
By: **Senator Gladden**

Introduced and read first time: February 2, 2006

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurers and Title Insurance Producers**

3 FOR the purpose of establishing certain limitations on the examination of an
4 authorized title insurer by the Insurance Commissioner; exempting employees
5 or officers of an authorized title insurer from the licensing requirements for
6 insurance producers; authorizing a certain licensed title insurance producer
7 without a certain appointment to provide certain escrow, closing, or settlement
8 services and to do so without written documentation of an appointment; altering
9 the intervals at which a title insurer shall conduct a certain on-site review of
10 certain practices of certain title insurance producers; altering the circumstances
11 under which a title insurer is required to report a suspected violation to the
12 Commissioner as the result of an examination; clarifying that the Commissioner
13 may issue a limited lines license to an attorney at law who solicits, procures, or
14 negotiates title insurance to act as a title insurance producer; providing for the
15 applicability of certain licensing provisions to certain attorneys at law; altering
16 the applicability to attorneys and law firms of certain bonding requirements,
17 certain limited liability company, corporate, and partnership requirements,
18 certain licensing requirements, and certain education, experience, and
19 examination requirements; altering certain notice requirements as to the
20 availability of title insurance; exempting certain real estate transactions from
21 certain notice provisions as to the availability of title insurance; altering certain
22 definitions; defining a certain term; and generally relating to title insurers and
23 title insurance producers.

24 BY repealing and reenacting, with amendments,
25 Article - Insurance
26 Section 2-205, 10-101(i), 10-103(b) and (d), 10-118(d), 10-121(j), and 10-125
27 Annotated Code of Maryland
28 (2003 Replacement Volume and 2005 Supplement)

29 BY repealing and reenacting, without amendments,
30 Article - Insurance
31 Section 10-101(a), (b), and (d), 10-103(a) and (c), and 10-118(a), (b), and (c)
32 Annotated Code of Maryland

1 (2003 Replacement Volume and 2005 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Insurance

4 Section 22-102

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2005 Supplement)

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

9 **Article - Insurance**

10 2-205.

11 (a) (1) Whenever the Commissioner considers it advisable, the
12 Commissioner shall examine the affairs, transactions, accounts, records, and assets of
13 each:

14 (i) authorized insurer;

15 (ii) management company of an authorized insurer;

16 (iii) subsidiary owned or controlled by an authorized insurer;

17 (iv) rating organization; or

18 (v) authorized health maintenance organization.

19 (2) The Commissioner shall examine each domestic insurer and health
20 maintenance organization at least once every 5 years.

21 (b) The Commissioner shall examine the affairs, transactions, accounts,
22 records, and assets of:

23 (1) each insurer and each health maintenance organization that applies
24 for an original certificate of authority to do business in the State; and

25 (2) each rating organization that applies for a license to do business in
26 the State.

27 (c) When examining a reciprocal insurer, the Commissioner may examine the
28 attorney in fact of the reciprocal insurer to the extent that the transactions of the
29 attorney in fact relate to the reciprocal insurer.

30 (d) The Commissioner may limit the examination of an alien insurer to its
31 insurance transactions and affairs in the United States.

32 (e) Instead of conducting an examination, the Commissioner may accept a full
33 report, certified by the insurance supervisory official of another state, of the most

1 recent examination of a foreign insurer or health maintenance organization, alien
2 insurer or health maintenance organization, or an out-of-state rating organization.

3 (F) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY,
4 WITH RESPECT TO THE EXAMINATION OF AN AUTHORIZED TITLE INSURER:

5 (1) THE EXAMINATION SHALL BE LIMITED TO EXAMINATION FOR
6 COMPLIANCE WITH THE FOLLOWING PROVISIONS OF THIS ARTICLE, AS APPLICABLE:

7 (I) § 22-102 OF THIS ARTICLE;

8 (II) § 22-103 OF THIS ARTICLE;

9 (III) TITLE 11 OF THIS ARTICLE, AS IT RELATES TO RATE AND FORM
10 FILINGS AND APPROVALS; AND

11 (IV) TITLE 27, SUBTITLES 2, 3, AND 8 OF THIS ARTICLE;

