

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 30

Session of  
1987

INTRODUCED BY HOLL, JANUARY 15, 1987

SENATOR HOLL, BANKING AND INSURANCE, RE-REPORTED AS AMENDED,  
JUNE 1, 1987

## AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," establishing the Pennsylvania  
12 Liability Underwriting Services Plan; and providing for  
13 financial disclosure.

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

16 Section 1. The act of May 17, 1921 (P.L.682, No.284), known  
17 as The Insurance Company Law of 1921, is amended by adding  
18 articles to read:

19 ARTICLE X-A.

20 PENNSYLVANIA LIABILITY UNDERWRITING SERVICES PLAN.

21 Section 1001-A. Definitions.--The following words and  
22 phrases when used in this article shall have the meanings given

to them in this section unless the context clearly indicates otherwise:

(1) "Board," means the board of directors of the Plan.

(2) "Commercial liability insurance," means the insurance coverage against the legal liability of the insured against loss, damage or expense incident to a claim arising out of the death or injury of any person or property damage as the result of or incident to the lawful conduct of a business enterprise or public purpose.

(3) "Commissioner," means the Insurance Commissioner of the Commonwealth.

(4) "Department," means the Insurance Department of the Commonwealth.

(5) "Plan," means the Pennsylvania Liability Underwriting Services Plan.

Section 1002-A. Creation of Plan.--The commissioner shall be authorized to establish, from time to time, as may be necessary, the Pennsylvania Liability Underwriting Services Plan as a legal entity to operate during periods of time designated by the commissioner with all the rights which are reasonable and necessary to fulfill its purpose, including, but not limited to, the following:

(1) To own property.

(2) To enter into contracts.

(3) To sue and be sued, provided that no judgment against the Plan shall create any liability in the individual members.

Section 1003-A. Purpose.--The purpose of the Plan is to assist in the placement of commercial liability insurance for eligible Pennsylvania commercial risks and public entities that have tried and failed to find such coverage.

1     Section 1004-A. Membership.--Every commercial liability  
2     insurer admitted to do business in this Commonwealth shall, as a  
3     condition of its authority to write such kinds of insurance  
4     within this Commonwealth, be a member of the Plan and have the  
5     rights and obligations as hereinafter described. The  
6     commissioner may require eligible surplus lines insurers or  
7     their agents THE SURPLUS LINES INDUSTRY to participate in the  
8     Plan.

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9     Section 1005-A. Participation.--Each member of the Plan  
10    shall participate in funding the administrative costs of the  
11    plan, to the extent that application fees do not defray those  
12    costs, and in the review of applications for insurance. Each  
13    member's share of participation obligations shall be equitable  
14    and set forth in the plan of operation. However, members of the  
15    Plan shall not be required to review application of eligible  
16    commercial risks or public entities where the member has not  
17    underwritten such coverage for two consecutive years preceding  
18    the effective date of this section.

19    Section 1006-A. Board of Directors.--The Plan shall be  
20    governed by nine directors and the Insurance Commissioner, who  
21    shall serve as a non-voting ex officio chairman. The nine  
22    directors shall be appointed to the board as voting members by  
23    the commissioner, each to serve a term of two years. Five  
24    members shall be representatives of insurance companies, two  
25    members shall be licensed insurance agents or brokers and two  
26    members shall be consumers of commercial insurance. Members  
27    shall serve as representatives of their employers, who may have  
28    the right to substitute individuals with the prior approval of  
29    the commissioner.

30    Section 1007-A. Voting Rights.--Whenever so designated by

1 the board pursuant to its plan of operation, each commercial  
2 liability insurer shall be allotted votes in proportion to its  
3 share of the Statewide total written premium during the prior  
4 year relating to general liability coverage, plus the liability  
5 portion, as determined by the commissioner, of commercial multi-  
6 peril coverage.

7 Section 1008-A. Organization.--(a) Within sixty (60) days  
8 following the issuance of an order by the commissioner to  
9 establish a plan the board shall submit to the commissioner, for  
10 his review, a proposed plan of operation of the Plan, consistent  
11 with the provisions of this act, which shall provide for the  
12 formation of the Plan and the economical and efficient  
13 administration of the Plan, including, but not limited to,  
14 management of the Plan, preliminary assessment of all members  
15 for initial expenses necessary to commence operations,  
16 establishment of necessary facilities within this Commonwealth,  
17 assessment of members to defray continuing expenses, limits of  
18 liability, eligibility requirements, procedures for securing  
19 timely referrals and quotes on insurance applications and  
20 governance of the Plan.

