

SENATE BILL 1050

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By: **Senator Kelley**

Introduced and read first time: February 26, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurance – Title Insurers and Title Insurance Producers – Regulation**
3 **and Reports**

4 FOR the purpose of providing that a title insurance producer independent contractor
5 who is the agent of a title insurance producer is not required to file a certain
6 fidelity bond, surety bond, or letter of credit with the Maryland Insurance
7 Commissioner under certain circumstances; prohibiting a title insurance
8 producer from using or accepting the services of a title insurance producer
9 independent contractor unless the title insurance producer independent
10 contractor is covered under the title insurance producer's fidelity bond and
11 surety bond or letter of credit; providing that a title insurance producer that
12 uses the services of a title insurance producer independent contractor is the
13 legal principal of the title insurance producer independent contractor and is
14 liable for certain actions of the title insurance producer independent contractor;
15 requiring any deed of trust executed by a title insurance producer independent
16 contractor as the agent of a title insurance producer to include certain
17 information; requiring the Maryland Insurance Commissioner to conduct a
18 certain study, adopt certain regulations, examine a certain rate review and
19 approval process, and report certain information to certain committees of the
20 General Assembly; requiring the Maryland Insurance Administration and the
21 Department of Labor, Licensing, and Regulation to develop a certain document
22 and make it available on their websites, adopt certain regulations, share certain
23 information, and report certain information to certain committees of the
24 General Assembly; altering a certain definition; and generally relating to title
25 insurers and title insurance producers.

26 BY repealing and reenacting, without amendments,
27 Article – Insurance
28 Section 10–101(a) and 10–121(e), (g), and (k)
29 Annotated Code of Maryland
30 (2003 Replacement Volume and 2009 Supplement)

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 10–101(j), 10–121(n), and 10–121.1
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2009 Supplement)

6 BY adding to
7 Article – Insurance
8 Section 10–121(n)
9 Annotated Code of Maryland
10 (2003 Replacement Volume and 2009 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 10–101.

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

16 (j) “Title insurance producer independent contractor” means a person that:

17 (1) is licensed to act as a title insurance producer;

18 (2) provides escrow, closing, or settlement services that may result in
19 the issuance of a title insurance contract as an independent contractor for, or on behalf
20 of, a licensed and appointed title insurance producer; and

21 (3) is not an employee of[, or associated with,] the licensed and
22 appointed title insurance producer.

23 10–121.

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

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

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

31 2. a letter of credit.

1 (2) Unless the Commissioner approves a lesser amount, each bond or
2 letter of credit shall be for \$150,000.

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

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

8 (5) The Commissioner shall make a specific finding that states the
9 reason for accepting a bond or letter of credit for less than \$150,000.

10 (g) The title insurance producer shall file the bond or letter of credit with the
11 Commissioner:

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

14 (2) before the Commissioner issues the license.

15 (k) (1) (i) Except as provided in paragraph (5) of this subsection, the
16 title insurer shall during each calendar year conduct an on-site review of the
17 underwriting, claims, and escrow practices of each title insurance producer appointed
18 by the insurer as a principal agent as designated in the title insurance agency contract
19 between the insurer and the producer.

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

22 (iii) If the title insurance producer or agency does not maintain
23 separate bank or trust accounts for each title insurer it represents, the title insurer
24 shall verify that the funds held on its behalf are reasonably ascertainable from the
25 books of account and records of the title insurance producer or agency.

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

29 (3) If, as a result of the examination, a title insurer has reasonable
30 cause to believe that a title insurance producer or agency has engaged in any of the
31 prohibited activities set forth in § 10-126 of this subtitle, the title insurer shall report
32 in writing the suspected violation to the Commissioner and submit a copy of the
33 examination.

34 (4) The examination required under this section is in addition to any
35 examination conducted by the Commissioner to determine compliance with the

1 accounts maintained for the benefit of the Maryland Affordable Housing Trust under §
2 22–103 of this article.

3 (5) The title insurer is not required to perform the on–site review of a
4 title insurance producer for the calendar year during which the title insurance
5 producer is initially appointed if the appointment is made on or after June 30 of that
6 calendar year.