12 (2) THE EXAMINATION MAY NOT INCLUDE AN EXAMINATION OF:

13 (I) THE ESCROW, CLOSING, OR SETTLEMENT PRACTICES OF A
14 TITLE INSURANCE PRODUCER; OR

15 (II) THE CONTENTS OF THE ESCROW, CLOSING, OR SETTLEMENT
16 FILES OR RECORDS OF A TITLE INSURANCE PRODUCER; AND

17 (3) ANY REPORT OF THE EXAMINATION ISSUED IN ACCORDANCE WITH §
18 2-209 OF THIS SUBTITLE SHALL BE MADE WITH RESPECT TO EACH AUTHORIZED
19 TITLE INSURER UNDER THE EXAMINATION, AND A SINGLE REPORT MAY NOT BE
20 MADE TO APPLY TO MORE THAN ONE AUTHORIZED TITLE INSURER.

21 10-101.

22 (a) In this subtitle the following words have the meanings indicated.

23 (b) "Business entity" means a corporation, professional association,
24 partnership, limited liability company, limited liability partnership, or other legal
25 entity.

26 (d) (1) "License" means a document issued by the Commissioner to act as an
27 insurance producer for the kind or subdivision of insurance or combination of kinds or
28 subdivisions of insurance specified in the document.

29 (2) "License" includes a limited lines license.

30 (i) (1) "Title insurance producer" means a person that, for compensation,
31 solicits, procures, or negotiates title insurance contracts.

32 (2) "Title insurance producer" includes a person that provides escrow,
33 closing, or settlement services that [may] result in the issuance of a title insurance
34 contract.

- 1 (3) "Title insurance producer" does not include:
- 2 (i) individuals employed and used by title insurance producers for
3 the performance of clerical and similar office duties;
- 4 (ii) a financial institution as defined in § 1-101(i) of the Financial
5 Institutions Article that does not solicit, procure, or negotiate title insurance
6 contracts for compensation; or
- 7 (iii) a title insurance insurer that is licensed under this article.
8 10-103.

9 (a) In this section, the term "insurer" does not include an insurer's officers,
10 directors, employees, subsidiaries, or affiliates.

11 (b) The licensing requirements of this section do not apply to:

12 (1) an insurer;

13 (2) an officer, director, or employee of an insurer or of an insurance
14 producer who does not receive any commission on policies written or sold to insure
15 risks residing, located or to be performed in the State if:

16 (i) the activities of the officer, director, or employee are executive,
17 administrative, managerial, clerical, or a combination of these, and are only indirectly
18 related to the sale, solicitation, or negotiation of insurance;

19 (ii) the function of the officer, director, or employee relates to
20 underwriting, loss control, inspection, or the processing, adjusting, investigating, or
21 settling of a claim on a contract of insurance; or

22 (iii) the officer, director, or employee is acting in the capacity of a
23 special agent or agency supervisor assisting insurance producers where the
24 individual's activities are limited to providing technical advice and assistance to
25 licensed insurance producers and do not include the sale, solicitation, or negotiation
26 of insurance;

27 (3) an individual who performs administrative services related to mass
28 marketed property and casualty insurance, provided that no commission is paid to the
29 individual for the services;

30 (4) an employer, association, the officers, directors, and employees of an
31 employer or association, or the trustees of an employee trust plan if:

32 (i) the employer, association, officers, directors, and employees, or
33 trustees are engaged in the administration or operation of a program of employee
34 benefits for the employer's or association's own employees or the employees of its
35 subsidiaries or affiliates;

