S T A T E O F N E W Y O R K

3550

2009-2010 Regular Sessions

I N S E N A T E

March 24, 2009

Introduced by Sens. BRESLIN, STACHOWSKI, DIAZ -- (at request of the New York State Insurance Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the licensing of agents of authorized title insurance corporations; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph of subsection (k) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, is amended to read as follows:

In this article, "insurance producer" means an insurance agent, TITLE INSURANCE AGENT, insurance broker, reinsurance intermediary, excess lines broker, or any other person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Such term shall not include:

S 2. Paragraph 4 of subsection (k) of section 2101 of the insurance law is REPEALED and paragraphs 5, 6, 7, 8, 9 and 10 are renumbered paragraphs 4, 5, 6, 7, 8 and 9.

S 3. Section 2101 of the insurance law is amended by adding a new subsection (v) to read as follows:

(V)(1) IN THIS CHAPTER, "TITLE INSURANCE AGENT" MEANS ANY AUTHORIZED OR ACKNOWLEDGED AGENT OF A TITLE INSURANCE CORPORATION, AND ANY SUB-AGENT OR OTHER REPRESENTATIVE OF SUCH AN AGENT, WHO:

(A) ACTS AS AN AGENT IN THE SOLICITATION OF, NEGOTIATION FOR, OR SALE OF, A TITLE INSURANCE POLICY;

(B) ISSUES COMMITMENTS TO INSURE OR REPORTS OF TITLE BASED UPON A SEARCH OR AN EXAMINATION OF TITLE; OR

(C) DETERMINES INSURABILITY IN ACCORDANCE WITH UNDERWRITING RULES AND STANDARDS PRESCRIBED BY THE TITLE INSURANCE CORPORATION AND WHO, IN SUBSTANTIAL PART, ON BEHALF OF THE TITLE INSURANCE CORPORATION:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(I) COLLECTS PREMIUMS AND OTHER FUNDS IN CONNECTION WITH THE ISSUANCE OF A TITLE INSURANCE POLICY;

(II) CLOSES OR SETTLES TITLE, INCLUDING THE CLEARANCE OF TITLE EXCEPTIONS IN CONNECTION WITH THE ISSUANCE OF A TITLE INSURANCE POLICY; OR

(III) MARKS UP A TITLE INSURANCE COMMITMENT TO BIND A TITLE INSURANCE CORPORATION OR PREPARES AND ISSUES A TITLE INSURANCE POLICY ON BEHALF OF A TITLE INSURANCE CORPORATION.

(2) SUCH TERM SHALL NOT INCLUDE ANY REGULAR SALARIED OFFICER OR EMPLOYEE OF AN AUTHORIZED TITLE INSURANCE CORPORATION OR OF A LICENSED TITLE INSURANCE AGENT, WHO DOES NOT RECEIVE A COMMISSION OR OTHER COMPENSATION FOR SERVICES WHICH COMMISSION OR OTHER COMPENSATION IS DIRECTLY DEPENDENT UPON THE AMOUNT OF TITLE INSURANCE BUSINESS DONE.

S 4. The section heading of section 2103 of the insurance law is amended to read as follows:

Insurance agents; TITLE INSURANCE AGENTS; licensing.

S 5. Subsection (b) of section 2103 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(b) The superintendent may issue a license to any person, firm, association or corporation who or which has complied with the requirements of this chapter, authorizing the licensee to act as INSURANCE agent OR TITLE INSURANCE AGENT of any authorized insurer, other than an insurer specified in subsection (b) of section two thousand one hundred fifteen of this article, with respect to the lines of authority for accident and health or sickness, property, casualty, personal lines or any other line of authority granted other than life, and variable life and variable annuity products, which such insurer is authorized to do in this state.

