

SENATE, No. 836

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator BUBBA

1 AN ACT concerning title insurance, amending P.L.1991, c.18, and
2 amending and supplementing P.L.1975, c.106 and P.L.1987, c.293.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 2 of P.L.1987, c.293 (C.17:22A-2) is amended to read
8 as follows:

9 2. As used in this act:

10 a. "Applicant" means a person who has applied for, or who intends
11 to apply for, a license in accordance with this act.

12 b. "Commissioner" means the Commissioner of Insurance.

13 c. "Days" means calendar days.

14 d. "Department" means the Department of Insurance.

15 e. "Insurance," "insurance policy" or "insurance contract" includes
16 contracts or policies of life insurance, health insurance, annuities,
17 indemnity, property and casualty, fidelity, surety[,]and guaranty [and
18 title] insurance.

19 f. "Insurance agent" means a person authorized, in writing, by any
20 insurance company to act as its agent to solicit, negotiate or effect
21 insurance contracts on its behalf or to collect insurance premiums and
22 who may be authorized to countersign insurance policies on its behalf.

23 g. "Insurance broker" means a person who, for a commission,
24 brokerage fee, or other consideration, acts or aids in any manner
25 concerning negotiation, solicitation or effectuation of insurance
26 contracts as the representative of an insured or prospective insured; or
27 a person who places insurance in an insurance company that he does
28 not represent as an agent.

29 h. "Insurance consultant" means a person who, for a fee,
30 commission or other consideration, acts or holds himself out to the
31 public or any licensee as offering any advice, counsel, opinion or
32 service with respect to the benefits, advantages or disadvantages under
33 any insurance policy or contract that is or could be issued in this State,
34 but shall not include bank trust officers, attorneys-at-law and certified

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 public accountants who negotiate contracts on behalf of others or
2 provide general financial counsel if no commission or brokerage fee is
3 paid for those services.

4 i. "Insurance company" includes any company that underwrites or
5 issues an insurance policy or contract including fraternal benefit
6 societies as defined in P.L.1959, c.167 (C.17:44A-1 et seq.) and risk
7 retention groups and purchasing groups as defined in 15 U.S.C.§
8 3901, but does not include title insurance companies.

9 j. "Insurance producer" means any person engaged in the business
10 of an insurance agent, insurance broker or insurance consultant.

11 k. "License" means any license issued pursuant to the provisions of
12 this act or any act which is superseded by this act.

13 l. "Licensee" means any person holding an insurance producer
14 license issued pursuant to this act.

15 m. "Limited insurance representative" means a person who is
16 authorized to solicit, negotiate or effect contracts for a particular line
17 of insurance as an agent for an insurance company authorized to write
18 that line in this State which by the nature of the line of business and
19 the manner by which it is marketed to the public does not require the
20 professional competency demanded for an insurance producer license.

21 n. "Organization" means any corporation, partnership or other legal
22 entity.

23 o. "Person" means any individual, corporation, partnership or other
24 legal entity.

25 p. "State, other than this State," includes any other state, the
26 District of Columbia, the Commonwealth of Puerto Rico, any territory
27 of the United States and the Provinces of Canada.

28 (cf: P.L.1987, c.293, s.2)

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30 2. Section 10 of P.L.1987, c.293 (C.17:22A-10) is amended to
31 read as follows:

32 10. a. No insurance producer license shall be issued unless it
33 designates one or more of the following authorities:

34 (1) Life

35 (2) Health

36 (3) Property/Casualty

37 (4) Surplus Lines

38 (5) [Title Insurance] (~~Deleted by amendment, P.L. , c. .~~)

39 b. The commissioner shall, by rule or regulation, designate the kind
40 or kinds of insurance that may be transacted by licensed insurance
41 producers holding each authority.

42 (cf: P.L.1987, c.293, s.10)

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44 3. (New section) Nothing contained in P.L.1987, c.293
45 (C.17:22A-1 et seq.) shall be construed to apply to title insurance,
46 except as may be expressly provided in this 1996 amendatory and

1 supplementary act. The sole authority of the commissioner to regulate
2 title insurance shall be derived from P.L.1975, c.106 (C.17:46B-1 et
3 seq.), except as may be expressly provided in this 1996 amendatory
4 and supplementary act.

