SENATE BILL 881

C4 4lr1833
CF 4lr2617

By: **Senator Kelley**
Introduced and read first time: January 31, 2014
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Title Insurers – Statutory or Unearned Premium Reserve for Escrow Losses

FOR the purpose of altering the formula in accordance with which a title insurer domiciled in the State shall reduce the reserves applicable to certain contracts of title insurance for purposes of a certain statutory or unearned premium reserve; altering the percent of the total amount of certain risk premiums for title insurance contracts that must be assigned originally to certain reserves; altering the date on, and the method by which, a title insurer must calculate and recalculate a certain reserve; requiring that a certain sum of certain excess reserves be assigned immediately to a certain statutory reserve for escrow losses; requiring a title insurer domiciled in the State to maintain a certain statutory reserve or unearned premium reserve for escrow losses of at least a certain amount computed in a certain manner; altering the circumstances under which certain unearned premium reserves may be released; requiring that certain unearned premium reserves be retained for the protection of policyholders; authorizing, if a certain title insurer becomes insolvent or is in the process of liquidation or dissolution, the use of a certain amount of certain assets for a certain purpose and the transfer of a certain balance to certain assets; providing that certain assets shall be available to pay claims for certain losses under certain circumstances and that the balance of the claims shall be paid out of certain assets under certain circumstances; providing that the unearned premium reserve shall constitute a trust fund for certain purposes under certain circumstances; providing that the amount of unearned premium reserve for escrow losses does not limit the amount of liability of a domestic title insurer; defining a certain term; making stylistic and conforming changes; providing that certain provisions of this Act apply retroactively to certain title insurance contracts; providing for a delayed effective date for certain provisions of this Act; and generally relating to statutory or unearned premium reserves of title insurers.

BY repealing and reenacting, with amendments,

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Article – Insurance
Section 5–206
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 5–206
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)
(As enacted by Section 1 of this Act)

Preamble

WHEREAS, Defalcations and theft from real property escrow accounts are a continuing and growing financial problem in the real estate and title insurance business; and

WHEREAS, In an effort to address the problem, the General Assembly enacted Chapters 356 and 357 of the Acts of the General Assembly of 2008, creating the Commission to Study the Title Insurance Industry in Maryland; and

WHEREAS, In its February 2010 report, the Commission's first recommendation was that the Maryland Insurance Commissioner "study, in consultation with the title insurance industry, the feasibility and structure of a guaranty fund and other avenues of remuneration for consumers and title insurers in a real estate transaction who are victims of theft of moneys held in escrow by a licensed title insurance producer"; and

WHEREAS, Homeowners and title insurers have been harmed as a result of the theft of moneys held in escrow; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

5–206.

(a) **(1) IN THIS SECTION, "RISK PREMIUMS" MEANS THE AMOUNT CHARGED FOR THE ASSUMPTION OF RISK.**

(2) "RISK PREMIUMS" INCLUDES TITLE INSURANCE PRODUCER COMMISSIONS.

(3) "RISK PREMIUMS" DOES NOT INCLUDE CHARGES FOR SERVICES RENDERED IN THE PREPARATION OF DOCUMENTS, SEARCHING, UNDERWRITING, RECORDING OF DOCUMENTS, OR CLOSING OF A RISK.

(B) (1) In addition to adequate reserves required by § 5–103 of this title for outstanding losses, a title insurer **DOMICILED IN THE STATE** shall maintain a statutory reserve or unearned premium reserve of at least an amount computed as follows:

(i) 8% of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be as assigned originally to the reserves; and

(ii) during each of the 20 years that follow the year in which the contract is issued, the reserves applicable to the contract shall be reduced **IN EQUAL 12–MONTH INSTALLMENTS** in accordance with the following formula:

1. 35% of the aggregate sum **[**on July 1 of**]** **IN** the year **[**next**]** succeeding the year of addition;

2. 15% of the aggregate sum **[**on July 1 of**]** **IN** each of the succeeding 2 years;

3. 10% of the aggregate sum **[**on July 1 of**]** **IN** the succeeding year;

4. 3% of the aggregate sum **[**on July 1 of**]** **IN** each of the succeeding 3 years;

5. 2% of the aggregate sum **[**on July 1 of**]** **IN** each of the succeeding 3 years; and

6. 1% of the aggregate sum **[**on July 1 of**]** **IN** each of the succeeding 10 years.