S 6. Subsection (c) of section 2103 of the insurance law is amended to read as follows:

(c) Any such license issued to a firm or association shall authorize only the members thereof, named in such license as sub-licensees, to act individually as agents thereunder, and any such license issued to a corporation shall authorize only the officers and directors thereof, named in such license as sub-licensees, to act individually as agents thereunder. Every sub-licensee, acting as insurance agent OR TITLE INSURANCE AGENT pursuant to such a license shall be authorized so to act only in the name of the licensee. IN THE CASE OF A LICENSE ISSUED TO A TITLE INSURANCE AGENT, AT LEAST ONE DESIGNATED SUB-LICENSEE MUST HAVE A FINANCIAL OR OTHER BENEFICIAL INTEREST IN THE LICENSEE.

S 7. Subsection (e) of section 2103 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(e) Before any original insurance agent's license OR TITLE INSURANCE AGENT'S LICENSE is issued there shall be on file in the office of the superintendent an application by the prospective licensee in such form or forms and supplements, and containing information the superintendent prescribes and for each business entity, the sub-licensee or sub-licensees named in the application shall be designated responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

S 8. Subparagraph (B) of paragraph 2 of subsection (f) of section 2103 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(B) For individuals seeking to qualify to obtain a license under subsection (b) of this section, not more than [six] SEVEN types of examinations, each adapted to test the qualifications of an individual with respect to the kinds of insurance business specified in such classifica-

tion. Every such individual shall be required to pass the type or types of examination prescribed by the superintendent for the line or lines of authority for which the license is sought. No individual shall be deemed qualified to take the examination unless he shall have successfully completed a course or courses, approved as to method and content by the superintendent, covering the principal branches of the insurance business and requiring not less than ninety hours of classroom work, in institutions of learning meeting the standards prescribed by paragraph one of subsection (a) of section two thousand one hundred four of this article; provided, however, with respect to a license issued pursuant to subsection (b) of this section for a personal line of authority OR TITLE INSURANCE AGENT, there shall be required not less than forty hours of such classroom work.

S 9. Paragraph 7 of subsection (g) of section 2103 of the insurance law, as renumbered by chapter 137 of the laws of 1986, is amended to read as follows:

(7) of any applicant who has passed the written examination given by the superintendent for an insurance agent's license OR TITLE INSURANCE AGENT'S LICENSE and was licensed as such or of an applicant who was licensed as an insurance agent OR TITLE INSURANCE AGENT but did not pass such an examination, provided the applicant applies within two years following the date of termination of his license;

S 10. Paragraphs 10 and 11 of subsection (g) of section 2103 of the insurance law are renumbered paragraphs 11 and 12 and a new paragraph 10 is added to read as follows:

(10) OF ANY APPLICANT SEEKING TO OBTAIN A LICENSE AS A TITLE INSURANCE AGENT, WHEN SUCH APPLICANT IS A LICENSED ATTORNEY AT LAW OF THIS STATE;

S 11. Subsection (h) of section 2103 of the insurance law is amended to read as follows:

(h) The superintendent may refuse to issue any insurance agent's license OR TITLE INSURANCE AGENT'S LICENSE if, in [his] THE SUPERINTENDENT'S judgment, the proposed licensee or any sub-licensee is not trustworthy and competent to act as such agent, or has given cause for the revocation or suspension of such a license, or has failed to comply with any prerequisite for the issuance of such license.

S 12. Paragraph 5 of subsection (j) of section 2103 of the insurance law, as added by chapter 769 of the laws of 1984, is amended to read as follows:

(5) Before the renewal of any insurance agent's license OR TITLE INSURANCE AGENT'S LICENSE shall be issued, the following requirements shall have been met:

(A) The licensee shall have filed a completed renewal application in such form or forms and supplements thereto and containing such information as the superintendent may prescribe.

(B) The licensee shall have paid such fees as are prescribed in this section.

S 13. Subparagraph (A) of paragraph 8 of subsection (j) of section 2103 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(A) The superintendent may in issuing a renewal license dispense with the requirements of a verified application by any individual licensee or sub-licensee who, by reason of being engaged in any military service for the United States, is unable to make personal application for such renewal license, upon the filing of an application on behalf of such individual, in such form as the superintendent shall prescribe, by some person or persons who in his judgment have knowledge of the facts and

who make affidavit showing such military service and the inability of such insurance agent OR TITLE INSURANCE AGENT to make personal applica-tion.

