

SENATE BILL 86

C4

(91r0044)

ENROLLED BILL

—Finance/Economic Matters—

Introduced by **Chair, Finance Committee (By Request - Departmental - Insurance Administration, Maryland)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Title Insurance Producers - Regulation and Requirements**

3 FOR the purpose of specifying that, with certain exceptions, only a licensed title
4 insurance producer may ~~have~~ exercise control over ~~or custody of~~ certain money;
5 increasing the amount of a certain fidelity bond and a certain surety bond or
6 letter of credit that certain applicants for a license to act as a title insurance
7 producer must file with the Maryland Insurance Commissioner; making certain
8 conforming changes; ~~requiring the Commissioner to adopt certain regulations~~
9 requiring the Commission to Study the Title Insurance Industry in Maryland to
10 examine the adequacy of a certain blanket surety bond or letter of credit and to
11 make a certain determination under certain circumstances; defining a certain
12 term; providing for the effective dates of this Act; providing for the application
13 of certain provisions of this Act; and generally relating to title insurance
14 producers.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 BY repealing and reenacting, with amendments,
 2 Article – Insurance
 3 Section 10–121
 4 Annotated Code of Maryland
 5 (2003 Replacement Volume and 2008 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Insurance
 8 Section 10–121(e) and (f)
 9 Annotated Code of Maryland
 10 (2003 Replacement Volume and 2008 Supplement)
 11 (As enacted by Section 1 of this Act)

12 BY repealing and reenacting, with amendments,
 13 Chapter 356 of the Acts of the General Assembly of 2008
 14 Section 1(g)

15 BY repealing and reenacting, with amendments,
 16 Chapter 357 of the Acts of the General Assembly of 2008
 17 Section 1(g)

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

20 **Article – Insurance**

21 10–121.

22 (A) (1) IN THIS SUBSECTION, “TRUST MONEY” MEANS A DEPOSIT,
 23 PAYMENT, OR OTHER MONEY THAT A PERSON ENTRUSTS TO ANOTHER PERSON A
 24 LICENSED TITLE INSURANCE PRODUCER IN CONNECTION WITH THE PROVISION
 25 OF ESCROW, CLOSING, OR REAL ESTATE SETTLEMENT SERVICES.

26 (2) ONLY EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
 27 SUBSECTION, ONLY A LICENSED TITLE INSURANCE PRODUCER MAY HAVE
 28 EXERCISE CONTROL OVER OR CUSTODY OF MONEY RECEIVED OR HELD IN
 29 ESCROW OR IN TRUST MONEY.

30 (3) THIS SUBSECTION DOES NOT APPLY TO TRUST MONEY THAT IS
 31 ENTRUSTED TO:

32 (I) A LAW FIRM AS DEFINED IN § 10–125 OF THIS SUBTITLE;
 33 OR

34 (II) A TITLE INSURER.

1 ~~[(a)]~~ **(B)** A title insurance producer may not convert or misappropriate
2 money received or held in escrow or trust while:

3 (1) acting as a title insurance producer; or

4 (2) providing any escrow, closing, or settlement services.

5 ~~[(b)]~~ **(C)** (1) If an applicant for a license is a partnership, each partner
6 must hold a license to act as a title insurance producer and, if applicable, an
7 appointment with a title insurer.

8 (2) (i) If an applicant for a license is a corporation, each controlling
9 owner and each officer must hold a license to act as a title insurance producer and, if
10 applicable, an appointment with a title insurer.

11 (ii) For purposes of subparagraph (i) of this paragraph, a person
12 is not considered a controlling owner of a corporation if the person:

13 1. is a stockholder of the corporation;

14 2. does not manage or have day-to-day control over the
15 operation of the corporation; and

16 3. is not an officer, director, or employee of the
17 corporation who in any other way renders services for the corporation for which the
18 person is compensated by the corporation.

19 (3) If an applicant for a license is a limited liability company, each
20 individual who has direct control over its fiscal management and each manager and
21 officer must hold a license to act as a title insurance producer and, if applicable, an
22 appointment with a title insurer.

