

SENATE BILL 881

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4lr1833
CF 4lr2617

By: **Senator Kelley**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurers – Statutory or Unearned Premium Reserve for Escrow Losses**

3 FOR the purpose of altering the formula in accordance with which a title insurer
4 domiciled in the State shall reduce the reserves applicable to certain contracts
5 of title insurance for purposes of a certain statutory or unearned premium
6 reserve; altering the percent of the total amount of certain risk premiums for
7 title insurance contracts that must be assigned originally to certain reserves;
8 altering the date on, and the method by which, a title insurer must calculate
9 and recalculate a certain reserve; requiring that a certain sum of certain excess
10 reserves be assigned immediately to a certain statutory reserve for escrow
11 losses; requiring a title insurer domiciled in the State to maintain a certain
12 statutory reserve or unearned premium reserve for escrow losses of at least a
13 certain amount computed in a certain manner; altering the circumstances under
14 which certain unearned premium reserves may be released; requiring that
15 certain unearned premium reserves be retained for the protection of
16 policyholders; authorizing, if a certain title insurer becomes insolvent or is in
17 the process of liquidation or dissolution, the use of a certain amount of certain
18 assets for a certain purpose and the transfer of a certain balance to certain
19 assets; providing that certain assets shall be available to pay claims for certain
20 losses under certain circumstances and that the balance of the claims shall be
21 paid out of certain assets under certain circumstances; providing that the
22 unearned premium reserve shall constitute a trust fund for certain purposes
23 under certain circumstances; providing that the amount of unearned premium
24 reserve for escrow losses does not limit the amount of liability of a domestic title
25 insurer; defining a certain term; making stylistic and conforming changes;
26 providing that certain provisions of this Act apply retroactively to certain title
27 insurance contracts; providing for a delayed effective date for certain provisions
28 of this Act; and generally relating to statutory or unearned premium reserves of
29 title insurers.

30 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Insurance
 2 Section 5–206
 3 Annotated Code of Maryland
 4 (2011 Replacement Volume and 2013 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – Insurance
 7 Section 5–206
 8 Annotated Code of Maryland
 9 (2011 Replacement Volume and 2013 Supplement)
 10 (As enacted by Section 1 of this Act)

11 Preamble

12 WHEREAS, Defalcations and theft from real property escrow accounts are a
 13 continuing and growing financial problem in the real estate and title insurance
 14 business; and

15 WHEREAS, In an effort to address the problem, the General Assembly enacted
 16 Chapters 356 and 357 of the Acts of the General Assembly of 2008, creating the
 17 Commission to Study the Title Insurance Industry in Maryland; and

18 WHEREAS, In its February 2010 report, the Commission’s first
 19 recommendation was that the Maryland Insurance Commissioner “study, in
 20 consultation with the title insurance industry, the feasibility and structure of a
 21 guaranty fund and other avenues of remuneration for consumers and title insurers in
 22 a real estate transaction who are victims of theft of moneys held in escrow by a
 23 licensed title insurance producer”; and

24 WHEREAS, Homeowners and title insurers have been harmed as a result of the
 25 theft of moneys held in escrow; now, therefore,

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

28 **Article – Insurance**

29 5–206.

30 (a) (1) IN THIS SECTION, “RISK PREMIUMS” MEANS THE AMOUNT
 31 CHARGED FOR THE ASSUMPTION OF RISK.

32 (2) “RISK PREMIUMS” INCLUDES TITLE INSURANCE PRODUCER
 33 COMMISSIONS.

1 **(3) “RISK PREMIUMS” DOES NOT INCLUDE CHARGES FOR**
2 **SERVICES RENDERED IN THE PREPARATION OF DOCUMENTS, SEARCHING,**
3 **UNDERWRITING, RECORDING OF DOCUMENTS, OR CLOSING OF A RISK.**

4 **(B)** (1) In addition to adequate reserves required by § 5–103 of this title
5 for outstanding losses, a title insurer **DOMICILED IN THE STATE** shall maintain a
6 statutory reserve or unearned premium reserve of at least an amount computed as
7 follows:

8 (i) 8% of the total amount of the risk premiums written in the
9 calendar year for title insurance contracts shall be as assigned originally to the
10 reserves; and

11 (ii) during each of the 20 years that follow the year in which the
12 contract is issued, the reserves applicable to the contract shall be reduced **IN EQUAL**
13 **12-MONTH INSTALLMENTS** in accordance with the following formula:

14 1. 35% of the aggregate sum [on July 1 of] **IN** the year
15 [next] succeeding the year of addition;

16 2. 15% of the aggregate sum [on July 1 of] **IN** each of the
17 succeeding 2 years;

18 3. 10% of the aggregate sum [on July 1 of] **IN** the
19 succeeding year;

20 4. 3% of the aggregate sum [on July 1 of] **IN** each of the
21 succeeding 3 years;

22 5. 2% of the aggregate sum [on July 1 of] **IN** each of the
23 succeeding 3 years; and

24 6. 1% of the aggregate sum [on July 1 of] **IN** each of the
25 succeeding 10 years.

26 (2) (i) The title insurer shall calculate retroactive adjusted
27 statutory reserve or unearned premium reserve on an aggregate basis on January 1,
28 2010.

29 (ii) The adjusted aggregate reserve shall be recalculated as if
30 paragraph (1)(ii) of this subsection had been in effect during the 20 years preceding
31 January 1, 2010.

32 (3) Subject to subsection [(c)] **(D)** of this section, the aggregate sum of
33 any excess reserves resulting from a recalculation under this subsection shall be

1 (ii) during each of the 20 years that follow the year in which the
2 contract is issued, the reserves applicable to the contract shall be reduced in equal
3 12-month installments in accordance with the following formula:

- 4 1. 35% of the aggregate sum in the year succeeding the
5 year of addition;
- 6 2. 15% of the aggregate sum in each of the succeeding 2
7 years;
- 8 3. 10% of the aggregate sum in the succeeding year;
- 9 4. 3% of the aggregate sum in each of the succeeding 3
10 years;
- 11 5. 2% of the aggregate sum in each of the succeeding 3
12 years; and
- 13 6. 1% of the aggregate sum in each of the succeeding 10
14 years.

15 (2) (i) The title insurer shall calculate retroactive adjusted
16 statutory reserve or unearned premium reserve on an aggregate basis on January 1,
17 **[2010] 2015.**

18 (ii) The adjusted aggregate reserve shall be recalculated as if
19 paragraph **[(1)(ii)] (1)(I) AND (II)** of this subsection had been in effect during the 20
20 years preceding January 1, **[2010] 2015.**

21 (3) **[Subject to subsection (d) of this section, the] THE** aggregate sum
22 of any excess reserves resulting from a recalculation under this subsection shall be
23 **[released over a 3-year period in equal installments of one-third each year, beginning**
24 **with the 2010 calendar year] ASSIGNED IMMEDIATELY TO A STATUTORY RESERVE**
25 **FOR ESCROW LOSSES AS REQUIRED BY SUBSECTION (C) OF THIS SECTION.**

26 **(C) IN ADDITION TO THE STATUTORY RESERVE OR UNEARNED PREMIUM**
27 **RESERVE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, A TITLE**
28 **INSURER DOMICILED IN THE STATE SHALL MAINTAIN A STATUTORY RESERVE**
29 **OR UNEARNED PREMIUM RESERVE FOR ESCROW LOSSES OF AT LEAST AN**
30 **AMOUNT COMPUTED AS FOLLOWS:**

31 **(1) 2% OF THE TOTAL AMOUNT OF THE RISK PREMIUMS WRITTEN**
32 **IN THE CALENDAR YEAR FOR TITLE INSURANCE CONTRACTS SHALL BE AS**
33 **ASSIGNED ORIGINALLY TO THE RESERVES; AND**

1 **(2) THE AMOUNT SET ASIDE IN RESERVE SHALL BE RELEASED IN**
2 **ACCORDANCE WITH THE FOLLOWING:**

3 **(I) IMMEDIATELY ON THE OCCURRENCE OF A LOSS ARISING**
4 **OUT OF THEFT OF ESCROW FUNDS IN AN AMOUNT NOT TO EXCEED THE AMOUNT**
5 **OF THE LOSS; AND**

6 **(II) IF THE TITLE INSURER BECOMES INSOLVENT OR IS IN**
7 **THE PROCESS OF LIQUIDATION:**

8 **1. THE BALANCE OF THE RESERVE THEN REMAINING**
9 **SHALL BE ASSIGNED TO THE RESERVE REQUIRED UNDER SUBSECTION (B) OF**
10 **THIS SECTION; AND**

11 **2. THE FUNDS SHALL BE WITHDRAWN IN**
12 **ACCORDANCE WITH SUBSECTION (B)(1)(II) OF THIS SECTION, TREATING THE**
13 **YEAR OF ADDITION AS THE YEAR THE FUNDS WERE ASSIGNED.**

14 **[(c)] (D)** (1) Each title insurer shall file with its annual statement
15 required under § 4–116 of this article a certification by a member in good standing of
16 the American Academy of Actuaries as to the adequacy of its reserves required under
17 this section and § 5–103 of this title.

