

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2888 Session of
1986

INTRODUCED BY D. R. WRIGHT, REINARD, DeVERTER AND F. TAYLOR,
NOVEMBER 19, 1986

REFERRED TO COMMITTEE ON INSURANCE, NOVEMBER 19, 1986

AN ACT

1 Amending the act of September 22, 1978 (P.L.763, No.143),
2 entitled "An act establishing certain procedures relating to
3 the termination of insurance agency contracts or accounts and
4 providing penalties," further defining "agent" and "insurer";
5 further providing for cancellation of contracts; and making
6 an editorial correction.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 1, 2, 3 and 4 of the act of September
10 22, 1978 (P.L.763, No.143), entitled "An act establishing
11 certain procedures relating to the termination of insurance
12 agency contracts or accounts and providing penalties," are
13 amended to read:

14 Section 1. [Definitions] Scope of act and definitions.

15 (a) Application of act.--This act applies to all classes and
16 kinds of insurance which may be written by stock of mutual
17 property or casualty insurance companies, associations or
18 exchanges, and including fidelity, surety and guaranty bonds and
19 all other forms of motor vehicle insurance except:

1 (1) Reinsurance.

2 (2) Accident and health insurance.

3 (3) Insurance against loss of or damage to aircraft or
4 against liability arising out of the ownership, maintenance
5 or use of aircraft.

6 (b) Non-application of act.--The provisions of this act do
7 not apply to a business owned by the insurer and not by the
8 agent, provided such insurer offers to continue such policies
9 through another of its agents.

10 (c) Definitions.--The following words and phrases when used
11 in this act shall have, unless the context clearly indicates
12 otherwise, the meanings given to them in this section:

13 "Agent." [An insurance agent authorized to transact and
14 transacting the business of automobile insurance in the
15 Commonwealth.] An individual, partnership or corporation,
16 licensed by the Insurance Department who contracts with an
17 insurer to sell insurance on behalf of the insurer.

18 "Insurer." An insurance company, association or exchange
19 authorized to transact and transacting the business of
20 [automobile] property or casualty, or both, insurance in the
21 Commonwealth.

22 Section 2. Cancellation of contract.

23 (a) Notice.--After an agency contract has been in effect for
24 a period of [five] four years, no insurer shall terminate its
25 contract with an agent without first providing such agent and
26 the Insurance Commissioner with written notification at least 90
27 days prior to the date of termination. Such notice shall advise
28 the agent of his right of appeal under subsection (d).

29 (b) Reason for action.--Such notification shall set forth
30 the insurer's reason for the action.

1 (c) Privileged information.--Any information, document,
2 record or statement so furnished or disclosed to the department
3 shall be absolutely privileged and shall not be admissible as
4 evidence in or as basis for any action against the appointing
5 insurer or against any representative of the foregoing.

6 (d) Administrative review.--Any agent may if, within 30 days
7 of receipt of notice of termination, [request] he requests in
8 writing to the Insurance Commissioner that [he] the Insurance
9 Commissioner review the action of the insurer for the purpose of
10 determining that said termination was in compliance with the
11 provisions of this [section] act.

12 (e) Restriction on termination.--No insurer shall terminate
13 its contract with an agent solely due to the adverse experience
14 [of a single year. Prior to such termination it shall be the
15 obligation of the insurer to demonstrate that it has made a
16 reasonable attempt to rehabilitate such agent.] for the three
17 years preceding the date of such termination.

18 (f) Rehabilitation.--

19 (1) Prior to termination of an agency contract under
20 this act, it shall be the obligation of the insurer to
21 demonstrate to the Insurance Commissioner that it has made a
22 reasonable attempt to rehabilitate such agent.

23 (2) Notwithstanding any provision contained in the
24 agency contract, rehabilitation of such agent shall not be
25 for less than one year.

26 (3) An insurer shall notify an agent in writing that the
27 agent has been placed on a rehabilitation program and failure
28 to meet the rehabilitation program may result in agency
29 termination.

30 (4) The rehabilitation program shall include goals and

1 objectives in which the agent is expected to take action. The
2 insurer shall work jointly with the agent to meet the
3 rehabilitation program.

4 (5) Successful rehabilitation of the agency shall
5 prohibit any termination action. Successful rehabilitation
6 includes meeting the goals and objectives set forth by the
7 insurer; however, the Insurance Commissioner may extend the
8 rehabilitation period if the agent has made significant
9 progress toward meeting the goals and objectives of the
10 program.

11 Section 3. Continuation of business.

12 (a) Policies.--Where an insurer notifies an agent that its
13 contract shall be terminated, the insurer shall offer to
14 continue such agent's policies and any amendments thereto,
15 through such agent for a period of 12 months from the effective
16 date of termination, subject to the insurer's current
17 underwriting standards.

18 (b) Commissions.--The terminated agent or an agent under
19 rehabilitation shall be entitled to receive commissions on
20 account of all business continued or written pursuant to this
21 subsection at the [insurer's prevailing] commission rate [for
22 such business] specified in the agency's agreement.

23 [(c) Application of section.--The provisions of the section
24 do not apply to business owned by the insurer and not by the
25 agent, provided such insurer offers to continue such policies
26 through another of its agents.]

27 Section 4. Certain agreements permitted.

28 (a) Construction of act.--Nothing contained in this act
29 shall be deemed or construed to prohibit an amendment or
30 addendum subsequent to the inception date of the original agency

1 agreement providing in such subsequent amendment or addendum
2 that the original agency agreement may be terminated at a sooner
3 time than is required by this act provided the agent agrees in
4 writing to such sooner termination.

5 (b) Certain terminations excepted.--This act shall not apply
6 to:

7 (1) an agent whose license has been suspended or revoked
8 by the Insurance Commissioner or whose contract has been
9 terminated for insolvency abandonment, gross [and] or willful
10 misconduct or failure to pay over to the insurer moneys due
11 to the insurer after his receipt of a written demand thereof;
12 or

13 (2) an agent who has demonstrated gross incompetence
14 which would normally be cause for agency contract
15 termination.

16 Section 2. Section 5 of the act, repealed in part October 5,
17 1980 (P.L.693, No.142), is amended to read:

18 Section 5. Penalties.

19 (a) Summary offense.--Any person, agent or insurer who
20 willfully violates any provision of this act shall, upon
21 conviction thereof, at a summary proceeding, be sentenced to pay
22 a fine not exceeding \$500, plus costs. Conviction under this
23 subsection shall not bar administrative action by the Insurance
24 Commissioner under this section.

25 (b) Administrative action.--Upon satisfactory evidence of a
26 violation of this act by any person, agent or insurer, the
27 Insurance Commissioner may, in his discretion, pursue any one or
28 more of the following courses of action:

29 (1) Suspend or revoke the license of such offending
30 person, agent or insurer.

1 (2) Refuse, for a period not to exceed one year
2 thereafter, to issue a new license to or to renew a license
3 of, such person, agent or insurer.

4 (3) Impose a civil penalty of not more than \$500 for
5 each and every act in violation of this act.

6 (c) Review and appeal.--Any adjudication of the Insurance
7 Commissioner under subsection (b) shall be subject to review and
8 appeal in accordance with [the "Administrative Agency Law."]
9 Title 2 of the Pennsylvania Consolidated Statutes (relating to
10 administrative law and procedure).

11 Section 3. This act shall take effect immediately.