S 14. Paragraph 12 of subsection (j) of section 2103 of the insurance law, as added by chapter 769 of the laws of 1984, is amended to read as follows:

(12) Except where a corporation, association or firm licensed as an insurance agent OR TITLE INSURANCE AGENT is applying to add a sub-licen-see, or the date of the expiration of the license is changed, there shall be no fee required for the issuance of an amended license.

S 15. Subsection (l) of section 2103 of the insurance law is amended to read as follows:

(l) Any licensee may at any time while such license is in force apply to the superintendent for an additional license authorizing such licen-see, and the sub-licensees named in such existing license, to act as insurance agents OR TITLE INSURANCE AGENTS for additional insurers. The superintendent may, after the requirements of this chapter have been complied with, issue such additional license.

S 16. Section 2103 of the insurance law is amended by adding two new subsections (p) and (q) to read as follows:

(P)(1) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION, THE SUPERINTENDENT MAY ISSUE A LICENSE TO ANY PERSON, FIRM, OR CORPORATION, AUTHORIZING SUCH LICENSEE TO ACT AS A TITLE INSURANCE AGENT, WHEN SUCH PERSON, FIRM OR CORPORATION:

(A) FILES IN THE OFFICE OF THE SUPERINTENDENT, ON OR BEFORE JANUARY FIRST, TWO THOUSAND TEN, OR WITHIN NINETY DAYS AFTER THE SUPERINTENDENT HAS PROMULGATED APPLICATION FORMS, WHICHEVER DATE IS LATER, AN APPLICA-TION FOR SUCH LICENSE, IN SUCH FORM AND CONTAINING SUCH INFORMATION AS THE SUPERINTENDENT PRESCRIBES;

(B) PAYS TO THE SUPERINTENDENT THE SUM OF FORTY DOLLARS FOR EACH YEAR OR FRACTION OF A YEAR IN WHICH THE LICENSE SHALL BE VALID;

(C) DEMONSTRATES TO THE SATISFACTION OF THE SUPERINTENDENT THAT SUCH APPLICANT HAS REGULARLY AND CONTINUOUSLY ACTED AS A TITLE INSURANCE AGENT FOR A PERIOD OF AT LEAST FIVE YEARS IMMEDIATELY PRECEDING THE FILING OF SUCH APPLICATION AND IS COMPETENT AND TRUSTWORTHY TO ACT AS A TITLE INSURANCE AGENT; AND

(D) IS AT LEAST EIGHTEEN YEARS OF AGE AT THE TIME OF THE ISSUANCE OF SUCH LICENSE.

(2) SUCH LICENSE ISSUED PURSUANT TO THIS SUBSECTION FOR AN INDIVIDUAL, WHO WAS BORN IN AN ODD NUMBERED YEAR, SHALL EXPIRE ON THE INDIVIDUAL'S BIRTHDAY IN THE NEXT ODD NUMBERED YEAR. SUCH LICENSE ISSUED PURSUANT TO THIS SUBSECTION FOR AN INDIVIDUAL, WHO WAS BORN IN AN EVEN NUMBERED YEAR, SHALL EXPIRE ON THE INDIVIDUAL'S BIRTHDAY IN THE NEXT EVEN NUMBERED YEAR.

(Q) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO COURSE OF STUDY OR WRITTEN EXAMINATION SHALL BE REQUIRED WITH RESPECT TO ANY APPLICANT FOR A TITLE INSURANCE AGENT'S LICENSE WHO FILES AN APPLICATION UNDER THIS SECTION WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION AND WHO DEMONSTRATES TO THE SATISFACTION OF THE SUPERINTEN-DENT THAT SUCH APPLICANT OR ITS PROSPECTIVE SUB-LICENSEE HAS REGULARLY AND CONTINUOUSLY PERFORMED THE FUNCTIONS OF A TITLE INSURANCE AGENT FOR A PERIOD OF AT LEAST FIVE YEARS IMMEDIATELY PRECEDING THE FILING OF SUCH APPLICATION.

