



William Bush
STATE REPRESENTATIVE
29th District

**HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901**

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**House Economic Development/Banking/Insurance & Commerce
05.17.23**

This committee meeting has been recorded and may be accessed via legis.delaware.gov

Chair Bush called the meeting to order at 3:00 p.m. Members present included Chair Bush, Rep. Baumbach, Griffith, Matthews, Lambert, Dorsey Walker, Wilson-Anton, Gray, Short, Smith, Spiegelman. For a list of guests present, please see the attendance list below.

HB 156, AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO PET INSURANCE.

Chair Bush invited Rep. Williams, primary sponsor, to the committee floor.

Rep. Williams explained that HB 156 establishes a comprehensive framework for regulating pet insurance in the State. She added that the legislation is based on the model developed by the National Association of Insurance Commissioners, which has already been adopted by three states, with six more states, including New Jersey and Pennsylvania, currently considering similar bills. Rep. Williams stated that HB 156 aims to provide consumers with the ability to budget for their pets' healthcare needs and ensure that they can afford necessary care without being limited financially. She cited that the pet insurance market has been steadily growing nationwide, and while only 16,000 pets were insured in Delaware in 2021, that number is expected to increase. Rep. Williams explained that the bill originated from the insurance commissioner's office as one of their initiatives mentioned during the Joint Finance Committee (JFC) hearing, and that it has received support from industry stakeholders.

Rep. Williams invited Regulatory Specialist, Leslie Ledogar, with the Department of Insurance to the committee floor.

Rep. Baumbach thanked Rep. Williams for bringing this legislation forward and thanked Ms. Ledogar for working collaboratively to develop the model legislation.

Rep. Dorsey Walker thanked Rep. Williams for introducing this legislation and stated that her dog had cancer and did not have pet insurance at the time, as a result, each surgery costed \$2,000 or more.

Rep. Williams clarified that she was not the primary contributor to the development of HB 156, rather it was the office of the Insurance Commissioner and representatives from other states who did the work to

put the legislation together. Rep. Williams recalled some concerns raised during a presentation by the commissioner to JFC, regarding the exploitation of pet owners in terms of wellness and medical insurance for their pets. Rep. Williams stated that HB 156 ensures to protect constituents from being taken advantage of regarding pet insurance.

Ms. Ledogar stated that the commissioner is in full support of this legislation, and thanked industry stakeholders for their support and collaboration in bringing attention to the bill. Ms. Ledogar emphasized that the purpose of the legislation is to help people budget for their pets' healthcare expenses. She added that by having pet insurance, people can pay a small amount for coverage and receive financial assistance for unexpected accidents and illnesses such as cancer, bone fractures, skin conditions, digestive problems, and infections. Ms. Ledogar clarified that the bill does not cover pre-existing conditions or wellness expenses. Ms. Ledogar cited that in the there is low penetration rate for pet insurance in the US, only 2 percent, while in Europe that number is far greater.

Rep. Griffith asked whether the bill prohibits an insurance company from offering prohibitive policies.

Ms. Ledogar stated that the bill establishes requirements for what an individual must put in the minimum requirements in pet insurance contracts, including the disclosures regarding coverage and exclusions.

Rep. Griffith asked if the bill sets a maximum rate that insurance companies can charge for pet insurance.

Ms. Ledogar said that the bill does not set a maximum rate.

Rep. Griffith asked what the average annual cost for these policies are.

Ms. Ledogar stated that she does not have the information.

Rep. Matthews asked who the current sellers of pet insurance are and if there are any requirements for training, and how does the department plan to work with the aging community to ensure that these changes are not burdensome.

Ms. Ledogar said Nationwide and Chubb are examples of current sellers of pet insurance. She added that insurance companies always train their personnel on various products, including pet insurance. She said that the training covers information about the product, how to market it, and frequently asked questions to help agents understand and effectively sell the insurance. Ms. Ledogar highlighted that the bill includes a separate section on training, which emphasizes the importance of agents to be knowledgeable about the products they are selling. Ms. Ledogar explained that the provision for training is in the bill, however, if the language is not clear, she is willing to consider any necessary improvements.

