policyholders' interests are not being preserved, the DFS may require the insurer to deposit and maintain securities with a market value of not less than \$100,000 or more than 25% of the insurer's obligations in Florida, up to a maximum of \$2 million. This deposit is in addition to any other deposits required to be made by an insurer under ch. 637, F.S. (domestic, foreign, and alien title insurers are subject to different deposit requirements). This provision maintains existing law.

The DFS may, without prior notice or the opportunity for a hearing, immediately suspend an insurer's certificate of authority if it determines that the insurer is impaired, insolvent or is the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings by the chief insurance regulator of any state.

An insurer is subject to administrative supervision by the DFS when it is determined that the insurer is:

- In unsound financial condition.
- Engaging in practices that render continuance of its business hazardous to the public or its insureds.
- Exceeding its powers under its certificate of authority.

Within 15 days after receiving notice of the determination to proceed with administrative supervision, an insurer is required to submit a corrective plan to the DFS. If the DFS and the insurer are unable to agree on a plan (or if the insurer does not submit a plan), the DFS may require the insurer to take such corrective action as may be reasonably necessary.

During the period of supervision, the title insurer may be prohibited from:

- Withdrawing any of its bank accounts.
- Lending funds.
- Investing funds.
- Transferring property.
- Incurring any debt, obligation, or liability.
- Merging or consolidating with another company.
- Entering into any new reinsurance contract or treaty.
- Terminating, surrendering, forfeiting, converting, or lapsing any insurance policy, certificate, or contract of insurance, except for nonpayment of premiums due.
- Releasing, paying, or refunding premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy or certificate.
- Making any material change in management.

When the insurer corrects the conditions underlying the administrative supervision so that continuation of its business will not be hazardous to the public or policyholders, the insurer will be released from supervision. The DFS is authorized to adopt rules to define standards of hazardous financial condition

and corrective action that are substantially similar to those in the National Association of Insurance Commissioners' model regulation.

Placing an insurer under administrative supervision does not preclude the DFS from initiating judicial proceedings to place the insurer in conservation, rehabilitation, or liquidation. Insurers subject to administrative supervision are required to pay to the DFS the expenses of the administration.

### Liquidation

When a title insurer is ordered into liquidation under ch. 631, F.S., each remaining authorized title insurer will be subject to an assessment to pay the unpaid Florida claims of the insurer in liquidation and the expenses of administering and settling the insurer's outstanding claims.

The bill amends current assessment provisions for title insurers and provides for the following only upon issuance of a court order directing the liquidation of an insurer:

- The title insurer's policies remain in force.<sup>19</sup>
- The DFS must order an assessment upon a judicially approved request by the receiver on an annual basis in an amount that the receiver deems sufficient, together with other assets of the estate, for the payment of known claims, loss adjustment expenses, and the cost of administration of the liquidation expenses.
- Each authorized title insurer must be assessed pro rata based upon the total title insurance premiums written in Florida for the most recent calendar year.
- Assessments must be paid to the receiver within 45 days of notice or under an approved quarterly installment plan.
- An emergency assessment will be ordered by the DFS upon a judicially approved request by the receiver.
- The amount of an assessment or multiple assessments paid by a title insurer in a year cannot exceed 4% of the insurer's surplus to policyholders at the end of the previous calendar year or more than 10% of its surplus during a 60-month period.<sup>20</sup>
- The DFS may exempt an insurer from an assessment or limit the assessment when the full assessment would reduce the insurer's surplus below the minimum required by law to maintain its certificate of authority.
- Assessments and emergency assessments ordered by DFS are considered assets of the estate.

Unless ordered into liquidation, a title insurer in rehabilitation may not be released from rehabilitation until all assessments have been repaid.

### **Data Collection**

Under current law,<sup>21</sup> the Financial Services Commission may adopt rules requiring insurers to submit statistical information necessary to analyze premium rates. However, there is no mechanism for the collection of data from title insurance agencies. The bill requires licensed title insurance agencies and

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<sup>19</sup> Current law does not provide for policies to remain in force. The Florida Department of Financial Services, Division of Rehabilitation and Liquidation, informs that a proposed order of liquidation for National Title Insurance Company (NTIC) provides for the immediate cancellation of all NTIC policies. See Florida Department of Financial Services, Division of Rehabilitation and Liquidation, "National Title Insurance Receivership Status Conference." A copy of the presentation is on file with the IBFA Policy Committee.

