

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1424 Session of
2002INTRODUCED BY HOLL, ORIE, M. WHITE, MOWERY, JUBELIRER AND
THOMPSON, APRIL 29, 2002

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED, JUNE 12, 2002

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," further providing for requisites
12 for foreign companies to do business; deleting provisions
13 relating to admitted assets; further providing for standard
14 nonforfeiture law for individual deferred annuities, ~~for~~ <—
15 ~~health insurance coverage for mastectomy and breast cancer~~
16 ~~reconstruction~~ and for title insurance agents; further
17 defining "wet marine and transportation insurance"; and
18 further providing for placement of surplus lines insurance,
19 for requirements for eligible surplus lines insurers, for
20 surplus lines licensee's duty to notify insured, for
21 declarations, for licensing of surplus lines licensee, for
22 records of surplus lines licensee, for suspension, revocation
23 or nonrenewal of surplus lines licensee's license and for
24 service of process in actions against surplus lines insurer.

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

27 Section 1. Section 301(d) of the act of May 17, 1921
28 (P.L.682, No.284), known as The Insurance Company Law of 1921,

1 is amended to read:

2 Section 301. Requisites for Foreign Companies To Do
3 Business.--No stock or mutual insurance company or association
4 of any other State or foreign government shall be admitted and
5 authorized to do business until:

6 * * *

7 [(d) It shall file in the office of the Auditor General a
8 statement showing: (I) The name of the company or association;
9 (II) the date of incorporation or organization; (III) the act of
10 Assembly or authority under which incorporated or organized;
11 (IV) the place of business; (V) the post office address and
12 names of the president, secretary, and treasurer; (VI) the
13 amount of capital authorized by its charter; and (VII) the
14 amount of capital paid into the treasury of the company.

15 Any company or association which shall neglect or refuse to
16 file such statement shall be subject to a penalty of five
17 hundred dollars (\$500.00), which penalty shall be collected, on
18 an account settled by the Auditor General and State Treasurer,
19 in the same manner as taxes on stock are settled and collected.]

20 * * *

21 Section 2. Section 320.1 of the act is repealed.

22 Section 3. Section 410C of the act is amended by adding a
23 subsection to read:

24 Section 410C. Standard Nonforfeiture Law for Individual
25 Deferred Annuities.--* * *

26 (m) Notwithstanding any other provision of this section THE <—
27 PROVISIONS OF SUBSECTION (D), for any contract issued on or
28 after July 1, 2002, and before January 1, 2005, the interest
29 rate at which minimum nonforfeiture amounts, partial withdrawals
30 and partial surrenders shall be accumulated shall be one and

1 one-half per centum (1.5%) per annum.

2 ~~Section 4. Section 633(b) of the act, added November 4, 1997 <—~~
3 ~~(P.L.492, No.51), is amended to read:~~

4 ~~Section 633. Mastectomy and Breast Cancer Reconstruction. *~~

5 ~~* *~~

6 ~~(b) (1) Every health care policy which is delivered, issued~~
7 ~~for delivery, renewed, extended or modified in this Commonwealth~~
8 ~~by a health care insurer which provides coverage for the~~
9 ~~surgical procedure known as mastectomy shall also include~~
10 ~~coverage for:~~

11 ~~(i) prosthetic devices;~~

12 ~~(ii) physical complications, including lymphedemas; and~~

13 ~~(iii) reconstructive surgery incident to any mastectomy[.];~~

14 ~~in a manner determined in consultation with the attending~~
15 ~~physician and the patient. Written notice of the availability of~~
16 ~~such coverage shall be delivered to the participant upon~~
17 ~~enrollment and annually thereafter.~~

18 ~~(2) Coverage for prosthetic devices and reconstructive~~
19 ~~surgery shall be subject to the deductible and coinsurance~~
20 ~~conditions applied to the mastectomy and all other terms and~~
21 ~~conditions applicable to other benefits.~~

