Unofficial Copy C4 1996 Regular Session 6lr2293

## **By: Senator Collins** Introduced and read first time: February 2, 1996 Assigned to: Finance

# A BILL ENTITLED

## 1 AN ACT concerning

## 2 Title Insurance Agents - Maximum Commission

3 FOR the purpose of prohibiting an insurer from paying and a title insurance agent from

- 4 receiving a certain commission in an amount greater than the amount set by the
- 5 Insurance Commissioner; requiring the submission of certain data to the
- 6 Commissioner to be used to set a certain commission; requiring the Commissioner
- 7 to hold certain public hearings at certain times; establishing certain notice
- 8 requirements for the hearings; and generally relating to certain commissions
- 9 payable to title insurance agents by insurers.

10 BY repealing and reenacting, with amendments,

- 11 Article 48A Insurance Code
- 12 Section 242A
- 13 Annotated Code of Maryland
- 14 (1994 Replacement Volume and 1995 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

16 MARYLAND, That the Laws of Maryland read as follows:

17 Article 48A - Insurance Code

18 242A.

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

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

29 (1) Rates shall be reasonable and adequate for the class of risks to which30 they apply.

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

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

7 (4) Guarantees may be grouped by classification for the establishment of 8 rates and minimum premiums. A special or unusual guarantee, more hazardous to the 9 insurer than ordinary title guarantees because of an alleged irregularity or a difference in 10 interpretation or application of law which might affect marketability of title, may be 11 classified individually and separately according to the circumstances peculiar to each 12 case.

13 (c) (1) Every insurer must file with the Commissioner, any manual orschedule 14 of rates or premiums which it proposes to use, together with any rules or regulations 15 governing the setting or making of such rates or premiums, and indicate the character or 16 extent of coverage contemplated under such rates and premiums, except that insurers 17 need not include rates or premiums for a special or unusual guarantee as defined in 18 subsection (b)(4), and such rates or premiums may be classified individually and 19 separately according to the circumstances peculiar to each case.

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

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

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

(5) If at any time after the approval of a filing, the Commissioner should find that the filing does not meet the requirements of this section or is otherwise contrary to law, or if any party having an interest in such filing should make complaint in writing, etting forth specific and reasonable causes for complaint to the Commissioner, or if any insurer, upon notice of disapproval by the Commissioner of a filing pursuant to this section, should so request, the Commissioner shall hold a hearing within 30 days and shall give notice of the hearing in writing to all parties in interest. The Commissioner may

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confirm, modify, change or rescind any previous action, if warranted by the facts shown at
 the hearing.

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

6 (7) (I) Every insurer must hold to the rates or premiums as approved by 7 the Commissioner and may not deviate therefrom nor allow to or for the account of any 8 insured a rebate or discount on the rates or premiums payable. As compensation for 9 procuring business, an insurer may pay or allow a commission to any licensed agent of the 10 insurer.

(II) 1. NOTWITHSTANDING ANY PROVISION OF EXISTING OR
 SUBSEQUENT AGENCY CONTRACT, COMMISSION AGREEMENT, PREMIUM
 AGREEMENT, OR OTHER CONTRACT THAT REQUIRES A COMMISSION OR PREMIUM
 SPLIT BETWEEN AN INSURER AND AGENT, AN INSURER MAY NOT PAY AND AN
 AGENT MAY NOT RECEIVE A COMMISSION, FEE, GIFT, OR OTHER CONSIDERATION,
 DIRECTLY OR INDIRECTLY, IN AN AMOUNT GREATER THAN THE MAXIMUM
 AMOUNT SET BY THE COMMISSIONER.

2. FOR THE PURPOSE OF COLLECTING DATA TO BE USED TO
 SET THE MAXIMUM COMMISSION PAYABLE, THE COMMISSIONER SHALL REQUIRE
 INSURERS AND LICENSED AGENTS DOING BUSINESS IN THE STATE TO SUBMIT, IN
 THE FORM THAT THE COMMISSIONER CONSIDERS APPROPRIATE, INFORMATION
 ABOUT LOSS EXPERIENCE, EXPENSE OF OPERATION, AND OTHER MATERIAL
 MATTERS FOR THE CONSIDERATION OF THE COMMISSIONER.

3. TO CONSIDER THE AMOUNT OF THE MAXIMUM
 COMMISSION PAYABLE AND OTHER MATTERS RELATED TO THE MAXIMUM
 COMMISSION, THE COMMISSIONER SHALL HOLD PUBLIC HEARINGS NOT EARLIER
 THAN SEPTEMBER 1 OR LATER THAN NOVEMBER 15 OF EACH EVEN-NUMBERED
 YEAR BEGINNING IN 1996.

4. THE COMMISSIONER MAY HOLD ADDITIONAL PUBLIC
 HEARINGS ON THE MAXIMUM COMMISSION PAYABLE AS THE COMMISSIONER
 CONSIDERS NECESSARY.

5. AT LEAST 4 WEEKS BEFORE THE INITIAL PUBLIC
HEARING, NOTICE OF THE HEARING SHALL BE PUBLISHED IN THE MARYLAND
REGISTER OR IN OTHER PUBLICATIONS AS DIRECTED BY THE COMMISSIONER AND
SHALL BE SENT DIRECTLY TO ALL INSURERS AND LICENSED AGENTS DOING
BUSINESS IN THE STATE.

6. ANY ADDITIONAL PUBLIC HEARING SHALL BE
 ANNOUNCED BEFORE THE ADJOURNMENT OF THE INITIAL HEARING AND NOTICE
 OF THE HEARING SHALL BE PUBLISHED AT LEAST 1 WEEK BEFORE THE HEARING IN
 THE MARYLAND REGISTER OR IN OTHER PUBLICATIONS AS DIRECTED BY THE
 COMMISSIONER.

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7. ONCE SET BY THE COMMISSIONER, THE MAXIMUM
 COMMISSION PAYABLE BY INSURERS TO AGENTS MAY NOT BE CHANGED UNTIL THE
 NEXT PUBLIC HEARING IN 2 YEARS.

4 (8) In order to further more equitable establishment and adjustment of 5 rates and premiums and forms of contracts, policies or guarantees of insurance, the 6 Commissioner and every insurer may exchange information and experience data with 7 each other, and with the insurance supervisory officials and insurers in other states and 8 with national organizations and associations and may consult and cooperate with them in 9 respect to rate and premium making and forms of contracts, policies andguarantees of 10 insurance.

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

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

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

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

40 (3) No penalty shall be imposed and no license shall be suspended except 41 upon written order of the Commissioner, stating his findings, made after a hearing held 42 upon not less than ten days' written notice to such person or insurer and specifying the 43 alleged violation.

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