

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 2833** Session of  
1986

INTRODUCED BY DeVERTER, GODSHALL, VROON, FLICK, BOWSER, JOHNSON,  
FARGO, MERRY, BLACK, FOX AND DAVIES, OCTOBER 6, 1986

REFERRED TO COMMITTEE ON INSURANCE, OCTOBER 6, 1986

AN ACT

1 Amending the act of July 31, 1968 (P.L.738, No.233), entitled  
2 "An act relating to establishment of an Industry Placement  
3 Facility to make available basic property insurance against  
4 fire and other perils for residential and business properties  
5 located in certain areas of the Commonwealth of Pennsylvania  
6 through the cooperative efforts of the Commonwealth and the  
7 private property insurance industry; providing for a sharing  
8 by the Commonwealth of insured losses resulting from riots  
9 and other civil disorders through the formation of the  
10 Pennsylvania Civil Disorder Authority; levying an assessment  
11 on all policies of basic property insurance written in the  
12 Commonwealth; and conferring powers and imposing duties upon  
13 the Insurance Commissioner and upon certain property  
14 insurers," broadening the purposes of the act; providing for  
15 liability insurance coverage; and further providing for  
16 inspections by the Inspection Bureau for distribution of  
17 risks, uninsurable risks and privileged communications.

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

20 Section 1. The title and sections 102, 103, 201, 202, 203,  
21 204 and 207 of the act of July 31, 1968 (P.L.738, No.233), known  
22 as The Pennsylvania Fair Plan Act, are amended to read:

AN ACT

24 Relating to establishment of an Industry Placement Facility to  
25 make available basic property and liability insurance

1 [against fire and other perils] for residential and business  
2 properties located in [certain areas of] the Commonwealth of  
3 Pennsylvania through the cooperative efforts of the  
4 Commonwealth and the private property and casualty insurance  
5 industry; providing for a sharing by the Commonwealth of  
6 insured losses resulting from riots and other civil disorders  
7 through the formation of the Pennsylvania Civil Disorder  
8 Authority; levying an assessment on all policies of basic  
9 property insurance written in the Commonwealth; and  
10 conferring powers and imposing duties upon the Insurance  
11 Commissioner and upon certain property insurers.

12 Section 102. Purposes.--The purposes of this act are:

13 (1) To encourage stability in the property and liability  
14 insurance market for property and operations located in [urban  
15 areas of] this Commonwealth;

16 (2) To encourage maximum use, in obtaining basic property  
17 and liability insurance, as defined in this act, of the normal  
18 insurance market provided by the private property and liability  
19 insurance industry;

20 (3) To encourage the improvement of the condition of  
21 properties located in [urban areas of] this Commonwealth and to  
22 further orderly community development generally;

23 (4) To provide for the formulation and administration by an  
24 Industry Placement Facility of a plan assuring fair access to  
25 insurance requirements (Fair Plan) in order that no property  
26 shall be denied basic property or liability insurance through  
27 the normal insurance market provided by the private property and  
28 liability insurance industry except after a physical inspection  
29 of such property and a fair evaluation of its individual  
30 underwriting characteristics;

1 (5) To publicize the purposes and procedures of the Fair  
2 Plan to the end that no one may fail to seek its assistance  
3 through ignorance thereof;

4 (6) To provide for the formulation and administration by the  
5 Industry Placement Facility of a reinsurance arrangement whereby  
6 property and casualty insurers shall share equitably the  
7 responsibility for insuring insurable property for which basic  
8 property or liability insurance cannot be obtained through the  
9 normal insurance market; and

10 (7) To provide a framework for participation by the  
11 Commonwealth in a sharing of insured losses resulting from riots  
12 and other civil disorders occurring in this Commonwealth through  
13 the formation of a Pennsylvania Civil Disorder Authority, in  
14 order that insurance companies doing business within this  
15 Commonwealth may qualify for Federal reinsurance of such losses  
16 if Federal legislation providing for such reinsurance is  
17 enacted.