22 ~~(3) [The coverage for prosthetic devices inserted during~~
23 ~~reconstructive surgery and reconstructive surgery pursuant to~~
24 ~~this section may be limited to such surgical procedures~~
25 ~~performed within six years of the date of the mastectomy.] An~~
26 ~~insurer may not deny to a patient eligibility, or continued~~
27 ~~eligibility, to enroll or to renew coverage under the terms of~~
28 ~~the health insurance policy, solely for the purpose of avoiding~~
29 ~~the requirements of this section.~~

30 ~~* * *~~

1 Section ~~5~~ 4. Section 724(b) of the act, amended December 21, <—
2 1995 (P.L.714, No.79), is amended to read:

3 Section 724. Agents; Defined.--* * *

4 [(b) No bank, trust company, bank and trust company or other
5 lending institution, mortgage service, mortgage brokerage or
6 mortgage guaranty company or any officer or employe of any of
7 the foregoing shall be permitted to act as an agent for a title
8 insurance company.] The word "agent" shall not include approved <—
9 attorneys, nor shall it include officers and salaried employees
10 of any title insurance company authorized to do a title
11 insurance business within this Commonwealth.† <—

12 Section ~~6~~ 5. The definition of "wet marine and <—
13 transportation insurance" in section 1602 of the act, added
14 December 18, 1992 (P.L.1519, No.178), is amended to read:

15 Section 1602. Definitions.--As used in this article the
16 following words and phrases shall have the meanings given to
17 them in this section:

18 * * *

19 "Wet marine and transportation insurance." Any of the
20 following:

21 (1) Insurance upon vessels, crafts or hulls and of interests
22 therein or with relation thereto.

23 (2) Insurance of marine builder's risks, marine war risks
24 and contracts of marine protection and indemnity insurance.

25 (3) Insurance of freights and disbursements pertaining to a
26 subject of insurance coming within this definition.

27 (4) Insurance of personal property and interest therein, in
28 the course of exportation from or importation into any country,
29 or in the course of transportation coastwise or on inland
30 waters, including transportation by land, water or air from

1 point of origin to final destination, in connection with any and
2 all risks or perils of navigation, transit or transportation,
3 and while being prepared for and while awaiting shipment, and
4 during any delays, transshipment or reshipment [incident
5 thereto]. Insurance of personal property and interests therein
6 shall not be considered wet marine and transportation insurance
7 if:

8 (i) the property has been transported solely by
9 land;

10 (ii) the property has reached its final destination
11 as specified in the bill of lading or other shipping
12 document; or

13 (iii) the insured no longer has an insurable
14 interest in the property.

15 Section 7 6. Section 1604 of the act, added December 18, <—
16 1992 (P.L.1519, No.178), is amended to read:

17 Section 1604. Placement of Surplus Lines Insurance.--

18 Insurance may be procured through a surplus lines licensee from
19 nonadmitted insurers if the following requirements are met:

20 (1) Each insurer is an eligible surplus lines insurer.

21 (2) The placement satisfies the criteria set forth in at
22 least one of the following subparagraphs:

23 (i) The full amount or kind of insurance cannot be obtained
24 from admitted insurers. Such full amount or kind of insurance or
25 any portion thereof may be procured from eligible surplus lines
26 insurers, provided that a diligent search is made among the
27 admitted insurers who are writing, in this Commonwealth,
28 coverage comparable to the coverage being sought.

29 (ii) The full amount or kind of insurance cannot be obtained
30 from any admitted insurers because [no such insurers are

1 writing] coverage comparable to the coverage being sought
2 generally is not available in the authorized market.

3 (iii) The kind of insurance sought to be obtained from
4 admitted insurers requires a unique form of coverage not
5 available in the admitted market.

6 (3) [The] With respect to personal lines policies or
7 contract forms, the policy or contract form used by the insurer
8 does not differ materially from policies or contracts
9 customarily used by admitted insurers for the kind of insurance
10 involved. [Coverage] Personal lines coverage may be placed in an
11 eligible surplus lines insurer using a unique form or policy
12 designed for the kind of insurance only if a copy of such form
13 is first filed with the department by the surplus lines licensee
14 desiring to use it [simultaneously with the affidavit required
15 by section 1609]. The form shall be deemed approved by the
16 commissioner unless within ten (10) days after receipt of the
17 same, the commissioner shall find that the use of such form will
18 be contrary to law or public policy.