21 (b) The plan of operation shall be subject to approval by  
22 the commissioner and shall take effect ten (10) days after  
23 having been approved by him. If the commissioner disapproves the  
24 proposed plan of operation, the commissioner shall specify his  
25 objections and how the plan of operation may be made acceptable.  
26 Following the receipt of objections from the commissioner, the  
27 Plan shall, within fifteen (15) days, submit for review an  
28 appropriately revised plan of operation, and, if the Plan fails  
29 to do so or if the revised Plan so filed is unacceptable, the  
30 commissioner shall promulgate a plan of operation.

1     (c) The Plan may, by its own initiative, subject to prior  
2 approval by the commissioner, amend the plan of operation.

3     Section 1009-A. Application Fees.--Subject to approval by  
4 the commissioner, the Plan shall require applications to be  
5 accompanied by reasonable application fees, which may vary for  
6 different classes of applicants. Initially, application fees  
7 should not exceed one hundred dollars (\$100) nor be less than  
8 ten dollars (\$10) for any class of insured and shall be reviewed  
9 annually by the commissioner. The application fee is non-  
10 refundable if the applicant is determined to be eligible for  
11 coverage, regardless of whether coverage is found for the  
12 applicant through the Plan.

13     Section 1010-A. Eligibility.--All applications for  
14 commercial liability coverage may be eligible for consideration  
15 by the Plan if they are accompanied by the application fee  
16 appropriate to that class of risk, three refusals of coverage  
17 from admitted Pennsylvania commercial lines writers and one  
18 refusal of coverage from a licensed surplus lines agent, and a  
19 completed questionnaire as shall be supplied to the applicant by  
20 the Plan and approved by the commissioner, except for  
21 applications relating to:

22     (1) Insurance on motor vehicles.

23     (2) Insurance for pollution or environmental impairment.

24     (3) Insurance for workers' compensation and employers'  
25 liability.

26     (4) Insurance for medical malpractice professional  
27 liability.

28     (5) Insurance on activities conducted substantially outside  
29 this Commonwealth unless the insurance is required by  
30 Pennsylvania or Federal statute.

1     (6) Other risks as may be excluded by the Plan and approved  
2 by the commissioner.

3     Section 1011-A. Immunity.--There shall be no liability or  
4 cause of action against any member of the Plan or its agents or  
5 employees, the Plan or its agents or employees, members of the  
6 board of directors or the department or its representatives for  
7 any action taken by or statement made by them in the performance  
8 of their powers and duties under this article.

9     Section 1012-A. Funds.--All fees, assessments and other  
10 moneys received by the Plan shall be deposited into a restricted  
11 revenue account within the General Fund and are hereby  
12 appropriated to the board for the purposes set forth in this  
13 article.

14                     ARTICLE X-B.

15                     FINANCIAL DISCLOSURE.

16     ~~Section 1001 B. Reporting of Loss and Expense Experience.--~~ <—  
17 ~~Insurers licensed and admitted to write property or casualty~~  
18 ~~insurance in this Commonwealth are required to record and report~~  
19 ~~annually to the Insurance Commissioner loss and expense~~  
20 ~~experience data necessary to review insurance rates. The~~  
21 ~~commissioner may designate one or more rate service~~  
22 ~~organizations to gather and compile such data. The commissioner~~  
23 ~~shall prescribe the form and method by which all data shall be~~  
24 ~~furnished to the Insurance Department or its designee.~~

25     ~~Section 1002 B. Insurers with Duty to Report. (a) Insurers~~  
26 ~~reporting annually to the commissioner shall be those identified~~  
27 ~~in the latest annual report of the Insurance Commissioner, as~~  
28 ~~provided by section 219 of the act of May 17, 1921 (P.L.789,~~  
29 ~~No.285), known as "The Insurance Department Act of one thousand~~  
30 ~~nine hundred and twenty one," and have underwritten at least one~~

~~per centum (1%) of the total Pennsylvania premium volume for the following lines of insurance:~~

~~(1) Private passenger auto liability, including first party coverage.~~

~~(2) Commercial auto liability, including first party coverage.~~

~~(3) Medical malpractice liability.~~

~~(4) Workmen's compensation.~~

~~(5) Other liability.~~

~~(b) Information reported by insurers shall consist of voluntary business, written on a direct basis, for all classes combined, and based on total limits information for each line of insurance set forth in subsection (a).~~

~~Section 1003 B. Data Comparisons. (a) The following data shall be reported by insurers on a countrywide basis for each line of insurance:~~

~~(1) Written premium.~~

~~(2) Earned premium.~~

~~(3) Earned premium at current level.~~

~~(4) Paid losses.~~

~~(5) Outstanding reported case reserves.~~

~~(6) Increment for loss development.~~

~~(7) Paid allocated loss adjustment expenses.~~

~~(8) Reported case reserves for allocated loss adjustment expenses.~~

~~(9) Increment for allocated loss adjustment expense development.~~

~~(10) Increment for trend, including annual percentage change, basis for the annual percentage change and length of trend.~~

~~(b) The following data shall be reported by insurers on a  
Statewide basis for each line of insurance:~~

~~(1) Written premium.~~

~~(2) Earned premium.~~

~~(3) Earned premium at current level.~~

~~(4) Paid losses.~~

~~(5) Outstanding reported case reserves.~~

~~(6) Increment for loss development.~~

~~(7) Paid allocated loss adjustment expenses.~~

~~(8) Reported case reserves for allocated loss adjustment  
expenses.~~

~~(9) Increment for allocated loss adjustment expense  
development.~~

~~(10) Increment for trend, including annual percentage  
change, basis for the annual percentage change and length of  
trend.~~

~~(11) Dollars of Pennsylvania commission and acquisition  
expenses.~~

~~(12) Dollars of Pennsylvania taxes, licenses and fees.~~

~~(13) Dollars of general expenses allocated by line to  
Pennsylvania.~~

~~(14) Dollars of unallocated loss adjustment expenses by line  
to Pennsylvania.~~

~~(15) Dollars of investment income on assets equivalent to  
Pennsylvania unearned premiums and loss reserves and the rate of  
return on invested funds.~~

~~Section 1004 B. Filing Dates. The initial report by  
insurers on the items identified in section 1002 B(a)(1), (2)  
and (4) shall consist of calendar accident years 1986 and 1987  
evaluated as of May 31, 1988. For items identified in section~~



~~1002 B(a)(3) and (5), the initial report shall consist of policy years ending 1986 and 1987 evaluated as of May 31, 1988. The two years shall be separately reported. Subsequent reports shall include the latest two years, evaluated as of May 31. The initial report by insurers shall be filed on or before July 31, 1988. Each subsequent report shall be filed on or before July 31 following the May 31 evaluation date. All insurer reports shall be accompanied by an affidavit, signed by an officer of the insurer, certifying the completeness and accuracy of the reports.~~

~~Section 1005 B. Commissioner's Duty to Report Data Compiled. The commissioner or his designee shall compile the initial individual reports and the commissioner shall prepare findings, if any, by November 1, 1988. Subsequent reports and findings of the commissioner shall be compiled on or before November 1 of each year. All reports compiled by the commissioner shall be filed by the commissioner with the standing committees of the General Assembly having responsibility for insurance affairs and shall be deemed public records for the purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the "Right to Know Law."~~

~~Section 1006 B. Future Regulations. The commissioner may, by regulation, adopt new data disclosure requirements developed by the National Association of Insurance Commissioners. Such regulations shall supersede specific data disclosure requirements of this article if the commissioner, after notice and hearing, determines that such data disclosure requirements are, in total, at least as effective as the data disclosure requirements of this article.~~

~~Section 1007 B. Penalty. Insurers which fail to comply with~~

~~any reporting requirements under this section shall pay a fine of five thousand dollars (\$5,000) and a fine of two hundred dollars (\$200) daily until the reporting requirements are fully satisfied.~~

~~Section 2. The provisions of this act relating to the Pennsylvania Liability Underwriting Services Plan shall expire December 31, 1990.~~