S 17. Subsection (a) of section 2109 of the insurance law, paragraph 3 as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(a) The superintendent may issue a temporary insurance agent's LICENSE, TITLE INSURANCE AGENT'S LICENSE or insurance broker's license, or both, AN INSURANCE AGENT'S AND INSURANCE BROKER'S LICENSE, without requiring the applicant to pass a written examination or to satisfy the requirements of subsection (c) of section two thousand one hundred four of this article except as to age, in the case of a license issued pursuant to paragraph two [hereof] OF THIS SUBSECTION, in the following cases:

(1) in the case of the death of a person who at the time of his death was a licensed accident and health insurance agent under subsection (a) of section two thousand one hundred three of this article, a licensed insurance agent OR LICENSED TITLE INSURANCE AGENT under subsection (b) of such section or a licensed insurance broker:

(A) to the executor or administrator of the estate of such deceased agent or broker;

(B) to a surviving next of kin of such deceased agent or broker, where no administrator of his estate has been appointed and no executor has qualified under his duly probated will;

(C) to the surviving member or members of a firm or association, which at the time of the death of a member was such a licensed insurance agent, LICENSED TITLE INSURANCE AGENT or licensed insurance broker; or

(D) to an officer or director of a corporation upon the death of the only officer or director who was qualified as a sub-licensee or to the executor or administrator of the estate of such deceased officer or director;

(2) to any person who may be designated by a person licensed pursuant to this chapter as an insurance agent, TITLE INSURANCE AGENT or an insurance broker, or both AN INSURANCE AGENT AND INSURANCE BROKER, and who is absent because of service in any branch of the armed forces of the United States, including a partnership or corporation which is licensed pursuant to this chapter as an insurance agent, TITLE INSURANCE AGENT or as an insurance broker, or both AN INSURANCE AGENT AND INSURANCE BROKER, in a case where the sub-licensee or all sub-licensees, if more than one, named in the license or licenses issued to such partnership or corporation is or are absent because of service in any branch of the armed forces of the United States; and

(3) to the next of kin of a person who has become totally disabled and prevented from pursuing any of the duties of his or her occupation, and who at the commencement of his or her disability was a licensed accident and health insurance agent under subsection (a) of section two thousand one hundred three of this article, a licensed insurance agent OR LICENSED TITLE INSURANCE AGENT under subsection (b) of such section or a licensed insurance broker.

S 18. Subsection (c) of section 2109 of the insurance law is amended to read as follows:

(c) Such license or licenses shall authorize the person or persons named therein to renew the business of the deceased, absent or disabled INSURANCE agent, TITLE INSURANCE AGENT, or INSURANCE broker, or both AN INSURANCE AGENT AND INSURANCE BROKER, as the case may be, or of the firm or, in the case of a license issued pursuant to paragraph one or three of subsection (a) [hereof] OF THIS SECTION, the association whose business is being continued thereunder, each such agent, broker, firm or association being referred to in this section as "original licensee", expiring during the period in which such temporary license or licenses are in force, to collect premiums due and payable to the original licensee or, in the case of a license issued pursuant to paragraph one of

subsection (a) [hereof] OF THIS SECTION, to his estate, and to perform such other acts as an insurance agent, TITLE INSURANCE AGENT or as an insurance broker, or both AN INSURANCE AGENT AND INSURANCE BROKER, as the case may be, as are incidental to the continuance of the insurance business of such original licensee.

S 19. Subsections (a) and (d) of section 2112 of the insurance law, subsection (a) as amended by chapter 540 of the laws of 1996 and subsection (d) as amended by chapter 687 of the laws of 2003, are amended to read as follows:

(a) Every insurer, fraternal benefit society or health maintenance organization doing business in this state shall file a certificate of appointment in such form as the superintendent may prescribe in order to appoint insurance agents OR TITLE INSURANCE AGENTS to represent such insurer, fraternal benefit society or health maintenance organization.