23 ~~[(c)]~~ **(D)** (1) When the application of a partnership for a license as a title
24 insurance producer is submitted, the Commissioner shall investigate the character of
25 each partner of the partnership applicant.

26 (2) When the application of a corporation for a license as a title
27 insurance producer is submitted, the Commissioner shall investigate the character of
28 each controlling owner and each officer and director of the corporate applicant.

29 (3) When the application of a limited liability company for a license is
30 submitted, the Commissioner shall investigate the character of each individual who
31 has direct control over its fiscal management and each member, manager, officer, and
32 director of the limited liability company applicant.

1 [(d)] (E) (1) In addition to meeting any of the applicable requirements
2 for a license to act as an insurance producer under this subtitle, a sole proprietor, a
3 limited liability company, a partnership, or a corporate applicant for a license as a title
4 insurance producer shall file with the Commissioner:

5 (i) a blanket fidelity bond covering appropriate employees and
6 title insurance producer independent contractors; and

7 (ii) 1. a blanket surety bond; or

8 2. a letter of credit.

9 (2) Unless the Commissioner approves a lesser amount, each bond or
10 letter of credit shall be for ~~[\$100,000]~~ ~~\$250,000~~.

11 (3) The Commissioner may adopt regulations that specify when it is
12 appropriate for a bond or letter of credit to be less than ~~[\$100,000]~~ ~~\$250,000~~.

13 (4) Notwithstanding paragraph (2) of this subsection, the
14 Commissioner may waive the requirement for a bond or letter of credit if the
15 Commissioner finds that bonds are not generally available or reasonably affordable.

16 (5) The Commissioner shall make a specific finding that states the
17 reason for accepting a bond or letter of credit for less than ~~[\$100,000]~~ ~~\$250,000~~.

18 [(e)] (F) (1) The surety bond or letter of credit shall be for the benefit of
19 any person that suffers a loss if the title insurance producer converts or
20 misappropriates money received or held in escrow or trust while:

21 (i) acting as a title insurance producer; or

22 (ii) providing any escrow, closing, or settlement services.

23 (2) The fidelity bond shall be for the benefit of the employer of the title
24 insurance producer who suffers any loss as described in paragraph (1) of this
25 subsection.

26 (3) The total liability of the surety insurer under each bond or letter of
27 credit may not exceed ~~[\$100,000]~~ ~~\$250,000~~.

28 [(f)] (G) The title insurance producer shall file the bond or letter of credit
29 with the Commissioner:

30 (1) after the Commissioner notifies the title insurance producer of the
31 approval of the application for a license; and

1 (2) before the Commissioner issues the license.

2 [(g)] (H) (1) Each bond or letter of credit shall remain in force until:

3 (i) the surety insurer is released from liability by the
4 Commissioner; or

5 (ii) the bond or letter of credit is canceled by the surety insurer.

6 (2) A surety insurer shall notify the title insurance producer and the
7 Commissioner at least 30 days before canceling a bond or letter of credit.

8 (3) If a surety insurer fails to notify the title insurance producer and
9 the Commissioner as required by paragraph (2) of this subsection, the bond or letter of
10 credit remains in effect until the surety insurer notifies the title insurance producer
11 and the Commissioner.

12 (4) A cancellation under this subsection does not affect any liability
13 that occurred during the life of the bond or letter of credit and before the date of
14 cancellation.

15 [(h)] (I) Before the Commissioner renews the license of a title insurance
16 producer, the title insurance producer shall submit satisfactory evidence of compliance
17 with this section.

18 [(i)] (J) (1) If a title insurance producer has been charged with a
19 violation of this section or this article that could result in suspension or revocation of
20 the license of the title insurance producer, the Commissioner may seek an immediate
21 restraining order from a circuit court to prohibit the title insurance producer from
22 providing title insurance, escrow, closing, or settlement services.

23 (2) A restraining order issued by a court under this subsection is
24 effective until:

25 (i) the court lifts the restraining order; or

26 (ii) the charges are dismissed or adjudicated.