~~Section 3. This act shall take effect immediately.~~

SECTION 1001-B. CLAIMS DISCLOSURE.--IN ADDITION TO ANY OTHER ANNUAL REPORTS REQUIRED BY LAW OR REGULATION, INSURERS LICENSED AND ADMITTED TO WRITE PROPERTY AND CASUALTY INSURANCE IN THIS COMMONWEALTH AND HAVING UNDERWRITTEN AT LEAST ONE PER CENTUM (1%) OF THE TOTAL PENNSYLVANIA PREMIUM VOLUME FOR THE LINES OF INSURANCE SPECIFIED IN SECTION 1002-B ARE REQUIRED TO REPORT ANNUALLY TO THE INSURANCE COMMISSIONER, EITHER DIRECTLY OR THROUGH ITS STATISTICAL AGENT, LOSS AND EXPENSE EXPERIENCE DATA AS MAY BE NECESSARY TO DETERMINE WHETHER RATES ARE EXCESSIVE, INADEQUATE OR UNFAIRLY DISCRIMINATORY. THE INSURANCE COMMISSIONER SHALL DESIGNATE STATISTICAL AGENTS TO COLLECT AND COMPILE SUCH DATA. THE COMMISSIONER SHALL PRESCRIBE THE FORM AND METHOD BY WHICH ALL DATA SHALL BE FURNISHED TO THE INSURANCE DEPARTMENT OR ITS DESIGNEE.

SECTION 1002-B. TYPES OF INSURANCE REQUIRED.--EACH REPORT SUBMITTED PURSUANT TO SECTION 1001-B SHALL SEPARATELY STATE THE REQUIRED INFORMATION FOR THE FOLLOWING TYPES OF INSURANCE:

(1) POLITICAL SUBDIVISION LIABILITY INSURANCE, REPORTED SEPARATELY FOR MUNICIPALITIES, SCHOOL DISTRICTS AND OTHER POLITICAL SUBDIVISIONS.

(2) LIABILITY INSURANCE FOR PURPOSES OF SECTION 497 OF THE ACT OF APRIL 12, 1951 (P.L.90, NO.21), KNOWN AS THE "LIQUOR

1 CODE."

2 (3) DAY-CARE CENTER LIABILITY INSURANCE.

3 (4) OFFICERS AND DIRECTORS LIABILITY INSURANCE.

4 (5) PRODUCT LIABILITY INSURANCE.

5 (6) MEDICAL MALPRACTICE INSURANCE.

6 (7) ATTORNEY MALPRACTICE INSURANCE.

7 (8) ARCHITECT AND ENGINEER MALPRACTICE INSURANCE.

8 (9) ANY OTHER TYPE OF INSURANCE DEEMED NECESSARY BY THE  
9 COMMISSIONER, AFTER PROPER NOTICE AND HEARING.

10 SECTION 1003-B. CONTENTS OF REPORT.--SUCH REPORT SHALL  
11 INCLUDE THE FOLLOWING, WHICH SHALL BE SPECIFIC TO COVERAGE  
12 WITHIN THIS COMMONWEALTH FOR THE PREVIOUS YEAR ENDING ON THE  
13 THIRTY-FIRST DAY OF DECEMBER:

14 (1) DIRECT PREMIUMS WRITTEN.

15 (2) DIRECT PREMIUMS EARNED.

16 (3) PRO-RATA ESTIMATED NET INVESTMENT INCOME, INCLUDING NET  
17 REALIZED CAPITAL GAINS AND LOSSES, USING APPROPRIATE ESTIMATES  
18 WHERE NECESSARY.