<sup>20</sup> Currently, s. 627.7865, F.S., caps such assessments at one-tenth of a title insurer's surplus as to policyholders.

<sup>21</sup> Section 627.782, F.S.

insurers to maintain and submit by each March 31st information that the DFS has determined will be of assistance in analyzing title insurance premium rates, title search costs, and the condition of Florida's title insurance industry. The data include revenue, loss, and expense data. The DFS is authorized to adopt rules to assist in the collection and analysis of data.

## **Miscellaneous**

### *Unfair Methods of Competition and Unfair and Deceptive Acts or Practices*

The bill defines unfair methods of competition and unfair and deceptive acts or practices with respect to title insurance and provides administrative penalties for nonwillful and willful violations.

### *Fraud<sup>22</sup>*

Insurers with a minimum of \$10 million in direct written premiums are required to establish anti-fraud investigative units. Insurers that do not meet this criterion must adopt and file an anti-fraud plan with the DFS. Insurers may be fined up to \$2,000 per day for noncompliance and/or be subjected to other administrative fines. The bill authorizes DFS to pay rewards of up to \$25,000 to persons that provide information leading to the arrest and conviction of persons for insurance fraud.

## **Other Administrative Responsibilities of DFS**

### *Reports to be Published Annually*

1. Statistical report on title insurance, on either a calendar year or fiscal year basis, which must include such information as:
  - The total amount of title insurance premiums earned in Florida.
  - Total losses paid and incurred by title insurance.
  - The ratios of premiums written to losses incurred and premiums earned to losses incurred.
  - The market share of the 10 largest title insurers or insurer groups.
  - The profitability of title insurance.
  - Analysis of the impact of the insurance industry on the state's economy.
2. Report to the Governor and the Legislature providing:
  - The names of authorized title insurers, with abstracts of their financial statements.
  - The names of insurers whose businesses were closed during the year, the cause thereof, and amounts of assets and liabilities as ascertainable.
  - The names of insurers against which delinquency or similar proceedings were instituted, and a concise statement of the circumstances and results of each proceeding.
  - The receipts and estimated expenses of the DFS for the year.
  - Such other pertinent information and matters as the DFS deems to be of public interest.
3. Compilation of the laws of Florida relating to insurance (to be published after the close of each Regular Legislative Session).
4. Analysis and summary report of the state of the Florida insurance industry (on a calendar year basis).

### *Maintaining Specified Information*

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<sup>22</sup> The fraud provisions discussed here are provided for in current law, but their applicability to title insurance has been unclear. To eliminate this uncertainty, the provisions have been included in ch. 637, F.S. Correspondence between representatives of Old Republic National Title Insurance Company (Jim Russick) and IBFA Policy Committee staff. On file with the IBFA Policy Committee.

The DFS must maintain, and make available upon request:

- Calendar year profitability, including investment income from loss reserves (Florida and countrywide).
- Aggregate Florida loss reserves.
- Premiums written (Florida and countrywide).
- Incurred losses (Florida and countrywide).
- Paid losses (Florida and countrywide).
- Allocated Florida loss adjustment expenses.
- Variation of premiums charged by the industry as compared to rates promulgated by the Insurance Services Office (Florida and countrywide).
- An analysis of policy size limits (Florida and countrywide).
- Trends; emerging trends as exemplified by the percentage change in frequency and severity of both paid and incurred claims, and pure premium (Florida and countrywide).

**B. SECTION DIRECTORY:**

**Section 1.** Creates provisions relating to the administration of ch. 637, F.S.

**Section 2.** States legislative findings, provides definitions, and creates provisions relating to the administration of ch. 637. F.S.

**Section 3.** Creates provisions of ch. 637, F.S., relating to the administration of title insurers.

**Section 4.** Creates ss. 637.2001, 637.2002, 637.2003, 637.20035, 637.2004, 637.2005, 637.2006, and 637.2007, F.S.

**Section 5.** Transfers and renumbers s. 625.330, F.S., as s.637.20073, F.S., with amendments, relating to special investments by title insurers.

