

Regulatory Analysis Form

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REGULATORY ANALYSIS
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IRRC Number: 1984

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-175

(3) Short Title

Title Insurance Rebates

(4) PA Code Cite

31 Pa. Code, Chapter 125, §§125.1 - 125.9

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this rulemaking is to amend Chapter 125 of Title 31 of the Pennsylvania Code in order to make it consistent with the Act of December 21, 1995 (P.L. 714, No. 79) ("Act 79"). This regulation, adopted in 1968, identified and defined prohibited rebating and inducement activities associated with title insurance transactions.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department has determined that section 125.1(b) and sections 125.5-125.9 should be removed from the regulation as they are without statutory basis or redundant and unnecessary.

Section 125.1(b) is being deleted as the controlling law, section 730 of the Insurance Company Law (40 P.S. §910-30), was repealed in 1995. Section 10 of Act 79, further amended section 731 of the Insurance Company Law (40 P.S. § 910-31) having to do with "Commissions; Other Considerations Prohibited." Act 79 specifically identifies and defines activities which constitute *per se* unlawful inducements. Sections 125.5 -125.9 in no manner enhance the prohibitions already delineated in section 10 of Act 79, and are, therefore, found to be redundant.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Insurance Department seeks to amend Chapter 125, §§125.1-125.9 to be consistent with the authorizing statute. Moreover, it is in the public interest to delete redundant and confusing regulatory requirements.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The title insurance industry along with the general public will benefit from the regulation to the extent that it will be consistent with the statute.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the amendment of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all title insurers, agents and approved attorneys licensed to do title insurance business in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Comments regarding the amendment of this regulation were solicited from the various trade associations representing the insurance industry. The Pennsylvania Land Title Association agreed that the chapter should be amended as recommended.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendment of the regulation will not have any impact on costs associated with licensed title insurers, agents and approved attorneys who do business in the Commonwealth of Pennsylvania.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings associated to state government associated with this rulemaking.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
N/A.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Amending Chapter 125, §§125.1-125.9 is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. It merely provides for consistency with the statute.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendment of the regulation imposes no additional paperwork requirements on the Department, licensed title insurers, agents, approved attorneys or the general public.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of the Attorney General, and the Independent Regulatory Review Commission and upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

93 SEP 14 PM 4:10

LEGISLATIVE REFERENCE
REVIEW DIVISION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Crestina S. Cooper
(Deputy Attorney General)

SEP 10 1998

Date of Approval

Check if applicable.
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-175

DATE OF ADOPTION:

BY:

M. Diane Koken
M. Diane Koken

Insurance Commissioner

TITLE:

(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies

BY: *John F. Weaker*

8/25/98

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
(CHIEF COUNSEL, INDEPENDENT AGENCY)
(STRIKE INAPPLICABLE TITLE)

Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

Notice of Proposed Rulemaking

Insurance Department

31 Pa. Code, Chapter 125
§§125.1-125.9

Title Insurance Rebates

PREAMBLE

The Insurance Department ("Department") hereby proposes to amend Title 31, Pennsylvania Code, Chapter 125, §§125.1-125.9, Title Insurance Rebates, as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§66, 186, 411 and 412), sections 701(4) and 731 of the Act of May 17, 1921, P.L. 682, No. 284, (40 P.S. §§ 910-1(4) and 910-31) and sections 635 and 636 of the Act of May 17, 1921, P.L. 789. No. 285, (40 P.S. §§ 275 and 276).

Purpose

The purpose of this rulemaking is to amend Chapter 125 of Title 31 of the Pennsylvania Code in order to make it consistent with the Act of December 21, 1995 (P.L. 714, No. 79) ("Act 79"). This regulation, adopted in 1968, identified and defined prohibited rebating and inducement activities associated with title insurance transactions.

Explanation of Regulatory Requirements

The Department has determined that section 125.1(b) and sections 125.5-125.9 should be removed from the regulation as they are without statutory basis or redundant and unnecessary.

Section 125.1(b) is being deleted as the controlling law, section 730 of the Insurance Company Law (40 P.S. §910-30), was repealed in 1995. Section 10 of Act 79, further amended section 731 of the Insurance Company Law (40 P.S. § 910-31) having to do with "Commissions; Other Considerations Prohibited." Act 79 specifically identifies and defines activities which constitute per se unlawful inducements. Sections 125.5 -125.9 in no manner enhance the prohibitions already delineated in section 10 of Act 79, and are, therefore, found to be redundant.

Minor revisions to section 125.3, relating to increasing the charge or fee, have been made to clarify the nature of the prohibited activity.

External Comments

Comments regarding the amendment of this regulation were solicited from the Pennsylvania Land Title Association (PLTA), which represents the title insurance industry. The PLTA agreed with the Department that this Chapter should be amended as recommended.

Fiscal Impact

There is no fiscal impact as a result of the amendment to this regulation.

Paperwork

The amendment of this regulation will affect all licensed title insurers, agents and approved attorneys in the Commonwealth.

Effectiveness/sunset Date

The rulemaking will become effective upon final publication in the Pennsylvania Bulletin. Because the rulemaking proposes to amend the regulation, no sunset date has been assigned.

Contact Person

For information on this matter, contact Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120 within thirty (30) days of this publication.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)), renumbered and amended by the act of June 25, 1997 (P.L. 252, No. 24)(1997 Pa. Legis. Serv. 180-97(West)), the agency submitted a copy of this regulation on 9/14/98 to the Independent Regulatory Review Commission and to the Chairmen of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the agency within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

M. Diane Koken
Insurance Commissioner

ANNEX A
CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

Title 31. Insurance. Part VIII. Miscellaneous Provisions, Chapter 125, Title Insurance Rebates.