Rep. Griffith asked what kind of pets are covered.

Ms. Ledogar said that all pets are covered and that it is up to the carrier to determine what kind of pets they cover.

Rep. Williams mentioned that she is working with Mr. Kidner on refining the language of the bill in lines 168 to 178.

Rep. Gray asked how this legislation would impact farming operations, specifically in regards to insuring cattle.

Ms. Ledogar said that there is farming insurance that would cover livestock.

Chair Bush asked committee members for any other questions, seeing none, Chair Bush opened the committee floor for public comments.

Scott Kidner, on behalf of Insurance Agent and Brokers, stated that the company offering the policy should provide training and guidance to brokers, however, he expressed that the language on lines 168 to 178 was not clear.

A motion was made by Rep. Griffith and seconded by Rep. Dorsey Walker to release HB 156 from committee ; the motion carried. Yes = 11 (Bush, Baumbach, Dorsey Walker, Griffith, Lambert, Matthews, Wilson-Anton, Gray, Smith Short, Spiegelman) : No=0; Absent= 2 (Carson, Hensley). The bill was released from committee with a F=0, M=11, U=0.

HB 147, AN ACT TO AMEND TITLE 12, TITLE 25, AND TITLE 30 OF THE DELAWARE CODE RELATING TO THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.

Chair Bush invited Rep. Baumbach, primary sponsor, to the committee floor.

Rep. Baumbach explained the purpose of a transfer on death deed (TOD) stating, when someone dies, the deed transfers the described property, subject to any liens, mortgages, or other encumbrances on the property at their death. Probate is not required. The TOD deed has no effect until the individual dies and it can be revoked at any time. Individuals are also free to transfer the property to someone else during their lifetime. If the individual does not owe any interest in the property when they die, the deed will have no effect.

Rep. Baumbach stated that in Delaware, TOD deeds are not available except for bank account transfers, and this bill changes that. In addition, Rep. Baumbach added that this legislation uses model language from other states and from the Uniform Law Commission.

Chair Bush opened the committee floor for questions from committee members.

Rep. Spiegelman asked what the implications of a TOD deed on the state's collection of realty transfer tax (RTT) are.

Rep. Baumbach stated that a RTT is applied during a transaction, and since a TOD is not a transaction between two parties, it does not affect the RTT. However, if a property with a TOD is sold, then RTT is

applied and the TOD is no longer applied as it was tied to the first person who owned the property and has now sold it, thereby having no interest in the property.

Rep. Spiegelman asked if a TOD deed can be considered as a transfer of ownership without a transaction.

Rep. Baumbach clarified that it is not a transfer of ownership, as it has the same owner with all the rights to the property, rather it is a beneficiary designation.

Rep. Spiegelman asked to confirm that a TOD deed does not fall under wills and estate laws.

Rep. Baumbach said that a TOD deed bypasses probate and, therefore, the will has no say over a properly completed and filed TOD deed and the property itself.

Rep. Spiegelman asked whether the encumbrance of the property, such as easements, liens, and leases, are transferred along with the deed in a TOD deed.

Rep. Baumbach confirmed and added that the ownership or activity of the property does not change during the life of the owner.

Rep. Wilson-Anton asked whether, in the event of a property owner's death, the transfer of the property through a TOD deed would affect the existing lease agreement the owner had had with a tenant. She asked if the new owner of the property, who received the property through a TOD, would be obligated to honor the lease agreement or if they can make new changes to the tenancy agreement.

Rep. Baumbach stated that in the case of a TOD deed, the lease agreement with a tenant will be conveyed with the property. This means that the recipient of the property through a TOD deed will have the same responsibilities to the tenant. The terms of the lease agreement, including the ability to cancel it with proper notice, remain unchanged whether the transfer went through a probate process with a will or through a TOD deed.

Rep. Griffith asked for some clarification on the difference in requirements necessary to execute a will versus a TOD deed, and whether the requirements to execute a TOD deed are as stringent as the requirements to execute a will according to Delaware Law.

