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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2775** Session of  
1994

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

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REFERRED TO COMMITTEE ON INSURANCE, JUNE 14, 1994

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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 Section 723 of the act is repealed.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 which the agent was appointed to perform by the title insurance  
30 company.

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

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

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

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

30       **(2)** Obtain errors and omissions insurance in an amount

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) Advancing or paying or offering to advance or pay money  
29 on behalf of any person into escrow to facilitate a closing,  
30 except a sum which represents the proceeds of a loan made in the

1 ordinary course of business.

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

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

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

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

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

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

1 modification of any of the foregoing relating to the rates which  
2 it proposes to use. Every such filing shall state the proposed  
3 effective date thereof, and shall indicate the character and  
4 extent of the coverage contemplated.

5 \* \* \*

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

15 \* \* \*

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

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

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

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

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

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

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

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

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

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

30 Section 748. Penalties.--(a) The commissioner may, if he

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

9 \* \* \*

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