(2) (i) The title insurer shall calculate retroactive adjusted statutory reserve or unearned premium reserve on an aggregate basis on January 1, 2010.

(ii) The adjusted aggregate reserve shall be recalculated as if paragraph (1)(ii) of this subsection had been in effect during the 20 years preceding January 1, 2010.

(3) Subject to subsection **[**(c)**]** **(D)** of this section, the aggregate sum of any excess reserves resulting from a recalculation under this subsection shall be

released over a 3–year period in equal installments of one–third each year, beginning with the 2010 calendar year.

[(b)**] (C)** (1) Each title insurer shall file with its annual statement required under § 4–116 of this article a certification by a member in good standing of the American Academy of Actuaries as to the adequacy of its reserves required under this section and § 5–103 of this title.

(2) The actuarial certification required of a title insurer must conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

[(c)**] (D)** (1) Unearned premium reserves may not be released under subsection (a) of this section to the extent that the release would result in the aggregate reserve falling below the amount required under this section and § 5–103 of this title.

(2) Any amount of unearned premium reserves that may not be released under paragraph (1) of this subsection shall be considered an unearned premium reserve and may not be considered a supplemental reserve.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Insurance

5–206.

(a) (1) In this section, "risk premiums" means the amount charged for the assumption of risk.

(2) "Risk premiums" includes title insurance producer commissions.

(3) "Risk premiums" does not include charges for services rendered in the preparation of documents, searching, underwriting, recording of documents, or closing of a risk.

(b) (1) In addition to adequate reserves required by § 5–103 of this title for outstanding losses, a title insurer domiciled in the State shall maintain a statutory reserve or unearned premium reserve of at least an amount computed as follows:

(i) **[**8%**] 6%** of the total amount of the risk premiums written in the calendar year for **THE NET RETAINED LIABILITY FOR** title insurance contracts shall be as assigned originally to the reserves; and

(ii) during each of the 20 years that follow the year in which the contract is issued, the reserves applicable to the contract shall be reduced in equal 12–month installments in accordance with the following formula:

1. 35% of the aggregate sum in the year succeeding the year of addition;

2. 15% of the aggregate sum in each of the succeeding 2 years;

3. 10% of the aggregate sum in the succeeding year;

4. 3% of the aggregate sum in each of the succeeding 3 years;

5. 2% of the aggregate sum in each of the succeeding 3 years; and

6. 1% of the aggregate sum in each of the succeeding 10 years.

(2) (i) The title insurer shall calculate retroactive adjusted statutory reserve or unearned premium reserve on an aggregate basis on January 1, **[**2010**] 2015**.

(ii) The adjusted aggregate reserve shall be recalculated as if paragraph **[**(1)(ii)**] (1)(I) AND (II)** of this subsection had been in effect during the 20 years preceding January 1, **[**2010**] 2015**.

(3) **[**Subject to subsection (d) of this section, the**] THE** aggregate sum of any excess reserves resulting from a recalculation under this subsection shall be **[**released over a 3–year period in equal installments of one–third each year, beginning with the 2010 calendar year**] ASSIGNED IMMEDIATELY TO A STATUTORY RESERVE FOR ESCROW LOSSES AS REQUIRED BY SUBSECTION (C) OF THIS SECTION**.

(C) IN ADDITION TO THE STATUTORY RESERVE OR UNEARNED PREMIUM RESERVE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, A TITLE INSURER DOMICILED IN THE STATE SHALL MAINTAIN A STATUTORY RESERVE OR UNEARNED PREMIUM RESERVE FOR ESCROW LOSSES OF AT LEAST AN AMOUNT COMPUTED AS FOLLOWS:

(1) 2% OF THE TOTAL AMOUNT OF THE RISK PREMIUMS WRITTEN IN THE CALENDAR YEAR FOR TITLE INSURANCE CONTRACTS SHALL BE AS ASSIGNED ORIGINALLY TO THE RESERVES; AND