Rep. Baumbach stated that based on his understanding, the requirements for a will are less strict compared to a TOD deed. He explained that a TOD designation requires notarization and delivery to the recorder of deeds office in the county where the property is located.

Rep. Griffith stated that in a will several witnesses are needed.

Rep. Baumbach invited Mark Cutrona, Division of Research, to the committee floor.

Mr. Cutrona stated that similar formalities exist for both a TOD and a will, with some additional consideration. He stated that capacity, similar to what is required for a will, is also necessary for

executing a TOD deed. In addition, the TOD deed must be acknowledged, like the formalities of a deed, including the acknowledgement statement and property details.

Rep. Griffith stated that there are reasons why Delaware has strict rules regarding what constitutes a valid will, including requirements for witnesses and how it should be constructed. Rep. Griffith emphasized that a TOD deed must also be ensured to have the same level of accuracy and requirements, as disputes among relatives can arise when it comes to property distribution. Rep. Griffith provided a scenario where one child can convince their parent to execute a TOD deed, while the father's other children only discover this upon their father's death, there also exists a will. Rep. Griffith raised the question as to how conflicts would be resolved if the will and the TOD deed both exist and in conflict with one another, which document would take precedence.

Mr. Cutrona said that the TOD deed would take precedence over the will.

Rep. Griffith asked what if the TOD deed was executed prior to the will.

Mr. Cutrona said that even if the TOD deed was executed prior to the will, it would still take precedence and stated that he can provide a clearer answer following the adjournment of the meeting.

Rep. Griffith asked what the mechanisms in place are if someone wants to argue that a TOD deed was executed under duress.

Mr. Cutrona said that he currently does not have the information at hand. He added that if these concerns were insurmountable, the law allowing TOD deeds would not exist in 30 other states. Mr. Cutrona suggested that there is someone speaking today from the Uniform Law Commission who can provide additional insights and information on the topic.

Rep. Griffith said that she would want to hear from practitioners in Delaware who have experience with the probate process, citing that other state's processes are chaotic. Rep. Griffith stated that the probate process is challenging and stressful to family members, and that oftentimes individuals are taken advantage of. Therefore, Rep. Griffith stated, the same stringent requirements that are required for a will should also follow with a TOD deed, so that relatives and beneficiaries can have an understanding between the differences and similarities. Rep. Griffith also stated that the law should be clear with provisions addressing if a TOD deed was executed under duress.

Rep. Baumbach asked Mr. Cutrona to speak on which sections of the bar he has worked with in constructing HB 147.

Mr. Cutrona said that the real estate section and the trust estate section both reviewed HB 147 and expressed no opposition to it.

Rep. Griffith asked whether the bar sections supported HB 147.

Mr. Cutrona said that the bar sections took no position.

Rep. Spiegelman provided a scenario in reference to lines 99 to 100 of the bill. Rep. Spiegelman stated that in the event where a deed has been transferred upon death, but the estate as it exists, is not sufficient to satisfy the liens against the deceased, can creditors still pursue the property that was transferred through the bill's provisions.

Mr. Cutrona confirmed that creditors can still go after the property that was assigned through this bill.

Rep. Spiegelman stated that if a person, by accident or unintentionally, sells their property and is granted living rights, also assigns the same property through a TOD deed to someone else, is there a mechanism with the courts that would intervene to resolve or prevent this.

Rep. Baumbach stated that the TOD specification made by the initial owner of the property becomes null and void because the property has been sold to a new person.

Rep. Spiegelman stated that Rep. Baumbach is only correct if the initial owner of the property has sold the property. However, if the initial owner retains legal possession of the property and is under a contract to transfer the property at the time of their death, the situation becomes more complicated. Rep. Spiegelman clarified that he is not referring to a sale and leaseback arrangement but rather the sale of their developer rights or the rights to sell the property.

Rep. Baumbach asked if in Rep. Spiegelman's scenario, the initial owner does or does not have full rights to the property.

