

SENATE BILL 941

C4

11r2687
CF 11r3061

By: **Senator Kelley**

Introduced and read first time: February 28, 2011

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurance – Closing Protection**

3 FOR the purpose of requiring a title insurer, its agent, or its employee that accepts a
4 certain closing protection fee under certain circumstances to provide certain
5 notice about the closing protection fee in a certain manner; requiring title
6 insurers under certain circumstances to provide certain protected parties with
7 reimbursement for actual loss of the protected party's trust money that is
8 converted or misappropriated by the title insurer, title insurance producers, or
9 their employees; prohibiting reimbursement of protected parties for certain
10 losses under certain circumstances; requiring a closing protection fee in a
11 certain amount to be collected by or on behalf of a title insurer in connection
12 with a closing; requiring the Maryland Insurance Commissioner to set the
13 amount of the closing protection fee; prohibiting a title insurer from splitting a
14 commission with or providing a commission to certain title insurance producers
15 under certain circumstances; authorizing the charge for the closing protection
16 fee to be combined with a certain title insurance premium on a certain
17 settlement statement; providing that the closing protection fee is premium and
18 is subject to a certain premium tax; requiring the closing protection fee to be
19 included with other premiums written by the title insurer when computing a
20 certain statutory reserve; providing that certain liability of a title insurer is not
21 limited to the amount of closing protection fees; requiring title insurers to
22 maintain a record of the amount of closing protection fees collected and
23 reimbursement fees paid on an annual basis beginning at a certain time;
24 requiring the Commissioner at certain times to collect and compile certain data,
25 review the data to make a certain determination, and if necessary increase the
26 amount of the closing protection fee by regulation; authorizing title insurers or
27 title insurance producers to provide a certain closing protection letter to certain
28 protected parties; providing that certain provisions of law control over the terms
29 of a closing protection letter under certain circumstances; authorizing the
30 Commissioner to adopt certain regulations; defining certain terms; and
31 generally relating to closing protection and title insurance.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Insurance
3 Section 22–102
4 Annotated Code of Maryland
5 (2006 Replacement Volume and 2010 Supplement)

6 BY adding to
7 Article – Insurance
8 Section 22–104
9 Annotated Code of Maryland
10 (2006 Replacement Volume and 2010 Supplement)

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

13 **Article – Insurance**

14 22–102.

15 (a) Except as provided in subsection (d) of this section, when, in connection
16 with a real estate transaction that involves a purchase money mortgage or deed of
17 trust on land in the State, a title insurer accepts a premium for a policy that insures
18 the title to the property, [or] the title insurer, its agent, or employee accepts a
19 premium for mortgagee title insurance, **OR THE TITLE INSURER, ITS AGENT, OR**
20 **EMPLOYEE ACCEPTS A CLOSING PROTECTION FEE UNDER § 22–104 OF THIS**
21 **TITLE**, the person first accepting the premium **OR FEE**:

22 (1) shall insert the name of each insured in the binder for the title
23 insurance or the title report; [and]

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

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

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

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

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

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

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

3 (vii) that contains a clear statement of the contingencies that
4 must be satisfied to make the buyer's policy effective, if the buyer's policy is not
5 effective on payment of the premium; AND

6 **(3) IMMEDIATELY ON RECEIPT OF THE CLOSING PROTECTION**
7 **FEE, SHALL DELIVER TO THE BUYER OR AGENT OR ATTORNEY OF THE BUYER**
8 **WRITTEN NOTICE OF THE AMOUNT AND PURPOSE OF THE CLOSING PROTECTION**
9 **FEE.**

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

15 (c) (1) The person required to give notice under subsection (a) of this
16 section shall retain the original signed statement of receipt required by subsection (b)
17 of this section and a copy of the notice required by subsection (a) of this section for 3
18 years.

19 (2) The statement of receipt and notice shall be available for
20 inspection by the Commissioner on request.

21 (d) This section does not apply to a real estate transaction involving a
22 mortgage or deed of trust securing an extension of credit made:

23 (1) solely to acquire an interest in or to carry on a business or
24 commercial enterprise; or

25 (2) to any business or commercial organization.

26 **22-104.**

27 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
28 **MEANINGS INDICATED.**

29 **(2) "CLOSING" MEANS THE PROCESS IN WHICH, IN CONNECTION**
30 **WITH A REAL ESTATE TRANSACTION IN THE STATE, A TITLE INSURER, TITLE**
31 **INSURANCE PRODUCER, OR TITLE INSURANCE PRODUCER INDEPENDENT**
32 **CONTRACTOR:**

33 **(I) COLLECTS AND HOLDS TRUST MONEY FOR OR ON**
34 **BEHALF OF A LENDER, BORROWER, SELLER, OR BUYER;**

1 **(II) OBTAINS OR INDICATES AN INTENTION TO OBTAIN THE**
2 **EXECUTION OF TITLE DOCUMENTS; AND**

3 **(III) COLLECTS, OR INDICATES ON A SETTLEMENT**
4 **STATEMENT OR BY DELIVERY OF A TITLE INSURANCE COMMITMENT AN**
5 **INTENTION TO COLLECT, A TITLE INSURANCE PREMIUM FOR AN OWNER'S OR**
6 **LOAN POLICY.**

