

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2775 Session of 1994

INTRODUCED BY BUXTON, COLAFELLA, TIGUE, STEIGHNER, VAN HORNE,
YOUNGBLOOD, TRELLO, GIGLIOTTI, PISTELLA AND SERAFINI,
JUNE 14, 1994

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 26, 1994

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," further providing for financial
12 requirements, for agents, for prohibition of commissions and
13 other considerations, for rate filing, for making of rates
14 and for penalties; and providing for conditions with respect
15 to escrow, closing and settlement services and title
16 indemnification accounts and for division of fees.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Section 705 of the act of May 17, 1921 (P.L.682,
20 No.284), known as The Insurance Company Law of 1921, added
21 August 14, 1963 (P.L.922, No.439), is amended to read:

22 Section 705. Financial Requirements.--Every title insurance
23 company shall have a minimum capital, which shall be paid in and
24 maintained, of not less than [two hundred fifty thousand dollars

1 (\$250,000)] five hundred thousand dollars (\$500,000) and, in
2 addition, paid-in initial surplus at least equal to fifty
3 percent of its capital.

4 Section 2. Section 723 of the act is repealed.

5 Section 3. Sections 724 and 726 of the act, added August 14,
6 1963 (P.L.922, No.439), are amended to read:

7 Section 724. Agents; Defined.--[An agent is a person, firm,
8 association, corporation, cooperative or joint-stock company,
9 authorized in writing by a title insurance company directly or
10 indirectly:

11 (1) To solicit risks and collect premiums, and to issue or
12 countersign policies in its behalf; or

13 (2) To solicit risks and collect premiums in its behalf.]

14 (a) A title insurance agent is any licensed person, firm,
15 association, corporation, partnership or any other legal entity
16 authorized, in writing, by a licensed title insurance company to
17 perform the following:

18 (1) Solicits title insurance risks and collects title
19 insurance premiums on behalf of the title insurance company.

20 (2) Issues commitments to insure title, or reports of title,
21 based upon a search and examination of title and/or conducts
22 real estate closing, disburses funds, clears title and records
23 closing documents.

24 (3) Issues and countersigns title insurance policies based
25 on independent determination of insurability following
26 underwriting rules and standards prescribed by the title
27 insurance company.

28 ~~An agent shall assume financial responsibility for all the acts~~ <—

29 (4) ASSUMES FINANCIAL RESPONSIBILITY FOR ALL THE ACTS which <—
30 the agent was appointed to perform by the title insurance

1 company.

2 **(b)** No bank, trust company, bank and trust company or other
3 lending institution, mortgage service, mortgage brokerage or
4 mortgage guaranty company or any officer or employee of any of
5 the foregoing shall be permitted to act as an agent for a title
6 insurance company. The word "agent" shall not include approved
7 attorneys, nor shall it include officers and salaried employees
8 of any title insurance company authorized to do a title
9 insurance business within this Commonwealth.

10 Section 726. Agents; To be Licensed.--**(a)** Agents for a
11 title insurance company shall be licensed in the manner provided
12 for agents of insurance companies in section 603 of the act of
13 May 17, 1921 (P.L.789), known as "The Insurance Department Act
14 of 1921": Provided, however, That in the event that an applicant
15 for an agent's license is presently an agent of a title insurer
16 [or a licensed insurance broker or an attorney at law], the
17 applicant shall not be required to take an examination to
18 qualify for such license. Licenses of title insurance agents
19 shall expire [annually] biennially at midnight of June 30,
20 unless sooner terminated as the result of severance of business
21 relations between the company and the agent, or unless revoked
22 by the commissioner for cause.

23 **(b)** In addition to the requirements set forth in subsection
24 (a), all agents for a title insurance company shall:

25 **(1)** Pass an examination given by the Insurance Commissioner
26 or any testing service selected by the commissioner covering the
27 search and examination of title to real property, insurance
28 principles relating to title insurance and the fiduciary duties
29 and procedures of escrow, closing and settlement of real estate
30 transactions.

1 (2) Obtain errors and omissions insurance in an amount
2 acceptable to the insurer appointing the agent, but in no event
3 in an amount less than two hundred fifty thousand dollars
4 (\$250,000) per claim and an aggregate limit of five hundred
5 thousand dollars (\$500,000) with a deductible no greater than
6 twenty-five thousand dollars (\$25,000). The required errors and
7 omissions insurance shall be paid by the title insurance agent,
8 and a title insurer shall not provide the insurance directly or
9 indirectly on behalf of a title insurance agent. In the event
10 errors and omissions insurance is unavailable generally, the
11 Insurance Department shall promulgate rules for alternative
12 methods to comply with this paragraph.