5

6 4. Section 1 of P.L.1975, c.106 (C.17:46B-1) is amended to read
7 as follows:

8 1. Certain words defined. As used in this act:

9 a. "Title insurance" means insuring, guaranteeing or indemnifying
10 owners of real property or others interested therein against loss or
11 damage suffered by reason of liens, encumbrances upon, defects in or
12 the unmarketability of the title to said property, guaranteeing,
13 warranting, or otherwise insuring by a title insurance company the
14 correctness of searches relating to the title to real property, or doing
15 any business in substance equivalent to any of the foregoing in a
16 manner designed to evade the provisions of this act.

17 b. The "business of title insurance" shall be deemed to be (1) the
18 making as insurer, guarantor or surety, or proposing to make as
19 insurer, guarantor or surety, of any contract or policy of title
20 insurance; (2) the transacting or proposing to transact, any phase of
21 the title insurance, including abstracting, examination of title,
22 solicitation, negotiation preliminary to execution of a contract of title
23 insurance, and execution of a contract of title insurance, insuring and
24 transacting matters subsequent to the execution of the contract and
25 arising out of it, including reinsurance; or (3) the doing, or proposing
26 to do, any business in substance equivalent to any of the foregoing in
27 a manner designed to evade the provisions of this act.

28 c. "Title insurance company" means any domestic company
29 organized under the provisions of this act for the purpose of insuring
30 titles to real estate, any title insurance company organized under the
31 laws of another state or foreign government and licensed to insure
32 titles to real estate within this State pursuant to section 25 of this act,
33 and any domestic or foreign company having the power and authorized
34 to insure title to real estate within this State as of the effective date of
35 this act and which meets the requirements of this act.

36 d. "Applicants for insurance" shall be deemed to include all those,
37 whether or not a prospective insured, who from time to time apply to
38 a title insurance company, or to its agent, for title insurance, and who
39 at the time of such application are not agents for a title insurance
40 company.

41 e. "Premium" for title insurance means that portion of the fee
42 charged by a title insurance company, agent of a title insurance
43 company or approved attorney of a title insurance company, or any of
44 them, to an insured or to an applicant for insurance, for the assumption
45 by the title insurance company of the risk created by the issuance of
46 the title insurance policy.

1 f. "Fee" for title insurance means and includes the premium for the
2 assumption of the insurance risk, charges for abstracting or searching,
3 examination, determining insurability, and every other charge, whether
4 denominated premium or otherwise, made by any title insurance
5 company or title insurance agent.

6 g. "Commissioner" means the Commissioner of Insurance of the
7 State of New Jersey.

8 h. "Approved attorney" means an attorney at law admitted to
9 practice in the State of New Jersey, who is not an employee of a title
10 insurance company or of a title insurance agent, upon whose
11 examination of title and report thereon a title insurance company may
12 issue a policy of title insurance.

13 i. "Title insurance agent" means a person, firm, partnership,
14 association, corporation, cooperative or joint-stock company having
15 a bona fide office or offices within the State of New Jersey, and
16 authorized in writing by a title insurance company to solicit insurance
17 risks and collect fees in its behalf and who in the regular course of
18 business as such agent shall perform all of the following functions:
19 examine title to real estate, determine insurability in accordance with
20 underwriting rules and standards prescribed by such title insurance
21 company, and issue a title report, binder, or commitment to insure, and
22 policy based upon the examination performed by such agent and
23 determination of insurability as aforesaid. Provided, however, the term
24 "title insurance agent" shall not include officers and salaried employees
25 of any title insurance company authorized to do a title insurance
26 business within this State.

27 j. "Single insurance risk" means the insured amount of any policy
28 or contract of title insurance issued by a title insurance company unless
29 two or more policies or contracts are simultaneously issued on
30 different estates in identical real property, in which event, it means the
31 sum of the insured amounts of all such policies or contracts.
32 However, any such policy or contract that insures a mortgage interest
33 that is excepted in a fee or leasehold policy or contract, and which
34 does not exceed the insured amount of such fee or leasehold policy or
35 contract, shall be excluded in computing the amount of a single
36 insurance risk.

37 k. "Net retained liability" means the total liability retained by a title
38 insurance company under any policy or contract of insurance, or under
39 a single insurance risk as defined in or computed in accordance with
40 subsection j. of this section, after the purchase of reinsurance.

41 l. "Foreign title insurance company" means a title insurance
42 company organized under the laws of any other state of the United
43 States.