Section 125.1 Prohibited rebates and inducements

Section 125.2 Charges required for title reports and others

Section 125.3 Increasing the charge or fee

Section 125.4 Participation in fees

Section 125.5 [Paying for advertising] Reserved.

Section 125.6 [Providing equipment] Reserved.

Section 125.7 [Payment of rent] Reserved.

Section 125.8 [Paying convention expenses] Reserved.

Section 125.9 [Paying vacation expenses or prizes] Reserved.

Section 125.1 Prohibited rebates and inducements.

[(a)] No title insurance company or agent or approved attorney of a title insurance company shall pay to any approved attorney, real estate broker, real estate salesman, attorney at law, or any other person, partnership, or corporation, who or which, from time to time, apply to a title insurance company or to an agent of a title insurance company for title insurance and who at the time of such application are not duly licensed agents for a title insurance company, any compensation, consideration, benefits, or remuneration directly or indirectly.

[(b)] The payment of any such compensation, consideration, benefit, or remuneration shall be deemed to be an illegal rebate and inducement, except that a title insurance company or an agent of a title insurance company may pay to an

attorney at law in good standing (but not to an approved attorney of the title insurance company) or a real estate broker licensed in this Commonwealth, a cash commission for procuring a title insurance for a client in a real estate transaction, if such cash commission is not in excess of that set forth in the Schedule of Commissions filed by the title insurance company with the Insurance Department of the Commonwealth.]

Section 125.2 Charges required for title reports and others

- (a) The issuance without charge of a title report, commitment to insure, guaranteed general search, information certificate, or title insurance policy shall be considered an illegal rebate and inducement.
- (b) The charge for the title report, commitment to insure, guaranteed general search, or information certificate shall have a reasonable relation to the cost of production, but in no event shall it be less than the rate for a minimum title insurance policy as set forth in the rate schedule of the title insurance company filed with the Insurance Department.
- (c) The provisions of subsection (a) of this section shall not preclude the crediting of the amount paid for the title report, commitment to insure, or information certificate to the charge or premium for the final policy of title insurance issued on the basis of such title report, commitment to insure, or information certificate.

Section 125.3 Increasing the charge or fee

Increasing the charge or fee for a title insurance policy by any amount and [payment of] returning any or all of the added amount [or increase] to [anyone]any person would be considered an illegal rebate and inducement.

Section 125.4 Participation in fees

Participation by anyone in any of the fees charged by a title insurance company or agent thereof for title insurance, including but not limited to charges for special insurance and except cash commissions specified in § 125.1 of this Title (relating to prohibited rebates and inducements), would be considered an illegal rebate and inducement.

Section 125.5 [Paying for advertising

Furnishing, paying for, or an offer to pay for or furnish any brochures, billboards, newspaper, radio, television, or other advertising or promotional material for customers to be used in connection with the sale or encumbrance of real property would be considered an illegal rebate and inducement. Examples include, but are not limited to, payment of expenses incurred at openings or ground-breaking ceremonies or other events if such might be used directly or indirectly to promote the sale or encumbrance of real property.] Reserved.

Section 125.6 [Providing equipment

Providing furniture or equipment to a customer without a fair price being paid by the customer for such furniture or equipment would be considered an illegal rebate and inducement.] Reserved.

Section 125.7 [Payment of rent

The payment of all or any part of the rent on space occupied by any person specified in § 125.1(a) of this Title (relating to prohibited rebates and inducements) would be considered an illegal rebate and inducement.] Reserved.

Section 125.8 [Paying convention expenses

The payment of or offering to pay the expenses of any of the persons specified in § 125.1(a) of this Title (relating to prohibited rebates and inducements) for the purposes of attending a convention sponsored by the payee or payor of any organization to which he or they may belong would be considered an illegal rebate and inducement.] Reserved.

Section 125.9 [Paying vacation expenses or prizes

The offering of, or the agreement to pay for, prizes to or vacation for any of the persons specified in § 125.1(a) of this Title (relating to prohibited rebates and inducements) where such offer or payment relates directly or indirectly to the title orders coming to the title insurance company or agent thereof through the efforts of such person would be considered an illegal rebate and inducement.] Reserved.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-Mail: psalvato@ins.state.pa.us

September 14, 1998

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17120

Re: Insurance Department Proposed
Regulation No. 11-175, Title
Insurance Rebates

Dear Mr. Nyce:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 125, Title Insurance Rebates.

The purpose of this rulemaking is to amend Chapter 125 of Title 31 of the Pennsylvania Code in order to make it consistent with the Act of December 21, 1995 (P.L. 714, No. 79) ("Act 79"). This regulation, adopted in 1968, identified and defined prohibited rebating and inducement activities associated with title insurance transactions.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-175
SUBJECT: Title Insurance Rebates
AGENCY: Department of Insurance

DISPATCHED
98 SEP 14 PM 4:10
REGULATORY REVIEW
COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/14/98	<u><i>D. Saphaga</i></u>	HOUSE COMMITTEE ON INSURANCE
9/14/98	<u><i>Denise Patton</i></u>	SENATE COMMITTEE ON BANKING & INSURANCE
9/14/98	<u><i>Kim C. Burner</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
9/14/98	<u><i>Marya Caruso</i></u>	LEGISLATIVE REFERENCE BUREAU

September 11, 1998