

# SENATE BILL 1050

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CF HB 1470

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By: **Senator Kelley**

Introduced and read first time: February 26, 2010

Assigned to: Rules

Re-referred to: Finance, March 5, 2010

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2010

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## CHAPTER \_\_\_\_\_

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 information, and report certain information to certain committees of the  
2 General Assembly; altering a certain definition; and generally relating to title  
3 insurers and title insurance producers.

4 BY repealing and reenacting, without amendments,  
5 Article – Insurance  
6 Section 10–101(a) and 10–121(e), (g), and (k)  
7 Annotated Code of Maryland  
8 (2003 Replacement Volume and 2009 Supplement)

9 BY repealing and reenacting, with amendments,  
10 Article – Insurance  
11 Section 10–101(j), 10–121(n), and 10–121.1  
12 Annotated Code of Maryland  
13 (2003 Replacement Volume and 2009 Supplement)

14 BY adding to  
15 Article – Insurance  
16 Section 10–121(n)  
17 Annotated Code of Maryland  
18 (2003 Replacement Volume and 2009 Supplement)

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

21 **Article – Insurance**

22 10–101.

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

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

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

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

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

31 10–121.

32 (e) (1) In addition to meeting any of the applicable requirements for a  
33 license to act as an insurance producer under this subtitle, a sole proprietor, a limited

1 liability company, a partnership, or a corporate applicant for a license as a title  
2 insurance producer shall file with the Commissioner:

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

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

6 2. a letter of credit.

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

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

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

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

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

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

20 (2) before the Commissioner issues the license.

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

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

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

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

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

9 (4) The examination required under this section is in addition to any  
10 examination conducted by the Commissioner to determine compliance with the  
11 accounts maintained for the benefit of the Maryland Affordable Housing Trust under §  
12 22-103 of this article.

13 (5) The title insurer is not required to perform the on-site review of a  
14 title insurance producer for the calendar year during which the title insurance  
15 producer is initially appointed if the appointment is made on or after June 30 of that  
16 calendar year.

17 **(N) NOTWITHSTANDING SUBSECTIONS (E) AND (G) OF THIS SECTION, A**  
18 **TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR WHO ~~IS THE AGENT~~**  
19 **PROVIDES ESCROW CLOSING OR SETTLEMENT SERVICES THAT MAY RESULT IN**  
20 **THE ISSUANCE OF A TITLE INSURANCE CONTRACT FOR OR ON BEHALF OF A**  
21 **TITLE INSURANCE PRODUCER IS NOT REQUIRED TO FILE A BLANKET FIDELITY**  
22 **BOND, BLANKET SURETY BOND, OR LETTER OF CREDIT WITH THE**  
23 **COMMISSIONER.**

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

26 10-121.1.

27 **(A)** A title insurance producer may not use or accept the services of a title  
28 insurance producer independent contractor unless the title insurance producer  
29 independent contractor:

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

32 **(2) IS COVERED UNDER THE TITLE INSURANCE PRODUCER'S:**

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

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

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

3                   **(I) THE LEGAL PRINCIPAL OF THE TITLE INSURANCE**  
4 **PRODUCER INDEPENDENT CONTRACTOR; AND**

5                   **(II) LIABLE FOR ALL ACTIONS OF THE TITLE INSURANCE**  
6 **PRODUCER INDEPENDENT CONTRACTOR, INCLUDING UNINTENTIONAL**  
7 **~~CONDUCT~~ CONDUCT, THAT OCCURS WITHIN THE SCOPE OF THE TITLE**  
8 **INSURANCE PRODUCER'S INDEPENDENT CONTRACTOR'S EMPLOYMENT.**

9           **(2) ~~ANY~~ WHEN A MORTGAGE OR DEED OF TRUST EXECUTED BY IN**  
10 **A TRANSACTION IN WHICH A TITLE INSURANCE PRODUCER INDEPENDENT**  
11 **CONTRACTOR IS ACTING AS THE AGENT FOR OR ON BEHALF OF A TITLE**  
12 **INSURANCE PRODUCER SHALL INCLUDE ON PRODUCER, THERE SHALL BE**  
13 **INCLUDED ON OR WITH THE RECORDED MORTGAGE OR DEED OF TRUST THE**  
14 **NAME, ADDRESS, AND LICENSE NUMBER OF THE TITLE INSURANCE PRODUCER**  
15 **INDEPENDENT CONTRACTOR AND THE TITLE INSURANCE PRODUCER FOR**  
16 **WHICH THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS**  
17 **ACTING.**

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

19           (a) The Maryland Insurance Commissioner shall:

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

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

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

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

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

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

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

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

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.