

No. 372

AN ACT

Relating to the regulation of rates for title insurance which may be charged by title insurance companies, both domestic and foreign, banks and trust companies or trust companies having the power to make title insurance; to rating organizations; conferring on the Insurance Commissioner the power and duty of supervising and regulating persons, associations, companies and corporations and enforcing the provisions of this act; prescribing and regulating the practice and procedure before the Insurance Commissioner, and procedure for review by the courts; giving the Court of Common Pleas of Dauphin County exclusive jurisdiction over certain proceedings; prescribing penalties and providing for the enforcement thereof; repealing the act, approved the eleventh day of June, one thousand nine hundred forty-seven (Pamphlet Laws 538), insofar as it applies to title insurance; repealing inconsistent acts; and continuing existing filings and proceedings.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

“The Title Insurance Rate Regulatory Act of 1953.”

Section 1. Short Title.—This act shall be known and may be cited as “The Title Insurance Rate Regulatory Act of 1953.”

Section 2. Scope of Act.—This act applies to every class and kind of title insurance, guaranteed search, information certificate or other report as to the title to real property under which a fixed liability is assumed, that may be issued by a title insurer, except reinsurance.

Section 3. Definitions.—As used herein the term:

(1) “title insurer” means any title insurance company authorized to do business in this Commonwealth, and any bank and trust company or trust company having the power to make title insurance.

(2) “fee” for title insurance means and includes the premium, the examination and settlement fees, and every other charge, whether denominated premium or otherwise, made by a title insurer, a title insurance underwriter, or both, to an insured or to an applicant for any policy or contract for the issuance of, or an application for any class or kind of, title insurance, but the term “fee” shall not include any charges paid by an insured or by an applicant for any policy or contract to an attorney-at-law acting as an independent contractor and retained by such attorney-at-law, whether or not he is acting as a title insurance underwriter, or any charges made for special services not constituting title insurance, even though performed in connection with a title insurance policy or contract.

(3) “Commissioner” means the Insurance Commissioner.

Section 4. Rate Filing.—(a) Every title insurer shall file with the Commissioner every manual of classifications, rules, plans, schedules of fees, and every modification of any of the foregoing, relating to the rates which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

(b) A title insurer may satisfy its obligations to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Commissioner to accept such filings on its behalf.

(c) A filing shall be open to public inspection when received by the Commissioner.

(d) The Commissioner shall make such review of the filings as may be necessary to carry out the provisions of this act.

(e) Subject to the provisions of subsections (g) and (h) of this section, each filing shall be on file for a period of thirty (30) days before it becomes effective. The Commissioner may, upon written notice given within such period to the person making the filing, extend such waiting period for an additional period, not to exceed thirty (30) days, to enable him to complete the review of the filing. Further extensions of such waiting period may also be made with the consent of the person making the filing. Upon written application by the person making the filing, the Commissioner may authorize a filing or any part thereof which he has reviewed to become effective before the expiration of the waiting period or any extension thereof.

(f) Except in the case of rates filed under subsections (g) and (h) of this section, a filing which has become effective shall be deemed to meet the requirements of this act.

(g) When the Commissioner finds that any rate for a particular kind or class of risk cannot practicably be filed before it is used, or any contract or kind of title insurance, by reason of rarity or peculiar circumstances, does not lend itself to advance determination and filing of rates, he may, under such rules and regulations as he may prescribe, permit such rates to be used without a previous filing and waiting period.

(h) Upon the written consent of the insured stating his reasons therefor, filed with the Commissioner, a rate in excess of that provided by a filing which might otherwise be deemed applicable may be used on any specific risk. The rate shall become effective when such consent is filed.

(i) Beginning ninety (90) days after the effective date of this act, no title insurer shall charge any fee for any

policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurer or such title insurance underwriter, as provided in this act, or in accordance with subsections (g) and (h) of this section.

Section 5. Justification for Rates.—A rate filing shall be accompanied by a statement of the title insurer or rating organization making the filing, setting forth the basis upon which the rate was fixed and the fees are to be computed. Any filing may be justified by (1) the experience or judgment of the title insurer or rating organization making the filing, or (2) the experience of other title insurers or rating organizations, or (3) any other factors which the title insurer or rating organization deems relevant. The statement and justification shall be open to public inspection after the rate to which it applies becomes effective.

