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GOVERNMENT OF THE DISTRICT OF COLUMBIA



**DEPARTMENT OF INSURANCE, SECURITIES AND  
BANKING**

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TESTIMONY OF  
**PHILIP BARLOW**  
ASSOCIATE COMMISSIONER  
INSURANCE BUREAU

***BILL 18-1008, TITLE INSURANCE REGULATION***

***CLARIFICATION ACT OF 2010***

COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS  
MURIEL BOWSER, CHAIRPERSON  
COUNCIL OF THE DISTRICT OF COLUMBIA

SEPTEMBER 29, 2010

JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, NW  
WASHINGTON, DC 20004  
11:00 AM

**GOOD MORNING CHAIRPERSON BOWSER, MEMBERS OF THE COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS, AND COMMITTEE STAFF. I AM PHILIP BARLOW, ASSOCIATE COMMISSIONER FOR INSURANCE FOR THE DEPARTMENT OF INSURANCE, SECURITIES AND BANKING (“DEPARTMENT” OR “DISB”). THANK YOU FOR PROVIDING THE DEPARTMENT WITH THE OPPORTUNITY TO PRESENT TESTIMONY TODAY ON BILL 18-1008, TITLE INSURANCE REGULATION CLARIFICATION ACT OF 2010.**

**BILL 18-1008 AMENDS DC OFFICIAL CODE §31-2501.02 AND §31-2702 TO REMOVE THE EXEMPTIONS FOR TITLE INSURANCE FROM CHAPTER 25 OF TITLE 31, THE FIRE AND CASUALTY ACT, AND CHAPTER 27 OF TITLE 31 WHICH PROVIDES FOR THE REGULATION OF CASUALTY AND OTHER INSURANCE RATES. THE COUNCIL RECENTLY ENACTED A COMPREHENSIVE REGULATORY SCHEME FOR TITLE INSURERS IN THE TITLE INSURANCE INSURER ACT OF 2010 (“TITLE INSURER ACT”). THIS BILL MAKES CHANGES TO EXISTING LAWS REGARDING THE REGULATION OF PROPERTY AND CASUALTY (“P&C”) INSURERS TO IMPLEMENT THE TITLE INSURER ACT, INCLUDING THE EXEMPTION OF TITLE INSURANCE RATE REGULATION FOR CERTAIN COMMERCIAL TRANSACTIONS. CHAPTER 25 OF TITLE 31 DEALS WITH THE REGULATION OF P&C INSURERS GENERALLY AND CHAPTER 27 DEALS SPECIFICALLY WITH THE REGULATION OF P&C RATES.**

**THE TITLE INSURER ACT PROVIDES THAT “[N]O PERSON, OTHER THAN A DOMESTIC, FOREIGN, OR NON-U.S. TITLE INSURER ORGANIZED ON THE STOCK PLAN AND LICENSED UNDER THE FIRE AND CASUALTY ACT, SHALL ISSUE A TITLE INSURANCE POLICY OR OTHERWISE TRANSACT THE BUSINESS OF TITLE INSURANCE IN THE DISTRICT.” THE CONFORMING AMENDMENT TO CHAPTER 25 REMOVES THE TITLE**

**INSURANCE EXEMPTION TO ENABLE THE TITLE INSURER ACT AND THE FIRE AND CASUALTY ACT TO OPERATE AS A SEAMLESS REGULATORY SCHEME. THIS CHANGE MAY BE ACCOMPLISHED THROUGH A TECHNICAL AMENDMENT IF APPROVED BY THE GENERAL COUNSEL OF COUNCIL.**

**REGARDING THE REGULATION OF TITLE INSURANCE RATES, THE TITLE INSURER ACT PROVIDES THAT RATES BE “FILED BY THE TITLE INSURER WITH AND APPROVED BY THE COMMISSIONER IN ACCORDANCE WITH APPLICABLE LAW AND RULES GOVERNING RATE FILINGS”. BILL 18-1008, ALSO REPEALS THE TITLE INSURANCE EXEMPTION FROM DC OFFICIAL CODE § 31-2702 TO MAKE CHAPTER 27 THE “APPLICABLE RATE FILING PROVISION” FOR TITLE INSURERS AS OPPOSED TO ESTABLISHING NEW PROCEDURES FOR TITLE INSURERS. THE CHANGE ALSO WILL EXEMPT TITLE INSURANCE RATES AND FORMS FOR CERTAIN COMMERCIAL RISKS FROM THE RATE AND FORM APPROVAL REQUIREMENTS AND AUTHORIZE INSURERS AND COMMERCIAL ENTITIES TO SET TITLE INSURANCE RATES FOR EXEMPTED RISKS.**