44 m. "Alien title insurance company" means any title insurance
45 company incorporated or organized under the laws of any foreign
46 nation or of any province or territory thereof, not included under the

1 definition of "foreign title insurance company."

2 n. "Personal or controlled insurance" means a policy of title
3 insurance where the source or origination of the application for
4 insurance or where the insured or one of the insureds under such
5 policy is, or the loss thereunder is payable to:

6 (1) The title insurance company issuing such policy, or (a) any
7 person or corporation directly or indirectly owning or controlling a
8 majority of the voting stock or controlling interest in such title
9 insurance company, or (b) any corporation which is directly or
10 indirectly controlled by a person or corporation which also controls
11 the title insurance company as described in paragraph (1)(a) of this
12 subsection, or (c) any corporation making consolidated returns for
13 United States income tax purposes with such title insurance company
14 or any corporation described in paragraphs (1)(a) and (1)(b) of this
15 subsection; or

16 (2) The title insurance agent issuing such policy, or

17 (a) If such title insurance agent is a natural person:

18 (i) his spouse, his employer or his employer's spouse; or

19 (ii) any person related to him or the persons mentioned in
20 subparagraph (i) of paragraph (2)(a) of this subsection within the
21 second degree by blood or marriage; or

22 (iii) if his employer is a corporation, any person directly or
23 indirectly owning or controlling a majority of the voting stock or
24 controlling interest in such corporation; or

25 (iv) if his employer is a partnership or association, any person
26 owning an interest in such partnership or association.

27 (b) If such title insurance agent is a corporation,

28 (i) any person directly or indirectly owning or controlling a
29 majority of the voting stock or controlling interest in such corporation;
30 or

31 (ii) any corporation which is directly or indirectly controlled by a
32 person who also controls the title insurance agent as described in
33 subparagraph (i) of paragraph (2)(b) of this subsection; or

34 (iii) any corporation making consolidated returns for United States
35 income tax purposes with any corporation described in subparagraph
36 (i) or (ii) of paragraph (2)(b) of this subsection.

37 o. "Source" as used in this act means and includes clients and
38 customers of attorneys at law and real estate brokers, where such
39 attorney or broker acts as a title insurance agent in an individual,
40 partnership or corporate capacity.

41 p. "Person" as used in this act means a firm, partnership,
42 association, corporation, cooperative or joint-stock company as well
43 as individuals, unless restricted by the context to an individual as
44 distinguished from some other entity.

45 (cf: P.L.1990, c.131, s.1)

- 1 5. (New section) a. Every title insurance company authorized to
2 transact business within this State shall certify annually to the
3 commissioner the names of all title insurance agents representing it in
4 this State. No person shall function as a title insurance agent and no
5 title insurance company shall authorize any person to function as its
6 agent unless that person holds a valid title insurance agent's license.
- 7 b. Any person who solicits, negotiates or effectuates a contract of
8 title insurance insuring real property within this State shall be licensed
9 in the manner provided by section 4 of P.L. 1987, c. 293
10 (C.17:22A-4), whether a partner, principal, director, shareholder,
11 officer or employee of a title insurance agent or title insurance
12 company. The license shall be denominated an "individual title
13 insurance producer's license."
- 14 c. Each title insurance agent doing business in this State shall
15 obtain an organization license in accordance with the provisions of
16 section 6 of P.L. 1987, c. 293 (C. 17:22A-6), to be denominated a
17 "title insurance agent's organization license." No license shall be
18 issued to any agent which does not meet the requirements of
19 subsection i. of section 1 of P.L. 1975, c. 106 (C.17:46B-1).
- 20 d. No person shall act as, or perform any of the functions of, or
21 hold himself out as, a title insurance producer, or receive any payment,
22 compensation, commission or fee in connection with same, without
23 first having obtained an individual title insurance producer's license.
24 No title insurance agent shall act as, or perform any of the functions
25 of, or hold himself out as a title insurance agent, or receive any fee,
26 payment, compensation, commission or consideration in connection
27 with same, without having first obtained an organization license.
28 Engaging in a single act or transaction shall be sufficient proof of a
29 violation of this section. However, this section shall not apply to the
30 clerical duties of office employees nor the managerial or supervisory
31 duties of managers who do not solicit, negotiate or effectuate
32 contracts of title insurance.
- 33 e. The commissioner shall have the powers set forth in sections 17
34 through 21, inclusive, of P.L.1987, c.293 (C. 17:22A-17 through
35 17:22A-21, inclusive) with respect to individual title insurance
36 producer's licenses and title insurance agent's organization licenses.
- 37 f. In the event of the death or the inability further to act, of a
38 licensed title insurance agent, where no other agent in the agency,
39 copartnership, association or corporation is authorized to represent
40 such insurance company, the commissioner may issue a temporary
41 license to another person enabling that other person to represent any
42 such insurance company, upon the filing of an appropriate application
43 for a title insurance agent's license containing the additional
44 information required by this section. Such temporary license shall
45 continue only until the licensee is afforded an opportunity of taking the
46 examination for title insurance agents and receiving the results, but not

