

No. 1987-88

AN ACT

HB 1044

Amending the act of September 22, 1978 (P.L.763, No.143), entitled "An act establishing certain procedures relating to the termination of insurance agency contracts or accounts and providing penalties," further defining "agent" and "insurer"; and further providing for cancellation of contracts.

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

Section 1. Section 1 of the act of September 22, 1978 (P.L.763, No.143), entitled "An act establishing certain procedures relating to the termination of insurance agency contracts or accounts and providing penalties," is amended to read:

Section 1. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Agent." [An insurance agent authorized to transact and transacting the business of automobile insurance in the Commonwealth.] *An individual, partnership or corporation, licensed by the Insurance Department, who contracts with an insurer to sell insurance on behalf of the insurer.*

"Insurer." An insurance company, association or exchange authorized to transact and transacting the business of [automobile insurance] *property or casualty insurance, or both*, in the Commonwealth.

Section 2. The act is amended by adding a section to read:

Section 1.1. Scope of act.

(a) *General rule.—This act applies to all classes and kinds of insurance which may be written by stock or mutual property or casualty insurance companies, associations or exchanges, including fidelity, surety and guaranty bonds and all other forms of motor vehicle insurance except:*

(1) *Reinsurance.*

(2) *Accident and health insurance.*

(3) *Insurance against loss of or damage to aircraft or against liability arising out of the ownership, maintenance or use of aircraft.*

(b) *Nonapplicability.—The provisions of this act do not apply to:*

(1) *business owned by the insurer and not by the agent, provided such insurer offers to continue such policies through another of its agents;*

(2) *any agency contract in effect for less than four years;*

(3) *an agent whose license has been suspended or revoked by the Insurance Commissioner or whose contract has been terminated for insolvency, abandonment, gross or willful misconduct, or failure to pay over to the insurer moneys due to the insurer after his receipt of a written demand thereof; or*

(4) an agent who has demonstrated gross incompetence which would normally be cause for agency contract termination.

Section 3. Sections 2, 3 and 4 of the act are amended to read:

Section 2. Cancellation of contract.

(a) Notice.—**[After an agency contract has been in effect for a period of five years, no]** *No* insurer shall terminate its contract with an agent without first providing such agent and the Insurance Commissioner with written notification at least 90 days prior to the date of termination. *Such notice shall advise the agent of his right of appeal under subsection (d).*

(b) Reason for action.—Such notification shall set forth the insurer's reason for the action.

(c) Privileged information.—Any information, document, record or statement so furnished or disclosed to the department shall be absolutely privileged and shall not be admissible as evidence in or as basis for any action against the appointing insurer or against any representative of the foregoing.

(d) Administrative review.—Any agent may, *if* within 30 days of receipt of notice of termination, request in writing to the Insurance Commissioner that **[he]** *the Insurance Commissioner* review the action of the insurer for the purpose of determining that said termination was in compliance with the provisions of this **[section]** *act*.

(e) Restriction on termination.—**[No insurer shall terminate its contract with an agent due to the adverse experience of a single year. Prior to such termination it shall be the obligation of the insurer to demonstrate that it has made a reasonable attempt to rehabilitate such agent.]** *Prior to termination due to adverse experience, mix of business or lack of premium volume, it shall be the obligation of the insurer to make a reasonable attempt to rehabilitate such agent as set forth in subsection (f). No insurer shall terminate its contract with an agent due solely to the adverse experience for a period of less than two successive years prior to the notice of rehabilitation as set forth in subsection (f).*

(f) Rehabilitation.—

(1) An insurer shall notify an agent, in writing, that the agent is placed on a rehabilitation program.

(2) Such notice shall specify the reasonable goals and objectives of the rehabilitation program.

(3) Such notice shall inform the agent that failure to attain the goals and objectives specified in the rehabilitation program may result in agency termination.

(4) The rehabilitation program of an agent under this act shall not be for a period of less than one year.

(5) Compliance with the rehabilitation program and attainment of the rehabilitation goals shall bar termination of the agency solely due to adverse experience, mix of business or lack of premium volume.

(6) Upon request of administrative review pursuant to subsection (d), it shall be the obligation of the insurer to demonstrate to the Insurance Commissioner that it has made a reasonable attempt to rehabilitate such agent.

Section 3. Continuation of business.

(a) **Policies.**—Where an insurer notifies an agent that its contract shall be terminated, the insurer shall offer to continue such agent's policies and any amendments thereto, through such agent for a period of 12 months from the effective date of termination, subject to the insurer's current underwriting standards.

(b) **Commissions.**—The terminated agent *or an agent under rehabilitation* shall be entitled to receive commissions on account of all business continued or written pursuant to this subsection **[at the insurer's prevailing commission rate for such business] in accordance with the commission rates in such agent's agreement.**

[(c) Application of section.—The provisions of the section do not apply to business owned by the insurer and not by the agent, provided such insurer offers to continue such policies through another of its agents.]

Section 4. Certain agreements permitted.

[(a) Construction of act.—]Nothing contained in this act shall be deemed or construed to prohibit an amendment or addendum subsequent to the inception date of the original agency agreement providing in such subsequent amendment or addendum that the original agency agreement may be terminated at a sooner time than is required by this act provided the agent agrees in writing to such sooner termination.

[(b) Certain terminations excepted.—This act shall not apply to:

(1) an agent whose license has been revoked by the Insurance Commissioner or whose contract has been terminated for insolvency abandonment, gross and willful misconduct or failure to pay over to the insurer moneys due to the insurer after his receipt of a written demand thereof; or

(2) an agent who has demonstrated gross incompetence which would normally be cause for agency contract termination.]

Section 4. This act shall take effect immediately.

APPROVED—The 18th day of December, A. D. 1987.

ROBERT P. CASEY