**Section 6.** Transfers and renumbers s. 625.111, F.S., as s. 637.20075, F.S., with amendments, relating to title insurance reserves.

**Section 7.** Creates sections of ch. 637, F.S, relating to responsibilities of title insurers and the regulatory authority of the Department of Financial Services.

**Section 8.** Transfers and renumbers s. 627.778, F.S., as s.637.20485, F.S., with amendments, relating to limits of risk.

**Section 9.** Creates ss. 637.2049, 637.20495, 637.2051, 637.2053, 637.2054, 637.2055, 637.2056, and 637.2057, F.S.

**Section 10.**Transfers and renumbers s. 627.777, F.S., as s. 637.2058, F.S., with amendments, relating to approval of forms

**Section 11.** Transfers and renumbers s. 627.7773, F.S., as s. 637.2059, F.S., with amendments, relating to accounting and auditing of forms by title insurers.

**Section 12.** Transfers and renumbers s. 627.7776, F.S., as s. 637.2061, F.S., with amendments, relating to civil liability.

**Section 13.** Transfers and renumbers s. 627.780, F.S., as s. 637.2063, F.S., with amendments, relating to illegal dealings in premiums.

**Section 14.** Transfers and renumbers s. 627.782, F.S., as s. 637.2064, F.S., with amendments, relating to adoption of rates.

**Section 15.** Transfers and renumbers s. 627.783, F.S., as s. 637.2065, F.S., with amendments, relating to title insurance rate deviations.

**Section 16.** Transfers and renumbers s. 627.7831, F.S., as s. 637.2066, F.S., relating to title insurance commitments.

**Section 17.** Transfers and renumbers s. 627.784, F.S., as s. 637.2067, F.S., relating to issuance of title insurance policies or guarantees of title.

**Section 18.** Transfers and renumbers s. 627.7841, F.S., as s. 637.2068, F.S., relating to adverse matters or defects in title.

**Section 19.** Transfers and renumbers s. 627.7842, F.S., as s. 637.2069, F.S., relating to title insurance policy exceptions.

**Section 20.** Transfers and renumbers s. 627.7843, F.S., as s. 637.2071, F.S., relating to ownership and encumbrance reports.

**Section 21.** Transfers and renumbers s. 627.7845, F.S., as s. 637.2072, F.S., with amendments, relating to determination of insurability.

**Section 22.** Transfers and renumbers s. 627.785, F.S., as s. 637.2073, F.S., relating to preemption by the state.

**Section 23.** Transfers and renumbers s. 627.786, F.S., as s. 637.2074, F.S., with amendments, relating to prohibition against title insurers transacting any other kind of insurance.

**Section 24.** Transfers and renumbers s. 627.7865, F.S., as s. 637.2075, F.S., with amendments, relating to title insurer assessments.

**Section 25.** Transfers and renumbers s. 627.791, F.S., as s. 637.2076, F.S., with amendments, relating to penalties against title insurers for violations by unlicensed persons or entities.

**Section 26.** Transfers and renumbers s. 627.792, F.S., as s. 637.2077, F.S., with amendments, relating to liability of title insurers for defalcation by agents or agencies.

**Section 27.** Transfers and renumbers s. 627.793, F.S., as s. 637.2078, F.S., with amendments, relating to the rule-making authority of DFS.

**Section 28.** Transfers and renumbers s. 627.796, F.S., as s. 637.2079, F.S., relating to errors and omissions policy requirements.

**Section 29.** Transfers and renumbers s. 627.797, F.S., as s. 637.2081, F.S., with amendments, relating to insurer lists of appointed agents.

**Section 30.** Transfers and renumbers s. 627.798, F.S., as s. 637.2082, F.S., with amendments, relating to rule-making authority of DFS.

**Section 31.** Creates ss. 637.2083, 637.2084, 637.2085, 637.2086, 637.2087, 637.2088, 637.2089, and 637.2091, F.S.

**Section 32.** Creates sections of ch. 637, F.S., relating to licensing and administration of title insurance agents and title insurance agencies.

**Section 33.** Transfers and renumbers s. 626.8412, F.S., as s.637.3001, F.S., with amendments, relating to licenses and appointments.

