

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 881

(Senator Kelley)

Finance

Economic Matters

Title Insurers - Statutory or Unearned Premium Reserves

This bill establishes that a title insurer domiciled in the State must maintain a statutory or unearned premium reserve of an amount computed in a specified manner *using the retained liability* for title insurance contracts. During each of the 20 years after a contract is issued, the reserves applicable to the contract must be reduced in equal 12-month installments in accordance with the specified computation provisions. The bill also allows each title insurer in the State to file, with its required annual statement, a certification by a member in good standing of the Casualty Actuarial Society. If, as under current law, a member in good standing of the American Academy of Actuaries provides the certification, that member must have been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

The bill takes effect June 1, 2014, and must be construed to apply retroactively to affect all title insurance contracts in effect on that date.

Fiscal Summary

State Effect: The bill does not directly affect State governmental operations or finances.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines a “risk premium” to mean the amount charged for an assumption of risk. A “risk premium” includes title insurance producer commissions. It does not include charges for services rendered in the preparation of documents, searching, underwriting, recording of documents, or closing of a risk.

The bill repeals an obsolete reserve schedule.

Current Law: A title insurer must maintain minimum statutory reserves or unearned premium reserves of at least 8% of the title insurance risk premiums written per calendar year. During each of the 20 years following the year in which the contract was issued, the applicable reserve must be reduced by a specified formula, which requires an initial 35% decrease of the aggregate sum on the next July 1. Each title insurer must file with its required annual statement a specified certification as to the adequacy of the title insurer’s reserves. The actuarial certification must conform to the National Association of Insurance Commissioners’ annual statement instructions for title insurers.

Generally, when a title insurer accepts a premium for a title insurance policy or mortgagee title insurance, the person first accepting the premium must insert the name of each insured in the binder for the title insurance or the title report and, immediately on receipt of the premium, must deliver a specified written notice to the buyer or the buyer’s agent or attorney.

Before disbursing any funds, the person required to give this notice must obtain from the buyer, at the time the person delivers the notice, a statement in writing that the buyer has received the notice and whether the buyer wants title insurance. The person required to give the notice must retain the original signed statement and a copy of the notice for three years and make the documents available for inspection by the Insurance Commissioner upon request.

By March 1 of each year, unless the Insurance Commissioner extends the time for good cause, each authorized insurer in the State must file with the Commissioner a complete statement of its financial condition, transactions, and affairs for the immediately preceding calendar year. The statement must be in a specified form, and late filings are charged a daily penalty. The Commissioner may also require an authorized insurer to file an interim statement under similar provisions.

The Fraud Division within the Maryland Insurance Administration (MIA) has the authority to investigate each person suspected of engaging in insurance fraud and must, if appropriate, refer a suspected case of insurance fraud to the Office of the Attorney

General or the appropriate local State's Attorney to prosecute a person criminally for insurance fraud.

Background: Title insurance policies are marketed as a method of protecting the financial interests of real property owners and mortgage lenders by insuring against losses that may be suffered due to title defects, liens, or other matters relating to real property titles. In most cases, such policies will defend against lawsuits that attack the title of a property, or reimburse the insured for actual monetary losses associated with title issues. Title insurance can usually be purchased to protect any type of interest in real property, including fee-simple ownership, easements, leases, and mortgages. Although nearly all institutional mortgage lenders require title insurance on mortgaged properties in order to protect their investments, some mortgage lenders do not. The lack of title insurance can leave a property owner exposed to costly lawsuits challenging the legitimacy of their ownership.

Title insurance exists as a result of the complex land records system currently in use in most jurisdictions across the country. Unlike the large government-managed land registration systems that are used in other countries (as well as some U.S. cities including Minneapolis and Boston), most state recording systems rely on the person obtaining a property to record their interest following a transaction. Errors in this recording process can lead to a myriad of legal problems for property owners; the courts are the final arbiters of title matters, including liens, in nonregistration land record systems.

Thefts of escrow accounts, known as defalcations, in the real estate and title insurance business became a nationwide problem after the economic downturn in the national real estate market. To address this issue, Chapters 356 and 357 of 2008 created the Commission to Study the Title Insurance Industry in Maryland with the purpose of recommending changes to State law related to title insurance. The commission's first recommendation suggested an MIA study of 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 money held in escrow by a licensed title insurance producer. No such study was conducted; however, Chapter 683 of 2012 required MIA to study closing and settlement practices of the title insurance industry and make recommendations to change these practices. In that study, MIA found that the theft of escrow funds was a common and inherent cost of doing business in the title insurance industry and recommended wider use of on-site reviews by title insurance underwriters to ensure an insurer's business practices do not create an environment vulnerable to theft.

Additional Information

Prior Introductions: None.

Cross File: HB 1082 (Delegate Jameson, *et al.*) - Economic Matters.

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

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