19 (4) All other requirements of this article are met.

20 Section 8 7. Section 1605 of the act, amended or added
21 December 18, 1992 (P.L.1519, No.178) and February 17, 1994
22 (P.L.92, No.9), is amended to read:

23 Section 1605. Requirements for Eligible Surplus Lines
24 Insurers.--(a) No surplus lines licensee shall place any
25 coverage with a nonadmitted insurer unless, at the time of
26 placement, such nonadmitted insurer:

27 (1) Is of good repute and financial integrity.

28 (2) Qualifies under any of the following subparagraphs:

29 (i) Has policyholder surplus equal to or greater than two
30 times the minimum capital and surplus required to be fully

1 licensed in this Commonwealth. Two (2) years from the effective
2 date of this article is granted to allow those nonadmitted
3 insurers which are eligible surplus lines insurers on the
4 effective date of this article to achieve this capital and
5 surplus requirement. If an alien insurer, as defined by the act
6 of December 10, 1974 (P.L.804, No.266), referred to as the Alien
7 Insurer Domestication Law, it shall maintain in the United
8 States an irrevocable trust fund in either a national bank or a
9 member of the Federal Reserve System, in an amount not less than
10 that currently required by the National Association of Insurance
11 Commissioners' [Nonadmitted Insurers Information Office]
12 International Insurers Department or its successor for the
13 protection of all of its policyholders in the United States, and
14 such trust fund consists of cash, securities, letters of credit
15 or investments of substantially the same character and quality
16 as those which are eligible investments for admitted insurers
17 authorized to write like kinds of insurance in this
18 Commonwealth. Such trust fund will be in addition to the capital
19 and surplus required in this subparagraph and shall have an
20 expiration date which at no time shall be less than five (5)
21 years.

22 (ii) Is any Lloyd's or other similar group of insurers which
23 includes unincorporated individual insurers that maintains a
24 trust fund of not less than fifty million (\$50,000,000) dollars
25 as security to the full amount thereof for all policyholders and
26 creditors in the United States of each member of the group. Such
27 trust funds shall likewise comply with the terms and conditions
28 established in subparagraph (i) for alien insurers.

29 (iii) Is an insurance exchange created by the laws of
30 individual states that maintains capital and surplus or the

1 substantial equivalent thereof of not less than fifteen million
2 (\$15,000,000) dollars in the aggregate. For insurance exchanges
3 which maintain funds for the protection of all insurance
4 exchange policyholders, each individual syndicate shall maintain
5 minimum capital and surplus or the substantial equivalent
6 thereof of not less than one million five hundred thousand
7 (\$1,500,000) dollars. In the event the insurance exchange does
8 not maintain funds for the protection of all insurance exchange
9 policyholders, each individual syndicate shall meet the minimum
10 capital and surplus requirements of subparagraph (i).

11 (3) Has provided to the department a copy of its current
12 annual financial statement certified by such insurer, such
13 statement to be provided no more than thirty (30) days after the
14 date required for filing an annual financial statement in its
15 domiciliary jurisdiction and which is either:

16 (i) certified by the regulatory authority in the domicile of
17 the insurer; or

18 (ii) certified by an accounting or auditing firm licensed in
19 the jurisdiction of the insurer's domicile.

20 In the case of an insurance exchange, the statement may be an
21 aggregate statement of all underwriting syndicates operating
22 during the period reported.

23 (b) In addition to meeting the requirements in subsection
24 (a), a nonadmitted insurer shall be an eligible surplus lines
25 insurer if it appears on the most recent list of eligible
26 surplus lines insurers published by the department from time to
27 time but at least semiannually. Nothing in this section shall
28 require the department to place or maintain the name of any
29 nonadmitted insurer on the list of eligible surplus lines
30 insurers.