Section 6. Making of Rates.—(a) In making rates, due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting practice and judgment, to the extent appropriate to past and prospective expenses, including commissions paid, the expenses incurred by title insurers, to a reasonable margin for profit and contingencies, and to all other relevant factors, both within and outside of this Commonwealth.

(b) Rates shall not be inadequate or unfairly discriminatory, nor shall rates be excessive, that is, such as to permit title insurers to earn a greater profit, after payment of all taxes upon all income, than is necessary to enable them to earn over the years sufficient amounts to pay their actual expenses and losses arising in the conduct of their title insurance business, including commissions paid and the actual costs of maintaining a title plant, plus a reasonable profit.

(c) In ascertaining the estimated future earnings of title insurers, the Commissioner shall utilize a properly weighted cross section of title insurers operating in this Commonwealth representative of the average of normally efficiently operated title insurers, including, on a weighted basis, both title insurers having their own title plants and those not operating upon the title plant system. In ascertaining what is a reasonable profit after * payment of all taxes on such income, the Commissioner shall give due consideration to the following matters:

- (i) the cyclical nature of the real estate business;
- (ii) the average rates of profit after payment of taxes on all income earned by other types of insurers and other industry generally;
- (iii) the desirability for stability of rate structures;
- (iv) the necessity of insuring through growth in assets

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in times of high business activity the financial solvency of title insurers in times of economic depression; and

(v) the necessity for earning sufficient dividends on the stock of title insurers to induce capital to be invested in title insurance companies. An average profit after taxes on income over a period of years which is equal to the average profit after taxes on income over such period of years of other types of insurers shall prima facie be a reasonable profit.

(d) The systems of expense provisions and the amount of expense charged against each class of contract or policy may vary between title insurers. Rates may, in the discretion of any title insurer, be less than the cost of performing the work in the case of smaller insurances, and the excess may be charged against the larger insurances without rendering the rates unfairly discriminatory.

Section 7. Disapproval of Filings.—(a) Upon the review at any time by the Commissioner of a filing he shall, before issuing an order of disapproval, hold a hearing upon not less than ten (10) days written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title insurer and rating organization which made such filing, and if, after such hearing, he finds that such filing or a part thereof does not meet the requirements of this act, he shall issue an order specifying in what respects he finds that it so fails, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective if the filing or a part thereof has become effective under the provisions of section 4 of this act: Provided, however, That a title insurer or rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of section 9 of this act in the case of a deviation filing. Copies of said order shall be sent to every such title insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(b) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the Commissioner for a hearing thereon: Provided, however, That the title insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the Commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty (30) days after receipt of

such application, hold a hearing upon not less than ten (10) days written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the Commissioner finds that the filing or a part thereof does not meet the requirements of this act, he shall issue an order specifying in what respects he finds that such filing or a part thereof fails to meet the requirements of this act, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(c) No filing nor any modification thereof shall be disapproved if the rates in connection therewith meet the requirements of this act.

Section 8. Rating Organizations.—(a) A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside this Commonwealth, may make application to the Commissioner for license *as a rating organization for title insurers, and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this Commonwealth upon whom notices or orders of the Commissioner or process affecting such rating organization may be served, and (4) a statement of its qualifications as a rating organization. If the Commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization, and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license authorizing the applicant to act as a rating organization for title insurance. Every such application shall be granted or denied in whole or in part by the Commissioner within sixty (60) days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three (3) years unless sooner suspended or revoked by the Commissioner or withdrawn by the licensee. The fee for said license shall be twenty-five dollars (\$25). Licenses issued pursuant to this section may be suspended or revoked by the Commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the Commissioner promptly of every change in

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(1) its constitution, its articles of agreement or association or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business, (2) its list of members and subscribers, and (3) the name and address of the resident of this Commonwealth designated by it upon whom notices or orders of the Commissioner or process affecting such rating organization may be served.

(b) Subject to rules and regulations which have been approved by the Commissioner as reasonable, each rating organization shall permit any title insurer not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit a title insurer as a subscriber, shall, at the request of any subscriber or any such title insurer, be reviewed by the Commissioner at a hearing held upon at least ten (10) days written notice to such rating organization and to such subscriber or title insurer. If the Commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject a title insurer's application for subscribership within thirty (30) days after it was made, the title insurer may request a review by the Commissioner as if the application had been rejected. If the Commissioner finds that the title insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the title insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(c) Cooperation among rating organizations, or among rating organizations and title insurers, and concert of action among title insurers under the same general management and control in rate making or in other matters within the scope of this act is hereby authorized, provided the filings resulting therefrom are subject to all the provisions of this act which are applicable to filings generally. The Commissioner may review such activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring the discontinuance of such activity or practice.