Rep. Spiegelman clarified that the initial owner does not have full rights to the property, however, the property remains deeded to them.

Rep. Baumbach explained that for a TOD deed to be applicable, the person must have a simple interest in the property.

Rep. Spiegelman acknowledged that the courts would then determine the TOD deed as null and void, because the person never had the simple ownership interest in the property due to the encumbrance on it, which includes the inability to sell the property.

Mr. Cutrona confirmed and added that this applies to all deeds because an individual can only grant the rights to which they have.

Rep. Matthews expressed the need for education efforts to inform and educate individuals who are buying property about the changes brought by this legislation. He emphasized the importance of providing training and education to mortgage originators and professionals to ensure that consumers are well informed about the changes and potential implications. Rep. Matthews asked if education and training mechanisms are included or can be included in the legislation.

Rep. Baumbach stated that he is willing to make a request to the Board of Realtors to inquire about their plans for educating their members and about the changes and how they plan to communicate these changes to property buyers.

Rep. Matthews agreed with Rep. Baumbach and emphasized that everyone in any part of a real estate transaction should have robust training on this change.

Rep. Griffith provided a scenario in reference to lines 79 and 80 in which an individual designates a TOD deed to their neighbor, however, their neighbor dies prior to the death of the initiator of the TOD deed. Following the death of the initiator of the TOD deed, Rep. Griffith asked, if the beneficiaries of the neighbor receive the TOD deed, and if not, does it go back to the state.

Rep. Baumbach stated that the TOD deed would not go to the beneficiaries of the neighbor and that the TOD deed would become void, and the property would go back to the state.

Rep. Griffith asked if a will does not include the property, is the property probated like a will.

Mr. Cutrona stated that the property would then undergo the intestacy process or the next heir in line.

Rep. Griffith asked that this is an important question to consider and asked if provisions should be made in the will indicating the prospect of a TOD deed becoming null or void.

Mr. Cutrona stated that with a TOD deed, there can be alternative beneficiaries specified in the case that the primary beneficiary does not survive. However, Mr. Cutrona added that a TOD deed is for simple situations and that more complex situations should be conducted through a trust or a will with consultation from an attorney.

Rep. Griffith asked if a TOD deed can also be applied for condos that range from \$250,000 to \$10 million.

Mr. Cutrona said that a TOD deed can be used for that type of property, however, stated that other methods should also be considered for that type of property.

Rep. Griffith raised some concerns regarding the execution of a TOD deed, in particular, on whether it is required for there to be a witness to the signature.

Mr. Cutrona said there would be no need for a witness to execute a TOD deed. The TOD deed has to be signed and notarized and then sent to the recorder's office.

Rep. Griffith suggested that more witnesses should be added to execute a TOD deed and that a simple notarization is not enough given the importance and weight of the document. Rep. Griffith cited that the bill states, "that the capacity required to make or revoke a TOD deed is the same as the capacity required to make or revoke a bill," indicating that the language of the bill suggests the execution of a TOD deed should function in the same process as a will.

Rep. Wilson-Anton asked in what simple situations would this legislation be beneficial.

Rep. Baumbach stated that in a situation where a single individual, widow, or widower wishes to give their property to another individual after their death, however, wants to prevent the beneficiary from obtaining rights to the property during their lifetime; a TOD deed would be able to accomplish. This is different from joint ownership, where the joint owner has some rights to the property, however, with a TOD deed the property belongs to the executioner of a TOD deed until their death.

Rep. Wilson-Anton asked if there are economic implications with this legislation.

Rep. Baumbach said that this legislation would only induce a little more work for the Recorder of Deeds, however, the Recorder of Deeds supports this legislation. In addition, this legislation would reduce the probate costs for a family.

Rep. Spiegelman questioned why the bill, in reference to lines 249 to 251," does not require... any other form otherwise required...or law enacted by a county or municipality, from being recorded with or accepted by the recorder of deeds." Rep. Spiegelman stated if a municipality has this provision within their charter, but other municipalities do not, how does this legislation provide uniformity across municipalities.