- 1 (ii) the program involves the use of insurance issued by an insurer;
2 and
- 3 (iii) the employer, association, officers, directors, and employees, or
4 trustees are not in any manner compensated, directly or indirectly, by the insurer
5 issuing the contracts;
- 6 (5) an employee of an insurer or organization employed by an insurer
7 who is:
- 8 (i) engaged in the inspection, rating, or classification of risks or in
9 the supervision of the training of insurance producers; and
- 10 (ii) not individually engaged in the sale, solicitation, or negotiation
11 of insurance;
- 12 (6) a person whose activities in the State are limited to advertising
13 without the intent to solicit insurance in the State through communications in
14 printed publications or other forms of electronic mass media if:
- 15 (i) the distribution of the printed publications or other forms of
16 electronic mass media is not limited to residents of the State; and
- 17 (ii) the person does not sell, solicit, or negotiate insurance that
18 would insure risks residing, located, or to be performed in the State;
- 19 (7) a person who is not a resident of the State who sells, solicits, or
20 negotiates a contract of insurance for commercial property and casualty risks to an
21 insured with risks located in more than one state insured under the contract if:
- 22 (i) the person is otherwise licensed as an insurance producer to
23 sell, solicit, or negotiate that insurance in the state where the insured maintains its
24 principal place of business; and
- 25 (ii) the contract insures risks located in that state; [or]
- 26 (8) a salaried, full-time employee who counsels or advises the employee's
27 employer relative to the insurance interests of the employer or of the subsidiaries or
28 business affiliates of the employer, provided that the employee does not sell or solicit
29 insurance or receive a commission; OR
- 30 (9) AN EMPLOYEE OR OFFICER OF AN AUTHORIZED TITLE INSURER.
- 31 (c) Except as otherwise provided in this article, before a person acts as an
32 insurance producer in the State, the person must obtain:
- 33 (1) a license in the kind or subdivision of insurance for which the person
34 intends to act as an insurance producer; and
- 35 (2) if acting for an insurer, an appointment from the insurer.

1 (d) (1) Except as otherwise provided in this subsection, an insurance
2 producer may not sell, solicit, or negotiate any insurance on behalf of an insurer for
3 which the insurance producer does not have an appointment.

4 (2) Without an appointment, an insurance producer may:

5 (i) submit to an insurer an informal inquiry for any kind of life
6 insurance, health insurance, or annuity for which the insurance producer has a
7 license if the insurer has a certificate of authority for the kind of insurance about
8 which the inquiry is made; and

9 (ii) solicit an application for any kind of life insurance, health
10 insurance, or annuity for which the insurance producer has a license if the insurer to
11 which the application is submitted has a certificate of authority for the kind of
12 insurance requested in the application.

13 (3) WITHOUT AN APPOINTMENT, A LICENSED TITLE INSURANCE
14 PRODUCER ACTING ON BEHALF OF ANOTHER LICENSED AND APPOINTED TITLE
15 INSURANCE PRODUCER MAY PROVIDE ESCROW, CLOSING, OR SETTLEMENT
16 SERVICES THAT RESULT IN THE ISSUANCE OF A TITLE INSURANCE CONTRACT.

17 10-118.

18 (a) In this section, "producer register" means a register of appointed insurance
19 producers who are authorized to sell, solicit, or negotiate contracts of insurance on
20 behalf of an insurer.

21 (b) (1) An insurer authorized to transact the business of insurance in the
22 State shall maintain a producer register.

23 (2) Within 30 days of the insurer appointing an insurance producer, the
24 insurer shall include the following information in the insurer's producer register:

25 (i) the insurance producer's name;

26 (ii) the license number assigned to the insurance producer by the
27 Commissioner;

28 (iii) the date that the insurer appointed the insurance producer; and

29 (iv) any additional information that the Commissioner may require.

30 (3) An insurer shall send written documentation of the appointment to
31 the insurance producer.

32 (c) A licensed insurance producer that has been appointed by an insurer shall
33 maintain:

34 (1) documentation of the insurer's appointment; and

35 (2) a list of the insurers that have appointed the producer.

1 (d) (1) The insurer's producer register and the producer's record relating to
2 an appointment:

3 (i) shall be open to inspection and examination by the
4 Commissioner; and

5 (ii) may be maintained electronically.

6 (2) Except as provided in [paragraph (3)] PARAGRAPHS (3) AND (4) of this
7 subsection, an insurance producer may not act on behalf of an insurer unless the
8 insurance producer has received written documentation of the appointment from the
9 insurer.

10 (3) An insurer may initially accept an application for life insurance,
11 health insurance, or an annuity from an insurance producer who is not appointed by
12 the insurer and is not on the insurer's producer register if, within 30 days of accepting
13 the application, the insurer:

14 (i) rejects the application in accordance with § 27-501 of this
15 article; or

16 (ii) appoints the insurance producer and enters in the insurer's
17 producer register the information required by subsection (b) of this section.