**Section 34.** Transfers and renumbers s. 626.8413, F.S., as s. 637.3002, F.S., with amendments, relating to title insurance agents.

**Section 35.** Creates ss. 637.3003, 637.30041, 637.30042, 637.30043, 637.30044, 637.30045, 637.30046, 637.30047, 637.30048, and 637.30049, F.S.

**Section 36.** Transfers and renumbers s. 626.8414, F.S., as s. 637.3005, F.S., relating to qualifications for applicants for the title insurance agent examination.

**Section 37.** Transfers and renumbers s. 626.8417, F.S., as s. 637.3006, F.S., with amendments, relating to title insurance agent licensure.

**Section 38.** Transfers and renumbers s. 626.8418, F.S., as s. 637.3007, F.S., with amendments, relating to application for title insurance agency license.

**Section 39.** Transfers and renumbers s. 626.8419, F.S., as s. 637.3008, F.S., relating to appointment of title insurance agencies.

**Section 40.** Transfers and renumbers s. 626.842, F.S., as s. 637.3009, F.S., relating to credit and character reports of title insurance agents.

**Section 41.** Creates ss. 637.30093, 637.30094, 637.30095, 637.30096, and 637.30097, F.S.

**Section 42.** Transfers and renumbers s. 626.84201, F.S., as s. 637.3011, F.S., with amendments, relating to nonresident title insurance agents.

**Section 43.** Transfers and renumbers s. 626.8421, F.S., as s. 637.3012, F.S., with amendments, relating to appointment of title insurance agents.

**Section 44.** Creates s. 637.30125, F.S., relating to agents in charge.

**Section 45.** Transfers and renumbers s. 626.8423, F.S., as s. 637.3013, F.S., relating to investigations of applicants for license or renewal or continuation of license.

**Section 46.** Creates s. 637.30133, F.S., relating to consumer protections.

**Section 47.** Creates s. 637.30135, F.S., relating to fingerprinting requirements.

**Section 48.** Transfers and renumbers s. 626.8427, F.S., as s. 637.3014, F.S., relating to application for licensure as a title insurance agent.

**Section 49.** Creates ss. 637.30142, 637.30143, 637.30144, 637.30145, 637.30146, and 637.30147, F.S.

**Section 50.** Transfers and renumbers s. 626.843, F.S., as s. 637.3015, F.S., with amendments, relating to appointment of title insurance agents.

