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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/09

SPONSOR Garcia, T. LAST UPDATED _____ HB 357

SHORT TITLE Biennial Title Insurance Hearings SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below		Recurring	Title Insurance Maintenance Assessment Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 488

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 357 prohibits a title insurer or title insurance agent from:

- giving to give or receiving, directly or indirectly, any consideration or thing of value for the referral of title insurance business or escrow or other service provided by a title insurer or title insurance agent.
- entering into a reinsurance agreement with an affiliate of a real estate developer, a real estate agency, a mortgage lender or a referrer of title business without the prior written approval of the superintendent.

The bill changes the annual hearing requirement to once every two years or only in the odd-numbered calendar years.

The bill requires that lack of legal right of access to the property must be included in the coverage of the title insurance policy.

Tolling of the 60 day deadline for issuance of the final order setting rates is changed from closure of the hearing to when the Superintendent of Insurance closes the record.

The bill requires that a request for review shall be filed no later than thirty days after the issuance of the order of the superintendent that promulgated the rates

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

Prohibiting compensation for referrals of business is intended to reduce or eliminate reverse competition. Reverse competition refers to a market structure in which title agents and title insurers market their products and services to real estate professionals who are in a position to steer the ultimate consumer – the consumer paying for the title insurance or escrow – to the title agent or title insurer.

The competition for the referrers' business involves the title agent or title insurer providing things of value to the referrers and passing these sales and marketing costs onto consumers, who have no ability to exert market pressure on title insurance or escrow prices. As a result, there can be no assumption that actual expenses incurred by title agents and title insurers in New Mexico are reasonable expenses for purposes establishing reasonable title insurance rates.

ADMINISTRATIVE IMPLICATIONS

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

The Superintendent of Insurance will only have to hold title insurance hearing every other year

RELATIONSHIP

This bill overlaps with HB 488 Title Insurance Rates, Hearings & Coverages. HB 357 and HB 488 have many of the same administrative provisions such as creating a biennial hearing and specifying the time for a party to seek review of a rate order

Both bills have identical language intended to reduce or eliminate reverse competition in the title insurance marketplace.

Unlike HB 488, this bill does not attempt to introduce rate ceilings below which title insurers may compete on both price and service quality.

Unlike HB 488, this bill also leaves untouched the statutory exemption from negligence that is currently state law.