18 Section 103. Definitions.--As used in this act, unless the  
19 context otherwise requires:

20 (1) "Commissioner" means the Insurance Commissioner of the  
21 Commonwealth of Pennsylvania;

22 (2) "Basic [property] insurance" [means insurance against  
23 direct loss to real or tangible personal property at a fixed  
24 location caused by perils defined and limited in the standard  
25 fire policy prescribed in section 506 of the act of May 17, 1921  
26 (P.L.682), known as "The Insurance Company Law of 1921," and in  
27 the extended coverage endorsement approved by the commissioner  
28 pursuant to section 354 of the act, and such vandalism,  
29 malicious mischief, burglary, theft, or such other classes of  
30 insurance as may be determined by the Industry Placement

Facility with the approval of the commissioner, but shall not include insurance on motor vehicle, farm or such manufacturing risks as may be excluded by the commissioner] means:

(i) insurance on real and tangible personal property against direct loss or damage of a fixed location caused by perils defined and limited in the standard fire policy prescribed in section 506 of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and in the extended coverage endorsement approved by the commissioner pursuant to section 354 of the act, and such vandalism, malicious mischief, burglary, theft, or such other classes of property insurance as may be determined by the Industry Placement Facility with the approval of the commissioner, but shall not include insurance on motor vehicles or such other risks as may be excluded by the commissioner; or

(ii) insurance covering legal liability imposed by law arising out of the ownership, maintenance and use of real and tangible personal property, including business operations incidental to such ownership and such other forms or classes of liability insurance as may be determined by the Industry Placement Facility with the approval of the commissioner, but shall not include insurance on motor vehicles or such other risks as may be excluded by the commissioner;

(3) "Inspection bureau" means the organization or organizations designated by the Industry Placement Facility with the approval of the commissioner to inspect and to determine the condition of the properties for which basic property insurance is sought;

[(4) "Urban area" means any municipality of the Commonwealth having a blighted, deteriorated or deteriorating area (i) which

1 the Secretary of the Department of Housing and Urban Development  
2 of the United States has approved as eligible for an urban  
3 renewal project; or (ii) which has been designated as an urban  
4 area by the Industry Placement Facility with the approval of the  
5 commissioner;]

6 (5) "Premiums written" means gross direct premiums charged  
7 on all policies of basic property or liability insurance and the  
8 basic property and liability insurance components of all  
9 multiple peril policies covering property in this Commonwealth  
10 less all premiums and dividends returned to policyholders and  
11 the unused or unabsorbed portions of premium deposits;

12 (6) "Government" means the Federal government and the  
13 government of the Commonwealth of Pennsylvania, or any agency or  
14 instrumentality, corporate or otherwise, of either of them;

15 (7) "Municipality" means any city, borough, incorporated  
16 town or township established in the Commonwealth of  
17 Pennsylvania;

18 (8) "Federal reinsurance facility" means any agency, or  
19 instrumentality thereof, or any body corporate, created by the  
20 Federal government for the purpose of providing reinsurance for  
21 losses resulting from riots and other civil disorders;

22 (9) "Insurer" means any insurance company or group of  
23 companies under common ownership which is authorized to engage  
24 in the insurance business under the laws of any State, and also  
25 includes any pool or association of insurance companies formed,  
26 associated or otherwise created for the purpose of sharing risks  
27 written in accordance with this act.

28 Section 201. Industry Placement Facility.--(a) Membership.  
29 Each insurer which is authorized to write and is engaged in  
30 writing within this Commonwealth, on a direct basis, basic

1 property and liability insurance or any component thereof  
2 contained in a multiple peril policy, including homeowners and  
3 commercial multiple peril policies, shall participate in the  
4 Industry Placement Facility, as hereinafter described, as a  
5 condition of its authority to write such kinds of insurance  
6 within this Commonwealth. Other insurers may become members  
7 provided they are eligible unlicensed insurers under the act of  
8 January 24, 1966 (P.L.1509).