1 Section 9 8. Sections 1608, 1609, 1615, 1619, 1623 and 1624 <—
2 of the act, added December 18, 1992 (P.L.1519, No.178), are
3 amended to read:

4 Section 1608. Surplus Lines Licensee's Duty to Notify
5 Insured.--At the time of presenting a quotation to the insured,
6 the surplus lines licensee shall present to the insured or to
7 the producing broker written notice that the insurance or a
8 portion thereof involves placement with nonadmitted insurers.
9 The licensee shall, either directly or through the producing
10 broker, give notice to the insured that:

11 (1) the insurer with which the licensee places the insurance
12 is not licensed by the Pennsylvania Insurance Department and is
13 subject to its limited regulation; and

14 (2) in the event of the insolvency of an eligible surplus
15 lines insurer, losses will not be paid by the Pennsylvania
16 Property and Casualty Insurance Guaranty Association.

17 Section 1609. Declarations.--(a) In the case of each
18 placement of insurance in accordance with this article:

19 (1) Within thirty (30) days after the surplus lines licensee
20 has placed insurance with an eligible surplus lines insurer, the
21 producing broker must execute and forward to the surplus lines
22 licensee a written statement, in a form prescribed by the
23 department, declaring that:

24 (i) A diligent effort to procure the desired coverage from
25 admitted insurers was made.

26 (ii) The insured was expressly advised in writing prior to
27 placement of the insurance that:

28 (A) the insurer with whom the insurance is to be placed is
29 not admitted to transact business in this Commonwealth and is
30 subject to limited regulation by the department; and

(B) in the event of the insolvency of the insurer, losses will not be paid by the Pennsylvania Property and Casualty Insurance Guaranty Association.

This written declaration shall be open to public inspection.

(2) Within forty-five (45) days after insurance has been placed in an eligible surplus lines insurer, the surplus lines licensee shall file with the department a written declaration of his lack of knowledge of how the coverage could have been procured from admitted insurers. The surplus lines licensee shall simultaneously file the written declaration of the producing broker, as set forth in paragraph (1).

(3) In a particular transaction where the producing broker and surplus lines licensee are one in the same entity, he shall execute both declarations.

(b) Subsection (a) shall not apply to any insurance which has been placed continuously with an eligible surplus lines insurer for a period of at least three (3) consecutive years immediately preceding the current placement. However, within forty-five (45) days after insurance has been placed with an eligible surplus lines insurer, the surplus lines licensee shall file with the department his written declaration on a form prescribed by the department.

Section 1615. Licensing of Surplus Lines Licensee.--(a) No agent or broker licensed by the department shall transact surplus lines insurance with any nonadmitted insurer unless such agent or broker possesses a valid surplus lines agent's license issued by the department.

(b) The department shall issue a surplus lines agent's license to any resident or nonresident of this Commonwealth who is a qualified holder of a current property and casualty

1 broker's license, but only when the broker has complied with the
2 following:

3 (1) Remitted the license fee to the department.

4 (2) Submitted a properly completed license application on a
5 form supplied by the department.

6 (3) Passed a qualifying examination approved by the
7 department, except that all holders of a license prior to the
8 effective date of this article shall be deemed to have passed
9 such an examination.

10 [(4) Filed with the department and maintained concurrent
11 with the term of the license, in force and unimpaired, a bond in
12 favor of the Commonwealth of Pennsylvania in the penal sum of at
13 least fifty thousand (\$50,000) dollars, aggregate liability,
14 with corporate sureties approved by the department. The bond
15 shall be conditioned that the surplus lines licensee will
16 conduct business in accordance with the provisions of this
17 article and will promptly remit the taxes as provided by law. No
18 bond shall be terminated except for nonpayment of premiums.
19 Termination notice shall be given to the surplus lines licensee
20 and to the department at least thirty (30) days prior to the
21 termination date.]

22 (c) Corporations and partnerships shall be eligible to be
23 resident or nonresident surplus lines licensees, upon the
24 following conditions:

25 (1) The corporation or partnership licensee shall list all
26 employees, including at least one active officer or partner, who
27 have satisfied the requirements of this article to become
28 surplus lines licensees.

