

17:46B-1

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(Title insurance  
act of)

LAWS OF: 1990

CHAPTER: 131

Bill No: S2643

Sponsor(s): May 14, 1990

Date Introduced: O'Connor

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: No

Date of Passage: Assembly: November 19, 1990

Senate: October 1, 1990

Date of Approval: December 19, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

DOMESTIC

MEXIC

1 AN ACT concerning title insurance fees and amending P.L.1975,  
2 c.106.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 1 of P.L.1975, c.106 (C.17:46B-1) is amended to  
7 read as follows:

8 1. Certain words defined. As used in this act:

9 a. "Title insurance" means insuring, guaranteeing or  
10 indemnifying owners of real property or others interested therein  
11 against loss or damage suffered by reason of liens, encumbrances  
12 upon, defects in or the unmarketability of the title to said  
13 property, guaranteeing, warranting, or otherwise insuring by a  
14 title insurance company the correctness of searches relating to  
15 the title to real property, or doing any business in substance  
16 equivalent to any of the foregoing in a manner designed to evade  
17 the provisions of this act.

18 b. The "business of title insurance" shall be deemed to be (1)  
19 the making as insurer, guarantor or surety, or proposing to make  
20 as insurer, guarantor or surety, of any contract or policy of title  
21 insurance; (2) the transacting or proposing to transact, any phase  
22 of the title insurance, including abstracting, examination of title,  
23 solicitation, negotiation preliminary to execution of a contract of  
24 title insurance, and execution of a contract of title insurance,  
25 insuring and transacting matters subsequent to the execution of  
26 the contract and arising out of it, including reinsurance; or (3) the  
27 doing, or proposing to do, any business in substance equivalent to  
28 any of the foregoing in a manner designed to evade the provisions  
29 of this act.

30 c. "Title insurance company" means any domestic company  
31 organized under the provisions of this act for the purpose of  
32 insuring titles to real estate, any title insurance company  
33 organized under the laws of another state or foreign government  
34 and licensed to insure titles to real estate within this State  
35 pursuant to section 25 of this act, and any domestic or foreign  
36 company having the power and authorized to insure title to real  
37 estate within this State as of the effective date of this act and  
38 which meets the requirements of this act.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. "Applicants for insurance" shall be deemed to include all  
2 those, whether or not a prospective insured, who from time to  
3 time apply to a title insurance company, or to its agent, for title  
4 insurance, and who at the time of such application are not agents  
5 for a title insurance company.

6 e. "Premium" for title insurance means that portion of the fee  
7 charged by a title insurance company, agent of a title insurance  
8 company or approved attorney of a title insurance company, or  
9 any of them, to an insured or to an applicant for insurance, for  
10 the assumption by the title insurance company of the risk created  
11 by the issuance of the title insurance policy.

12 f. "Fee" for title insurance means and includes the premium  
13 for the assumption of the insurance risk, charges for abstracting  
14 or searching, examination, determining insurability, and every  
15 other charge, whether denominated premium or otherwise, made  
16 by any [of them, but the term "fee" shall not include any charges  
17 paid to and retained by an attorney at law whether or not he is  
18 acting as an agent of a title insurance company or an approved  
19 attorney] title insurance company or title insurance agent.

20 g. "Commissioner" means the Commissioner of Insurance of  
21 the State of New Jersey.

22 h. "Approved attorney" means an attorney at law admitted to  
23 practice in the State of New Jersey, who is not an employee of a  
24 title insurance company or of a title insurance agent, upon whose  
25 examination of title and report thereon a title insurance company  
26 may issue a policy of title insurance.

27 i. "Title insurance agent" means a person, firm, partnership,  
28 association, corporation, cooperative or joint-stock company  
29 authorized in writing by a title insurance company to solicit  
30 insurance risks and collect fees in its behalf and who in the  
31 regular course of business as such agent shall perform all of the  
32 following functions: examine title to real estate, determine  
33 insurability in accordance with underwriting rules and standards  
34 prescribed by such title insurance company, and issue a title  
35 report, binder, or commitment to insure, and policy based upon  
36 the examination performed by such agent and determination of  
37 insurability as aforesaid. Provided, however, the term "title  
38 insurance agent" shall not include officers and salaried employees  
39 of any title insurance company authorized to do a title insurance  
40 business within this State.

41 j. "Single insurance risk" means the insured amount of any  
42 policy or contract of title insurance issued by a title insurance  
43 company unless two or more policies or contracts are  
44 simultaneously issued on different estates in identical real  
45 property, in which event, it means the sum of the insured  
46 amounts of all such policies or contracts. However, any such  
47 policy or contract that insures a mortgage interest that is  
48 excepted in a fee or leasehold policy or contract, and which does

1 not exceed the insured amount of such fee or leasehold policy or  
2 contract, shall be excluded in computing the amount of a single  
3 insurance risk.

4 k. "Net retained liability" means the total liability retained by  
5 a title insurance company under any policy or contract of  
6 insurance, or under a single insurance risk as defined in or  
7 computed in accordance with paragraph j. of this section, after  
8 the purchase of reinsurance.

9 l. "Foreign title insurance company" means a title insurance  
10 company organized under the laws of any other state of the  
11 United States.