9 (b) Purposes. The purposes of the facility shall be twofold,  
10 as more fully set forth in this article:

11 (1) To formulate and administer, subject to the approval of  
12 the commissioner, a plan assuring fair access to insurance  
13 requirements (Fair Plan) in order that no property [in urban  
14 areas] shall be denied basic property insurance through the  
15 normal insurance market provided by the private property and  
16 casualty insurance industry, except after a physical inspection  
17 of such property and a fair evaluation of its individual  
18 underwriting characteristics; and

19 (2) To formulate and administer, subject to the approval of  
20 the commissioner, a reinsurance arrangement whereby the members  
21 of the facility shall share equitably the responsibility for  
22 insuring property [in urban areas] which is insurable but for  
23 which basic property insurance cannot be obtained through the  
24 normal insurance market.

25 (c) Organization. Within [forty-five] sixty days following  
26 the effective date of this amendatory act, the Industry  
27 Placement Facility shall submit to the commissioner for his  
28 review a proposed plan of operation of the facility, consistent  
29 with the provisions of this amendatory act and the purposes of  
30 the facility, which shall provide for the Fair Plan, the

1 reinsurance arrangement, and the economical and efficient  
2 administration of the facility, including, but not limited to,  
3 management of the facility, preliminary assessment of all  
4 members for initial expenses necessary to commence operations,  
5 establishment of necessary facilities within this Commonwealth,  
6 assessment of members to defray losses and expenses, commission  
7 arrangements, reasonable underwriting standards and limits of  
8 liability, acceptance and cession of reinsurance, and procedures  
9 for determining amounts of insurance to be provided.

10 The plan of operation shall be subject to approval by the  
11 commissioner and shall take effect [ten] forty-five days after  
12 having been approved by him. If the commissioner disapproves the  
13 proposed plan of operation, the facility shall within fifteen  
14 days submit for review an appropriately revised plan of  
15 operation and, if the facility fails to do so, or if the revised  
16 plan so filed is unacceptable, the commissioner shall promulgate  
17 a plan of operation.

18 (d) Amendment of Plan of Operation of Facility. The facility  
19 shall, on its own initiative, subject to prior approval by the  
20 commissioner, or at the direction of the commissioner, amend the  
21 plan of operation.

22 (e) Administration. (1) The facility shall be governed by a  
23 board of seven directors, elected annually by the members of the  
24 facility. Each member of the facility shall be allotted votes  
25 bearing the same ratio to the total number of votes to be cast  
26 as its degree of participation in the facility bears to the  
27 total participation. Pending the determination of the degree of  
28 participation of the members in the facility, each member of the  
29 facility shall be allotted votes bearing the same ratio to the  
30 total number of votes to be cast as each member's written

1 premium on basic property and liability insurance during  
2 calendar year [1967] 1986 bears to the statewide total written  
3 premium for basic property and liability insurance during such  
4 year. The first board shall be elected at a meeting of the  
5 members or their authorized representatives.

6 (2) Any vacancy on the board shall be filled by a vote of  
7 the other directors.

8 (3) If at any time the members fail to elect the required  
9 number of directors or a vacancy remains unfilled for more than  
10 fifteen days, the commissioner may appoint the directors  
11 necessary to constitute a full board.

12 (f) Participation. All members of the facility shall  
13 participate in its expenses and in its profits and losses (or in  
14 such categories thereof as may be separately established by the  
15 facility) in the proportion that the premiums written (as herein  
16 defined, but excluding that portion, if any, of premiums which  
17 is attributable to the reinsurance arrangement maintained by the  
18 facility) by each such member during the second preceding  
19 calendar year bear to the aggregate premiums written in this  
20 Commonwealth by all members of the facility. Such participation  
21 by each member in the facility shall be determined annually by  
22 the facility on the basis of such premiums written during the  
23 second preceding calendar year as disclosed in the annual  
24 statements and other reports filed by the member with the  
25 commissioner.