18 (2) The actuarial certification required of a title insurer must conform
19 to the National Association of Insurance Commissioners' annual statement
20 instructions for title insurers.

21 **[(d)] (E)** (1) Unearned premium reserves may not be released under
22 subsection **[(a)] (B) OR (C)** of this section to the extent that the release would result in
23 the aggregate reserve, **WHEN COMBINED WITH THE AMOUNT REQUIRED UNDER §**
24 **5–103 OF THIS TITLE**, falling below the amount required under this section and §
25 5–103 of this title.

26 (2) Any amount of unearned premium reserves that may not be
27 released under paragraph (1) of this subsection shall be considered an unearned
28 premium reserve and may not be considered a supplemental reserve.

29 **(F) (1) THE UNEARNED PREMIUM RESERVES ESTABLISHED UNDER**
30 **THIS SECTION SHALL BE RETAINED FOR THE PROTECTION OF POLICYHOLDERS.**

31 **(2) IF A TITLE INSURER SUBJECT TO THIS SECTION BECOMES**
32 **INSOLVENT OR IS IN THE PROCESS OF LIQUIDATION OR DISSOLUTION:**

1 **(I) 1. AN AMOUNT OF THE ASSETS OF THE TITLE**
2 **INSURER EQUAL TO THE UNEARNED PREMIUM RESERVES AS IS NECESSARY MAY**
3 **BE USED TO PAY FOR REINSURANCE OF THE TITLE INSURER'S OUTSTANDING**
4 **LIABILITIES ON ALL IN-FORCE POLICIES OR REINSURANCE AGREEMENTS OF**
5 **TITLE INSURANCE, AS TO WHICH CLAIMS FOR LOSSES BY POLICYHOLDERS ARE**
6 **NOT THEN PENDING; AND**

7 **2. THE BALANCE, IF ANY, OF THE UNEARNED**
8 **PREMIUM RESERVE FUND SHALL THEN BE TRANSFERRED TO THE GENERAL**
9 **ASSETS OF THE TITLE INSURER;**

10 **(II) 1. THE ASSETS OF THE TITLE INSURER OTHER THAN**
11 **THE UNEARNED PREMIUM RESERVE SHALL BE AVAILABLE TO PAY CLAIMS FOR**
12 **LOSSES SUSTAINED BY POLICYHOLDERS THEN PENDING OR ARISING UP TO THE**
13 **TIME REINSURANCE IS PLACED; OR**

14 **2. IF CLAIMS FOR LOSSES ARE IN EXCESS OF THE**
15 **ASSETS OF THE TITLE INSURER, THE BALANCE OF THE CLAIMS SHALL BE PAID**
16 **OUT OF THE ASSETS ATTRIBUTABLE TO THE UNEARNED PREMIUM RESERVE;**
17 **AND**

18 **(III) IF REINSURANCE IS UNAVAILABLE, THE UNEARNED**
19 **PREMIUM RESERVE SHALL CONSTITUTE A TRUST FUND OUT OF WHICH**
20 **POLICYHOLDER LOSSES SHALL BE PAID AS FUNDS ARE RELEASED IN**
21 **ACCORDANCE WITH SUBSECTION (B)(1)(II) OF THIS SECTION.**

22 **(G) THE AMOUNT OF UNEARNED PREMIUM RESERVE REQUIRED UNDER**
23 **SUBSECTION (B) OF THIS SECTION DOES NOT LIMIT THE AMOUNT OF LIABILITY**
24 **OF A DOMESTIC TITLE INSURER.**

25 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
26 be construed to apply retroactively and shall be applied to and interpreted to affect
27 title insurance contracts in effect on the effective date of this Act.

28 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
29 take effect January 1, 2015.

30 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
31 Section 4 of this Act, this Act shall take effect June 1, 2014.