12 m. "Alien title insurance company" means any title insurance  
13 company incorporated or organized under the laws of any foreign  
14 nation or of any province or territory thereof, not included under  
15 the definition of "foreign title insurance company."

16 n. "Personal or controlled insurance" means a policy of title  
17 insurance where the source or origination of the application for  
18 insurance or where the insured or one of the insureds under such  
19 policy is, or the loss thereunder is payable to:

20 (1) The title insurance company issuing such policy, or (a) any  
21 person or corporation directly or indirectly owning or controlling  
22 a majority of the voting stock or controlling interest in such title  
23 insurance company, or (b) any corporation which is directly or  
24 indirectly controlled by a person or corporation which also  
25 controls the title insurance company as described in paragraph  
26 (1)(a) of this subsection, or (c) any corporation making  
27 consolidated returns for United States income tax purposes with  
28 such title insurance company or any corporation described in  
29 paragraphs (1)(a) and (1)(b) of this subsection; or

30 (2) The title insurance agent issuing such policy, or

31 (a) If such title insurance agent is a natural person:

32 (i) his spouse, his employer or his employer's spouse; or

33 (ii) any person related to him or the persons mentioned in  
34 subparagraph (i) of paragraph (2)(a) of this subsection within the  
35 second degree by blood or marriage; or

36 (iii) if his employer is a corporation, any person directly or  
37 indirectly owning or controlling a majority of the voting stock or  
38 controlling interest in such corporation; or

39 (iv) if his employer is a partnership or association, any person  
40 owning an interest in such partnership or association.

41 (b) If such title insurance agent is a corporation,

42 (i) any person directly or indirectly owning or controlling a  
43 majority of the voting stock or controlling interest in such  
44 corporation; or

45 (ii) any corporation which is directly or indirectly controlled  
46 by a person who also controls the title insurance agent as  
47 described in subparagraph (i) of paragraph (2)(b) of this  
48 subsection; or

1 (iii) any corporation making consolidated returns for United  
2 States income tax purposes with any corporation described in  
3 subparagraph (i) or (ii) of paragraph (2)(b) of this subsection.

4 o. "Source" as used in this act means and includes clients and  
5 customers of attorneys at law and real estate brokers, where such  
6 attorney or broker acts as a title insurance agent in an individual,  
7 partnership or corporate capacity.

8 p. "Person" as used in this act means a firm, partnership,  
9 association, corporation, cooperative or joint-stock company as  
10 well as individuals, unless restricted by the context to an  
11 individual as distinguished from some other entity.

12 (cf: P.L.1975, c.106, s.1)

13 2. This act shall take effect immediately.  
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15

#### 16 STATEMENT 17

18 This bill would clarify the definition of the word "fee" as used  
19 in "The Title Insurance Act of 1974" (P.L.1975, c.106 (C.17:46B-1  
20 et seq)). Presently, "fee" is defined as not including any charges  
21 paid to and retained by an attorney whether or not he is acting as  
22 an agent of a title insurance company or as an approved  
23 attorney. This language has caused confusion in that it appears  
24 to indicate that money received by an attorney acting as an agent  
25 of a title insurance company is not included in the term "fee" for  
26 title insurance. In order to eliminate this confusion, this bill  
27 would delete that language. This is not intended to effect legal  
28 fees received by attorneys in connection with real estate  
29 transactions.  
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#### 32 PROPERTY AND ESTATES 33

34 Clarifies the definition of the word "fee" as used in "The Title  
35 Insurance Act of 1974."

1 (iii) any corporation making consolidated returns for United  
2 States income tax purposes with any corporation described in  
3 subparagraph (i) or (ii) of paragraph (2)(b) of this subsection.

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5 customers of attorneys at law and real estate brokers, where such  
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8 p. "Person" as used in this act means a firm, partnership,  
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ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

SENATE, No. 2643

STATE OF NEW JERSEY

DATED: OCTOBER 29, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 2643.

This bill would clarify the definition of the word "fee" as used in "The Title Insurance Act of 1974" (P.L. 1975, c. 106 C. 17:46B-1 et seq.). Presently "fee" is defined as not including any charges paid to and retained by an attorney whether or not he is acting as an agent of a title insurance company or as an approved attorney. This language has caused confusion in that it appears to indicate that money received by an attorney acting as an agent of a title insurance company is not included in the term "fee" for title insurance. In order to eliminate this confusion, this bill would delete that language. The bill is not intended to affect legal fees received by attorneys in connection with real estate transactions.

This bill is the same as Assembly Bill No. 4088 of 1990.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2643

STATE OF NEW JERSEY

DATED: MAY 14, 1990

The Senate Judiciary Committee reports favorably Senate Bill No. 2643.

This bill would clarify the definition of the word "fee" as used in "The Title Insurance Act of 1974" (P.L.1975, c.106 (C.17:46B-1 et seq)). Presently, "fee" is defined as not including any charges paid to and retained by an attorney whether or not he is acting as an agent of title insurance company or as an approved attorney. This language has caused confusion in that it appears to indicate that money received by an attorney acting as an agent of a title insurance company is not included in the term "fee" for title insurance. In order to eliminate this confusion, this bill would delete that language. The bill is not intended to affect legal fees received by attorneys in connection with real estate transactions.