26 Section 202. Fair Plan. The Fair Plan shall contain  
27 provision that: (1) Any person having an insurable interest in  
28 real or tangible personal property [at a fixed location in an  
29 urban area, his representative, an insurance agent or broker, or  
30 an insurer] or liability arising out of the ownership,



1 maintenance or use of such property or operations incidental  
2 thereto and situated within this Commonwealth, may request the  
3 facility for an inspection of the property by representatives of  
4 the Inspection Bureau, such inspection to be without cost to the  
5 applicant for insurance. The request for such inspection need  
6 not be made in writing. No such risk shall be written at  
7 surcharged rates or be denied insurance coverage for basic  
8 property insurance by an insurer unless such an inspection has  
9 first been made.

10 (2) The plan of operation of the Inspection Bureau, the  
11 manner and scope of the inspection, and the form of the  
12 inspection report, which shall include, but need not be limited  
13 to, pertinent structural and occupancy features as well as the  
14 general condition of the building and surrounding structures,  
15 shall be prescribed by the Industry Placement Facility subject  
16 to the approval of the commissioner.

17 (3) Promptly after the request for inspection is received by  
18 the facility, if no policy has been issued, the inspection shall  
19 be made, a written inspection report prepared, and such report  
20 filed with the insurer or insurers, if any, designated by the  
21 applicant; a copy thereof shall be made available to the  
22 applicant or to his representative upon request. If no insurer  
23 has been designated by the applicant, the facility shall proceed  
24 as in clause (7) below.

25 (4) After the inspection report is received by an insurer,  
26 it shall promptly determine if the risk meets reasonable  
27 underwriting standards at the applicable premium rate, including  
28 approved surcharges for [physical] risk characteristics, and  
29 shall promptly return to the Industry Placement Facility the  
30 inspection report and provide an action report setting forth:

1 (i) the amount of coverage it agrees to write, and if the  
2 insurer agrees to write the coverage with an approved surcharge,  
3 the improvements necessary before it will provide coverage at an  
4 unsurcharged premium rate;

5 (ii) the amount of coverage it agrees to write if certain  
6 improvements to the [property] risk specified in the action  
7 report are made; or

8 (iii) the specific reasons for which it declines to write  
9 coverage. The inspection report and the action report shall be  
10 kept on file with the facility.

11 If the insurer declines the risk or agrees to write it on  
12 condition that [the property] it be improved as specified, the  
13 insurer shall, at the time of returning the inspection and  
14 action reports to the facility, send a copy of both reports to  
15 the applicant for insurance. The insurer shall advise the  
16 applicant at the time of sending the reports to him of his right  
17 to appeal such determination to the commissioner and shall  
18 advise the applicant of the means by which to initiate such an  
19 appeal.

20 The Inspection Bureau shall submit to the commissioner  
21 periodic reports setting forth information by individual  
22 insurers including the number of risks inspected under the plan,  
23 the number of risks accepted, the number of risks conditionally  
24 accepted and reinspections made, the number of risks declined,  
25 and such other information as the commissioner may request.

26 (5) All policies written pursuant to the Fair Plan shall be  
27 promptly written after inspection or reinspection and shall be  
28 separately coded so that appropriate records may be compiled for  
29 purposes of ratemaking, performing loss prevention and other  
30 studies of the operation of the Fair Plan.

1 (6) If any single insurer will underwrite only a portion of  
2 the full insurable value of the property, the Industry Placement  
3 Facility shall assist the owner and his agent or broker in  
4 obtaining the remaining coverage from other members of the  
5 facility, except to the extent that deductibles, percentage  
6 participation clauses, and other accepted underwriting devices  
7 are needed to meet special problems of insurability.