7 **(3) "CLOSING PROTECTION FEE" MEANS THE FEE DESCRIBED IN**
8 **SUBSECTION (D) OF THIS SECTION.**

9 **(4) "CLOSING PROTECTION LETTER" MEANS A DOCUMENT THAT:**

10 **(I) IS ISSUED BY A TITLE INSURER OR TITLE INSURANCE**
11 **PRODUCER ON BEHALF OF A TITLE INSURER IN CONNECTION WITH A CLOSING;**
12 **AND**

13 **(II) PROVIDES COVERAGE AGAINST LOSS CAUSED BY**
14 **CERTAIN MATTERS.**

15 **(5) "PROTECTED PARTY" MEANS A LENDER, BORROWER, BUYER,**
16 **OR SELLER WHO, IN CONNECTION WITH A CLOSING:**

17 **(I) DELIVERS TRUST MONEY TO A TITLE INSURER, TITLE**
18 **INSURANCE PRODUCER, OR TITLE INSURANCE PRODUCER INDEPENDENT**
19 **CONTRACTOR IN RELIANCE ON A TITLE INSURANCE COMMITMENT OR CLOSING**
20 **PROTECTION LETTER ISSUED BY THE TITLE INSURER OR TITLE INSURANCE**
21 **PRODUCER ON BEHALF OF THE TITLE INSURER; OR**

22 **(II) IS ENTITLED TO RECEIVE TRUST MONEY IN PAYMENT**
23 **FOR OR SATISFACTION OF AN INTEREST, ESTATE, LIEN, OR SECURITY INTEREST**
24 **IN THE PROPERTY THAT IS THE SUBJECT OF THE REAL ESTATE TRANSACTION.**

25 **(6) "REAL ESTATE TRANSACTION" MEANS A TRANSACTION IN**
26 **WHICH:**

27 **(I) PROPERTY IS SOLD OR LEASED FROM A SELLER TO A**
28 **BUYER, INCLUDING THE CREATION OF A LIEN OR SECURITY INTEREST IN**
29 **PROPERTY; OR**

30 **(II) A LIEN OR SECURITY INTEREST IS CREATED IN**
31 **PROPERTY IN FAVOR OF A LENDER.**

1 **(7) (I) “TITLE DOCUMENT” MEANS A WRITTEN DOCUMENT**
2 **THAT MEMORIALIZES A REAL ESTATE TRANSACTION.**

3 **(II) “TITLE DOCUMENT” INCLUDES A DEED, LEASE,**
4 **ASSIGNMENT, MORTGAGE, DEED OF TRUST, RELEASE, LAND INSTALLMENT**
5 **CONTRACT, AND FINANCING STATEMENT.**

6 **(8) “TITLE INSURANCE PRODUCER” HAS THE MEANING STATED**
7 **IN § 10–101 OF THIS ARTICLE.**

8 **(9) “TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR”**
9 **HAS THE MEANING STATED IN § 10–101 OF THIS ARTICLE.**

10 **(10) “TRUST MONEY” HAS THE MEANING STATED IN § 22–103 OF**
11 **THIS TITLE.**

12 **(B) A TITLE INSURER SHALL PROVIDE A PROTECTED PARTY WITH**
13 **REIMBURSEMENT FOR ACTUAL LOSS OF THE PROTECTED PARTY’S TRUST**
14 **MONEY THAT IS CONVERTED OR MISAPPROPRIATED BY:**

15 **(1) THE TITLE INSURER OR AN EMPLOYEE OF THE TITLE**
16 **INSURER;**

17 **(2) A TITLE INSURANCE PRODUCER WHO HOLDS AN**
18 **APPOINTMENT WITH THE TITLE INSURER OR AN EMPLOYEE OF THE TITLE**
19 **INSURANCE PRODUCER; OR**

20 **(3) A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR**
21 **WHO HOLDS AN APPOINTMENT WITH THE TITLE INSURER.**

22 **(C) A TITLE INSURER IS NOT REQUIRED TO PROVIDE REIMBURSEMENT**
23 **TO A PROTECTED PARTY UNDER THIS SECTION FOR:**

24 **(1) LOSS OR IMPAIRMENT OF TRUST MONEY IN THE COURSE OF**
25 **COLLECTION OR WHILE ON DEPOSIT WITH A BANK OR FINANCIAL INSTITUTION**
26 **DUE TO FAILURE, INSOLVENCY, BANKRUPTCY, OR SUSPENSION OF THE BANK OR**
27 **FINANCIAL INSTITUTION;**

28 **(2) LOSS TO A PROTECTED PARTY THAT ARISES FROM FRAUD**
29 **PERPETRATED BY THAT PROTECTED PARTY;**

30 **(3) LOSS THAT EXCEEDS THE ACTUAL AMOUNT OF FUNDS**
31 **CONVERTED OR MISAPPROPRIATED FROM THE PROTECTED PARTY;**

1 (4) LOSS THAT EXCEEDS THE AMOUNT OF TOTAL FUNDS
2 DEPOSITED WITH THE TITLE INSURANCE PRODUCER OR TITLE INSURER IN
3 CONNECTION WITH THE CLOSING; OR

4 (5) LOSS THAT IS NOT RELATED TO A CLOSING.