18 (4) WITHOUT AN APPOINTMENT, A LICENSED TITLE INSURANCE
19 PRODUCER ACTING ON BEHALF OF ANOTHER LICENSED AND APPOINTED TITLE
20 INSURANCE PRODUCER MAY PROVIDE ESCROW, CLOSING, OR SETTLEMENT
21 SERVICES THAT RESULT IN THE ISSUANCE OF A TITLE INSURANCE CONTRACT.

22 10-121.

23 (j) (1) (i) The title insurer shall[, at least annually,] conduct an on-site
24 review of the underwriting, claims, and escrow practices of each title insurance
25 producer appointed by the insurer as a principal agent as designated in the title
26 insurance agency contract between the insurer and the producer.

27 (II) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION,
28 THE ON-SITE REVIEW SHALL BE CONDUCTED:

29 1. AT LEAST ONCE AT ANY TIME DURING THE CALENDAR
30 YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH THE TITLE
31 INSURANCE PRODUCER IS APPOINTED; AND

32 2. AFTER THE FIRST ON-SITE REVIEW, AT LEAST ONCE AT
33 ANY TIME DURING EACH SUCCESSIVE CALENDAR YEAR IN WHICH THE TITLE
34 INSURANCE PRODUCER IS APPOINTED.

35 (III) The on-site review shall include a review of the title insurance
36 producer's or agency's policy blank inventory and processing operations.

1 [(ii)] (IV) If the title insurance producer or agency does not maintain
2 separate bank or trust accounts for each title insurer it represents, the title insurer
3 shall verify that the funds held on its behalf are reasonably ascertainable from the
4 books of account and records of the title insurance producer or agency.

5 (2) A written report setting forth the results of the on-site review shall
6 be prepared by the title insurer and is subject to financial examination under § 2-205
7 of this article.

8 (3) If, as a result of the examination, a title insurer has reasonable cause
9 to believe that a title insurance producer or agency has [failed to remit premiums or
10 funds owed or that any other violation of this article has been committed] VIOLATED
11 ANY PROVISION OF THIS ARTICLE, the title insurer shall report in writing the
12 suspected violation to the Commissioner and submit a copy of the examination.

13 (4) The examination required under this section is in addition to any
14 examination conducted by the Commissioner to determine compliance with the
15 accounts maintained for the benefit of the Maryland Affordable Housing Trust under
16 § 22-103 of this article.

17 (5) THE TITLE INSURER IS NOT REQUIRED TO PERFORM THE ON-SITE
18 REVIEW OF A TITLE INSURANCE PRODUCER FOR THE CALENDAR YEAR IN WHICH
19 THE TITLE INSURER TERMINATES THE TITLE INSURANCE PRODUCER'S
20 APPOINTMENT.

21 10-125.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) "ATTORNEY AT LAW" MEANS AN INDIVIDUAL ATTORNEY WHO IS
24 ADMITTED TO PRACTICE BEFORE THE COURT OF APPEALS OF THE STATE.

25 [(2)] (3) (i) "Law firm" means an association of attorneys AT LAW
26 [who are admitted to practice before the Court of Appeals of the State] who EMPLOY,
27 OR ARE IN PARTNERSHIP OR OTHER ASSOCIATION WITH, AN ATTORNEY AT LAW OR
28 ATTORNEYS AT LAW WHO:

29 1. are primarily engaged in the practice of law; and

30 2. solicit, procure, or negotiate title insurance contracts only
31 as an incident to the practice of law.

32 (ii) ["Law firm" includes a sole practitioner.

33 (iii)] "Law firm" does not include:

34 1. an attorney or an association of attorneys who own,
35 operate, or share an interest in a title agency; or

1 2. an attorney who is employed by a title agency as a title
2 insurance producer.

3 [(3) (i) (4) "Title agency" means a business ENTITY, OTHER THAN A
4 LAW FIRM, formed for the primary purpose of soliciting, procuring, or negotiating title
5 insurance contracts and providing settlement services.