1 to exceed a period of six months. In the event of the failure of the
2 applicant to qualify for a regular title insurance agent's license, no
3 renewal or extension may be granted to any temporary license held by
4 the applicant.

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6 6. Section 1 of P.L. 1991, c. 18 (C. 17:46B-30.1) is amended to
7 read as follows:

8 1. a. No bank, trust company, bank and trust company, savings
9 bank, savings and loan association or other lending or financial
10 institution, mortgage service, mortgage brokerage, mortgage banking
11 or mortgage guaranty company, or any service company of or for any
12 lending or financial institution, or builder, or any person licensed as a
13 real estate broker or salesperson, or any officer, partner, principal or
14 employee of any of the foregoing, shall be licensed as or permitted to
15 act as an insurance producer or agent for a title insurance company.

16 b. No bank, trust company, bank and trust company, savings bank,
17 savings and loan association or other lending or financial institution,
18 mortgage service, mortgage brokerage, mortgage banking or mortgage
19 guaranty company, or any service company of or for any lending or
20 financial institution, or builder, or any person licensed as a real estate
21 broker or salesperson, or any officer, partner, principal or employee
22 of any of the foregoing, shall make the selection of a particular title
23 insurance company [or insurance] a producer or agent a condition
24 precedent to the granting of any mortgage loan.

25 c. For the purposes of this section, "builder" means any person
26 engaged in the construction of new homes.

27 (cf: P.L.1991, c.18, s.1)

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29 7. (New section) a. Every title insurance agent shall keep its
30 books of account and records and vouchers pertaining to the business
31 of title insurance in a bona fide office in this State in a manner that the
32 commissioner, or his authorized representatives, may readily ascertain
33 from time to time whether the agent has complied with all the
34 provisions of P.L. 1975, c. 106 (C. 17:46B-1 et seq.).

35 b. Every title insurance agent shall maintain a separate record of all
36 receipts and disbursements as a depository for funds and shall not
37 commingle any such funds with an agent's own funds or with funds
38 held by an agent in any other capacity.

39 c. If at any time the commissioner shall determine that an agent has
40 failed to comply with any of the provisions of this section, the
41 commissioner may direct that the agent cease writing new insurance
42 until these provisions are complied with.

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44 8. (New section) Every title insurance agent shall reply, in writing,
45 promptly, with a copy thereof to each title insurance company for
46 which that agent is acting, to any inquiry of the commissioner relative

1 to the business of title insurance. A copy of any inquiry sent by the
2 commissioner to any agent relative to that agent's conduct of the
3 business of title insurance shall also be sent by the commissioner to
4 each title insurance company for which that agent is acting.

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6 9. (New section) After the effective date of this 1996 amendatory
7 and supplementary act, no agent for a title insurance company shall
8 adopt a firm name containing the words "title," "title company," "title
9 insurance company," "guaranty," "guarantee," "guaranty company," or
10 "guarantee company" or similar combination thereof; except that the
11 word "title" may be used in combination with the words "agent" or
12 "agency" in letters of the same size and character.

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14 10. Section 34 of P.L.1975, c.106 (C.17:46B-34) is amended to
15 read as follows:

16 34. Commissions; no right to pay. a. [No] Notwithstanding any
17 provision of law to the contrary, no title insurance company and no
18 title insurance agent or producer shall pay, allow or give, or offer to
19 pay, allow or give, directly or indirectly, any commission or part of its
20 fee or charge or any other consideration as an inducement or
21 compensation for the placing or procuring of any order for title
22 insurance; provided, however, that nothing herein contained shall be
23 construed to prohibit the payment of a commission or other
24 compensation to a [regular full-time] bona fide partner, principal,
25 director, officer or employee of a title insurance company or agent of
26 a title insurance company as part of the regular compensation of such
27 employee or agent.