8 (7) If no insurer to which an inspection report has been  
9 forwarded pursuant to clause (3) above agrees promptly to  
10 provide basic property insurance for the property in question,  
11 or if no insurer has been designated by the applicant, the  
12 facility shall take appropriate action to ascertain whether any  
13 member of the facility will provide basic [property] insurance  
14 for the subject [property] risk at the applicable premium rate,  
15 including approved surcharges for [physical] risk  
16 characteristics.

17 (8) (i) No insurer shall direct any agent or broker or  
18 other producer not to solicit business through the Fair Plan,  
19 and no agent, broker or other producer shall be penalized in any  
20 way by an insurer for submitting applications for insurance to  
21 it under the Fair Plan.

22 (ii) Records of insurance procured under the Fair Plan shall  
23 be maintained separate from other records of an agent's or  
24 broker's business conducted with an insurer.

25 (9) Written notice will be given to any policyholder at  
26 least [twenty] forty-five days prior to the cancellation or  
27 nonrenewal of any risk eligible under the Fair Plan (except in  
28 the case of nonpayment of premium or evidence of [incendiarism]  
29 criminal conduct), and the insurer shall, in the notice of  
30 cancellation or nonrenewal, explain to the policyholder the

1 procedures for obtaining an inspection under the plan.

2 (10) No agent or broker shall be permitted to refuse an  
3 application for basic property insurance [within an urban area]  
4 if he is licensed to write and is actively engaged in writing  
5 such insurance.

6 (11) A cooperative and continuing public education program  
7 shall be undertaken by the Pennsylvania Insurance Department,  
8 the Industry Placement Facility, and the members of the facility  
9 to assure that the Fair Plan is given adequate publicity.

10 Section 203. Distribution of Risks.--(a) The facility shall  
11 have the power, on behalf of its members--

12 (1) to direct one or more of its members to issue policies  
13 of basic [property] insurance to applicants;

14 (2) to assume reinsurance from its members; and

15 (3) to cede reinsurance.

16 (b) Any member of the facility may cede to the facility  
17 basic [property] insurance [covering property in urban areas,]  
18 to the extent and on the terms and conditions set forth in the  
19 plan of operation of the facility.

20 (c) If the facility has been unable to obtain basic  
21 [property] insurance for any [property] risk through the  
22 voluntary action of its members pursuant to section 202 above,  
23 it shall promptly determine:

24 (1) whether the property is insurable [(environmental  
25 hazard, being any hazardous condition that might give rise to  
26 loss under an insurance contract but which is beyond the control  
27 of the property owners, shall not be considered by the facility  
28 in determining insurable condition)]; and

29 (2) whether there is any unpaid premium due from the  
30 applicant for prior insurance on the property.

1 If the facility determines that the property is insurable and  
2 that no such unpaid premium is due, it shall promptly cause one  
3 or more of its members to issue a policy or policies of basic  
4 [property] insurance at the applicable premium rate, including  
5 approved surcharges for [physical] risk characteristics[, in the  
6 full insurable value of the property,] for a term of one year,  
7 subject to total reinsurance of such risk by the facility.

8 Section 204. Uninsurable Risks.--If the facility finds that  
9 the [property] risk is not insurable, it shall promptly supply  
10 to the applicant a written statement setting forth the features  
11 or conditions of the [property] risk which prevent it from  
12 constituting an insurable risk and the measures, if any, which  
13 if taken would make the property an insurable risk, including,  
14 but not limited to, changes in the policy terms and conditions.

15 Section 207. Privileged Communications.--There shall be no  
16 liability on the part of, and no cause of action of any nature  
17 shall arise against insurers, the Inspection Bureau, the  
18 Industry Placement Facility, or their agents or employees, or the  
19 commissioner or his authorized representatives, for any  
20 statements made in good faith by them in any reports or  
21 communications concerning the property or operations to be  
22 insured, or at the time of any hearings conducted in connection  
23 therewith, or in the findings required by the provisions of this  
24 article. The inspection reports and communications of the  
25 Inspection Bureau and the Industry Placement Facility shall not  
26 be considered public documents.

27 Section 2. This act shall take effect in 60 days.