Section 9. Deviations.—Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurer who is a member of or subscriber to a rating organization may file with the Commissioner a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the Commissioner to be a proper rating unit for the application of such uniform decrease or increase, or to be applied to the rates for a particular area, or with respect to the amount of commissions to be paid. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the filing and data shall be sent simultaneously to such rating organization. Any such deviation filing shall be on file for a waiting period of thirty (30) days before it becomes effective. Extension of such waiting period may be made in the same manner that such period is extended in the case of rate filings. Upon written application of the person making the filing, the Commissioner may authorize a deviation filing or any part thereof to become effective before the expiration of the waiting period or any extension thereof. Deviation *filings shall be subject to the provisions of section 7 of this act. Each deviation shall be effective for at least one (1) year from the date such deviation is filed unless terminated sooner with the approval of the Commissioner, or in accordance with the provisions of section 7 of this act.

Section 10. Appeal by Minority.—Any member of or subscriber to a rating organization may appeal to the Commissioner from any action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the Commissioner shall, after a hearing held upon not less than ten (10) days written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing to give further consideration to such proposal and to take action or make a decision upon it within thirty (30) days, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order: Provided, however, If the appeal is from the action of the rating organization with regard to a rate on a proposed

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change in or addition to its filings relating to the character and extent of coverage, he shall approve the rate applied by the rating organization or such rate as may be suggested by the appellant, if either rate be in accordance with this act.

The failure of a rating organization to take action or make a decision within thirty (30) days after submission to it of a proposal under this section shall constitute a rejection of such proposal within the meaning of this section.

If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subsection (d) of section 6 of this act, from the system of expense provisions included in a filing made by the rating organization, the Commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the Commissioner shall apply the standards set forth in section 6 of this act.

Section 11. Information to Be Furnished Insureds; Hearings and Appeals of Insureds.—Every rating organization and every title insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

Every rating organization and every title insurer which makes its own rates shall provide, within this Commonwealth, reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or title insurer fails to grant or reject such request within thirty (30) days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such title insurer on such request may, within thirty (30) days after written notice of such action, appeal to the Commissioner, who, after a hearing held upon not less than ten (10) days written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

Section 12. Examinations.—The Commissioner shall, at least once in five (5) years, make or cause to be made an examination of such rating organization licensed

under this act in this Commonwealth. The reasonable costs of any such examination shall be paid by the rating organization examined upon presentation to it of a detailed account of such costs. The officer, manager, agents and employees of such rating organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The Commissioner shall furnish two copies of the examination report to the organization examined and shall notify such organization that it may, within twenty (20) days thereafter, request a hearing on said report or on any facts or recommendations therein. Before filing any such report for public inspection, the Commissioner shall grant a hearing to the organization examined. The report of any such examination, when filed for public inspection, shall be admissible in evidence in any action or proceeding brought by the Commissioner against the organization examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The Commissioner may withhold the report of any such examination from public inspection for such time as he may deem proper. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance supervisory official of another state pursuant to the laws of such state.

Section 13. Rate Administration; Authority and Duties of Commissioner; Rules and Regulations.—(a) The Commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time, and which shall be used thereafter by each title insurer in the recording and reporting of the composition of its business, its loss and countrywide expense experience and those of its title insurance underwriters in order that the experience of all title insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in this act. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this Commonwealth and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the Commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. Such rules and plans shall not place an unreasonable burden of expense on any title insurer. No

title insurer shall be required to record or report its expense and loss experience on a classification basis that is inconsistent with the rating system filed by it, nor shall any title insurer be required to report its experience to any agency of which it is not a member or subscriber. The Commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the Commissioner, to title insurers and rating organizations.

(b) Reasonable rules and plans may be promulgated by the Commissioner for the interchange of data necessary for the application of rating plans.

(c) In order to further uniform administration of rate regulatory laws, the Commissioner and every title insurer and rating organization may exchange information and experience data with insurance supervisory officials, title insurers and rating organizations in other states, and may consult with them with respect to rate making and the application of rating systems.