27 [(j)] (K) (1) (i) Except as provided in paragraph (5) of this subsection,
28 the title insurer shall during each calendar year conduct an on-site review of the
29 underwriting, claims, and escrow practices of each title insurance producer appointed
30 by the insurer as a principal agent as designated in the title insurance agency contract
31 between the insurer and the producer.

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

1 (iii) 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
6 shall be prepared by the title insurer and is subject to examination under § 2-205 of
7 this article.

8 (3) If, as a result of the examination, a title insurer has reasonable
9 cause to believe that a title insurance producer or agency has engaged in any of the
10 prohibited activities set forth in § 10-126 of this subtitle, the title insurer shall report
11 in writing the suspected violation to the Commissioner and submit a copy of the
12 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 review of a
18 title insurance producer for the calendar year during which the title insurance
19 producer is initially appointed if the appointment is made on or after June 30 of that
20 calendar year.

21 ~~[(k)]~~ (L) (1) A title insurance producer shall notify any title insurer with
22 whom the title insurance producer holds an appointment whenever a person licensed
23 under this subtitle becomes employed by, or associated with, the title insurance
24 producer.

25 (2) The bonding requirements of this subtitle relating to title
26 insurance producers do not apply to an employee or officer of an authorized title
27 insurer.

28 ~~[(l)]~~ (M) (1) A title insurance producer shall notify the Commissioner,
29 and any insurer with whom the title insurance producer holds an appointment, if an
30 individual licensed under this subtitle leaves the employment of or ends an association
31 with the title insurance producer.

32 (2) The title insurance producer required to provide notice under this
33 subsection shall notify the Commissioner within 5 working days after the day the
34 individual leaves employment or ends the association.

35 (3) The notice required under this subsection shall be in writing and
36 by certified mail.

1 [(m)] (N) In addition to any requirements under Title 10, Subtitle 1 of this
2 article, title insurance producers shall comply with this section.

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

5 Article – Insurance

6 10–121.

7 (e) (1) In addition to meeting any of the applicable requirements for a
8 license to act as an insurance producer under this subtitle, a sole proprietor, a limited
9 liability company, a partnership, or a corporate applicant for a license as a title
10 insurance producer shall file with the Commissioner:

11 (i) a blanket fidelity bond covering appropriate employees and
12 title insurance producer independent contractors; and

13 (ii) 1. a blanket surety bond; or

14 2. a letter of credit.

15 (2) Unless the Commissioner approves a lesser amount, each bond or
16 letter of credit shall be for [\$100,000] **\$150,000.**

17 (3) The Commissioner may adopt regulations that specify when it is
18 appropriate for a bond or letter of credit to be less than [\$100,000] **\$150,000.**

19 (4) Notwithstanding paragraph (2) of this subsection, the
20 Commissioner may waive the requirement for a bond or letter of credit if the
21 Commissioner finds that bonds are not generally available or reasonably affordable.

22 (5) The Commissioner shall make a specific finding that states the
23 reason for accepting a bond or letter of credit for less than [\$100,000] **\$150,000.**

24 (f) (1) The surety bond or letter of credit shall be for the benefit of any
25 person that suffers a loss if the title insurance producer converts or misappropriates
26 money received or held in escrow or trust while:

27 (i) acting as a title insurance producer; or

28 (ii) providing any escrow, closing, or settlement services.

29 (2) The fidelity bond shall be for the benefit of the employer of the title
30 insurance producer who suffers any loss as described in paragraph (1) of this
31 subsection.

1 (3) The total liability of the surety insurer under each bond or letter of
2 credit may not exceed [~~\$100,000~~] \$150,000.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Chapter 356 of the Acts of 2008**

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That:

8 (g) In order to develop recommendations, the Commission shall:

9 (1) review State laws relating to the title insurance industry;

10 (2) review the mechanisms available to enforce State laws relating to
11 the title insurance industry and the effectiveness of those mechanisms;

12 (3) identify title insurance industry issues that affect consumers in
13 Maryland;

14 (4) examine the rate-setting factors for title insurance premiums;

15 (5) examine how rates and services in a title plant state compare to
16 those in Maryland;

17 (6) identify ways to improve consumer education about the title
18 insurance industry;