(2) THE AMOUNT SET ASIDE IN RESERVE SHALL BE RELEASED IN ACCORDANCE WITH THE FOLLOWING:

(I) IMMEDIATELY ON THE OCCURRENCE OF A LOSS ARISING OUT OF THEFT OF ESCROW FUNDS IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF THE LOSS; AND

(II) IF THE TITLE INSURER BECOMES INSOLVENT OR IS IN THE PROCESS OF LIQUIDATION:

1. THE BALANCE OF THE RESERVE THEN REMAINING SHALL BE ASSIGNED TO THE RESERVE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION; AND

2. THE FUNDS SHALL BE WITHDRAWN IN ACCORDANCE WITH SUBSECTION (B)(1)(II) OF THIS SECTION, TREATING THE YEAR OF ADDITION AS THE YEAR THE FUNDS WERE ASSIGNED.

[(c)**] (D)** (1) Each title insurer shall file with its annual statement required under § 4–116 of this article a certification by a member in good standing of the American Academy of Actuaries as to the adequacy of its reserves required under this section and § 5–103 of this title.

(2) The actuarial certification required of a title insurer must conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

[(d)**] (E)** (1) Unearned premium reserves may not be released under subsection **[**(a)**] (B) OR (C)** of this section to the extent that the release would result in the aggregate reserve**, WHEN COMBINED WITH THE AMOUNT REQUIRED UNDER § 5–103 OF THIS TITLE,** falling below the amount required under this section and § 5–103 of this title.

(2) Any amount of unearned premium reserves that may not be released under paragraph (1) of this subsection shall be considered an unearned premium reserve and may not be considered a supplemental reserve.

(F) (1) THE UNEARNED PREMIUM RESERVES ESTABLISHED UNDER THIS SECTION SHALL BE RETAINED FOR THE PROTECTION OF POLICYHOLDERS.

(2) IF A TITLE INSURER SUBJECT TO THIS SECTION BECOMES INSOLVENT OR IS IN THE PROCESS OF LIQUIDATION OR DISSOLUTION:

(I) 1. AN AMOUNT OF THE ASSETS OF THE TITLE INSURER EQUAL TO THE UNEARNED PREMIUM RESERVES AS IS NECESSARY MAY BE USED TO PAY FOR REINSURANCE OF THE TITLE INSURER'S OUTSTANDING LIABILITIES ON ALL IN–FORCE POLICIES OR REINSURANCE AGREEMENTS OF TITLE INSURANCE, AS TO WHICH CLAIMS FOR LOSSES BY POLICYHOLDERS ARE NOT THEN PENDING; AND

2. THE BALANCE, IF ANY, OF THE UNEARNED PREMIUM RESERVE FUND SHALL THEN BE TRANSFERRED TO THE GENERAL ASSETS OF THE TITLE INSURER;

(II) 1. THE ASSETS OF THE TITLE INSURER OTHER THAN THE UNEARNED PREMIUM RESERVE SHALL BE AVAILABLE TO PAY CLAIMS FOR LOSSES SUSTAINED BY POLICYHOLDERS THEN PENDING OR ARISING UP TO THE TIME REINSURANCE IS PLACED; OR

2. IF CLAIMS FOR LOSSES ARE IN EXCESS OF THE ASSETS OF THE TITLE INSURER, THE BALANCE OF THE CLAIMS SHALL BE PAID OUT OF THE ASSETS ATTRIBUTABLE TO THE UNEARNED PREMIUM RESERVE; AND

(III) IF REINSURANCE IS UNAVAILABLE, THE UNEARNED PREMIUM RESERVE SHALL CONSTITUTE A TRUST FUND OUT OF WHICH POLICYHOLDER LOSSES SHALL BE PAID AS FUNDS ARE RELEASED IN ACCORDANCE WITH SUBSECTION (B)(1)(II) OF THIS SECTION.

(G) THE AMOUNT OF UNEARNED PREMIUM RESERVE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT LIMIT THE AMOUNT OF LIABILITY OF A DOMESTIC TITLE INSURER.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect title insurance contracts in effect on the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect January 1, 2015.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect June 1, 2014.