**UPON ADOPTION OF BILL 18-1008, NON-EXEMPT TITLE INSURANCE RATES WOULD BE REGULATED ON A “FILE-AND-USE” BASIS. THIS MEANS THAT INSURERS MAY USE RATES AS SOON AS THEY ARE FILED WITH THE DEPARTMENT. IF THE DEPARTMENT SUBSEQUENTLY DETERMINES THE RATES DO NOT MEET THE STANDARDS SET FORTH IN DC OFFICIAL CODE §31-2703, THAT RATES NOT BE “EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY”, THE RATES WOULD HAVE TO BE ADJUSTED TO COMPLY FROM THAT POINT GOING FORWARD. THE COMMERCIAL EXEMPTION PROVIDES THAT COMMERCIAL RISKS MEETING SPECIFIC CRITERIA DO NOT HAVE TO FILE FORMS OR RATES WITH THE DEPARTMENT PRIOR TO**

**USE. HOWEVER, INSURERS WILL BE REQUIRED TO ANNUALLY FILE WITH THE DEPARTMENT THE NUMBER OF EXEMPT POLICIES ISSUED IN THE DISTRICT.**

**ALONG WITH OTHER PROVISIONS IN THE TITLE INSURER ACT AND THE COMPANION LEGISLATION TITLE INSURANCE PRODUCER ACT OF 2010, THE DEPARTMENT BELIEVES THAT THE REGULATION OF TITLE INSURANCE RATES WILL PROVIDE SIGNIFICANT ADDITIONAL CONSUMER PROTECTIONS. FOR RESIDENTIAL PROPERTIES, CONSUMERS RARELY COMPETITIVELY SHOP FOR THE BEST TITLE INSURANCE RATE. ABSENT REGULATION, THERE IS NO REASON TO ASSUME THAT COMPETITION ALONE WOULD KEEP TITLE INSURANCE RATES FROM BEING EXCESSIVE. IN MARYLAND, WHERE TITLE INSURANCE RATES ARE REGULATED, THE RATES FOR RESIDENTIAL TITLE INSURANCE ARE LOWER THAN THE CURRENTLY UNREGULATED RATES IN THE DISTRICT.**

**THE DEPARTMENT HAS BEEN TOLD BY REPRESENTATIVES OF THE TITLE INSURANCE INDUSTRY THAT IF COMMERCIAL TITLE INSURANCE RATES ARE ALLOWED TO CONTINUE TO BE NEGOTIATED ON A CASE-BY-CASE BASIS, RESIDENTIAL TITLE INSURANCE CONSUMERS WOULD EFFECTIVELY SUBSIDIZE THE TITLE INSURANCE RATES ASSESSED ON COMMERCIAL PROPERTIES. THE DEPARTMENT CONSIDERS THE NOTION OF SUBSIDIES BETWEEN THE COMMERCIAL AND RESIDENTIAL MARKET TO BE UNFAIR DISCRIMINATION AND WOULD NOT ALLOW EITHER EXPLICIT OR IMPLICIT SUBSIDIES FOR THE COMMERCIAL MARKET TO BE INCLUDED IN RESIDENTIAL TITLE INSURANCE RATES APPROVED UNDER THE TITLE INSURER ACT. THE DEPARTMENT ALSO DOES NOT BELIEVE REGULATION OF TITLE INSURANCE RATES IN THE DISTRICT OF COLUMBIA WILL PRECIPITATE A THREAT TO THE FINANCIAL SOLVENCY OF TITLE INSURANCE COMPANIES OPERATING IN THE**

**DISTRICT, AS TITLE INSURERS LIKE OTHER INSURERS, ARE SUBJECT TO STRICT AND CONSISTENT SOLVENCY MONITORING BY STATE INSURANCE REGULATORS.**

**UNIFORM REGULATION OF ALL TITLE INSURANCE RATES, BOTH COMMERCIAL AND RESIDENTIAL, WOULD PLACE THE DEPARTMENT IN THE BEST POSITION TO UNDERSTAND BOTH THE COMMERCIAL AND RESIDENTIAL MARKET AND ENSURE THERE IS NO CROSS SUBSIDIZATION AND NO MARKETING OF RATES THAT ARE EXCESSIVE, INADEQUATE OR UNFAIRLY DISCRIMINATORY. ABSENT ADOPTION OF BILL 18-1008, THE DEPARTMENT INTENDS TO PROMULGATE RULES. FOR THEIR INITIAL FILING, THE DEPARTMENT WILL ALSO REQUIRE COMPANIES TO PROVIDE A REPORT IDENTIFYING THE PREMIUM VOLUME BY RATE CHARGED FOR ALL 2009 DISTRICT PREMIUM FOR ALL AFFILIATED COMPANIES. THIS WOULD GIVE THE DEPARTMENT THE ABILITY TO REVIEW AND UNDERSTAND THE RATES BEFORE THEY ARE USED IN THE DISTRICT OF COLUMBIA.**

**THIS CONCLUDES MY TESTIMONY. THANK YOU AGAIN FOR THE OPPORTUNITY TO PRESENT THE DEPARTMENT'S VIEWS AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS.**