19 (4) INCURRED CLAIMS, DEVELOPED AS THE SUM OF THE FOLLOWING,  
20 WHICH SHALL INCLUDE DATA FOR EACH OF THE FOLLOWING CATEGORIES  
21 USED TO DEVELOP THE SUM OF INCURRED CLAIMS:

22 (I) DOLLAR AMOUNT OF CLAIMS PAID WITH PAYMENT; PLUS

23 (II) RESERVES FOR OUTSTANDING REPORTED CLAIMS AT THE END OF  
24 THE CURRENT YEAR; MINUS

25 (III) RESERVES FOR OUTSTANDING REPORTED CLAIMS AT THE END OF  
26 THE PREVIOUS YEAR; PLUS

27 (IV) RESERVES FOR INCURRED BUT NOT REPORTED CLAIMS AT THE  
28 END OF THE CURRENT YEAR; MINUS

29 (V) RESERVES FOR INCURRED BUT NOT REPORTED CLAIMS AT THE END  
30 OF THE PREVIOUS YEAR; PLUS

1       (VI) PAID LOSS ADJUSTMENT EXPENSES; PLUS  
2       (VII) RESERVES FOR LOSS ADJUSTMENT EXPENSE AT THE END OF THE  
3       CURRENT YEAR; MINUS  
4       (VIII) RESERVES FOR LOSS ADJUSTMENT EXPENSE AT THE END OF  
5       THE PREVIOUS YEAR.  
6       (5) ESTIMATED INCURRED EXPENSES ALLOCATED SEPARATELY TO  
7       COMMISSIONS, OTHER ACQUISITION COSTS, ADVERTISING, GENERAL  
8       OFFICE EXPENSES, TAXES, LICENSES AND FEES AND ALL OTHER  
9       EXPENSES.  
10       (6) NET UNDERWRITING GAIN OR LOSS.  
11       (7) ESTIMATED NET OPERATING GAIN OR LOSS.  
12       (8) THE TOTAL NUMBER AND TOTAL DOLLAR AMOUNT OF CLAIMS  
13       CLOSED WITH PAYMENT, BY YEAR INCURRED AS OF THE LAST YEAR'S END.  
14       (9) THE TOTAL NUMBER OF CLAIMS CLOSED WITHOUT PAYMENT.  
15       (10) ANY OTHER REASONABLE INFORMATION REQUESTED BY THE  
16       DEPARTMENT BY REGULATION OR ORDER.

17       SECTION 1004-B. DUTY OF DEPARTMENT TO REPORT.--IT SHALL BE  
18       THE DUTY OF THE INSURANCE DEPARTMENT ANNUALLY TO COMPILE AND TO  
19       REVIEW ALL SUCH REPORTS SUBMITTED BY STATISTICAL AGENTS PURSUANT  
20       TO THIS ARTICLE TO DETERMINE THAT THE RATES FOR THE COMMERCIAL  
21       PROPERTY AND CASUALTY INSURANCE SET FORTH IN THIS SECTION ARE  
22       NOT INADEQUATE, EXCESSIVE OR UNFAIRLY DISCRIMINATORY. THE  
23       DEPARTMENT'S FINDINGS AND THE FILINGS SHALL BE PUBLISHED AND  
24       PROVIDED TO THE APPROPRIATE COMMITTEES OF THE GENERAL ASSEMBLY  
25       AND MADE AVAILABLE TO ANY INTERESTED INSURED OR CITIZEN.

26       SECTION 1005-B. PENALTY.--ANY INSURER WHICH FAILS TO FILE  
27       ANY REPORT UNDER THIS ARTICLE SHALL PAY A FINE OF FIVE THOUSAND  
28       DOLLARS (\$5,000), AND A FINE OF TWO HUNDRED DOLLARS (\$200) DAILY  
29       UNTIL THE REPORT REQUIRED IS FILED.

30       SECTION 2. THE INSURANCE COMMISSIONER SHALL, BY REGULATION,

1 ADOPT NEW DATA DISCLOSURE REQUIREMENTS DEVELOPED BY THE NATIONAL  
2 ASSOCIATION OF INSURANCE COMMISSIONERS. SUCH REGULATIONS SHALL  
3 SUPERSEDE SPECIFIC DATA DISCLOSURE REQUIREMENTS OF THIS ACT IF  
4 THE INSURANCE COMMISSIONER, AFTER NOTICE AND HEARING, DETERMINES  
5 THAT SUCH DATA DISCLOSURE REQUIREMENTS ARE, IN TOTAL, AT LEAST  
6 AS EFFECTIVE AS THE DATA DISCLOSURE REQUIREMENTS OF THIS ACT.

7 SECTION 3. THE PROVISIONS OF THIS ACT SHALL EXPIRE DECEMBER  
8 31, 1992.

9 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.