- Section 51.** Transfers and renumbers s. 626.8433, F.S., as s. 637.3016, F.S., relating to filing of reasons for terminating the appointment of a title insurance agent.
- Section 52.** Transfers and renumbers s. 626.8437, F.S., as s. 637.3017, F.S., with amendments, relating to denial, suspension, revocation, or refusal to continue the license or appointment of title insurance agents or agencies.
- Section 53.** Transfers and renumbers s. 626.844, F.S., as s. 637.3018, F.S., with amendments, relating to agent or agency appointments.
- Section 54.** Transfers and renumbers s. 626.8443, F.S., as s. 637.3019, F.S., with amendments, relating to duration of suspension or revocation of licenses.
- Section 55.** Transfers and renumbers s. 626.8447, F.S., as s. 637.3021, F.S., relating to the effect of suspension or revocation of the license and appointment of a title insurance agent.
- Section 56.** Transfers and renumbers s. 626.845, F.S., as s. 637.3022, F.S., relating to cancellation of licenses.
- Section 57.** Transfers and renumbers s. 626.8453, F.S., as s. 637.3023, F.S., with amendments, relating to criminal penalties for making false or fraudulent application for a license or appointment.
- Section 58.** Transfers and renumbers s. 626.8457, F.S., as s. 637.3024, F.S., relating to administrative fines.
- Section 59.** Transfers and renumbers s. 626.846, F.S., as s. 637.3025, F.S., with amendments, relating to placing licensees on probation.
- Section 60.** Transfers and renumbers s. 626.8463, F.S., as s. 637.3026, F.S., with amendments, relating to witnesses and evidence in DFS investigations.
- Section 61.** Transfers and renumbers s. 626.8467, F.S., as s. 637.3027, F.S., with amendments, relating to testimony at examinations, hearings, or investigations.
- Section 62.** Transfers and renumbers s. 626.847, F.S., as s. 637.3028, F.S., with amendments, relating to penalties for refusing to testify without lawful cause.
- Section 63.** Transfers and renumbers s. 626.8473, F.S., as s. 637.3029, F.S., with amendments, relating to funds in escrow.
- Section 64.** Creates s. 637.30295, F.S., relating to the collection of title insurance information by the DFS.
- Section 65.** Amends s. 624.5105, F.S., relating to the community contribution tax credit.
- Section 66.** Amends s. 624.5107, F.S., relating to child care tax credits.
- Section 67.** Provides for a type two transfer to the Department of Financial Services of all authority relating to the regulation of title insurance.
- Section 68.** Provides authority to prepare draft legislation to conform the Florida Statutes to the provisions of ch. 637, F.S.
- Section 69.** Creates s. 689.263, F.S., relating to the sale of residential property.
- Section 70.** Creates s. 717.1121, F.S., relating to payments from escrow related to real estate transactions.
- Section 71.** Amends s. 877.101, F.S., relating to escrow business by unauthorized persons.
- Section 72.** Amends s. 624.5015, F.S., relating to advance collection of fees and taxes.
- Section 73.** Amends s. 626.241, F.S., relating to scope of examinations.
- Section 74.** Amends s. 626.331, F.S., relating to the number of appointments permitted or required.
- Section 75.** Amends s. 197.502, F.S., relating to applications for obtaining tax deeds by holders of tax sale certificates.
- Section 76.** Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.
- Section 77.** Amends s. 624.604, F.S., relating to the definition of property insurance.
- Section 78.** Amends s. 624.605, F.S., relating to the definition of casualty insurance.
- Section 79.** Amends s. 625.031, F.S., relating to assets not allowed.
- Section 80.** Amends s. 626.207, F.S., relating to rule-making authority of the DFS.
- Section 81.** Amends s. 655.005, F.S., relating to definitions.
- Section 82.** Amends s. 701.041, F.S., relating to title insurers; mortgage release certificates.
- Section 83.** Amends s. 721.05, F.S., relating to definitions.
- Section 84.** Repeals ss. 624.608, 626.841, 626.8411, 626.9531, 627.7711, and 627.776.
- Section 85.** Provides an effective date of October 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Taxes and fees under ch. 637, F.S., are the same as under current law.<sup>23</sup>

#### 2. Expenditures:

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

According to the Department of Financial Services, the fiscal impact of the bill will require expenditures of \$2.5 million in FY 2010-11, \$2.2 million in FY 2011-12, and \$2.2 million in FY 2012-13. The DFS indicates the need for 15 new positions and the transfer of 10 positions from the Division of Agent & Agency Services to accommodate the workload associated with the bill. In addition, the bill redirects \$1.2 million in licensure and filing fee revenue from the Insurance Regulatory Trust Fund to a newly created Title Insurance Regulatory Trust Fund.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

#### 2. Other:

### B. RULE-MAKING AUTHORITY:

The DFS is granted rule-making authority to implement the provisions of ch. 637, F.S.

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<sup>23</sup> Correspondence between representatives of Old Republic National Title Insurance Company (Kevin Crowley) and IBFA Policy Committee staff. On file with the IBFA Policy Committee.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 624.01, F.S., which defines the Insurance Code, is not amended to include the newly created ch. 637, F.S. Language providing that mutual insurers and reciprocal insurers are eligible for certificates of authorization may be inconsistent with the requirement that a title insurer be a stock insurer. The bill also does not amend sections of the law to exempt title insurance from the scope of regulatory activity of the Financial Services Commission and the Office of Insurance Regulation with respect to risk-bearing entities.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee adopted four amendments to Proposed Committee Substitute for HB 853, which made the following changes:

- Removed language creating a Division of Title Insurance within the Department of Financial Services.
- Provided for unitary regulation of the title insurance industry by a type two transfer from the Financial Services Commission and the Office of Insurance Regulation to the Department of Financial Services.
- Removed references to a proposed Division of Title Insurance.
- Removed a provision prohibiting the rebating of any portion of the premium by title insurers, title insurance agencies, or title agents.

The proposed committee substitute was then reported favorably as a committee substitute.