29 (2) Only those employees [resident in this Commonwealth]
30 holding a certificate of eligibility may transact surplus lines

1 insurance.

2 (d) Each surplus lines license shall expire on the last day
3 of February of each year and shall be renewed before March 1 of
4 each year upon payment of the annual fee, in compliance with
5 other provisions of this section. Any surplus lines licensee who
6 fails to apply for renewal of a license before expiration of the
7 current license shall pay a penalty of two times the license fee
8 and be subject to other penalties as provided by law before his
9 license will be renewed.

10 Section 1619. Records of Surplus Lines Licensee.--(a) Each
11 surplus lines licensee shall keep in its office [in this
12 Commonwealth] a full and true record of each surplus lines
13 insurance contract placed by or through it, including a copy of
14 the policy, certificate, cover note or other evidence of
15 insurance, showing such of the following items as may be
16 applicable:

- 17 (1) Amount of the insurance and perils insured.
- 18 (2) Brief description of the risk insured and its location.
- 19 (3) Gross premium charged.
- 20 (4) Any return premium paid.
- 21 (5) Rate of premium charged for each risk insured.
- 22 (6) Effective date and terms of the contract.
- 23 (7) Name and address of the insured.
- 24 (8) Name and address of the eligible surplus lines insurer
25 and any nonadmitted insured involved pursuant to section 1606.
- 26 (9) Amount of tax and other sums to be collected from the
27 insured.
- 28 (10) Identity of the producing broker, any confirming
29 correspondence from the insurer or its representative and the
30 application.

1 (11) A copy of the written notice required by section 1408.

2 (b) The record of each contract shall be kept open at all
3 reasonable times to examination by the department without notice
4 for a period of not less than five (5) years following
5 termination of the contract.

6 Section 1623. Suspension, Revocation or Nonrenewal of
7 Surplus Lines Licensee's License.--The department may suspend,
8 revoke or refuse to renew the license of a surplus lines
9 licensee after notice and a hearing, as provided under the
10 applicable provision of the laws of this Commonwealth, upon any
11 one or more of the following grounds:

12 [(1) Removal of the resident surplus lines licensee's office
13 from this Commonwealth.

14 (2) Removal of the resident surplus lines licensee's
15 accounts and records from this Commonwealth during the period
16 during which such accounts and records are required to be
17 maintained under section 1619.]

18 (3) Closing of the surplus lines licensee's office for a
19 period of more than thirty (30) business days, unless permission
20 is granted by the department.

21 (4) Failure to make and file required reports.

22 (5) Failure to transmit required tax on surplus lines
23 premiums.

24 [(6) Failure to maintain required bonds.]

25 (7) Failure to remit premiums due insurers or return
26 premiums due insureds in the normal course of business and
27 within reasonable time limits.

28 (8) Violation of any provision of this article.

29 (9) For any other cause for which an insurance agent's or
30 broker's license could be denied, revoked or suspended or

1 refused upon renewal.

2 Section 1624. Service of Process in Actions Against Surplus
3 Lines Insurer.--(a) An eligible surplus lines insurer may be
4 sued upon any cause of action arising in this Commonwealth under
5 any surplus lines insurance contract made by it or evidence of
6 insurance issued or delivered by the surplus lines licensee.
7 Service of process shall be made pursuant to the procedures
8 provided by 42 Pa.C.S. Ch. 53 Subch. B (relating to interstate
9 and international procedure). Any such [policy] surplus lines
10 insurance contract or evidence of insurance delivered by the
11 surplus lines licensee shall contain a provision stating the
12 substance of this section and designating the person to whom
13 process shall be mailed.

14 (b) Each nonadmitted insurer accepting surplus lines
15 insurance shall be deemed thereby to have subjected itself to
16 accepting service of process under 42 Pa.C.S. Ch. 53 Subch. B.

17 (c) The service of process procedures provided in this
18 section are in addition to any other methods provided by law for
19 service of process upon insurers.

20 Section ~~10~~ 9. This act shall take effect in 60 days.

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