5 (D) (1) (I) IN CONNECTION WITH A CLOSING, A CLOSING
6 PROTECTION FEE SHALL BE COLLECTED BY OR ON BEHALF OF THE TITLE
7 INSURER.

8 (II) THE CLOSING PROTECTION FEE SHALL BE IN AN
9 AMOUNT SET BY THE COMMISSIONER.

10 (2) A TITLE INSURER MAY NOT SPLIT WITH OR PROVIDE TO A
11 TITLE INSURANCE PRODUCER OR TITLE INSURANCE PRODUCER INDEPENDENT
12 CONTRACTOR A COMMISSION BASED WHOLLY OR PARTLY ON A CLOSING
13 PROTECTION FEE COLLECTED UNDER THIS SECTION.

14 (3) THE CHARGE FOR THE CLOSING PROTECTION FEE MAY BE
15 COMBINED WITH THE CHARGE FOR THE TITLE INSURANCE PREMIUM ON THE
16 SETTLEMENT STATEMENT PROVIDED IN CONNECTION WITH THE CLOSING.

17 (4) THE CLOSING PROTECTION FEE IS PREMIUM AND IS SUBJECT
18 TO THE PREMIUM TAX APPLICABLE TO TITLE INSURANCE PREMIUMS UNDER
19 TITLE 6 OF THIS ARTICLE.

20 (5) THE CLOSING PROTECTION FEE SHALL BE INCLUDED WITH
21 OTHER PREMIUMS WRITTEN BY A TITLE INSURER IN COMPUTING THE
22 STATUTORY RESERVE REQUIRED UNDER § 5-206 OF THIS ARTICLE.

23 (6) THE LIABILITY OF A TITLE INSURER UNDER SUBSECTION (B)
24 OF THIS SECTION IS NOT LIMITED TO THE AMOUNT OF CLOSING PROTECTION
25 FEES COLLECTED UNDER THIS SUBSECTION.

26 (E) (1) A TITLE INSURER DOING BUSINESS IN THE STATE SHALL, ON
27 AN ANNUAL BASIS, MAINTAIN A RECORD OF THE AMOUNT OF CLOSING
28 PROTECTION FEES COLLECTED AND REIMBURSEMENT CLAIMS PAID BY THE
29 TITLE INSURER BEGINNING WITH THE YEAR OF ENACTMENT OF THIS SECTION.

30 (2) FOLLOWING THE END OF THE FIFTH CALENDAR YEAR AFTER
31 THE DATE OF ENACTMENT OF THIS SECTION AND AT THE END OF EACH
32 SUBSEQUENT 5-YEAR PERIOD, THE COMMISSIONER SHALL:

1 (I) COLLECT AND COMPILE DATA ON THE AMOUNT OF
2 CLOSING PROTECTION FEES COLLECTED AND REIMBURSEMENT CLAIMS PAID BY
3 TITLE INSURERS DOING BUSINESS IN THE STATE DURING THE PRECEDING
4 5-YEAR PERIOD;

5 (II) REVIEW THE DATA TO DETERMINE WHETHER THE
6 AMOUNT OF THE CLOSING PROTECTION FEE SET IN SUBSECTION (D) OF THIS
7 SECTION IS SUFFICIENT FOR THE REIMBURSEMENT OF PROTECTED PARTIES
8 AND ADEQUATE COMPENSATION FOR THE RISK UNDERTAKEN BY TITLE
9 INSURERS; AND

10 (III) IF NECESSARY, INCREASE THE AMOUNT OF THE
11 CLOSING PROTECTION FEE BY REGULATION.

12 (F) (1) A TITLE INSURER OR TITLE INSURANCE PRODUCER MAY
13 PROVIDE A CLOSING PROTECTION LETTER TO A PROTECTED PARTY THAT
14 PROVIDES FOR PROTECTION OF TRUST MONEY.

15 (2) IF THE TERMS OF A CLOSING PROTECTION LETTER PROVIDED
16 TO A PROTECTED PARTY REGARDING CONVERSION OR MISAPPROPRIATION OF
17 TRUST MONEY PROVIDE LESS COVERAGE FOR A PROTECTED PARTY THAN THIS
18 SECTION, THE PROVISIONS OF THIS SECTION CONTROL.

19 (G) THE COMMISSIONER:

20 (1) SHALL ADOPT REGULATIONS IF NECESSARY TO INCREASE THE
21 AMOUNT OF THE CLOSING PROTECTION FEE IN ACCORDANCE WITH SUBSECTION
22 (E)(2)(III) OF THIS SECTION; AND

23 (2) MAY ADOPT REGULATIONS FOR PAYMENT OF
24 REIMBURSEMENT CLAIMS UNDER THIS SECTION.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2011.