

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2-16-09

SPONSOR Leavell LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Title Insurance Hearings and Referral and Guides SB 524

ANALYST Lucero

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minor savings partially offset by increased costs	Minor savings partially offset by increased costs	Minor savings partially offset by increased costs	Recurring	General Fund and Title Insurance Maintenance assessment fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

This bill amends various provisions of the Title Insurance Law, Section 59A-30-1 NMSA 1978, and addresses a variety of issues regarding the regulation of business of title insurance.

Section 1 of the bill extends the current prohibition against inducements by title insurers to also prohibit inducements by title insurance agents. The bill adds new prohibitions against giving or receiving consideration for the referral of business and the formation of reinsurance agreements with builders and real estate developers without the prior written approval of the Superintendent.

Section 2 of the bill requires the Superintendent to develop a consumer information system that will provide and disseminate price and other relevant information on a readily available basis to purchasers of title insurance. While the Superintendent currently promulgates uniform title insurance premiums for the entire title insurance industry state-wide, the Superintendent would be required to develop consumer information on other relevant topics for title insurance consumers.

Section 4 of the bill expands the definition of "title insurance policy" to include a contract that indemnifies against loss or damage caused by the lack of legal right of access to the property.

This amendment would increase the coverage provided by title insurance policies.

Section 5 of the bill changes the current requirement that the Superintendent conduct an annual ratemaking hearing to establish title insurance rates, and instead requires the Superintendent to conduct the ratemaking hearing every odd-numbered calendar year. The bill also clarifies when the sixty-day period begins for issuance of a decision on the ratemaking hearing.

Section 6 of the bill provides a thirty-day deadline for the filing of a request for review of the Superintendent's decision in the ratemaking hearing.

### **FISCAL IMPLICATIONS**

The elimination of annual Public Regulation Commission (PRC) hearings in favor of biennial hearings may yield savings which may be partially offset by additional administrative costs.

### **SIGNIFICANT ISSUES**

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 title insurance rate hearings conducted annually by the Superintendent consume a large portion of the Insurance Department's time and technical resources. Changing to a biennial hearing will allow the Insurance Division to focus more of its energies on other regulatory functions. There may be an additional cost to update statutes, forms, etc.

### **CONFLICT, DUPLICATION**

Duplicates HB357

Conflicts with HB 488. Unlike HB 488, this bill does not attempt to introduce rate ceilings below which title insurers may compete on both price and service quality. This bill also leaves untouched (unlike HB 488) the statutory exemption from negligence that is currently state law. Both bills have identical language intended to reduce or eliminate reverse competition in the title insurance marketplace.

Many of the administrative provisions in HB 488 are present in this bill: creating a biennial hearing, specifying the time for a party to seek review of a rate order,

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Home buyers and homeowners seeking to refinance will be forced to pay for title insurance policies that are overpriced.