Mr. Cutrona highlighted that lines 249 to 251 came from the Uniform Law Commission and added that the lines in question are indicating that none of the mentioned documents are necessary for the TOD deed to be effective. Mr. Cutrona said that the documents are not a prerequisite for a TOD deed to be effective and stated that he currently does not have an answer for the question regarding municipalities.

Rep. Spiegelman noted that the majority of the municipalities and counties use the transfer of deed to keep their systems up to date in regard to ownership of properties. Rep. Spiegelman emphasized the importance of using these forms especially as the State is going through a reassessment process. He raised some concerns of the potential of lines 249 to 251 to hinder counties and municipality's ability in making sure that they are aware of all information pertaining to a property.

Rep. Lambert asked if a TOD deed can be applied to a property jointly owned, specifically for an individual's portion of the property.

Mr. Cutrona stated that both owners of the property would have to execute a TOD deed and would depend on what type of property is owned.

Rep. Baumbach invited Jane Sternecky, Legislative Council for the Uniform Law Commission, to the committee floor.

Ms. Sternecky stated that a TOD deed can be executed in a jointly owned property. Ms. Sternecky said that a husband and wife who jointly own a property can both sign a TOD deed and designate a

beneficiary. However, the TOD deed will only take effect following the death of the second signer or owner of the property.

Rep. Griffith provided a scenario where a married couple signs a TOD deed, however, one of the spouses dies, while the other decides to remarry and is seeking to revoke the TOD deed initially signed by the previous spouse.

Ms. Sternecky said that the new spouse would be able to revoke the TOD deed and designate a new beneficiary or decided not to do one.

Rep. Griffith asked what going through that process would entail.

Ms. Sternecky stated that HB 147 details the process for notarization and revocation.

Rep. Baumbach acknowledged the concerns and requests of committee members, including Rep. Griffith's request to add witnesses in setting up a TOD deed that follows the number and the process required for Delaware wills. In addition, Rep. Baumbach made a commitment to Rep. Spiegelman on gathering more information from counties and municipalities regarding the question posed concerning lines 249 to 251.

Rep. Spiegelman expressed that the information to be provided from counties and municipalities should come from the league that represents the counties and municipalities.

Rep. Baumbach said that he is committed if the committee chooses, to release the bill from the committee but not to put on the ready list, until Rep. Griffith is satisfied with the amendment and Rep. Spiegelman is satisfied with the discussions and necessary amendments that would or not be made in consultation with the league. He also made a commitment to Rep. Matthew's request to work with realtor associations on education and training efforts regarding the changes being made.

Rep. Spiegelman commented that the nature of this type of legislation will cause arguments and disputes among spouses and families, especially considering the scenarios and questions brought forth by Rep. Griffith.

Chair Bush opened the committee floor to public comments.

Scott Kidner, principal of C.S. Kidner Associates Inc, spoke in support of HB 147.

A motion was made by Rep. Baumbach and seconded by Rep. Dorsey Walker to release HB 147 from committee ; the motion carried. Yes = 11 (Bush, Baumbach, Dorsey Walker, Lambert, Gray, Griffith, Wilson-Anton, Short, Smith, Matthews, Spiegelman) : No=0; Absent= 2 (Hensley, Carson). The bill was released from committee with a F=1, M=9, U=0.

HB 144, AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS COMPENSATION.

Chair Bush explained that the bill increases the number of members in a Limited Liability Corporation (LLC) who are eligible for exemptions from workers compensation reimbursement from four to eight. Chair Bush stated that this would make the number of officers in a traditional corporation consistent and would also recognize the larger size of some LLCs.

Chair Bush opened the floor for questions from committee members, seeing none, Chair Bush opened the floor for public comments.

Mr. Kidner, on behalf of Independent Agents and Brokers, spoke in support of HB 144.

