

4707

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. MORELLE, SPANO, REILLY, ROBINSON -- Multi-Sponsored by -- M. of A. BING, CUSICK, DESTITO, GALEF, GUNTHER -- read once and referred 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:

1 Section 1. The opening paragraph of subsection (k) of section 2101 of
2 the insurance law, as added by chapter 687 of the laws of 2003, is
3 amended to read as follows:
4 In this article, "insurance producer" means an insurance agent, TITLE
5 INSURANCE AGENT, insurance broker, reinsurance intermediary, excess
6 lines broker, or any other person required to be licensed under the laws
7 of this state to sell, solicit or negotiate insurance. Such term shall
8 not include:
9 S 2. Paragraph 4 of subsection (k) of section 2101 of the insurance
10 law is REPEALED and paragraphs 5, 6, 7, 8, 9 and 10 are renumbered paragraphs 4, 5, 6, 7, 8 and 9.
11 S 3. Section 2101 of the insurance law is amended by adding a new
12 subsection (w) to read as follows:
13 (w)(1) IN THIS CHAPTER, "TITLE INSURANCE AGENT" MEANS ANY AUTHORIZED
14 OR ACKNOWLEDGED AGENT OF A TITLE INSURANCE CORPORATION, AND ANY SUB-AGENT OR OTHER REPRESENTATIVE OF SUCH AN AGENT, WHO:
15 (A) ACTS AS AN AGENT IN THE SOLICITATION OF, NEGOTIATION FOR, OR SALE
16 OF, A TITLE INSURANCE POLICY;
17 (B) ISSUES COMMITMENTS TO INSURE OR REPORTS OF TITLE BASED UPON A
18 SEARCH OR AN EXAMINATION OF TITLE; OR
19 (C) DETERMINES INSURABILITY IN ACCORDANCE WITH UNDERWRITING RULES AND
20 STANDARDS PRESCRIBED BY THE TITLE INSURANCE CORPORATION AND WHO, IN
21 SUBSTANTIAL PART, ON BEHALF OF THE TITLE INSURANCE CORPORATION:
22
23

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) CLOSING 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

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

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

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

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

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

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

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

25 (A) FILES IN THE OFFICE OF THE SUPERINTENDENT, ON OR BEFORE JANUARY
26 FIRST, TWO THOUSAND TWELVE, OR WITHIN NINETY DAYS AFTER THE SUPERINTEN-
27 DENT HAS PROMULGATED APPLICATION FORMS, WHICHEVER DATE IS LATER, AN
28 APPLICATION FOR SUCH LICENSE, IN SUCH FORM AND CONTAINING SUCH INFORMA-
29 TION AS THE SUPERINTENDENT PRESCRIBES;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (d) Every insurer, fraternal benefit society or health maintenance
16 organization or insurance producer or the authorized representative of
17 the insurer, fraternal benefit society, health maintenance organization
18 or insurance producer doing business in this state shall, upon termi-
19 nation of the certificate of appointment as set forth in subsection (a)
20 of this section of any insurance agent OR TITLE INSURANCE AGENT licensed
21 in this state, or upon termination for cause for activities as set forth
22 in subsection (a) of section two thousand one hundred ten of this arti-
23 cle, of the certificate of appointment, of employment, of a contract or
24 other insurance business relationship with any insurance producer, file
25 with the superintendent within thirty days a statement, in such form as
26 the superintendent may prescribe, of the facts relative to such termi-
27 nation for cause. The insurer, fraternal benefit society, health mainte-
28 nance organization, insurance producer or the authorized representative
29 of the insurer, fraternal benefit society, health maintenance organiza-
30 tion or insurance producer shall provide, within fifteen days after
31 notification has been sent to the superintendent, a copy of the state-
32 ment filed with the superintendent to the insurance producer at his, or
33 her or its last known address by certified mail, return receipt
34 requested, postage prepaid or by overnight delivery using a nationally
35 recognized carrier. Every statement made pursuant to this subsection
36 shall be deemed a privileged communication.

37 S 20. The section heading and paragraph 1 of subsection (a) of section
38 2115 of the insurance law, paragraph 1 of subsection (a) as amended by
39 chapter 418 of the laws of 2000, are amended to read as follows:

40 Property/casualty insurance agents; TITLE INSURANCE AGENTS; commis-
41 sions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 S 26. Subsection (b) of section 2132 of the insurance law, as amended
15 by chapter 499 of the laws of 2009, is amended to read as follows:

16 (b) This section shall not apply to:

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

19 (2) any limited licensees or any other licensees as the superintendent
20 may exempt subject to any continuing education requirements deemed
21 appropriate by the superintendent; [or]

22 (3) for purposes of the continuing education requirements for life
23 settlements, an insurance producer with a life line of authority who is
24 acting as a life settlement broker pursuant to section two thousand one
25 hundred thirty-seven of this article[.]; OR

26 (4) FOR PURPOSES OF A TITLE INSURANCE AGENT LICENSE, AN ATTORNEY
27 LICENSED TO PRACTICE LAW IN THIS STATE.