(d) Every insurer, fraternal benefit society or health maintenance organization or insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent OR TITLE INSURANCE AGENT licensed in this state, or upon termination for cause for activities as set forth in subsection (a) of section two thousand one hundred ten of this article, of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. The insurer, fraternal benefit society, health maintenance organization, insurance producer or the authorized representative of the insurer, fraternal benefit society, health maintenance organization or insurance producer shall provide, within fifteen days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier. Every statement made pursuant to this subsection shall be deemed a privileged communication.

S 20. The section heading and paragraph 1 of subsection (a) of section 2115 of the insurance law, paragraph 1 of subsection (a) as amended by chapter 418 of the laws of 2000, are amended to read as follows:

Property/casualty insurance agents; TITLE INSURANCE AGENTS; commissions.

(1) No insurer doing business in this state, and no agent or other representative thereof, except as provided in subsection (b) [hereof] OF THIS SECTION, shall pay any commission or other compensation to any person, firm, association or corporation for acting as insurance agent OR TITLE INSURANCE AGENT in this state, except to a licensed insurance agent OR LICENSED TITLE INSURANCE AGENT of such insurer or to a person described in paragraph two [or four] of subsection (a) of section two thousand one hundred one of this article or except as provided in subsection (c) of this section. For the purposes of this section, "acting as insurance agent" shall not include the referral of a person to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions and where the compensation for referral is not based upon the purchase of insurance by such person.

S 21. Paragraph 1 of subsection (a) of section 2115 of the insurance law, as amended by chapter 805 of the laws of 1984, is amended to read as follows:

(1) No insurer doing business in this state, and no agent or other representative thereof, except as provided in subsection (b) [hereof] OF THIS SECTION, shall pay any commission or other compensation to any person, firm, association or corporation for acting as insurance agent OR TITLE INSURANCE AGENT in this state, except to a licensed insurance agent OR LICENSED TITLE INSURANCE AGENT of such insurer or to a person described in paragraph two [or four] of subsection (a) of section two thousand one hundred one of this article or except as provided in subsection (c) of this section.

S 22. Subsection (b) of section 2115 of the insurance law, as amended by chapter 540 of the laws of 1996, is amended to read as follows:

(b) This section shall not apply to any life insurance company, fraternal benefit society, accident and health insurance company, health maintenance organization[, title insurance company] nor to any agent or representative of any such insurer, society or health maintenance organization, acting as such.

S 23. Subsections (a) and (c) of section 2120 of the insurance law are amended to read as follows:

(a) Every insurance agent, TITLE INSURANCE AGENT and [every] insurance broker acting as such in this state shall be responsible in a fiduciary capacity for all funds received or collected as insurance agent, TITLE INSURANCE AGENT or insurance broker, and shall not, without the express consent of his, HER or its principal, mingle any such funds with his, HER or its own funds or with funds held by him, HER or it in any other capacity.

(c) This section shall not require any such INSURANCE agent, TITLE INSURANCE AGENT, INSURANCE broker or reinsurance intermediary to maintain a separate bank deposit for the funds of each such principal, if and as long as the funds so held for each such principal are reasonably ascertainable from the books of account and records of such agent, broker or reinsurance intermediary, as the case may be.

S 24. The section heading and subsection (a) of section 2122 of the insurance law are amended to read as follows:

Advertising by insurance [agents and brokers] PRODUCERS. (a) (1) No insurance [agent or insurance broker] PRODUCER shall make or issue in this state any advertisement, sign, pamphlet, circular, card or other public announcement purporting to make known the financial condition of any insurer, unless the same shall conform to the requirements of section one thousand three hundred thirteen of this chapter.

(2) No insurance [agent, insurance broker] PRODUCER or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.