19 (7) study whether mechanics' liens on properties scheduled for
20 settlement have an impact on the timeliness of settlements or on title insurance
21 premium rates;

22 (8) review the time limits, subsequent to closing, for the issuance of
23 title insurance policies;

24 (9) study affiliated business arrangements among title insurance
25 producers, builders, title insurance companies, realtors, lenders, and other businesses
26 involved with the settlement of real estate transactions to determine the impact of
27 these arrangements on title insurance premium rates; [and]

28 **(10) (I) EXAMINE THE ADEQUACY OF THE BLANKET SURETY**
29 **BOND OR LETTER OF CREDIT REQUIRED UNDER § 10-121(E) OF THE INSURANCE**
30 **ARTICLE TO PROTECT CONSUMERS WHO SUFFER A LOSS FROM THE**

1 CONVERSION OR MISAPPROPRIATION BY A TITLE INSURANCE PRODUCER OF
2 MONEY RECEIVED OR HELD IN ESCROW OR TRUST; AND

3 (II) IF THE COMMISSION FINDS THAT AN INCREASE IN THE
4 AMOUNT OF THE BLANKET SURETY BOND OR LETTER OF CREDIT IS
5 WARRANTED, DETERMINE THE IMPACT OF THE ADDITIONAL COST ON TITLE
6 INSURANCE PRODUCERS; AND

7 [(10)] (11) study any other issue with significant impact on the title
8 insurance industry.

9 **Chapter 357 of the Acts of 2008**

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That:

12 (g) In order to develop recommendations, the Commission shall:

13 (1) review State laws relating to the title insurance industry;

14 (2) review the mechanisms available to enforce State laws relating to
15 the title insurance industry and the effectiveness of those mechanisms;

16 (3) identify title insurance industry issues that affect consumers in
17 Maryland;

18 (4) examine the rate-setting factors for title insurance premiums;

19 (5) examine how rates and services in a title plant state compare to
20 those in Maryland;

21 (6) identify ways to improve consumer education about the title
22 insurance industry;

23 (7) study whether mechanics' liens on properties scheduled for
24 settlement have an impact on the timeliness of settlements or on title insurance
25 premium rates;

26 (8) review the time limits, subsequent to closing, for the issuance of
27 title insurance policies;

28 (9) study affiliated business arrangements among title insurance
29 producers, builders, title insurance companies, realtors, lenders, and other businesses
30 involved with the settlement of real estate transactions to determine the impact of
31 these arrangements on title insurance premium rates; [and]

1 **(10) (I) EXAMINE THE ADEQUACY OF THE BLANKET SURETY**
 2 **BOND OR LETTER OF CREDIT REQUIRED UNDER § 10-121(E) OF THE INSURANCE**
 3 **ARTICLE TO PROTECT CONSUMERS WHO SUFFER A LOSS FROM THE**
 4 **CONVERSION OR MISAPPROPRIATION BY A TITLE INSURANCE PRODUCER OF**
 5 **MONEY RECEIVED OR HELD IN ESCROW OR TRUST; AND**

6 **(II) IF THE COMMISSION FINDS THAT AN INCREASE IN THE**
 7 **AMOUNT OF THE BLANKET SURETY BOND OR LETTER OF CREDIT IS**
 8 **WARRANTED, DETERMINE THE IMPACT OF THE ADDITIONAL COST ON TITLE**
 9 **INSURANCE PRODUCERS; AND**

10 **[(10)] (11) study any other issue with significant impact on the title**
 11 **insurance industry.**

12 **SECTION 4. AND BE IT FURTHER ENACTED, That the increase in the**
 13 **amount of the fidelity bond and the blanket surety bond or letter of credit required for**
 14 **licensing as a title insurance producer under § 10-121(e) of the Insurance Article, as**
 15 **enacted by Section 2 of this Act, shall apply to all title insurance producer licenses**
 16 **issued or renewed on or after October 1, 2009.**

17 **SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall**
 18 **take effect October 1, 2009.**

19 **SECTION ~~2~~ 6. AND BE IT FURTHER ENACTED, That, except as provided in**
 20 **Section 5 of this Act, this Act shall take effect June 1, 2009.**

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.