13 (3) Obtain a fidelity bond in an amount acceptable to the
14 insurer appointing the agent, but in no event in an amount less
15 than two hundred fifty thousand dollars (\$250,000). The required
16 bond shall be paid by the title insurance agent, and a title
17 insurer shall not provide the bond directly or indirectly on
18 behalf of a title insurance agent. In the event a fidelity bond
19 is unavailable generally, the Insurance Department shall
20 promulgate rules for alternative methods to comply with this
21 paragraph.

22 (4) Post a surety bond of not less than one hundred thousand
23 dollars (\$100,000). The required bond shall be paid by the title
24 insurance agent, and a title insurer shall not provide the bond
25 directly or indirectly on behalf of a title insurance agent. The
26 bond shall secure the performance by the agent of his duties and
27 responsibilities under his issuing agency contracts with each
28 underwriter for which he is licensed. The bond shall be
29 maintained unimpaired as long as the agent continues in business
30 in this Commonwealth and until one year after termination of all

1 title insurance agent licenses held by the agent. The agent
2 shall be entitled to the return of the bond together with
3 accrued interest after the year has passed, provided that no
4 claim has been made against the bond. In the event a surety bond
5 is unavailable generally, the Insurance Department may
6 promulgate rules for alternative methods to comply with this
7 paragraph. With respect to alternative methods for compliance,
8 the Insurance Department shall be guided by the past business
9 performance and good reputation and character of the proposed
10 title insurance agent. A surety bond is deemed to be unavailable
11 generally if the prevailing annual premium exceeds twenty-five
12 percent of the principal amount of the bond: Provided, however,
13 That title insurers are exempt from the requirement of obtaining
14 a surety bond.

15 (5) An agent shall complete sixteen hours, biennially, of
16 continuing education. The Insurance Commission shall, within
17 three months of the enactment of this subsection, be authorized
18 to promulgate rules and regulations for a continuing education
19 program.

20 (6) Render accounts to the title insurer detailing all
21 transactions and remit all funds and policies due under the
22 contract to the title insurer on a specified basis.

23 (7) Collect and hold in a fiduciary capacity for the account
24 of a title insurer all funds due the title insurer in a bank
25 that is a qualified institution. Each account shall be used for
26 all payments on behalf of the title insurer with whom a title
27 agency contract exists.

28 (8) Keep separate records of business written for each title
29 insurer. The title insurer shall have access and a right to copy
30 all files, accounts and records related to its business in a

1 form acceptable to the title insurer, and the Insurance
2 Commissioner shall have access to all files, books, bank
3 accounts and records of the title insurance agent in a form
4 usable to the Insurance Commissioner.

5 Section 4. Section 730 of the act is repealed.

6 Section 5. Sections 731, 737(a) and 739(a) of the act, added
7 August 14, 1963 (P.L.922, No.439), are amended to read:

8 Section 731. Commissions; Other Considerations Prohibited.--

9 (a) No title insurance company or agent or approved attorney of
10 a title insurance company shall pay, give or award to an
11 applicant for title insurance any compensation, consideration,
12 benefit or remuneration, directly or indirectly[, except as
13 provided in section 730].

14 (b) The following activities, whether performed directly or
15 indirectly, are deemed per se inducements for the placement or
16 referral of title insurance business by any person and are
17 unlawful:

18 (1) Paying or offering to pay, furnishing or offering to
19 furnish, or providing or offering to provide assistance with the
20 business expenses of any person, including, but not limited to,
21 rent, employe salaries, furniture, copiers, facsimile machines,
22 automobiles, telephone services or equipment or computers.

23 (2) Providing or offering to provide any form of
24 consideration intended for the benefit of any person, including
25 cash, below market rate loans, automobile charges, merchandise
26 or merchandise credits.

27 (3) Placing or offering to place compensating balances on
28 behalf of any person.

29 (4) Advancing or paying or offering to advance or pay money
30 on behalf of any person into escrow to facilitate a closing,

1 except a sum which represents the proceeds of a loan made in the
2 ordinary course of business.

3 (5) Disbursing or offering to disburse on behalf of any
4 person escrow funds held by a title insurance company or title
5 insurance agent before the conditions of the escrow applicable
6 to the disbursement have been met.

7 (6) Furnishing or offering to furnish all or any part of the
8 time or productive effort of any employe of the title insurance
9 company or title insurance agent to any person for any service
10 unrelated to the title business.

11 (c) Reasonable expenditures for food, beverages,
12 entertainment, educational programs and promotional items
13 constituting ordinary business expenses are deemed not to
14 constitute an inducement for the placement or referral of title
15 business, if the expenditures are correctly reported and
16 properly substantiated as an ordinary and necessary business
17 expense under provisions of the Internal Revenue Code of 1986
18 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and regulations
19 issued thereunder, and the expenditures do not violate any other
20 law.

21 (d) The provision or payment of any form of consideration as
22 an inducement for the placement or referral of title business
23 not specifically set forth in this section shall not be presumed
24 lawful merely because it is not specifically prohibited.

25 (e) The Insurance Commissioner may determine compliance and
26 enforce the provisions of this section by written order,
27 regulation or written consent.

28 Section 737. Rate Filing.--(a) Every title insurance company
29 shall file with the commissioner every manual of
30 classifications, rules, plans, and schedules of fees[,

1 commissions payable to applicants for title insurance] and every
2 modification of any of the foregoing relating to the rates which
3 it proposes to use. Every such filing shall state the proposed
4 effective date thereof, and shall indicate the character and
5 extent of the coverage contemplated.

6 * * *

7 Section 739. Making of Rates.--(a) In making rates, due
8 consideration shall be given to past and prospective loss
9 experience, to exposure to loss, to underwriting practice and
10 judgment, to the extent appropriate, to past and prospective
11 expenses, including commissions paid to agents [and applicants
12 for title insurance], the expenses incurred by title insurance
13 companies, to a reasonable margin for profit and contingencies,
14 and to all other relevant factors both within and outside of
15 this Commonwealth.

16 * * *

17 Section 6. The act is amended by adding sections to read:

18 Section 739.1. Conditions.--A title insurer or title agent
19 may engage in the escrow, settlement or closing business or any
20 combination of such businesses and operate as an escrow,
21 settlement or closing agent, in connection with the issuance of
22 a title insurance policy, provided that:

23 (1) Funds deposited in connection with any escrow,
24 settlement, closing or title indemnification shall be deposited
25 in a separate fiduciary trust account or accounts in a bank or
26 other financial institution insured by an agency of the Federal
27 Government. Such funds shall be the property of the person or
28 persons entitled thereto in accordance with the provision of the
29 escrow, settlement, closing or title indemnification and shall
30 be segregated by escrow, settlement, closing or title

indemnification in the records of the title insurer or title agent. Such funds shall not be subject to any debts of the title insurer or title agent and shall be used only in accordance with the terms of the individual escrow, settlement, closing or title indemnification under which the funds were accepted.

(2) The title insurer or title agent shall maintain separate records of all receipts and disbursements of escrow, settlement, closing or title indemnification funds.

(3) The title insurer or title agent shall comply with any rules or regulations promulgated by the Insurance Commissioner pertaining to escrow, settlement, closing or title indemnification transactions.

Section 739.2. Division of Fees.--(a) Nothing in this act shall be construed as prohibiting the division of fees between or among a title insurer and its title agent, two or more title insurers and their title agent, two or more title insurers, one or more title insurers and one or more title agents, or two or more title agents, provided such division of fees does not constitute an unlawful rebate or inducement under the provisions of this act.

(b) Notwithstanding subsection (a), with respect to any title insurance policy issued after the effective date of this act, no title insurer shall pay to any title insurance agent or permit such agent to retain any amount exceeding that which is promulgated by the Insurance Department on a periodic basis.

(c) This maximum retainage shall not be increased directly or indirectly by an insurer providing services to an agent for less than actual cost or fair market value.

Section 7. Section 748(a) of the act, added August 14, 1963 (P.L.922, No.439), is amended to read:

1 Section 748. Penalties.--(a) The commissioner may, if he
2 finds that any person or organization has violated any provision
3 of this article, impose a penalty of not more than [fifty
4 dollars (\$50)] five hundred dollars (\$500) for each such
5 violation, but if he finds such violation to be wilful, he may
6 impose a penalty of not more than [five hundred dollars (\$500)]
7 five thousand dollars (\$5,000) for each such violation. Such
8 penalties may be in addition to any other penalty provided by
9 law.

10 * * *

11 Section 8. This act shall take effect in 60 days.