S 25. Subsections (a) and (b) of section 2128 of the insurance law are amended to read as follows:

(a) Notwithstanding the provisions of sections two thousand three hundred twenty-four and four thousand two hundred twenty-four of this chapter, no insurance agent, TITLE INSURANCE AGENT, insurance broker, insurance consultant, excess line broker, reinsurance intermediary or insurance adjuster shall receive any commissions or fees or shares thereof in connection with insurance coverages placed for or insurance services rendered to the state, its agencies and departments, public benefit corporations, municipalities and other governmental subdivisions in this state, unless such insurance agent, TITLE INSURANCE AGENT,

insurance broker, insurance consultant, excess line broker, reinsurance intermediary or insurance adjuster actually placed insurance coverages on behalf of or rendered insurance services to the state, its agencies and departments, public benefit corporations, municipalities and other governmental subdivisions in this state.

(b) The superintendent shall, by regulation, require insurance agents, TITLE INSURANCE AGENTS, insurance brokers, insurance consultants, excess line brokers, reinsurance intermediaries and insurance adjusters to file disclosure statements with the insurance department and the most senior official of the governmental unit involved, with respect to any insurance coverages placed for or insurance services rendered to the state, its agencies and departments, public benefit corporations, municipalities and other governmental subdivisions in this state.

S 26. Subsection (b) of section 2132 of the insurance law, as added by chapter 656 of the laws of 1992, is amended to read as follows:

(b) This section shall not apply to:

(1) those persons holding licenses for which an examination is not required by the laws of this state; [or]

(2) FOR PURPOSES OF A TITLE INSURANCE AGENT LICENSE, AN ATTORNEY LICENSED TO PRACTICE LAW IN THIS STATE; OR

(3) any limited licensees or any other licensees as the superintendent may exempt subject to any continuing education requirements deemed appropriate by the superintendent.

S 27. The insurance law is amended by adding a new section 2137 to read as follows:

S 2137. TITLE INSURANCE BUSINESS ARRANGEMENTS. ANY PERSON WHO HOLDS ANY DIRECT OR INDIRECT FINANCIAL OR OTHER BENEFICIAL INTEREST IN, OR IS UNDER COMMON CONTROL WITH, OR UNDER CONTROL BY, A TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION SHALL NOT MAKE A REFERRAL OF TITLE INSURANCE BUSINESS TO SUCH AGENT OR INSURER UNLESS: IT DISCLOSES IN WRITING TO THE PARTY BEING REFERRED:

(A) THAT THE PERSON HAS A FINANCIAL OR OTHER BENEFICIAL INTEREST IN THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION;

(B) AN ESTIMATE OF THE COST OF THE SERVICES OF THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION, INCLUDING, WITHOUT LIMITATION, THE TITLE INSURANCE PREMIUMS, FEES AND OTHER CHARGES;

(C) THAT THE PARTY BEING REFERRED IS NOT REQUIRED TO USE THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION TO WHICH THE PARTY IS BEING REFERRED;

(D) THAT THE PERSON IS NOT THE SOLE SOURCE OF BUSINESS FOR THE TITLE INSURANCE AGENT OR THE TITLE INSURANCE CORPORATION AND THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION HAS SIGNIFICANT AND MULTIPLE SOURCES OF BUSINESS;

(E) THAT ANY MONEY OR OTHER THING OF VALUE PAID BY THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION TO THE PERSON IS BASED ON THE PERSON'S FINANCIAL OR OTHER BENEFICIAL INTEREST IN, OR COMMON CONTROL WITH, THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION AND IS NOT RELATED TO THE AMOUNT OF TITLE INSURANCE BUSINESS THE PERSON REFERS TO THE TITLE INSURANCE AGENT OR TITLE INSURANCE CORPORATION; AND THAT THE PAYMENT OF SUCH MONEY OR OTHER THING OF VALUE DOES NOT VIOLATE SECTION TWO THOUSAND ONE HUNDRED FIFTEEN, TWO THOUSAND THREE HUNDRED TWENTY-FOUR OR SIX THOUSAND FOUR HUNDRED NINE OF THIS CHAPTER; AND

(F) THAT THE PERSON IS NOT REQUIRED TO PRODUCE A SPECIFIED AMOUNT OF TITLE INSURANCE BUSINESS.