7 **(N) NOTWITHSTANDING SUBSECTIONS (E) AND (G) OF THIS SECTION, A**
8 **TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR WHO IS THE AGENT**
9 **OF A TITLE INSURANCE PRODUCER IS NOT REQUIRED TO FILE A BLANKET**
10 **FIDELITY BOND, BLANKET SURETY BOND, OR LETTER OF CREDIT WITH THE**
11 **COMMISSIONER.**

12 **[(n)] (O)** In addition to any requirements under Title 10, Subtitle 1 of this
13 article, title insurance producers shall comply with this section.

14 10–121.1.

15 **(A)** A title insurance producer may not use or accept the services of a title
16 insurance producer independent contractor unless the title insurance producer
17 independent contractor:

18 **(1)** holds an appointment with the title insurer with which the
19 contract of title insurance may be placed; **AND**

20 **(2) IS COVERED UNDER THE TITLE INSURANCE PRODUCER’S:**

21 **(I) BLANKET FIDELITY BOND; AND**

22 **(II) BLANKET SURETY BOND OR LETTER OF CREDIT.**

23 **(B) (1) A TITLE INSURANCE PRODUCER THAT USES THE SERVICES OF**
24 **A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS:**

25 **(I) THE LEGAL PRINCIPAL OF THE TITLE INSURANCE**
26 **PRODUCER INDEPENDENT CONTRACTOR; AND**

27 **(II) LIABLE FOR ALL ACTIONS OF THE TITLE INSURANCE**
28 **PRODUCER INDEPENDENT CONTRACTOR, INCLUDING UNINTENTIONAL**
29 **CONDUCT.**

30 **(2) ANY DEED OF TRUST EXECUTED BY A TITLE INSURANCE**
31 **PRODUCER INDEPENDENT CONTRACTOR ACTING AS THE AGENT OF A TITLE**
32 **INSURANCE PRODUCER SHALL INCLUDE ON THE RECORDED DEED OF TRUST**

1 THE NAME, ADDRESS, AND LICENSE NUMBER OF THE TITLE INSURANCE
2 PRODUCER INDEPENDENT CONTRACTOR AND THE TITLE INSURANCE
3 PRODUCER FOR WHICH THE TITLE INSURANCE PRODUCER INDEPENDENT
4 CONTRACTOR IS ACTING.

5 SECTION 2. AND BE IT FURTHER ENACTED, That:

6 (a) The Maryland Insurance Commissioner shall:

7 (1) study, in consultation with the title insurance industry, the
8 feasibility of establishing a guaranty fund or other mechanism for compensating
9 consumers and title insurers who have money that is held in escrow in connection with
10 a real estate transaction stolen by a title insurance producer;

11 (2) adopt regulations specifying the manner in which a title insurer
12 conducts the annual on-site review required under § 10-121(k) of the Insurance
13 Article of the underwriting, claims, and escrow practices of each title insurance
14 producer appointed by the insurer as a principal agent; and

15 (3) examine the current rate review and approval process for title
16 insurance premiums, including the appropriateness of including operating expenses as
17 a component of the total rate charged and whether additional factors, such as
18 underwriting losses, loss ratios, and combined ratios, should be considered when
19 reviewing title insurance rates.

20 (b) On or before December 31, 2010, the Commissioner shall report to the
21 Senate Finance Committee and the House Economic Matters Committee, in
22 accordance with § 2-1246 of the State Government Article, on the status of the
23 regulations and findings of the study and examination required under subsection (a) of
24 this section.

25 SECTION 3. AND BE IT FURTHER ENACTED, That:

26 (a) The Maryland Insurance Administration and the Department of Labor,
27 Licensing, and Regulation shall:

28 (1) (i) develop a document, entitled "The Title Insurance
29 Consumer's Bill of Rights", that explains a consumer's rights and responsibilities in a
30 real estate transaction closing;

31 (ii) make the document available on their websites; and

32 (iii) adopt regulations requiring that the document be provided
33 to a consumer at the same time that a good faith estimate is given to a consumer in
34 connection with a mortgage loan; and

1 (2) share information regarding complaints received involving real
2 estate closings and work collaboratively to track any patterns of problem transactions
3 or licensees.

4 (b) On or before December 31, 2010, the Administration and the Department
5 shall report to the Senate Finance Committee and the House Economic Matters
6 Committee, in accordance with § 2-1246 of the State Government Article, on the
7 status of the document, regulations, and collaboration between the Administration
8 and the Department required under subsection (a) of this section.

9 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2010.