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**By: Senator Astle**

Introduced and read first time: February 2, 1996

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Title Insurance - Rates and Premiums - Prohibited Consideration**

3 FOR the purpose of prohibiting certain insurers from paying and certain agents from  
4 receiving certain commissions or other consideration in an amount greater than a  
5 certain percentage of the gross title insurance premium; and generally relating to  
6 rates or premiums for title insurance.

7 BY repealing and reenacting, with amendments,  
8 Article 48A - Insurance Code  
9 Section 242A  
10 Annotated Code of Maryland  
11 (1994 Replacement Volume and 1995 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article 48A - Insurance Code**

15 242A.

16 (a) This section applies to all kinds and classes of insurance which insure or  
17 guarantee titles to real or leasehold property or any estate therein, or against loss by  
18 reason of defects, encumbrances, liens or charges on real or leasehold property or any  
19 estate therein; or which insure or guarantee the validity, priority and status of real and  
20 leasehold property liens and estates; or which insure or guarantee the correctness and  
21 sufficiency of searches for instruments, liens, charges or other matters affecting the title  
22 to real or leasehold property or any estate therein. Any person making such guarantees or  
23 issuing such insurance shall be deemed to be engaged in the business of title insurance  
24 and is hereinafter referred to as "insurer".

25 (b) All rates will be made in accordance with the following provisions:

26 (1) Rates shall be reasonable and adequate for the class of risks to which  
27 they apply.

28 (2) Rates shall not discriminate unfairly between risks involving essentially  
29 the same hazards and expense elements.

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1 (3) Due consideration will be given to past and prospective loss experience  
2 within and outside the State, reasonable margin for profit and contingencies, cost of  
3 participating insurance, percentage to be allocated to reserve, operating expense and all  
4 other relevant factors fairly attributable to the business of title insurance.

5 (4) Guarantees may be grouped by classification for the establishment of  
6 rates and minimum premiums. A special or unusual guarantee, more hazardous to the  
7 insurer than ordinary title guarantees because of an alleged irregularity or a difference in  
8 interpretation or application of law which might affect marketability of title, may be  
9 classified individually and separately according to the circumstances peculiar to each  
10 case.

11 (c) (1) Every insurer must file with the Commissioner, any manual or schedule  
12 of rates or premiums which it proposes to use, together with any rules or regulations  
13 governing the setting or making of such rates or premiums, and indicate the character or  
14 extent of coverage contemplated under such rates and premiums, except that insurers  
15 need not include rates or premiums for a special or unusual guarantee as defined in  
16 subsection (b)(4), and such rates or premiums may be classified individually and  
17 separately according to the circumstances peculiar to each case.

18 (2) Every insurer must file with the Commissioner, all forms of contracts,  
19 policies or guarantees of insurance with any and all types of modifications thereof, except  
20 as to special or unusual risks, which it proposes to use.

21 (3) No change in rates or premiums or in the forms of contracts, policies or  
22 guarantees of insurance shall be permitted to any insurer, unless and until a report  
23 indicating such change shall be filed and approved by the Commissioner.

24 (4) Any filing made pursuant to this section shall be approved by the  
25 Commissioner, unless he finds that such filing does not meet the requirements of this  
26 subtitle or shall otherwise be contrary to law. As soon as reasonably possible after the  
27 filing has been made, the Commissioner shall, in writing, approve or disapprove the same;  
28 provided, however, that, if such filing has not been disapproved by the Commissioner  
29 within fifteen days from the date of filing, or within thirty days if such period be extended  
30 in writing by the Commissioner during the first fifteen days, it shall be deemed approved,  
31 and the rates, contracts or other subject matter of such filing may be put into effect by the  
32 insurer at the expiration of such waiting period. In the event the Commissioner  
33 disapproves any filing, he shall specify in what respect he finds that such filing does not  
34 meet the requirements of this subtitle or is otherwise contrary to law.

35 (5) If at any time after the approval of a filing, the Commissioner should  
36 find that the filing does not meet the requirements of this section or is otherwise contrary  
37 to law, or if any party having an interest in such filing should make complaint in writing,  
38 setting forth specific and reasonable causes for complaint to the Commissioner, or if any  
39 insurer, upon notice of disapproval by the Commissioner of a filing pursuant to this  
40 section, should so request, the Commissioner shall hold a hearing within 30 days and shall  
41 give notice of the hearing in writing to all parties in interest. The Commissioner may  
42 confirm, modify, change or rescind any previous action, if warranted by the facts shown at  
43 the hearing.