28 S 27. The insurance law is amended by adding a new section 2138 to
29 read as follows:

30 S 2318. TITLE INSURANCE BUSINESS ARRANGEMENTS. ANY PERSON WHO HOLDS
31 ANY DIRECT OR INDIRECT FINANCIAL OR OTHER BENEFICIAL INTEREST IN, OR IS
32 UNDER COMMON CONTROL WITH, OR UNDER CONTROL BY, A TITLE INSURANCE AGENT
33 OR TITLE INSURANCE CORPORATION SHALL NOT MAKE A REFERRAL OF TITLE INSUR-
34 ANCE BUSINESS TO SUCH AGENT OR INSURER UNLESS: IT DISCLOSES IN WRITING
35 TO THE PARTY BEING REFERRED:

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

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

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

44 (D) THAT THE PERSON IS NOT THE SOLE SOURCE OF BUSINESS FOR THE TITLE
45 INSURANCE AGENT OR THE TITLE INSURANCE CORPORATION AND THE TITLE INSUR-
46 ANCE AGENT OR TITLE INSURANCE CORPORATION HAS SIGNIFICANT AND MULTIPLE
47 SOURCES OF BUSINESS;

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

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

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

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

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

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

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

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

40 (d) No title insurance corporation, TITLE AGENT, or any other person
41 acting for or on behalf of [it] THE TITLE INSURANCE CORPORATION OR TITLE
42 AGENT, shall OFFER OR make, DIRECTLY OR INDIRECTLY, any rebate of any
43 portion of the fee, premium or charge made, or pay or give to any appli-
44 cant for insurance, or to any person, firm, or corporation acting as
45 agent, representative, attorney, or employee of the owner, lessee, mort-
46 gagee or the prospective owner, lessee, or mortgagee of the real proper-
47 ty or any interest therein, either directly or indirectly, any commis-
48 sion, any part of its fees or charges, or any other consideration or
49 valuable thing, as an inducement for, or as compensation for, any title
50 insurance business, NOR SHALL ANY APPLICANT FOR INSURANCE, OR ANY
51 PERSON, FIRM, OR CORPORATION ACTING AS AGENT, REPRESENTATIVE, ATTORNEY,
52 OR EMPLOYEE OF THE OWNER, LESSEE, MORTGAGEE OR THE PROSPECTIVE OWNER,
53 LESSEE, OR MORTGAGEE OF THE REAL PROPERTY OR ANYONE HAVING ANY INTEREST
54 IN REAL PROPERTY KNOWINGLY RECEIVE, DIRECTLY OR INDIRECTLY, ANY SUCH
55 REBATE OR OTHER CONSIDERATION OR VALUABLE THING. Any person or entity
56 who [accepts or receives such a commission or rebate] VIOLATES THIS

1 SECTION shall be subject to a penalty equal to the greater of [one] FIVE
2 thousand dollars or five times the amount thereof.

3 (e) Premium rates for coverage shall fully reflect the foregoing
4 prohibitions of subsection (d) [hereof] OF THIS SECTION.

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

8 S 31. Each person, firm or corporation who has filed an application
9 for a license as a title insurance agent on or before January 1, 2012,
10 or within 90 days after the superintendent of insurance has promulgated
11 application forms pursuant to this act, whichever date is later, may act
12 as such an agent without a license issued pursuant to section 2103 of
13 the insurance law until the superintendent of insurance has made a final
14 determination on the application for such license filed by such person,
15 firm or corporation.

16 S 32. This act shall take effect on the one hundred twentieth day
17 after it shall have become a law, provided that the amendments to para-
18 graph 1 of subdivision (a) of section 2115 of the insurance law made by
19 section twenty of this act shall be subject to the expiration and rever-
20 sion of such paragraph pursuant to section 12 of chapter 418 of the laws
21 of 2000, as amended, when upon such date the provisions of section twen-
22 ty-one of this act shall take effect; provided, however, that effective
23 immediately, the addition, amendment and/or repeal of any rule or regu-
24 lation necessary for the implementation of this act on its effective
25 date are authorized and directed to be made and completed on or before
26 such effective date.