28 b. Notwithstanding any provision of law to the contrary, no person
29 shall be permitted to solicit, negotiate or effectuate a title insurance
30 policy, or to receive any fee, commission, compensation, consideration
31 or payment for same, whether directly or indirectly, unless he is: a
32 partner, principal, director, shareholder or officer of an entity which
33 is a title insurance company or title insurance agent or a bona fide
34 employee of a title insurance company or title insurance agent.

35 c. For the purposes of this section, "bona fide employee" means
36 one who is regularly on the payroll of the entity employing him and
37 whose job duties are performed under the supervision or control of the
38 employing entity. No more than 25 percent of the business originated
39 or controlled by a bona fide employee shall be personal or controlled
40 insurance, as defined in subsection n. of section 1 of P.L.1975, c.106
41 (C.17:46B-1) and section 39 of P.L.1975, c.106 (C.17:46B-39).

42 (cf: P.L.1975, c.106, s.34)

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44 11. Section 39 P.L.1975, c.106 (C.17:46B-39) is amended to read
45 as follows:

46 39. Personal or controlled insurance. a. If the rates and charges

1 for personal or controlled insurance from any one source so issued in
2 any 1 calendar year received by a title insurance company or by a title
3 insurance agent shall exceed 25%, or from all such sources shall
4 exceed 50% of the total rates and charges received by such title
5 insurance company or by such title insurance agent for title insurance
6 issued in the same year, the excess shall be deemed to be unlawful
7 rebate.

8 b. Each title insurance company, title insurance agent and person,
9 entity or organization holding an insurance producer license for the
10 line of title insurance shall, not later than the first day of April of each
11 calendar year, file or cause to be filed with the commissioner, a
12 Controlled Business Statement, setting forth the source of any
13 personal or controlled insurance, as defined in this section and
14 subsection n. of section 1 of P.L.1975, c.106 (C.17:46B-1), for the
15 preceding calendar year, and certifying that the entity or individual
16 filing the form is not in violation of the provisions of this section.

17 c. The Controlled Business Statement required by subsection b. of
18 this section shall be made in a form and in a manner to be prescribed
19 by the commissioner. It shall be signed, in the case of an individual,
20 by the licensee, or, in the case of a corporation or partnership entity,
21 by an officer or general partner, as the case may be, having actual
22 knowledge of the entity's business affairs, and shall be verified under
23 oath.

24 d. Any person or entity required to file a Controlled Business
25 Statement who or which shall fail to do so in a timely fashion, or shall
26 fail to properly complete, execute or verify the Controlled Business
27 Statement, shall be subject to fines or other penalties to be prescribed
28 and imposed by the commissioner. If it shall appear that a person or
29 entity shall have wilfully violated the provisions of this section,
30 whether by failing or refusing to file the Controlled Business
31 Statement in a timely fashion, or by conducting business in violation
32 of this section, or otherwise, the commissioner shall, in addition to any
33 fines or penalties which may be imposed by law, revoke the license of
34 that person or entity to transact title insurance business in this State.
35 (cf: P.L.1975, c.106, s.39)

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37 12. (New section) The commissioner may promulgate rules and
38 regulations which are consistent with this 1996 amendatory and
39 supplementary act and are necessary to implement the provisions
40 thereof.

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42 13. This act shall take effect immediately.

STATEMENT

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The purpose of this bill is to restore the licensing and regulation of title insurance agents under the provisions of "The Title Insurance Act of 1974," P.L.1975, c.106 (C.17:46B-1 et seq.). There are a number of issues unique to title insurance which have not been adequately addressed by the "New Jersey Insurance Producer Licensing Act," P.L.1987, c.293 (C.17:22A-1 et seq.), which currently provides for the licensing and regulation of these agents. Also, there are provisions of the "New Jersey Insurance Producer Licensing Act" and the regulations adopted thereunder which conflict with the provisions of "The Title Insurance Act of 1974." This bill will rectify these areas of incompatibility, while retaining the basic licensing procedures established under the "New Jersey Insurance Producer Licensing Act." This bill also makes it clear that the Commissioner of Insurance has full authority to promulgate regulations applicable to title insurance.

Modifies the regulation of title insurance agents.