1 (6) No insurer shall make or issue any contract, policy or guarantee of  
 2 insurance except in accordance with filings approved as provided in this section, except as  
 3 to special or unusual risks for which no filing has been hereinbefore provided.

4 (7) (I) Every insurer must hold to the rates or premiums as approved by  
 5 the Commissioner and may not deviate therefrom nor allow to or for the account of any  
 6 insured a rebate or discount on the rates or premiums payable. As compensation for  
 7 procuring business, an insurer may pay or allow a commission to any licensed agent of the  
 8 insurer.

9 (II) NOTWITHSTANDING ANY PROVISION OF AN EXISTING OR  
 10 SUBSEQUENT AGENCY CONTRACT, COMMISSION AGREEMENT, PREMIUM  
 11 AGREEMENT, OR OTHER DOCUMENT THAT REQUIRES A COMMISSION OR PREMIUM  
 12 SPLIT BETWEEN AN INSURER AND ITS AGENT, AN INSURER MAY NOT PAY AND AN  
 13 AGENT MAY NOT RECEIVE A COMMISSION, FEE, GIFT, OR OTHER CONSIDERATION,  
 14 DIRECTLY OR INDIRECTLY, IN AN AMOUNT GREATER THAN 70% OF THE GROSS  
 15 TITLE INSURANCE PREMIUM.

16 (8) In order to further more equitable establishment and adjustment of  
 17 rates and premiums and forms of contracts, policies or guarantees of insurance, the  
 18 Commissioner and every insurer may exchange information and experience data with  
 19 each other, and with the insurance supervisory officials and insurers in other states and  
 20 with national organizations and associations and may consult and cooperate with them in  
 21 respect to rate and premium making and forms of contracts, policies and guarantees of  
 22 insurance.

23 (9) The Commissioner shall require that by September 1, 1980, all title  
 24 insurance companies subject to the provisions of this section provide on a uniform basis  
 25 whatever financial data including rates, taxes, general expenses, allocated and  
 26 unallocated loss adjustment expenses, licenses, and fees, and all other expenses relating  
 27 to the procurement of business not specifically listed as commissions such as dividends,  
 28 retainers, stock, office space, or any other valuable consideration and any other  
 29 information the Commissioner requires in the regulation of rates. This information shall  
 30 be supplied on forms provided by the Commissioner. The Commissioner, in cooperation  
 31 with the Secretary of Labor, Licensing, and Regulation, shall conduct a study based on  
 32 this information and shall recommend to the 1981 session of the General Assembly  
 33 changes in the law, if any, he deems necessary to regulate title insurance companies.

34 (d) No person or organization shall knowingly give false or misleading information  
 35 to the Commissioner, to any insurer or to any other person which will in any manner  
 36 affect the proper determination of rates or premiums, or the proper issuance of a  
 37 contract, policy or guarantee of insurance.

38 (e) (1) The Commissioner may, if he finds that any person or organization has  
 39 violated any provision of this subtitle, impose a penalty of not more than \$250.00 for each  
 40 such violation, but, if he finds such violation to be wilful, he may impose a penalty of not  
 41 more than \$1,000.00 for each such violation. Such penalties may be in addition to any  
 42 other penalty provided by law.

43 (2) The Commissioner may suspend the license of any insurer who fails to  
 44 comply with any lawful order of the Commissioner within the time limited by such order,

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1 or any extension thereof which the Commissioner may grant. The Commissioner shall not  
2 suspend the license of any insurer for failure to comply with an order until the time  
3 prescribed for an appeal therefrom has expired or, if any appeal has been taken, until  
4 such order has been affirmed. The Commissioner may determine when a suspension of  
5 license shall become effective, and it shall remain in effect for a period fixed by him,  
6 unless he modifies or rescinds such suspension, or until the order upon which such  
7 suspension is based is modified, rescinded or reversed.

8 (3) No penalty shall be imposed and no license shall be suspended except  
9 upon written order of the Commissioner, stating his findings, made after a hearing held  
10 upon not less than ten days' written notice to such person or insurer and specifying the  
11 alleged violation.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 1996.