S 28. Subsection (b) of section 305 of the insurance law is amended to read as follows:

(b) No insurer, insurance agent, TITLE INSURANCE AGENT, insurance broker or other person subject to the provisions of this chapter whose conduct, condition or practices are being investigated, and no officer, director or employee of any such person, shall be entitled to witness or mileage fees.

S 29. Section 6409 of the insurance law, subsection (c) as added by chapter 955 of the laws of 1984, is amended to read as follows:

S 6409. Filing of policy forms; rates; classification of risks; commissions and rebates prohibited. (a) No title insurance policy shall be issued or delivered in this state, unless [and until a copy of the form thereof shall have] IT HAS been filed with AND APPROVED BY the superintendent [for his information], IN ACCORDANCE WITH ARTICLE TWENTY-THREE OF THIS CHAPTER.

(b) [Every title insurance corporation shall file with the superintendent its rate manual, if any, its basic schedule of rates and classification of risks, its rating plan and rules in connection with the writing or issuance of policies of title insurance and shall thereafter likewise file any changes therein. After any such filing no such corporation shall, in connection with the writing or issuance of any such policy, deviate from the rates, classifications of risks and rules last filed by it, either by making any reduction in rates without having filed the same as herein provided, or by way of any discriminations in favor of or against any insured. The superintendent shall have the powers specified in article twenty-three of this chapter applicable to title insurers.] TITLE INSURANCE RATES AND RATE FILINGS SHALL BE SUBJECT TO ARTICLE TWENTY-THREE OF THIS CHAPTER.

(c) Notwithstanding any other provision of this article, every title insurance [company] CORPORATION shall be required to offer, at or prior to title closing, an optional policy form which will insure the title of owner-occupied real property used predominantly for residential purposes which consists of not more than four dwelling units for an amount equal to the market value of the property at the time a loss is discovered. Such policy form shall be filed with, AND APPROVED BY, the superintendent pursuant to subsection (a) of this section. Rates for such coverage shall be filed AND APPROVED pursuant to subsection (b) of this section.

(d) No title insurance corporation, TITLE AGENT, or any other person acting for or on behalf of [it] THE TITLE INSURANCE CORPORATION OR TITLE AGENT, shall OFFER OR make, DIRECTLY OR INDIRECTLY, any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business, NOR SHALL ANY APPLICANT FOR INSURANCE, OR ANY PERSON, FIRM, OR CORPORATION ACTING AS AGENT, REPRESENTATIVE, ATTORNEY, OR EMPLOYEE OF THE OWNER, LESSEE, MORTGAGEE OR THE PROSPECTIVE OWNER, LESSEE, OR MORTGAGEE OF THE REAL PROPERTY OR ANYONE HAVING ANY INTEREST IN REAL PROPERTY KNOWINGLY RECEIVE, DIRECTLY OR INDIRECTLY, ANY SUCH REBATE OR OTHER CONSIDERATION OR VALUABLE THING. Any person or entity who [accepts or receives such a commission or rebate] VIOLATES THIS SECTION shall be subject to a penalty equal to the greater of [one] FIVE thousand dollars or five times the amount thereof.

(e) Premium rates for coverage shall fully reflect the foregoing prohibitions of subsection (d) hereof.

S 30. The superintendent of insurance shall promulgate application forms for persons, firms and corporations seeking to obtain a license as a title insurance agent.

S 31. Each person, firm or corporation who has filed an application for a license as a title insurance agent on or before January 1, 2010, or within 90 days after the superintendent of insurance has promulgated application forms pursuant to this act, whichever date is later, may act as such an agent without a license issued pursuant to section 2103 of the insurance law until the superintendent of insurance has made a final determination on the application for such license filed by such person, firm or corporation.

S 32. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that the amendments to paragraph 1 of subdivision (a) of section 2115 of the insurance law made by section twenty of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 12 of chapter 418 of the laws of 2000, as amended, when upon such date the provisions of section twenty-one of this act shall take effect; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.