A motion was made by Rep. Short and seconded by Rep. Griffith to release HB 144 from committee ; the motion carried. Yes = 11 (Bush, Baumbach, Dorsey Walker, Lambert, Gray, Griffith, Wilson-Anton, Short, Smith, Matthews, Spiegelman) : No=0; Absent= 2 (Hensley, Carson). The bill was released from committee with a F=1, M=9, U=0

HB 146, AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE.

Chair Bush explained that the bill aims to increase the assessments imposed on insurance companies to fund the operations of the Fraud Prevention Bureau, which is responsible for combating fraudulent activities in the insurance industry.

Chair Bush invited Ms. Ledogar to the committee floor.

Ms. Ledogar explained that the Fraud Prevention bureau is tasked to confront aggressively the problem of insurance fraud in the State of Delaware by facilitating the detection of insurance fraud, reducing the occurrence of fraud through administrative enforcement and deterrence, and requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims. Ms. Ledogar added that the bureau operates under a special revolving fund called the Delaware Insurance Fraud Auxiliary Fund, which supports its various functions and duties. Ms. Ledogar stated that the cost of administration and operation of the bureau is required to be borne by all the insurance companies who are admitted or authorized to transact the business of insurance in the State of Delaware. She highlighted that the current statute requires the commissioner to assess \$900, however, this legislation aims to increase it to \$1,050. Ms. Ledogar explained that the funds are collected by the Department of Insurance (DOI) on behalf of the bureau and are then deposited into the Delaware Insurance Fraud Auxiliary Fund. Ms. Ledogar stated that the insurance companies rely on the DOI and the bureau to root out fraud, which saves them millions in costs and substantial resources that would otherwise be spent on investigations. Ms. Ledogar explained that the last increase was done in 2018 and since then, the DOI has added approximately 32 new companies. In addition, Ms. Ledogar highlighted that the estimated personnel cost within the fraud bureau for fiscal year (FY) 2024, is expected to increase by at least 11 percent, which also includes the DHR salary maintenance review. Ms. Ledogar indicated that the \$150 increase per company, applied to a total of 1,377 companies, is expected to generate an additional \$205,550 in revenue for the fraud division. Ms. Ledogar noted that the bureau's budget has

consistently been under spent, and that the DOI does not anticipate paying rent for their office in the City of Wilmington during FY 2024 and the first four months of FY 2025. She noted that the increased assessment is projected to cover the bureau's expenses for FY 2024 to FY 2026.

Chair Bush opened the committee floor for questions from committee members.

Rep. Lambert thanked Ms. Ledogar for bringing this legislation to the committee and expressed the importance of addressing insurance fraud and prevention. Rep. Lambert asked for clarification regarding if the costs would be incurred by the consumer.

Ms. Ledogar stated that the bill is consumer friendly and that by effectively detecting and preventing insurance fraud, the insurance companies save money by not having to pay fraudulent claims, which has the effect of keeping insurance premiums lower for consumers.

Rep. Dorsey Walker asked why the insurance office located in Wilmington would not be paying rent for FY 2024.

Ms. Ledogar explained the insurance office is relocating to a new location that is much more ADA accessible with a much lower rent. She said that during relocation, the fraud bureau will be temporarily consolidated to the Dover offices during FY 2024 and the first four months of FY 2025.

Chair Bush opened the committee floor for public comments. There was no comment.

A motion was made by Rep. Wilson-Anton and seconded by Rep. Dorsey Walker to release HB 146 from committee ; the motion carried. Yes = 11 (Bush, Baumbach, Dorsey Walker, Lambert, Gray, Griffith, Wilson Anton, Short, Smith, Matthews, Spiegelman) : No=0; Absent= 2 (Hensley, Carson). The bill was released from committee with a F=1, M=9, U=0

Chair Bush adjourned the meeting at 4:03p.m.

Respectfully submitted by,

Falah Al-Falahi

Attendance List

Leslie Ledogar, Regulatory Specialist with Delaware Department of Insurance

Mark Cutrona, Division of Research

Jane Sternecky, Legislative Council for the Uniform Law Commission

Scott Kidner, principal of C.S. Kidner Associates Inc