6 [(ii) "Title agency" includes a sole proprietor, partnership, or
7 corporation.]

8 (b) Subject to this section, the Commissioner may issue a limited lines license
9 to an attorney at law [of the State] WHO SOLICITS, PROCURES, OR NEGOTIATES
10 TITLE INSURANCE CONTRACTS to act as a title insurance producer.

11 (c) All licensing provisions of this subtitle apply to:

12 (1) AN ATTORNEY AT LAW WHO SOLICITS, PROCURES, OR
13 NEGOTIATES TITLE INSURANCE CONTRACTS; AND

14 (2) title agencies even if the title agency is established or owned by
15 an attorney or [a law firm] ATTORNEYS.

16 (d) Notwithstanding any other provision of this subtitle:

17 [(1) the bonding requirements of this subtitle relating to title insurance
18 producers do not apply to law firms and individual attorneys practicing law in law
19 firms;

20 (2) the limited liability company, corporate, and partnership
21 requirements of this subtitle relating to title insurance producers do not apply to law
22 firms; and

23 (3) the education, experience, and examination requirements of this
24 subtitle relating to title insurance producers do not apply to individual attorneys]

25 (1) THE LICENSING, BONDING, EDUCATION, EXPERIENCE, AND
26 EXAMINATION REQUIREMENTS OF THIS SUBTITLE RELATING TO TITLE INSURANCE
27 PRODUCERS DO NOT APPLY TO LAW FIRMS; AND

28 (2) THE BONDING, EDUCATION, EXPERIENCE, AND EXAMINATION
29 REQUIREMENTS OF THIS SUBTITLE RELATING TO TITLE INSURANCE PRODUCERS DO
30 NOT APPLY TO ATTORNEYS.

31 22-102.

32 (a) [When] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
33 WHEN, in connection with a real estate transaction that involves a purchase money
34 mortgage or deed of trust on land in the State, a title insurer accepts a premium for
35 a policy that insures the title to the property or the title insurer, its agent, or

1 employee accepts a premium for mortgagee title insurance, the person first accepting
2 the premium:

3 (1) shall insert the name of each insured in the binder for the title
4 insurance or the title report; and

5 (2) immediately on receipt of the premium, shall deliver to the buyer or
6 agent or attorney of the buyer written notice:

7 (i) of the name of each insured under the policy;

8 (ii) of the face amount of the policy;

9 (iii) of the buyer's right and opportunity to obtain simultaneous title
10 insurance in the buyer's favor;

11 (iv) of the additional premium that will be required for purchase of
12 simultaneous title insurance in the buyer's favor;

13 (v) that the buyer's title insurance will be subject only to the
14 contingencies and conditions contained in the binder, title report, and policy;

15 (vi) of the buyer's right to review a sample of the form of policy in
16 which the contingencies and conditions will be inserted; and

17 (vii) that contains a clear statement of the contingencies that must
18 be satisfied to make the buyer's policy effective, if the buyer's policy is not effective on
19 payment of the premium.

20 (b) Before disbursing any funds, the person required to give notice under
21 subsection (a) of this section shall obtain from the buyer, at the time the person
22 delivers the notice, a statement in writing that the buyer has received the notice
23 described in subsection (a) of this section and that the buyer wants or does not want
24 owner's title insurance.

25 (c) (1) The person required to give notice under subsection (a) of this
26 section[:

27 (i)] shall retain the original signed statement of receipt required by
28 subsection (b) of this section and a copy of the notice required by subsection (a) of this
29 section FOR 3 YEARS. [until the title insurance policy is issued; and

30 (ii) after the title insurance policy is issued, shall forward the
31 statement of receipt and copy of the notice to the title insurer.

32 (2) The title insurer shall retain the statement of receipt and notice for 3
33 years.

34 (3)] (2) The statement of receipt and notice shall be available for
35 inspection by the Commissioner on request.

1 (D) THIS SECTION DOES NOT APPLY TO REAL ESTATE TRANSACTIONS
2 SECURING COMMERCIAL LOANS AS DESCRIBED IN § 12-103(E) OF THE COMMERCIAL
3 LAW ARTICLE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2006.