SB 86

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 86 (Chair, Finance Committee)(By Request - Departmental - Insurance Administration, Maryland)

Finance Economic Matters

Title Insurance Producers - Regulation and Requirements

This departmental bill limits control of funds held in trust to only the licensed title insurance producer in that entity. The bill's provisions do not apply to law firms or title insurers. The bill further increases the amount of the fidelity bond and the amount of the blanket surety bond or letter of credit that title insurers must maintain as a condition of licensure from $100,000 to $150,000, effective October 1, 2009. The Commission to Study the Title Insurance Industry in Maryland must review the adequacy of the bonding and letter of credit requirements and include its findings in its final report due by December 15, 2009.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: The additional reporting requirements can be handled with existing budgeted resources.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: The Maryland Insurance Administration (MIA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: Title insurance producers may not convert or misappropriate funds held in escrow or trust while (1) soliciting, procuring, or negotiating title insurance contracts; or (2) while performing escrow, closing, or settlement services. A sole proprietorship, limited liability company, partnership, or corporate applicant for a title insurance producer's license must file with the Insurance Commissioner:

- a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and
- a blanket surety bond or letter of credit.

A surety bond or letter of credit protects any person that suffers a loss if the title insurance producer misappropriates funds, while the fidelity bond protects the employer of the title insurance producer from misappropriation of funds held in escrow or trust. Unless expressly approved by the Commissioner, each bond or letter of credit maintained by a title insurance producer must be in the amount of $100,000.

Background: MIA is an independent State agency that regulates Maryland's $26 billion insurance industry by monitoring insurer solvency and compliance; investigating consumer complaints; reviewing insurance rates; educating consumers; and licensing approximately 1,500 insurance companies and 110,000 insurance producers.

The Compliance and Enforcement Unit of MIA investigates consumer complaints of title insurance producers, including:

- the failure of a producer to pay the balance of a prior mortgage;
- misappropriation of escrow funds; and
- the falsification or forgery of closing documents.

As shown in **Exhibit 1**, the number of complaints related to title insurance has increased significantly in recent years. In conjunction with the Department of Labor, Licensing, and Regulation (DLLR), MIA spent much of 2008 investigating problems and irregularities related to real estate transactions. MIA found instances of mismanagement or misappropriation of escrow funds totaling more than $5 million. In identifying specific regulatory gaps, MIA has determined that current bonding amounts required under statute are insufficient to protect consumers when a misappropriation of funds occurs.

Exhibit 1

Maryland Insurance Administration – Compliance & Enforcement Unit
Title Insurance Complaints 2005 – 2008∗

	2005	2006	2007	2008
Title Insurance Complaints	90	100	201	496
Total Complaints	255	268	364	697
Percentage	35%	37%	55%	71%

∗ Note: Complaints for 2008 reflect only 11 months of the calendar year.
Source: Maryland Insurance Administration

Chapters 356 and 357 of 2008 created the Commission to Study the Title Insurance Industry in Maryland. The commission, staffed by DLLR and MIA, is required to report on its findings and make recommendations to the Governor and the General Assembly by December 15, 2009. To develop its recommendations, the commission must, among other things (1) review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms; (2) identify title industry issues affecting Maryland consumers; and (3) identify ways to improve consumer education about title insurance.

The commission met twice in 2008. In addition to having its organizational meeting, the commission discussed limiting the control of funds received to licensed title insurance producers and increasing the amount of the required fidelity bond and surety bond or letter of credit.

Small Business Effect: Some title insurance producers may be financially unable to meet the increased bonding requirements and, as a result, forced to close their businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History:	First Reader - January 28, 2009
ncs/ljm	Revised - Senate Third Reader - March 25, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Title Insurance Providers – Regulation and Requirements

BILL NUMBER: SB 86

PREPARED BY: Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.