(d) In addition to any powers hereinbefore expressly enumerated in this act, the Commissioner shall have full power and authority, and it shall be his duty, to enforce and carry out by regulations, orders, or otherwise, all and singular the provisions of this act and the full intent thereof. The Commissioner may make such reasonable rules and regulations, not inconsistent with this act or any amendment thereof, as may be necessary or proper in the exercise of his powers or for the performance of his duties under this act.

Section 14. False or Misleading Information.—No person or organization shall wilfully withhold information from, or knowingly give false or misleading information to, the Commissioner, any statistical agency designated by the Commissioner, any rating organization, or any title insurer, which will affect the rates or fees chargeable under this act.

Section 15. Penalties.—The Commissioner may, if he finds that any person or organization has violated any provision of this act, impose a penalty of not more than fifty dollars (\$50) for each such violation, but if he finds such violation to be wilful, he may impose a penalty of not more than five hundred dollars (\$500) for each such violation. Such penalties may be in addition to any other penalty provided by law.

The Commissioner may suspend the license of any rating organization or title insurer which fails to comply with an 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 rating organization or title insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired, or, if an 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 the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

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

Section 16. Hearing Procedure and Judicial Review.—(a) Any title insurer, rating organization or person aggrieved by any action of the Commissioner, except disapproval of a filing or a part thereof, or by any rule or regulation adopted and promulgated by the Commissioner, shall have the right to file a complaint with the Commissioner and to have a hearing thereon before the Commissioner. Pending such hearing and the decision thereon, the Commissioner may suspend or postpone the effective date of his previous action, rule or regulation.

(b) All hearings provided for in this act shall be conducted, and the decision of the Commissioner on the issue or filing involved shall be rendered, in accordance with the provisions of the Administrative Agency Law, approved the fourth day of June, one thousand nine hundred forty-five (Pamphlet Laws 1388), or any amendment thereof, relating to adjudication procedure.

(c) Any title insurer, rating organization or person aggrieved by any adjudication, including a disapproval of a filing or portion thereof, shall have a right to appeal therefrom to the Court of Common Pleas of Dauphin County and have a judicial review of such adjudication within the time and in the manner and with the same effect as is provided by the Administrative Agency Law, or any amendment thereof, and the rules of civil procedure promulgated by the Supreme Court of Pennsylvania, or any amendment thereof, having to do with judicial review of adjudications of agencies of the Commonwealth.

Section 17. Laws Repealed.—(a) The act, approved the eleventh day of June, one thousand nine hundred forty-seven (Pamphlet Laws 538), is hereby repealed insofar as it applies to the rates for title insurance, but not insofar as it makes title insurers subject to the pro-

visions of the act, approved the ninth day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1025).

(b) All other acts and parts of acts inconsistent herewith are hereby repealed.

Section 18. Existing Filings and Hearings Continued.—All title insurance manuals of classifications, rules and rates, rating plans and modifications thereof filed under such repealed act shall be deemed to have been filed under this act, and all title insurance rating organizations licensed under such repealed act shall be deemed to have been licensed under this act. All hearings and investigations pending under such repealed act shall be deemed to have been initiated under and shall be continued under this act.

Section 19. Effective Date.—The provisions of this act shall become effective immediately upon final enactment.

APPROVED—The 21st day of August, A. D. 1953.

JOHN S. FINE

No. 373

AN ACT

Concerning notaries public; and amending, revising, consolidating and changing the law relating thereto.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

“The Notary
Public Law.”

Section 1. Short Title.—This act shall be known and may be cited as “The Notary Public Law.”

Section 2. Appointment of Notaries.—The Secretary of the Commonwealth is hereby authorized to appoint and commission, for a term of four years from the date of appointment, as many notaries public as, in his judgment, the interest of the public may require, whose jurisdiction shall be co-extensive with the boundaries of the Commonwealth, irrespective of their place of residence within the Commonwealth.

Section 3. Eligibility.—Any citizen of Pennsylvania, being twenty-one (21) years of age or over, of known character, integrity and ability, shall be eligible to the office of notary public, if he shall have resided within this Commonwealth for at least two (2) years immediately preceding the date of his appointment, and if he shall be a registered elector in the Commonwealth.

Section 4. Disqualification; Exception.—The following persons shall be ineligible to hold the office of notary public: