

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1670 Session of
1991

INTRODUCED BY JOSEPHS, FREIND, MURPHY, TANGRETTI, MAIALE,
VAN HORNE, MICHLOVIC, CARN, BUTKOVITZ, McNALLY, ULIANA,
GLADECK, LaGROTTA, VEON, MELIO, COLAIZZO, GANNON, GODSHALL,
WAMBACH, JAMES, DURHAM, VROON AND DEMPSEY, JUNE 12, 1991

REFERRED TO COMMITTEE ON INSURANCE, JUNE 12, 1991

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 the purposes
12 of incorporation, for capital stock, surplus, investments and
13 other financial requirements, for reinsurance and for certain
14 annual reports; providing for business transacted with
15 broker-controlled property and casualty insurers and for
16 insurance holding companies; implementing the Risk Retention
17 Amendments of 1986; providing for regulation by the Insurance
18 Department of risk retention groups and purchasing groups
19 doing business in this Commonwealth; further providing for
20 the taxation of risk retention groups and purchasing groups;
21 providing for the regulation of the placing of insurance on
22 risks located in this Commonwealth with insurers not licensed
23 to transact insurance business in this Commonwealth;
24 providing for a life and health insurance guaranty
25 association; providing for certain fees and for civil and
26 criminal penalties; and making repeals.

27 The General Assembly of the Commonwealth of Pennsylvania

28 hereby enacts as follows:

29 Section 1. Section 202 of the act of May 17, 1921 (P.L.682,

1 No.284), known as The Insurance Company Law of 1921, is amended
2 by adding a subsection to read:

3 Section 202. Purposes for Which Companies May Be
4 Incorporated; Underwriting Powers.--* * *

5 (h) (1) No domestic stock fire, stock marine, stock fire
6 and marine, or stock casualty insurance company shall issue a
7 policy containing an aggregate limit on any one risk in an
8 amount exceeding ten per centum (10%) of its capital and
9 surplus, unless it shall be protected in excess of that amount
10 by reinsurance or collateral. This collateral may be in the form
11 of:

12 (i) Cash.

13 (ii) Securities listed by the Securities Valuation Office of
14 the National Association of Insurance Commissioners and
15 qualifying as admitted assets.

16 (iii) (A) Clean, irrevocable, unconditional letters of
17 credit and credit agreements issued or confirmed by a qualified
18 United States financial institution no later than the thirty-
19 first day of December in respect of the year for which filing is
20 being made, and in the possession of the insurance company on or
21 before the filing date of its annual statement.

22 (B) Letters of credit agreements meeting applicable
23 standards of issuer acceptability as of the dates of their
24 issuance or confirmation shall, notwithstanding the issuing or
25 confirming institution's subsequent failure to meet applicable
26 standards of issuer acceptability, continue to be acceptable as
27 collateral until their expiration, extension, renewal,
28 modification or amendment, whichever first occurs.

29 (iv) Any other form of collateral acceptable to the
30 Insurance Commissioner.

1 (2) The term "qualified United States financial institution"
2 when used in this subsection means an institution which meets
3 the following qualifications:

4 (i) Is organized or, in the case of a United States office
5 of a foreign banking organization, licensed, under the laws of
6 the United States or any state thereof.

7 (ii) Is regulated, supervised and examined by United States
8 Federal or state authorities having regulatory authority over
9 banks and trust companies.

10 (iii) Has been determined by either the Insurance
11 Commissioner or the Securities Valuation Office of the National
12 Association of Insurance Commissioners to meet such standards of
13 financial condition and standing as are considered necessary and
14 appropriate to regulate the quality of financial institutions
15 whose letters of credit will be acceptable to the Insurance
16 Commissioner.

17 Section 2. Section 206(d) and (e) of the act, amended or
18 added July 2, 1953 (P.L.331, No.74), November 27, 1968
19 (P.L.1118, No.349), July 9, 1976 (P.L.948, No.184) and June 19,
20 1981 (P.L.94, No.33), are amended to read:

21 Section 206. Minimum Capital Stock and Financial
22 Requirements To Do Business.--* * *

23 (d) Companies organized under this act to insure lives on
24 the mutual plan must have applications for insurance, to the
25 amount of one million dollars (\$1,000,000), by not less than
26 four hundred persons. Companies organized under this act to
27 insure lives on the mutual plan must also have a guarantee
28 capital, before commencing business, of not less than [five
29 hundred thousand dollars (\$500,000)] two million dollars
30 (\$2,000,000), and shall maintain unimpaired a policyholders'

1 surplus of [two hundred fifty thousand dollars (\$250,000)] one
2 million dollars (\$1,000,000) out of guarantee capital, surplus,
3 or any combination thereof.

4 (e) Mutual companies, other than mutual life companies and
5 other than title insurance companies, [hereafter organized under
6 this act, and existing mutual companies which determine to add]
7 which seek a certificate of authority to transact a line or
8 lines of insurance business shall comply with the following
9 conditions:

10 (1) Each such company shall hold bona fide applications for
11 at least twenty (20) policies, to be issued promptly and
12 simultaneously to at least twenty (20) policyholders or members
13 upon not less than two hundred (200) separate risks, each within
14 the maximum single risk described herein, upon the granting of
15 the certificate of authority to do business.

16 (2) The "maximum single risk" shall not exceed three times
17 the average risk or one percentum (1%) of the total insurance
18 applied for, whichever is the greater.

19 (3) It shall have collected at least an annual cash premium
20 upon each of such applications, which premium shall be held in
21 cash [or securities in which such insurance companies are
22 authorized to invest.] in an interest-bearing account
23 established in the name of the insurance company at financial
24 institutions located in this Commonwealth. In the case of
25 companies organized for any of the purposes mentioned in
26 paragraphs (1) or (2) or (3) of subdivision (b) of section two
27 hundred two of this act, the [said cash premiums, together with
28 any] sum or sums of money [which may be] advanced under section
29 eight hundred nine of this act, shall amount to not less than
30 twenty-five thousand dollars (\$25,000) for the purpose mentioned

1 in each numbered paragraph of subdivision (b). If organized for
2 all of the purposes mentioned in paragraphs (1), (2) and (3) of
3 subdivision (b) of section two hundred two of this act, the
4 [said cash premiums, together with any] sum or sums of money
5 [which may be] advanced under section eight hundred nine of this
6 act, shall amount to not less than fifty thousand dollars
7 (\$50,000). In the case of companies organized for any one of the
8 purposes mentioned in subdivision (c) of said section two
9 hundred two, except paragraphs (1), (4), (11) and (14), the
10 [said cash premiums collected, together with any] sum or sums of
11 money advanced under the said section eight hundred nine, shall
12 amount to not less than ten thousand dollars (\$10,000) for the
13 purpose mentioned in each numbered paragraph of said subdivision
14 (c). In the case of companies authorized to issue non-assessable
15 policies of insurance for the purposes mentioned in clause (11)
16 or clause (14), subdivision (c) of section two hundred and two
17 (202) of the act, the [said cash premiums collected, together
18 with any] sum or sums of money advanced under the said section
19 eight hundred nine, shall amount to not less than seven hundred
20 fifty thousand dollars (\$750,000). For the purpose mentioned in
21 either numbered paragraph (1) or (4) of said subdivision (c),
22 such amount shall be not less than twenty-five thousand dollars
23 (\$25,000): Provided, That in no event shall a company be
24 organized for any of the purposes mentioned in said subdivision
25 (c) unless the [amount collected as premiums, together with the]
26 sum or sums of money advanced under said section eight hundred
27 nine, shall amount to not less than fifty thousand dollars
28 (\$50,000); nor shall a company be organized for all of the
29 purposes mentioned in said subdivision (c) except paragraph (11)
30 or (14) unless the [cash premiums so collected and the] sum or

1 sums of money so advanced shall amount to not less than three
2 hundred fifty thousand dollars (\$350,000).

3 (4) In the case of companies hereafter organized [under this
4 act] for the purposes mentioned in subdivisions (b) and (c) of
5 section two hundred two of this act, each such company shall
6 meet the requirements of paragraphs (1) and (2) of subdivision
7 (e) of this section, and the required sum of [the cash premiums
8 collected and] money advanced under said section eight hundred
9 nine shall not be less than the aggregate of the sums required
10 under paragraph (3) of subdivision (e) of this section for the
11 purposes for which the company is to be incorporated.

12 (5) For the purpose of transacting employer's liability and
13 workmen's compensation insurance, the application shall cover
14 not less than five thousand (5,000) employees, each such employee
15 being considered a separate risk for determining the maximum
16 single risk.

17 (6) Each company writing non-assessable policies shall
18 maintain unimpaired so much of its surplus as is equal to the
19 minimum capital required for stock companies authorized to
20 transact the same class or classes of insurance; each company
21 writing assessable policies shall maintain unimpaired fifty per
22 centum (50%) of its required surplus.

23 * * *

24 Section 3. The act is amended by adding a section to read:

25 Section 206.2. Additional Capital and Surplus.--(a) In
26 addition to the minimum capital and surplus required for an
27 insurance company to qualify for authority to transact one or
28 more of the classes of insurance set out in section 202 of this
29 act, the Insurance Commissioner shall have the authority to
30 require additional capital and surplus based upon the nature,

1 type and volume of insurance a company is transacting or
2 proposes to transact.

3 (b) Whenever the Insurance Commissioner believes, from
4 evidence satisfactory to him, that an insurance company has
5 failed to meet the capital and surplus required by this section,
6 the Insurance Commissioner may, in his discretion:

7 (1) disapprove an insurance company's request for a
8 certificate of authority, or amendment thereto; or

9 (2) otherwise restrict, as provided by law, a company's
10 authority to transact business within this Commonwealth.

11 Before the Insurance Commissioner shall take any action as above
12 set forth, he shall give written notice to the company stating
13 specifically the nature of the proposed action and within thirty
14 (30) days from the date of mailing of such notice to the
15 company, such company may make written application to the
16 Insurance Commissioner for a hearing thereon, and such hearing
17 shall be held within thirty (30) days after receipt of such
18 application.

19 Section 4. Section 319.1 of the act, added December 3, 1975
20 (P.L.474, No.139), is amended to read:

21 Section 319.1. Reinsurance Credits.--(a) Unless an
22 unlicensed reinsurer is qualified to accept reinsurance from
23 insurers licensed in this Commonwealth, no credit shall be
24 allowed as an admitted asset or as a reduction of liability
25 relative to risks ceded by such licensed insurers. Qualified
26 reinsurers are those meeting the conditions for reinsurers
27 specified by the commissioner, in his discretion, and included
28 on a list of qualified reinsurers published and periodically
29 reviewed by said commissioner.

30 (b) A reduction from liability for the reinsurance ceded by

1 a domestic insurer to an assuming insurer which is not a
2 qualified reinsurer in accordance with this section shall be
3 allowed in an amount not exceeding the liabilities carried by
4 the ceding insurer and such reduction shall be in the amount of
5 funds held by or on behalf of the ceding insurer, including
6 funds held in trust for the ceding insurer, under a reinsurance
7 contract with such assuming insurer as security for the payment
8 of obligations thereunder, if such security is held in the
9 United States subject to withdrawal solely by, and under the
10 exclusive control of, the ceding insurer; or, in the case of a
11 trust, held in a qualified United States financial institution,
12 as defined in subsection (g)(2). This security may be in the
13 form of:

14 (1) Cash.

15 (2) Securities listed by a securities valuation office of a
16 national association of insurance commissioners, or any
17 successor thereto, and qualifying as admitted assets.

18 (3) (i) Clean, irrevocable, unconditional letters of credit
19 issued or confirmed by a qualified United States financial
20 institution, as defined in subsection (g)(1), no later than the
21 thirty-first day of December in respect of the year for which
22 filing is being made, and in the possession of the ceding
23 company on or before the filing date of its annual statement.

24 (ii) Letters of credit meeting applicable standards of
25 issuer acceptability as of the dates of their issuance or
26 confirmation shall, notwithstanding the issuing or confirming
27 institution's subsequent failure to meet applicable standards of
28 issuer acceptability, continue to be acceptable as security
29 until their expiration, extension, renewal, modification or
30 amendment, whichever first occurs.

1 (4) Any other form of security acceptable to the Insurance
2 Commissioner.

3 ~~[(a) Reserve Credit for Liability Assumed.--]~~ (c) No credit
4 shall be allowed as an admitted asset or as a deduction from
5 liability, to any ceding company for reinsurance unless the
6 reinsurance is payable to such company or its statutory
7 liquidator by the assuming company on the basis of the liability
8 of the ceding company under contract or contracts reinsured
9 without diminution because of insolvency of the ceding company.

10 ~~[(b) Payment by the Assuming Company.--]~~ (d) No such credit
11 shall be allowed for reinsurance unless the reinsurance
12 agreement provides that payment by the company shall be made
13 directly to the ceding company or to its liquidator, receiver,
14 or statutory successor.

15 (e) No credit shall be allowed as an admitted asset or as a
16 reduction in liability if the gross reserves established by the
17 ceding insurer do not include provision for the policy benefits
18 against which the ceding insurer is being indemnified by the
19 reinsurer.

20 (f) The Insurance Department may promulgate one or more
21 regulations to limit or prohibit the credit which a domestic
22 insurer may take as an admitted asset or as a reduction in
23 liability with respect to reinsurance ceded on any financial
24 statements filed with the Insurance Department.

25 (g) (1) The term "qualified United States financial
26 institution" when used in this section means an institution
27 which meets the following qualifications:

28 (i) Is organized or, in the case of a United States office
29 of a foreign banking organization, licensed, under the laws of
30 the United States or any state thereof.

1 (ii) Is regulated, supervised and examined by United States
2 Federal or state authorities having regulatory authority over
3 banks and trust companies.

4 (iii) Has been determined by either the Insurance
5 Commissioner or the Securities Valuation Office of the National
6 Association of Insurance Commissioners or a successor thereto to
7 meet such standards of financial condition and standing as are
8 considered necessary and appropriate to regulate the quality of
9 financial institutions whose letters of credit will be
10 acceptable to the Insurance Commissioner.

11 (2) The term "qualified United States financial institution"
12 also means, for the purposes of the provisions of this act
13 specifying those institutions that are eligible to act as a
14 fiduciary of a trust, an institution that meets the following
15 qualifications:

16 (i) Is organized or, in the case of a United States branch
17 or agency office of a foreign banking organization, licensed,
18 under the laws of the United States or any state thereof and has
19 been granted authority to operate with fiduciary powers.

20 (ii) Is regulated, supervised and examined by Federal or
21 state authorities having regulatory authority over banks and
22 trust companies.

23 Section 5. Section 320 of the act, amended June 20, 1947
24 (P.L.683, No.295), is amended to read:

25 Section 320. Annual and Other Reports; Penalties.--(a)
26 Every stock and mutual insurance company, association, and
27 exchange, doing business in this Commonwealth, shall annually,
28 on or before the first day of March, file in the office of the
29 Insurance Commissioner and with a national association of
30 insurance commissioners a statement which shall exhibit its

1 financial condition on the thirty-first day of December of the
2 previous year, and its business of that year and shall, within
3 thirty days after requested by the Insurance Commissioner,
4 [render] file with the Insurance Commissioner and with a
5 national association of insurance commissioners such additional
6 statement or statements concerning its affairs and financial
7 condition as the Insurance Commissioner may, in his discretion,
8 require. The Insurance Commissioner shall [furnish to each of
9 the insurance companies, associations, and exchanges blanks, in
10 such form as he may adopt, for their statement] require each
11 insurance company, association, and exchange to report its
12 financial condition on the annual statement convention blanks,
13 in such form as adopted by a national association of insurance
14 commissioners and shall, upon written request, furnish such
15 blanks for their convenience; and [he] may make such changes,
16 from time to time, in the form of the same as shall seem [to
17 him] best adapted to elicit from them a true exhibit of their
18 financial condition.

19 (b) Insurance companies of foreign governments, doing
20 business in this Commonwealth, shall be required to return only
21 the business done in the United States, and the assets held by
22 and for them within the United States for the protection of
23 policyholders therein.

24 (c) In the absence of actual malice, members of a national
25 association of insurance commissioners, its duly authorized
26 committees, subcommittees, and task forces, its delegates and
27 employees, and all others charged with the responsibility of
28 collecting, reviewing, analyzing and disseminating the
29 information developed from the filing of the annual statement
30 convention blanks shall be acting as agents of the Insurance

1 Commissioner under the authority of this act and shall not be
2 subject to civil liability for libel, slander or any other cause
3 of action by virtue of their collection, review, and analysis or
4 dissemination of the data and information collected from the
5 filings required hereunder.

6 (d) All financial analysis ratios and examination synopses
7 concerning insurance companies that are submitted to the
8 Insurance Department by a national association of insurance
9 commissioners' information system are confidential and may not
10 be disclosed by the Insurance Department.

11 (e) (1) Any company, association, or exchange, which
12 neglects to make and file its annual statement, or other
13 statements that may be required, in the form or within the time
14 herein provided shall forfeit a sum not to exceed [one hundred
15 dollars (\$100)] two hundred dollars (\$200) for each day during
16 which such neglect continues, and, upon notice by the
17 commissioner, its authority to do new business shall cease while
18 such default continues.

19 (2) For wilfully making a false annual or other statement
20 required by law, an insurance company, association or exchange,
21 and the persons making oath to or subscribing the same, shall
22 severally be punished by a fine of not less than [five hundred
23 dollars (\$500) nor more than five thousand dollars (\$5,000)] one
24 thousand dollars (\$1,000) nor more than ten thousand dollars
25 (\$10,000). A person who wilfully makes oath to such false
26 statement shall be guilty of perjury.

27 (3) The Insurance Commissioner may suspend, revoke or refuse
28 to renew the certificate of authority of any insurer failing to
29 file its annual statement when due.

30 Section 6. Section 322(d) of the act, amended October 4,

1 1978 (P.L.1009, No.216), is amended to read:

2 Section 322. Amendment of Charter.--* * *

3 (d) A mutual insurance company, other than life or title,
4 shall be permitted to amend its charter to include any or all of
5 the kinds of insurance included in section 202, subdivisions (b)
6 and (c), if its total assets less net liability for losses, for
7 expenses and for unearned premium reserve [for those premiums
8 received on nonassessable policies] are not less than the
9 minimum [premiums] surplus specified in section 206 (e) for the
10 incorporation of new companies, without the necessity of
11 obtaining or of holding any application or of issuing any policy
12 as specified in section 206 (e) for the incorporation of new
13 companies.

14 * * *

15 Section 7. The act is amended by adding a section to read:

16 Section 322.1. Contributions to Surplus.--(a) Any director,
17 officer, person, corporation or other entity may advance to a
18 domestic stock insurance company or mutual life insurance
19 company, in exchange for a surplus note, any sum or sums of
20 money necessary for the purpose of its business or to enable it
21 to comply with any of the requirements of law. If, as a result
22 of such advance, the director, officer, person, corporation or
23 other entity is presumed to secure control, as that term is
24 defined in Article XII of this act, the advance can only be made
25 after the director, officer, person, corporation or other entity
26 provides a filing to the Insurance Commissioner in accordance
27 with the provisions of Article XII of this act.

28 (b) The surplus note and interest thereon shall not be a
29 liability or claim against the company or any of its assets,
30 except as specified in this section. Payments of principal

1 and/or interest can only be made from the unassigned surplus of
2 the insurer and must be subordinated to payment of all other
3 liabilities of the insurer. If unassigned surplus is
4 insufficient and the insurer is unable to make payments of
5 principal and/or interest in a given year, the interest earned
6 for that year will be forfeited and cannot be paid in subsequent
7 years unless the insurer establishes unpaid interest as a
8 liability in each annual and quarterly statement filed with the
9 Insurance Commissioner.

10 (c) No commissions, promotion expenses or finders fees shall
11 be paid in connection with the advance of such money to the
12 company.

13 (d) Such company shall, prior to any transaction, provide
14 the Insurance Commissioner with such evidence as he may, by
15 regulation, prescribe concerning the receipt of any such advance
16 or the making of any payments, whether of principal or interest,
17 on account thereof.

18 Section 8. Sections 337.6 and 337.7 of the act are repealed.

19 Section 9. Sections 404.1, 404.2(10) and (17) and 406(f) of
20 the act, amended or added June 11, 1986 (P.L.226, No.64), are
21 amended to read:

22 Section 404.1. Investment Regulations.--(a) Any domestic
23 company may invest its funds as provided in this act and not
24 otherwise. Notwithstanding the provisions of this act, the
25 Insurance Commissioner may, after notice and hearing, order a
26 domestic company to limit or withdraw from certain investments,
27 or discontinue certain investment practices, to the extent that
28 the commissioner finds that such investments or investment
29 practices endanger the solvency of the company. The investments
30 of a foreign company shall be as permitted by the investment

1 laws of its state of domicile if such laws are substantially
2 similar to that provided by this act.

3 (b) No investment or loan (except loans on life policies) or
4 an investment practice shall be made or engaged in by any
5 domestic company unless the same has been authorized or ratified
6 by the board of directors or by a committee thereof charged with
7 the duty of supervising investments and loans. No such company
8 shall subscribe to or participate in any underwriting of the
9 purchase or sale of securities or property or enter into any
10 agreement to withhold from sale any of its property, but the
11 disposition of its property shall be at all times within the
12 control of the board of directors. Any agreement or contract
13 providing for the lawful disposition of property, wherein such
14 disposition may be determined at the option of a third person at
15 some specified future price or condition or specified time or
16 upon demand, shall be construed to be within the control of the
17 board of directors. Nothing contained in this section shall
18 prevent the board of directors of any such company from
19 depositing any of its securities with a committee appointed for
20 the purpose of protecting the interest of security holders or
21 with authorities of any state or country where it is necessary
22 to do so in order to secure permission to transact its
23 appropriate business therein; and nothing contained in this
24 section shall prevent the board of directors of such company
25 from depositing securities as collateral for the securing of any
26 bond required for the business of the company.

27 (c) Any domestic company subject to the provisions of this
28 act is required to have a formal investment plan which shall be
29 updated on an annual basis as authorized by the board of
30 directors. The investment plan shall include, at a minimum, a

1 description of the investment strategy of the company designed
2 to provide for liquidity and diversity of the investment
3 portfolio. The investment plan, and such other information as
4 the Insurance Department may require in order to determine the
5 impact of the investment plan on the solvency of the company,
6 shall be made available to the Insurance Department during the
7 course of a financial condition examination conducted in
8 accordance with the laws pertaining to the conduct of
9 examinations.

10 Section 404.2. Investment.--Subject to the provisions of
11 sections 405.2 and 406.1, the assets of any life insurance
12 company organized under the laws of this Commonwealth shall be
13 invested in the following classes of investment, provided the
14 value of which, as determined for annual statement purposes, but
15 in no event in excess of cost, shall not exceed the specified
16 percentage of such company's assets as of the thirty-first day
17 of December next preceding the date of investment:

18 * * *

19 (10) Equity interests:

20 (i) Investments (other than investments provided for in
21 section 406, clauses (11) and (13) of this section 404.2 and
22 investments in subsidiaries as provided for in section 405.2(c))
23 in common stocks, limited partnership interests, trust
24 certificates (except equipment trust certificates described in
25 clause (5)) or other equity interests (other than preferred
26 stocks) of corporations, joint-stock associations, business
27 trusts, business partnerships and business joint ventures
28 incorporated, organized or existing under the laws of the United
29 States, or of any state, district or territory thereof.

30 (ii) Stocks or shares of any regulated investment company

1 which is registered as an investment company under the Federal
2 Investment Company Act of 1940 (54 Stat 789, 15 U.S.C. §§ 80a-1
3 to 80a-52, 107), as, from time to time, amended, and which has
4 no preferred stock, bonds, loans or any other outstanding
5 securities having preference or priority as to the assets or
6 earnings over its common stock at the date of purchase.

7 (iii) Investments under this clause shall not exceed twenty-
8 five per centum (25%) of such company's admitted assets, and no
9 investment in any single corporation or entity contemplated by
10 this clause shall exceed five per centum (5%) of such company's
11 admitted assets.

12 (iv) Limited partnership interests under this clause shall
13 not exceed ten per centum (10%) of the company's admitted assets
14 in the aggregate. A company may not invest more than ten per
15 centum (10%) of its capital and surplus in any one such limited
16 partnership.

17 * * *

18 (17) (i) Investments shall be valued in accordance with the
19 published valuation standards of [the National Association of
20 Insurance Commissioners.] a national association of insurance
21 commissioners. Securities investments as to which [the National
22 Association of Insurance Commissioners] a national association
23 of insurance commissioners has not published valuation standards
24 in its valuation of securities manual or its successor
25 publication shall be valued as follows:

26 (A) Any investment by any insurer that is not valued by
27 [Standards] standards published by [the National Association of
28 Insurance Commissioners] a national association of insurance
29 commissioners shall, at the time of acquisition, be submitted to
30 [the National Association of Insurance Commissioners] a national

1 association of insurance commissioners for evaluation.

2 (B) Other securities investments shall be valued in
3 accordance with regulations promulgated by the Insurance
4 Commissioner pursuant to subclause (iv) of this clause.

5 (ii) Other investments, including real property, shall be
6 valued in accordance with regulations promulgated by the
7 Insurance Commissioner pursuant to subclause (iv) of this
8 clause, but in no event shall such other investments be valued
9 at more than their purchase price. Purchase price for real
10 property includes capitalized permanent improvements, less
11 depreciation spread evenly over the life of the property or, at
12 the option of the company, less depreciation computed on any
13 basis permitted under the Internal Revenue Code of 1954 (68A
14 Stat. 3, 26 U.S.C. § 1 et seq.) and regulations thereunder. Such
15 investments that have been affected by [permanent declines] an
16 impairment, other than a temporary decline, in value shall be
17 valued at not more than their market value.

18 (iii) Any investment, including real property, not purchased
19 by a company but acquired in satisfaction of a debt or
20 otherwise, shall be valued in accordance with the [applicable
21 procedures for that type of investment contained in this
22 section. For purposes of applying the valuation procedures, the
23 purchase price shall be deemed to be the market value at the
24 time the investment is acquired or, in the case of any
25 investment acquired in satisfaction of debt, the amount of the
26 debt (including interest, taxes and expenses), whichever amount
27 is less.] accounting procedures and practices developed by a
28 national association of insurance commissioners as required by
29 the law relating to the filing of annual financial statement
30 blanks.

1 (iv) The Insurance Commissioner may promulgate rules and
2 regulations for determining and calculating values to be used in
3 financial statements submitted to the Insurance Department for
4 investments not subject [published National Association of
5 Insurance Commissioners'] to valuation standards published by a
6 national association of insurance commissioners.

7 Section 406. Real Estate Which May Be Purchased, Held or
8 Conveyed.--Subject to the provisions of section four hundred
9 six, point one, it shall be lawful for any life insurance
10 company, organized under the laws of this Commonwealth, directly
11 or indirectly, alone or together with one or more persons or
12 entities, to purchase, receive, hold and convey, real estate or
13 any interest therein:

14 * * *

15 (f) Purchased, leased or owned for residential, business,
16 commercial or industrial use, or for development, improvement,
17 maintenance or construction and maintenance. [Provided that
18 investments] The aggregate cost of investments in unimproved
19 real estate under this subsection (f) shall not, however, exceed
20 the lesser of ten per centum (10%) of the company's admitted
21 assets or forty-five per centum (45%) of its capital and
22 surplus. Investments under this subsection (f), including
23 investments in limited partnership interests or other entities
24 where said entities are engaged primarily in holding real estate
25 or interests therein under this subsection and corporations
26 which are engaged primarily in holding real estate or interests
27 therein as defined in this subsection and the majority of whose
28 voting securities are owned directly or indirectly through one
29 or more intermediaries, shall not exceed twenty-five per centum
30 (25%) of such company's admitted assets.

1 Section 10. Section 419 of the act, amended July 28, 1959
2 (P.L.580, No.189), is amended to read:

3 Section 419. Certain Companies Heretofore Organized May Come
4 within Provisions of Act.--Every company incorporated or
5 reincorporated under the act of April twenty-eighth, one
6 thousand nine hundred and three (Pamphlet Laws, three hundred
7 twenty-nine), entitled "An act to provide for the incorporation
8 and regulation of corporations for the purpose of making
9 insurance upon the health of individuals, and against personal
10 injury and disablement and death therein; limiting the amount
11 for which such corporations may issue policies, and providing
12 the manner in which certain existing corporations may become
13 reincorporated under this act," or under the act of April
14 twentieth, one thousand nine hundred twenty-seven (Pamphlet
15 Laws, three hundred seventeen), entitled "An act authorizing
16 certain existing beneficial or protective societies, heretofore
17 incorporated, to reincorporate for the purpose of making
18 insurance upon the health of individuals and against personal
19 injury and disablement and death; regulating such corporations
20 and limiting the amount for which corporations may issue
21 policies; and imposing a tax on gross premiums of companies
22 reincorporated under the provisions of this act," or under the
23 act of June twenty-fourth, one thousand nine hundred thirty-nine
24 (Pamphlet Laws, six hundred eighty-six), entitled "An act
25 authorizing certain existing beneficial or protective societies,
26 heretofore incorporated, to reincorporate as limited life
27 insurance companies for the purpose of making insurance upon the
28 health of individuals and against personal injury and
29 disablement and death; regulating such corporations and limiting
30 the amount for which such corporations may issue policies," or

1 under any subsequent act, authorizing certain existing
2 incorporated beneficial or protective societies to
3 reincorporate, or to merge and reincorporate as limited life
4 insurance companies, or under the act of July 15, 1957 (P.L.
5 929), entitled "An act authorizing the incorporation of limited
6 life insurance companies for the purpose of issuing insurance
7 upon the health of individuals and against personal injury and
8 disablement and death, including endowment insurance; regulating
9 such companies and limiting the amounts for which such companies
10 may issue policies," [having in the case of a stock company a
11 capital of not less than three hundred thousand dollars
12 (\$300,000), and a surplus at least equal to fifty per centum of
13 the capital, or having, in the case of a mutual company,
14 insurance in force in an aggregate amount of not less than one
15 million dollars (\$1,000,000), on not less than four hundred
16 persons and a surplus of not less than two hundred thousand
17 dollars (\$200,000),] may, notwithstanding any limitation to the
18 contrary, established by any act of Assembly or by the
19 provisions of its charter, issue policies insuring the lives of
20 persons, and every insurance appertaining thereto, may grant and
21 dispose of annuities, and may insure against personal injury,
22 disablement or death resulting from traveling or general
23 accidents, and against disablement resulting from sickness, and
24 every insurance appertaining thereto, as specified in
25 subdivision (a) [clause one (1)] clauses one (1) and two (2) of
26 section two hundred and two (202) of this act[.], if such
27 company has and maintains the capital and surplus required of
28 stock and mutual insurers under sections 206 and 206.2 of this
29 act.

30 Section 11. Section 516 of the act is amended to read:

1 Section 516. Capital of Foreign Companies.--Stock fire,
2 stock marine, and stock fire and marine insurance companies, of
3 other States and foreign governments, to be licensed to do, in
4 this Commonwealth, any one of the classes of business mentioned
5 in section two hundred and two (202), subdivision (b) of this
6 act, must have a paid up and safely invested capital and
7 surplus, if a company of any other State, or a deposit in the
8 United States, if a company of a foreign government, of not less
9 than [two hundred thousand dollars (\$200,000); and, if to do all
10 of the classes of business mentioned in section two hundred and
11 two (202), subdivision (b) of this act, a paid up capital or
12 deposit of not less than four hundred thousand dollars
13 (\$400,000)] that required of domestic insurers to be authorized
14 to transact the class or classes of business.

15 Section 12. Sections 518B, 518C(a)(7), 518D(b) and (c) and
16 519(e) of the act, amended or added December 22, 1989 (P.L.755,
17 No.106), are amended to read:

18 Section 518B. Investment Regulations.--(a) Any domestic
19 company may invest its funds in sound investments as provided in
20 this act and not otherwise. Notwithstanding the provisions of
21 this act, the Insurance Commissioner may, after notice and
22 hearing, order a domestic company to limit or withdraw from
23 certain investments, or discontinue certain investment
24 practices, to the extent that the Insurance Commissioner finds
25 that such investments or investment practices are unsound or may
26 endanger the solvency of the company. The investments of a
27 foreign company shall be as permitted by the investment laws of
28 its state of domicile if such laws are substantially similar to
29 that provided by this act. No investment or loan or an
30 investment practice shall be made or engaged in by any domestic

1 company unless the same has been authorized or ratified by the
2 board of directors or by a committee thereof charged with the
3 duty of supervising investments and loans. No such company shall
4 subscribe to or participate in any underwriting of the purchase
5 or sale of securities or property or enter into any agreement to
6 withhold from sale any of its property, but the disposition of
7 its property shall be at all times within the control of the
8 board of directors. Any agreement or contract providing for the
9 lawful disposition of property wherein such disposition may be
10 determined at the option of a third person at some specified
11 future price or condition or specified time or upon demand shall
12 be construed to be within the control of the board of directors.
13 Nothing contained in this section shall prevent the board of
14 directors of any such company from depositing any of its
15 securities with a committee appointed for the purpose of
16 protecting the interest of security holders or with authorities
17 of any state or country where it is necessary to do so in order
18 to secure permission to transact its appropriate business
19 therein; and nothing contained in this section shall prevent the
20 board of directors of such company from depositing securities as
21 collateral for the securing of any bond required for the
22 business of the company.

23 (b) Any domestic company subject to the provisions of this
24 act is required to have a formal investment plan which shall be
25 updated on an annual basis as authorized by the board of
26 directors. The investment plan shall include, at a minimum, a
27 description of the investment strategy of the company designed
28 to provide for liquidity and diversity of the investment
29 portfolio. The investment plan, and such other information as
30 the Insurance Department may require in order to determine the

1 impact of the investment plan on the solvency of the company,
2 shall be made available to the Insurance Department during the
3 course of a financial condition examination conducted in
4 accordance with the laws pertaining to the conduct of
5 examinations.

6 Section 518C. Eligible Investments.--(a) Every domestic
7 stock fire, stock marine or stock fire and marine insurance
8 company shall invest and keep invested all its funds in sound
9 investments enumerated below, except such cash as may be
10 required in the transaction of its business. Such investments
11 shall include:

12 * * *

13 (7) Tangible personal property or fixtures or interest
14 therein, however evidenced, as an investment for the production
15 of income. Investments under this subsection shall not exceed
16 fifteen per centum (15%) of the company's admitted assets.

17 * * *

18 Section 518D. Valuation of Investments.--* * *

19 (b) Other investments, including real property, shall be
20 valued in accordance with regulations promulgated by the
21 Insurance Commissioner pursuant to subsection (d) of this
22 section, but in no event shall such other investments be valued
23 at more than their purchase price. Purchase price for real
24 property includes capitalized permanent improvements, less
25 depreciation spread evenly over the life of the property or, at
26 the option of the company, less depreciation computed on any
27 basis permitted under the United States Internal Revenue Code of
28 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.) and regulations
29 thereunder. Such investments that have been affected by
30 [permanent declines] an impairment, other than a temporary

1 decline, in value shall be valued at not more than their market
2 value.

3 (c) Any investment, including real property, not purchased
4 by a company but acquired in satisfaction of a debt or otherwise
5 shall be valued in accordance with the [applicable procedures
6 for that type of investment contained in this section. For
7 purposes of applying the valuation procedures, the purchase
8 price shall be deemed to be the market value at the time the
9 investment is acquired or in the case of any investment acquired
10 in satisfaction of debt, the amount of the debt, including
11 interest, taxes and expenses, whichever amount is less.]
12 accounting procedures and practices developed by a national
13 association of insurance commissioners as required by the law
14 relating to the filing of annual financial statement blanks.

15 * * *

16 Section 519. Real Estate Which May Be Acquired, Held, and
17 Conveyed.--A domestic stock fire, stock marine, or stock fire
18 and marine insurance company may, directly or indirectly, alone
19 or in combination with one or more other persons or entities
20 (except that no domestic stock fire, stock marine, or stock fire
21 and marine insurance company may participate in a general
22 partnership), acquire by purchase, lease or otherwise or
23 receive, hold, or convey real estate, or any interest therein:

24 * * *

25 (e) As an investment for the production of income or capital
26 appreciation, or so acquired for development, improvement,
27 maintenance or construction and maintenance for such investment
28 purposes. Provided that the aggregate cost of investments in
29 unimproved real estate under this clause (e) shall not exceed
30 the lesser of ten per centum (10%) of the company's admitted

1 assets or forty-five per centum (45%) of its capital and
2 surplus.

3 Section 13. The act is amended by adding a section to read:

4 Section 519.1. Additional Investment Authority for
5 Subsidiaries.--(a) As used in this section the following words
6 and phrases shall have the meanings given to them in this
7 subsection:

8 "Insurance company" or "insurer" includes any company,
9 association or exchange authorized to conduct an insurance
10 business in the jurisdiction of its domicile.

11 "Owner" or "holder" of securities of a specified person is
12 one who owns any security of such person, including common
13 stock, preferred stock, debt obligations and any other security
14 convertible into or evidencing the right to acquire any of the
15 foregoing.

16 "Person" is an individual, corporation, partnership,
17 association, joint-stock company, business trust, unincorporated
18 organization, any similar entity or any combination of the
19 foregoing acting in concert.

20 "Subsidiary" shall mean only a corporation in which another
21 person owns or holds, with the power to vote directly or through
22 one or more intermediaries, a majority of the outstanding voting
23 securities. A person whose business consists primarily of real
24 property and interests therein shall not be deemed a subsidiary
25 for the purposes of determining the volume limitations set forth
26 in clause (1) of subsection (c) of this section. A person which
27 is controlled by another person solely as a result of the
28 temporary assumption of control by the owner of securities upon
29 the happening of a prescribed event of default shall not be
30 deemed a subsidiary or affiliate for purposes of this section.

1 if such securities are disposed of within five (5) years from
2 the date of acquisition, unless such period is extended by the
3 Insurance Commissioner to enable the owner to dispose of such
4 securities in a reasonable and orderly manner.

5 "Voting security" means stock of any class or any ownership
6 interest having the power to elect the directors, trustees or
7 management of a person, other than securities having such power
8 only by reason of the happening of a contingency.

9 (b) Any domestic stock fire, stock marine or stock fire and
10 marine insurance company, either by itself or in cooperation
11 with one or more persons, may, in addition to any authority to
12 acquire or hold securities in corporations provided for
13 elsewhere in this act, organize or acquire one or more
14 subsidiaries. Such subsidiaries may conduct any kind of business
15 or businesses, and their authority to do so shall not be limited
16 by reason of the fact that they are subsidiaries of a domestic
17 stock fire, stock marine or stock fire and marine insurance
18 company. No domestic stock fire, stock marine or stock fire and
19 marine insurance company shall be deemed to be authorized to
20 participate in or to form a general partnership with any other
21 person.

22 (c) (1) At no time shall a domestic stock fire, stock
23 marine or stock fire and marine insurance company make an
24 investment in any subsidiary which will bring the aggregate
25 value of its investments, as determined for annual statement
26 purposes but not in excess of cost, in all subsidiaries under
27 this subsection to an amount in excess of twenty-five per centum
28 (25%) of its total admitted assets as of the immediately
29 preceding thirty-first day of December. In determining the
30 amount of investments of any domestic stock fire, stock marine

1 or stock fire and marine insurance company in subsidiaries for
2 purposes of this subsection, there shall be included investments
3 made directly by such insurance company and, if such investment
4 is made by another subsidiary, then to the extent that funds for
5 such investments are provided by the insurance company for such
6 purpose.

7 (2) The limitations set forth in clause (1) of this
8 subsection shall not apply to investments in any subsidiary
9 which is:

10 (i) An insurance company.

11 (ii) A holding company to the extent its business consists
12 of the holding of the stock of, or otherwise controlling, its
13 own subsidiaries.

14 (iii) A corporation whose business primarily consists of
15 direct or indirect ownership, operation or management of assets
16 authorized as investments pursuant to sections 518C and 519.

17 (iv) A company engaged in any combination of the activities
18 described in subclauses (i), (ii) and (iii) of this clause.

19 Investments made pursuant to subclause (i) shall not be
20 restricted in amount provided that after such investment, as
21 calculated for annual statement purposes, the insurer's surplus
22 will be reasonable in relation to the insurer's outstanding
23 liabilities and adequate to its financial needs. Investments
24 made pursuant to subclause (ii), or to the extent applicable in
25 this subclause, shall in addition not be subject to any
26 limitations on the amount of a domestic stock fire, stock marine
27 or stock fire and marine insurance company's assets provided for
28 under any other provision of this act and which might otherwise
29 be applicable: Provided, however, That such stock fire, stock
30 marine or stock fire and marine insurance company's investments,

1 to the extent that such stock fire, stock marine or stock fire
2 and marine insurance company provided the funds therefor, in
3 each of the subsidiaries of such holding company shall be
4 subject to the limitations, if any, applicable to such
5 investment as if the holding company's interest in each such
6 subsidiary were instead owned directly by the stock fire, stock
7 marine or stock fire and marine insurance company. Investments
8 made pursuant to subclause (iii), or, to the extent applicable,
9 this subclause, shall be counted in determining the limitations
10 contained in applicable subsections of sections 518C and 519:
11 Provided, however, That the value as calculated for annual
12 statement purposes, but not in excess of the cost thereof, of
13 such investment shall include only funds provided by the
14 insurance company therefor. Investments made in other
15 subsidiaries of such stock fire, stock marine or stock fire and
16 marine insurance company by any subsidiary described in
17 subclauses (i), (ii), (iii) and this subclause or by a person
18 whose business primarily consists of direct or indirect
19 ownership, operation or management of real property and interest
20 therein under section 519 shall be deemed investments made by
21 the insurance company only to the extent the funds for such
22 investment were provided by such insurance company.

23 (d) No restrictions, prohibitions or limitations contained
24 in this act otherwise applicable to investments of domestic
25 stock fire, stock marine or stock fire and marine insurers shall
26 be applicable to investments in common stock, preferred stock,
27 debt obligations or other securities of subsidiaries made
28 pursuant to subsection (c) of this section; nor shall the
29 additional investment authority granted by said subsection (c)
30 have the effect of restricting, prohibiting or limiting the

rights of a domestic stock fire, stock marine or stock fire and
marine insurer to make investments permitted under any other
section of this act.

(e) Whether any investment made pursuant to subsection (c)
of this section meets, at any time thereafter, the applicable
requirements thereof is to be determined when such investment is
made, taking into account the then outstanding principal balance
on all previous investments in debt obligations and the value,
but not in excess of the cost thereof, of all previous
investments in equity securities as calculated for annual
statement purposes. In calculating the amount of such
investments, there shall be included, as determined for annual
statement purposes:

(1) Total net moneys or other consideration expended and
obligations assumed in the acquisition or formation of a
subsidiary, including all organizational expenses and
contributions to capital and surplus of such subsidiary whether
or not represented by the purchase of capital stock or issuance
of other securities.

(2) All amounts expended by the domestic stock fire, stock
marine or stock fire and marine insurance company in acquiring
additional common stock, preferred stock debt obligations, and
other securities and all contributions to the capital or
surplus, or a subsidiary subsequent to its acquisition or
formation.

(f) If a domestic stock fire, stock marine or stock fire and
marine insurer ceases to own, directly or indirectly through one
or more intermediaries, a majority of the voting securities of a
subsidiary held pursuant to subsection (c) of this section, it
shall dispose of any investment therein made pursuant to such

1 subsection within five (5) years from the time of the cessation
2 of control or within such further time as the commissioner may
3 prescribe, unless, at any time after such investment shall have
4 been made, such investment shall have met the requirements for
5 investment under any other section of this act.

6 Section 14. Section 601 of the act is amended to read:

7 Section 601. Financial Requirements of Foreign Companies.--
8 Stock casualty insurance companies of other States and foreign
9 governments, organized to transact any of the classes of
10 insurance mentioned in subdivision (c), section two hundred and
11 two (202) of this act, in order to be licensed to do business in
12 this Commonwealth, must have a paid up and safely invested
13 capital and surplus, if a company of another State, or a deposit
14 in the United States, if a company of a foreign government, of
15 at least the amount required in this act for [Pennsylvania]
16 domestic companies. [Nothing contained in this act shall prevent
17 any foreign stock life insurance company now engaged in the
18 business of accident and sickness or liability insurance, or
19 both, from continuing the same, if the amount of its paid up
20 capital shall be equal to the amount required of a domestic
21 company to transact the business of life insurance, and at least
22 fifty thousand dollars for each of the other classes of
23 insurance undertaken.]

24 Section 15. The act is amended by adding a section to read:

25 Section 755. Investment Plan.--Any title insurance company
26 subject to the provisions of this act is required to have a
27 formal investment plan which shall be updated on an annual basis
28 as authorized by the board of directors. The investment plan
29 shall include, at a minimum, a description of the investment
30 strategy of the company designed to provide for liquidity and

diversity of the investment portfolio. The investment plan, and
such other information as the Insurance Department may require
in order to determine the impact of the investment plan on the
solvency of the company, shall be made available to the
Insurance Department during the course of a financial condition
examination conducted in accordance with the laws pertaining to
the conduct of examinations.

Section 16. Section 1004(d) of the act, amended June 24,
1939 (P.L.683, No.318), is amended to read:

Section 1004. Declaration To Be Filed with Insurance
Commissioner; Contents.--Such subscribers, so contracting among
themselves, shall, through their attorney, file with the
Insurance Commissioner of this Commonwealth a declaration
verified by the oath of such attorney, setting forth:

* * *

(d) A copy of the form of power of attorney, or other
authority of such attorney, under which such insurance is to be
effected or exchanged, and which shall provide that the
liability of the subscribers, exchanging contracts of indemnity,
shall make provision for contingent liability, equal to not less
than one additional annual premium or deposit charged: Provided,
however, That where an exchange has a surplus equal to the
[minimum] capital and surplus required of a stock insurance
company transacting the same kind or kinds of business, its
power of attorney need not provide for such contingent liability
of subscribers, and such exchange, so long as it maintains such
surplus, may issue to its subscribers policies or contracts
without contingent liability.

* * *

Section 17. Article XI of the act is repealed.

1 Section 18. The act is amended by adding articles to read:

2 ARTICLE XI.

3 BROKER CONTROLLED PROPERTY AND CASUALTY INSURERS.

4 Section 1101. Definitions.--As used in this article the
5 following words and phrases shall have the meanings given to
6 them in this section:

7 "Broker." A person, copartnership or corporation, not an
8 officer or agent of the company, association or exchange
9 interested, who or which, for compensation, acts or aids in any
10 manner in obtaining insurance for a person other than himself or
11 itself. An attorney-in-fact authorized by and acting for the
12 subscribers of a reciprocal insurer or inter-insurance exchange
13 under powers of attorney shall not be considered a broker for
14 the purposes of this article.

15 "Commissioner." The Insurance Commissioner of the
16 Commonwealth.

17 "Control" or "controlled." The possession, direct or
18 indirect, of the power to direct or cause the direction of the
19 management and policies of a person, whether through the
20 ownership of voting securities, by contract other than a
21 contract for goods or nonmanagement services or otherwise.
22 Control shall be presumed to exist if any person directly or
23 indirectly, owns, controls, holds with the power to vote or
24 holds proxies representing a majority of the outstanding voting
25 securities of any other person. No person shall be deemed to
26 control another person solely by reason of being an officer or
27 director of such other person. The Insurance Department may
28 determine upon application that any person does not or will not
29 upon the taking of some proposed action control another person.
30 The Insurance Commissioner may prospectively revoke or modify

this determination, after the notice and opportunity to be heard; whenever in his judgment revocation or modification is consistent with this article.

"Department." The Insurance Department of the Commonwealth.

"Independent casualty actuary." A casualty actuary who is a member in good standing of the American Academy of Actuaries and who is not affiliated with, nor an employee, a principal, nor the direct or indirect owner of, or in any way controlled by an insurer or broker.

"Licensed property or casualty insurer" or "insurer." Any person, firm, association or corporation duly licensed to transact a property or casualty insurance business in this Commonwealth and which issues policies covered by the act of November 25, 1970 (P.L.716, No.232), known as "The Pennsylvania Insurance Guaranty Association Act." The following, inter alia, are not deemed to be licensed property or casualty insurers for the purposes of this article:

(1) All nonadmitted insurers.

(2) All risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613) and Article XIII of this act.

(3) All residual market pools and joint underwriting authorities or associations.

(4) All captive insurers, which shall include, but not be limited to, insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.

1 "Reinsurance intermediary." Any person, firm, association or
2 corporation which acts as a broker in soliciting, negotiating or
3 procuring the making of any reinsurance contract or binder on
4 behalf of a ceding insurer, or acts as a broker in accepting any
5 reinsurance contract or binder on behalf of an assuming insurer.

6 "Violation." A finding by the Insurance Department of any
7 one or more of the following:

8 (1) The controlling broker did not materially comply with
9 section 1102.

10 (2) The controlled insurer, with respect to business placed
11 by the controlling broker, engaged in a pattern of charging
12 premiums that were lower than those being charged by such
13 insurer or other insurers for similar risks written during the
14 same period and placed by noncontrolling brokers. When
15 determining whether premiums were lower than those prevailing in
16 the market, the Insurance Department shall take into
17 consideration applicable industry or actuarial standards at the
18 time the business was written.

19 (3) The controlling broker failed to maintain records
20 sufficient:

21 (i) to demonstrate that such broker's dealings with its
22 controlled insurer were fair and equitable and in compliance
23 with the provisions of Article XII; and

24 (ii) to accurately disclose the nature and details of its
25 transactions with the controlled insurer, including such
26 information as is necessary to support the charges or fees to
27 the respective parties.

28 (4) The controlled insurer, with respect to business placed
29 by the controlling broker either failed to establish or deviated
30 from its underwriting procedures.

1 (5) The controlled insurer's capitalization at the time the
2 business was placed by the controlling broker and with respect
3 to such business was not in compliance with criteria established
4 by the Insurance Department or otherwise by the insurance laws
5 or regulations of this Commonwealth.

6 (6) The controlling broker or the controlled insurer failed
7 to substantially comply with the provisions of Article XII and
8 any rules and regulations relative thereto.

9 Section 1102. Limitation on Business Placed with Controlled
10 Insurer.--(a) No broker which has control of a licensed
11 property or casualty insurer may directly or indirectly place
12 business with such insurer in any transaction in which such
13 broker, at the time the business is placed, is acting as such on
14 behalf of the insured for any compensation, commission or other
15 thing of value, unless the requirements of this section are met,
16 including all of the following:

17 (1) There is a written contract between the controlling
18 broker and the insurer which contract has been approved by the
19 board of directors of the insurer.

20 (2) The broker, prior to the effective date of the policy,
21 delivers written notice to the prospective insured disclosing
22 the relationship between that broker and the controlled insurer.
23 This disclosure, signed by the insured, shall be retained in the
24 underwriting file until the filing of the report on the
25 examination covering the period in which the coverage is in
26 effect. If, however, the business is placed through a subbroker
27 who is not a controlling broker, the controlling broker shall
28 retain in its records a signed commitment from the subbroker
29 that the subbroker is aware of the relationship between the
30 insurer and the broker and that the subbroker has or will notify

1 the insured.

2 (3) All funds collected for the account of the insurer by
3 the controlling broker are paid, net of commissions,
4 cancellations and other adjustments, to the insurer no less
5 often than quarterly.

6 (b) In addition to any other required loss reserve
7 certification, the controlled insurer shall annually on the
8 first day of April of each year, file with the department an
9 opinion of an independent casualty actuary reporting loss ratios
10 for each line of business written and attesting to the adequacy
11 of loss reserves established for losses incurred and outstanding
12 as of year-end, including incurred but not reported, on business
13 placed by such broker.

14 (c) The controlled insurer shall annually report to the
15 department the amount of commissions paid to the broker, the
16 percentage such amount represents of the net premiums written
17 and comparable amounts and percentage paid to noncontrolling
18 brokers for placements of the same kinds of insurance.

19 (d) Every controlled insurer shall have an audit committee
20 of the board of directors composed of several directors. Prior
21 to approval of the annual financial statement, the audit
22 committee shall meet with management, the insurer's independent
23 certified public accountants, and an independent casualty
24 actuary to review the adequacy of the insurer's loss reserves.

25 (e) No reinsurance intermediary which has control of an
26 assuming insurer may directly or indirectly place business with
27 such insurer in any transaction in which such reinsurance
28 intermediary is acting as a broker on behalf of the ceding
29 insurer. No reinsurance intermediary which has control of a
30 ceding insurer may directly or indirectly accept business from

1 such insurer in any transaction in which the reinsurance
2 intermediary is acting as a broker on behalf of the assuming
3 insurer. The prohibitions in this subsection shall not apply to
4 a reinsurance intermediary which makes a full and complete
5 written disclosure to the parties of its relationship with the
6 assuming or ceding insurer prior to completion of the
7 transaction.

8 Section 1103. Liability of Controlling Broker in the Event
9 of Insolvency of Controlled Insurer.--(a) If the department has
10 reason to believe that a controlling broker has committed or is
11 committing an act which could be determined to be a violation,
12 as defined in section 1101, it shall serve upon the controlling
13 broker a statement of the charges and notice of a hearing to be
14 conducted in accordance with 2 Pa.C.S. (relating to
15 administrative law and procedure) at a time not less than thirty
16 (30) days after the service of the notice and at a place fixed
17 in the notice.

18 (b) At this hearing, the department must establish that the
19 controlling broker committed the violation. The controlling
20 broker shall have an opportunity to be heard and to present
21 evidence rebutting the charges and to establish that the
22 insolvency of the controlled insurer arose out of events not
23 attributable to the violation. The decision, determination or
24 order of the department shall be subject to judicial review
25 pursuant to 2 Pa.C.S.

26 (c) Upon a finding that the controlling broker committed a
27 violation and the controlling broker failed to establish that
28 such violation did not substantially contribute to the
29 insolvency, the controlling broker shall reimburse the
30 Pennsylvania Insurance Guaranty Association or Pennsylvania Life

1 and Health Insurance Guaranty Association for all payments made
2 for losses, loss adjustment and administrative expenses on the
3 business placed by such broker in excess of gross earned
4 premiums and investment income earned on premiums and loss
5 reserves for such business.

6 Section 1104. Other Penalties Applicable.--Nothing in this
7 article shall affect the right of the department to impose any
8 other penalties provided for in the insurance laws of this
9 Commonwealth.

10 Section 1105. Rights of Certain Parties not Affected.--
11 Nothing contained in this article is intended to or shall in any
12 manner alter or affect rights of policyholders, claimants,
13 creditors or other third parties.

14 ARTICLE XII.

15 INSURANCE HOLDING COMPANIES.

16 Section 1201. Definitions.--As used in this article the
17 following words and phrases shall have the meanings given to
18 them in this section:

19 "Affiliate." A person that directly or indirectly through
20 one or more intermediaries, controls or is controlled by, or is
21 under common control with, the person specified.

22 "Commissioner." The Insurance Commissioner of the
23 Commonwealth.

24 "Control," "controlling," "controlled by" and "under common
25 control with." The possession, direct or indirect, of the power
26 to direct or cause the direction of the management and policies
27 of a person, whether through the ownership of voting securities,
28 by contract other than a commercial contract for goods or
29 nonmanagement services, or otherwise, unless the power is the
30 result of an official position with or corporate office held by

1 the person. Control shall be presumed to exist if any person,
2 directly or indirectly, owns, controls, holds with the power to
3 vote, or holds proxies representing, ten per centum (10%) or
4 more of the voting securities of any other person. This
5 presumption may be rebutted by a showing that control does not
6 exist in fact. The Insurance Department may determine, after
7 furnishing all persons in interest notice and opportunity to be
8 heard and making specific findings of fact to support such
9 determination, that control exists in fact, notwithstanding the
10 absence of a presumption to that effect.

11 "Department." The Insurance Department of the Commonwealth.

12 "Earned surplus." The portion of the surplus that represents
13 the net earnings, gains or profits, after deduction of all
14 losses, that have not been distributed to the shareholders as
15 dividends, or transferred to stated capital or capital surplus
16 or applied to other purposes permitted by law, but does not
17 include unrealized appreciation of assets.

18 "Insurance holding company system." Two or more affiliated
19 persons, one or more of which is an insurer.

20 "Insurer." Any company, association or exchange authorized
21 by the Insurance Commissioner to transact the business of
22 insurance in this Commonwealth except that the term shall not
23 include:

24 (1) the Commonwealth or any agency or instrumentality
25 thereof;

26 (2) agencies, authorities or instrumentalities of the United
27 States, its possessions and territories, the Commonwealth of
28 Puerto Rico, the District of Columbia or a state or political
29 subdivision;

30 (3) fraternal benefit societies; or

1 (4) nonprofit medical and hospital service associations.

2 "Person." An individual, a corporation, a partnership, an
3 association, a joint stock company, a trust, an unincorporated
4 organization, any similar entity or any combination of the
5 foregoing acting in concert. The term shall not include any
6 joint venture partnership exclusively engaged in owning,
7 managing, leasing or developing real or tangible personal
8 property.

9 "Security holder." One who owns any security of a specified
10 person, including common stock, preferred stock, debt
11 obligations and any other security convertible into or
12 evidencing the right to acquire any of the foregoing.

13 "Subsidiary." An affiliate of a specified person controlled
14 by another person directly or indirectly through one or more
15 intermediaries.

16 "Voting security." Includes any security convertible into or
17 evidencing a right to acquire a voting security.

18 Section 1202. Acquisition of Control of or Merger with
19 Domestic Insurer.--(a) (1) No person other than the issuer
20 shall make a tender offer for or a request or invitation for
21 tenders of, or enter into any agreement to exchange securities
22 or, seek to acquire, or acquire, in the open market or
23 otherwise, any voting security of a domestic insurer if, after
24 the consummation thereof, such person would, directly or
25 indirectly, or by conversion or by exercise of any right to
26 acquire, be in control of such insurer, and no person shall
27 enter into an agreement to merge with or otherwise to acquire
28 control of a domestic insurer or any person controlling a
29 domestic insurer unless, at the time any such offer, request, or
30 invitation is made or any such agreement is entered into, or

prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the department and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the department in the manner hereinafter prescribed.

(2) For purposes of this section, a "domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the department is either directly or through its affiliates primarily engaged in business other than the business of insurance. Such person shall, however, file a preacquisition notification with the department containing the information set forth in section 1203(c)(2) thirty (30) days prior to the proposed effective date of the acquisition. Failure to file is subject to section 1203(e)(3). For purposes of this section, "person" shall not include any securities broker holding, in the usual and customary manner, less than twenty per centum (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(b) The statement to be filed with the department under this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected, hereinafter called "acquiring party," and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

1 (ii) if such person is not an individual, a report of the
2 nature of its business operations during the past five years or
3 for such lesser period as the person and any predecessors
4 thereof shall have been in existence; an informative description
5 of the business intended to be done by the person and the
6 person's subsidiaries; and a list of all individuals who are or
7 who have been selected to become directors or executive officers
8 of the person, or who perform or will perform functions
9 appropriate to those positions. This list shall include for each
10 individual the information required by subparagraph (i).

11 (2) The source, nature and amount of the consideration used
12 or to be used in effecting the merger or other acquisition of
13 control, a description of any transaction wherein funds were or
14 are to be obtained for any such purpose, including any pledge of
15 the insurer's stock, or the stock of any of its subsidiaries or
16 controlling affiliates, and the identity of persons furnishing
17 such consideration, provided, however, that where a source of
18 such consideration is a loan made in the lender's ordinary
19 course of business, the identity of the lender shall remain
20 confidential, if the person filing such statement so requests.

21 (3) Fully audited financial information as to the earnings
22 and financial condition of each acquiring party for the
23 preceding five fiscal years of each such acquiring party, or for
24 such lesser period as such acquiring party and any predecessors
25 thereof shall have been in existence, and similar unaudited
26 information as of a date not earlier than ninety (90) days prior
27 to the filing of the statement.

28 (4) Any plans or proposals which each acquiring party may
29 have to liquidate such insurer, to sell its assets or merge or
30 consolidate it with any person, or to make any other material

1 change in its business or corporate structure or management.

2 (5) The number of shares of any security referred to in
3 subsection (a) which each acquiring party proposes to acquire,
4 and the terms of the offer, request, invitation, agreement or
5 acquisition referred to in subsection (a), and a statement as to
6 the method by which the fairness of the proposal was arrived.

7 (6) The amount of each class of any security referred to in
8 subsection (a) which is beneficially owned or concerning which
9 there is a right to acquire beneficial ownership by each
10 acquiring party.

11 (7) A full description of any contracts, arrangements or
12 understandings with respect to any security referred to in
13 subsection (a) in which any acquiring party is involved,
14 including, but not limited to, transfer of any of the
15 securities, joint ventures, loan or option arrangements, puts or
16 calls, guarantees of loans, guarantees against loss or
17 guarantees of profits, division of losses or profits, or the
18 giving or withholding of proxies. Such description shall
19 identify the persons with whom such contracts, arrangements or
20 understandings have been entered into.

21 (8) A description of the purchase of any security referred
22 to in subsection (a) during the twelve calendar months preceding
23 the filing of the statement, by any acquiring party, including
24 the dates of purchase, names of the purchasers and consideration
25 paid or agreed to be paid therefor.

26 (9) A description of any recommendations to purchase any
27 security referred to in subsection (a) made during the twelve
28 calendar months preceding the filing of the statement, by any
29 acquiring party, or by anyone based upon interviews or at the
30 suggestion of such acquiring party.

1 (10) Copies of all tender offers for, requests, or
2 invitations for tenders of, exchange offers for, and agreements
3 to acquire or exchange any securities referred to in subsection
4 (a) and, if distributed, of additional soliciting material
5 relating thereto.

6 (11) The term of any agreement, contract or understanding
7 made with or proposed to be made with any broker-dealer as to
8 solicitation of securities referred to in subsection (a) for
9 tender and the amount of any fees, commissions or other
10 compensation to be paid to broker-dealers with regard thereto.

11 (12) Such additional information as the department may by
12 rule or regulation prescribe as necessary or appropriate for the
13 protection of policyholders of the insurer or in the public
14 interest.

15 (c) If the person required to file the statement referred to
16 in subsection (a) is a partnership, limited partnership,
17 syndicate or other group, the department may require that the
18 information called for by subsection (b)(1) through (12) shall
19 be given with respect to each partner of such partnership or
20 limited partnership, each member of such syndicate or group and
21 each person who controls such partner or member. If any such
22 partner, member or person is a corporation, or the person
23 required to file the statement referred to in subsection (a) is
24 a corporation, the department may require that the information
25 called for by subsection (b)(1) through (12) shall be given with
26 respect to such corporation, each officer and director of such
27 corporation, and each person who is directly or indirectly the
28 beneficial owner of more than ten per centum (10%) of the
29 outstanding voting securities of such corporation.

30 (d) If any material change occurs in the facts set forth in

the statement filed with the department and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the department and sent to such insurer within two (2) business days after the person learns of such change.

(e) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.), or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(f) (1) The department shall approve any merger or other acquisition of control referred to in subsection (a) unless it finds any of the following:

(i) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein. In applying the competitive standard in this subparagraph:

(A) the informational requirements of section 1203(c)(2) and the standards of section 1203(d)(2) shall apply;

1 (B) the merger or other acquisition shall not be disapproved
2 if the department finds that any of the situations meeting the
3 criteria provided by section 1203(d)(3) exist; and

4 (C) the department may condition the approval of the merger
5 or other acquisition on the removal of the basis of disapproval
6 within a specified period of time.

7 (iii) The financial condition of any acquiring party is such
8 as might jeopardize the financial stability of the insurer or
9 prejudice the interest of its policyholders.

10 (iv) The plans or proposals which the acquiring party has to
11 liquidate the insurer, sell its assets or consolidate or merge
12 it with any person, or to make any other material change in its
13 business or corporate structure or management, are unfair and
14 unreasonable to policyholders of the insurer and not in the
15 public interest.

16 (v) The competence, experience and integrity of those
17 persons who would control the operation of the insurer are such
18 that it would not be in the interest of policyholders of the
19 insurer and of the public to permit the merger or other
20 acquisition of control.

21 (vi) The acquisition is likely to be hazardous or
22 prejudicial to the insurance buying public.

23 (2) If the merger or other acquisition of control is
24 approved, the department shall so notify the person filing the
25 statement and the insurer whose stock is proposed to be
26 acquired, and such a determination is hereafter referred to as
27 an approving determination. Notice shall also be given by the
28 department of any determination which is not an approving
29 determination. If an approving determination is made by the
30 department, and not otherwise, the proposed offer and

1 acquisition may thereafter be made and consummated on the terms
2 and conditions and in the manner described in the statement and
3 subject to such conditions as may be prescribed by the
4 department as hereinafter provided. An approving determination
5 by the department shall be deemed to extend to offers or
6 acquisitions made pursuant thereto within one year following the
7 date of determination. The department may, as a condition of its
8 approving determination, require the inclusion in any offer of
9 provisions requiring the offer to remain open a specified
10 minimum length of time, permitting withdrawal of shares
11 deposited prior to the time the offeror becomes bound to
12 consummate the acquisition, and requiring pro rata acceptance of
13 any shares deposited pursuant to the offer. The department shall
14 hold a hearing before making the determination required by this
15 subsection if, within ten (10) days following the filing with
16 the department of the statement, written request for the holding
17 of such hearing is made either by the person proposing to make
18 the acquisition, by the insurer whose stock is proposed to be
19 acquired, or, if such issuer is not an insurer, by the insurance
20 company controlled by such issuer. Otherwise the department
21 shall determine in its discretion whether such a hearing shall
22 be held. Thirty (30) days' notice of any such hearing shall be
23 given to the person proposing to make the acquisition, to the
24 issuer whose stock is proposed to be acquired and, if such
25 issuer is not an insurer, to the insurance company controlled by
26 such issuer. Notice of any such hearing shall also be given to
27 such other persons, if any, as the department may determine.

28 (3) The department may retain at the acquiring person's
29 expense any attorneys, actuaries, accountants and other experts
30 not otherwise a part of the department's staff as may be

reasonably necessary to assist the department in reviewing the proposed acquisition of control.

(g) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the department by order shall exempt therefrom as:

(1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(2) as otherwise not comprehended within the purposes of this section.

(h) The following shall constitute a violation of this section:

(1) the failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b); or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the department has given its approval thereto.

Section 1203. Acquisitions Involving Insurers not Otherwise Covered.--(a) As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Acquisition." Any agreement, arrangement or activity the consummation of which results in a person acquiring, directly or indirectly, the control of another person and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

"Involved insurer." Includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

1 (b) (1) Except as exempted in paragraph (2), this section
2 applies to any acquisition in which there is a change in control
3 of an insurer authorized to do business in this Commonwealth.

4 (2) This section shall not apply to any of the following:

5 (i) An acquisition subject to approval or disapproval by the
6 department pursuant to section 1202.

7 (ii) A purchase of securities solely for investment purposes
8 so long as such securities are not used by voting or otherwise
9 to cause or attempt to cause the substantial lessening of
10 competition in any insurance market in this Commonwealth. If a
11 purchase of securities results in a presumption of control as
12 described in the definition of "control" in section 1101, it is
13 not solely for investment purposes unless the insurance
14 department of the insurer's state of domicile accepts a
15 disclaimer of control or affirmatively finds that control does
16 not exist and such disclaimer action or affirmative finding is
17 communicated by the domiciliary insurance department to the
18 Insurance Department of the Commonwealth.

19 (iii) The acquisition of a person by another person when
20 both persons are neither directly nor through affiliates
21 primarily engaged in the business of insurance, if
22 preacquisition notification is filed with the department in
23 accordance with subsection (c)(2) thirty (30) days prior to the
24 proposed effective date of the acquisition. However, such
25 preacquisition notification is not required for exclusion from
26 this section if the acquisition would otherwise be excluded from
27 this section by this paragraph.

28 (iv) The acquisition of already affiliated persons.

29 (v) An acquisition if, as an immediate result of the
30 acquisition:

1 (A) in no market would the combined market share of the
2 involved insurers exceed five per centum (5%) of the total
3 market;

4 (B) there would be no increase in any market share; or

5 (C) in no market would:

6 (I) the combined market share of the involved insurers
7 exceeds twelve per centum (12%) of the total market; and

8 (II) the market share increases by more than two per centum
9 (2%) of the total market.

10 For the purpose of this subparagraph, a market means direct
11 written insurance premium in this Commonwealth for a line of
12 business as contained in the annual statement required to be
13 filed by insurers licensed to do business in this Commonwealth.

14 (vi) An acquisition for which a preacquisition notification
15 would be required pursuant to this section due solely to the
16 resulting effect on the ocean marine insurance line of business.

17 (vii) An acquisition of an insurer whose domiciliary
18 insurance department affirmatively finds that such insurer is in
19 failing condition; there is a lack of feasible alternative to
20 improving such condition; the public benefits of improving such
21 insurer's condition through the acquisition exceed the public
22 benefits that would arise from not lessening competition; and
23 such findings are communicated by the domiciliary insurance
24 department to the Insurance Department of the Commonwealth.

25 (3) Sections 1210(b) and (c) and 1212 shall not apply to
26 acquisitions provided for in this subsection.

27 (c) (1) An acquisition covered by subsection (b) may be
28 subject to an order pursuant to subsection (e) unless the
29 acquiring person files a preacquisition notification and the
30 waiting period has expired. The acquired person may file a

preacquisition notification. The department shall give confidential treatment to information submitted under this subsection in the same manner provided in section 1208.

(2) The preacquisition notification shall be in such form and contain such information as prescribed by a national association of insurance commissioners relating to those markets which, under subsection (b)(2)(v), cause the acquisition not to be exempted from the provisions of this section. The department may require such additional material and information as it deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this Commonwealth accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(3) The waiting period required shall begin on the date of receipt by the department of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of such receipt, or termination of the waiting period by the department. Prior to the end of the waiting period, the department on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of such additional information by the department or termination of the waiting period by the department.

(d) (1) The department may enter an order under subsection (e)(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially

1 to lessen competition in any line of insurance in this
2 Commonwealth or tend to create a monopoly therein or if the
3 insurer fails to file adequate information in compliance with
4 subsection (c).

5 (2) In determining whether a proposed acquisition would
6 violate the competitive standard of paragraph (1), the
7 department shall consider the following:

8 (i) Any acquisition covered under subsection (b) involving
9 two or more insurers competing in the same market is prima facie
10 evidence of violation of the competitive standards as follows:

11 (A) if the market is highly concentrated and the involved
12 insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
<u>4%</u>	<u>4% or more</u>
<u>10%</u>	<u>2% or more</u>
<u>15%</u>	<u>1% or more; or</u>

17 (B) if the market is not highly concentrated and the
18 involved insurers possess the following shares of the market:

<u>Insurer A</u>	<u>Insurer B</u>
<u>5%</u>	<u>5% or more</u>
<u>10%</u>	<u>4% or more</u>
<u>15%</u>	<u>3% or more</u>
<u>19%</u>	<u>1% or more.</u>

24 A highly concentrated market is one in which the share of the
25 four largest insurers is seventy-five per centum (75%) or more
26 of the market. Percentages not shown in the tables are
27 interpolated proportionately to the percentages that are shown.
28 If more than two insurers are involved, exceeding the total of
29 the two columns in the table is prima facie evidence of
30 violation of the competitive standard in paragraph (1). For the

purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be insurer A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven per centum (7%) or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) if:

(A) there is a significant trend toward increased concentration in the market;

(B) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(C) another involved insurer's market is two per centum (2%) or more.

(iii) For the purposes of this paragraph:

(A) The term "insurer" includes any company or group of companies under common management, ownership or control.

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the department shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by a national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is

assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this Commonwealth and the relevant geographical market is assumed to be this Commonwealth.

(C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (i) and (ii), the department may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (i) and (ii), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) if:

(i) the acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(ii) the acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

(e) (1) (i) If an acquisition violates the standards of this section, the department may enter an order:

(A) requiring an involved insurer to cease and desist from doing business in this Commonwealth with respect to the line or lines of insurance involved in the violation; or

(B) denying the application of an acquired or acquiring insurer for a license to do business in this Commonwealth.

(ii) Such an order shall be issued in compliance with 2 Pa.C.S. (relating to administrative law and procedure).

(iii) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the department under paragraph (1) and while such order is in effect, may, after notice and hearing and upon order of the department, be subject at the discretion of the department to either or both of the following:

(i) A civil penalty of not more than ten thousand dollars (\$10,000) for every day of violation.

(ii) Suspension or revocation of such person's license.

(3) Any insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with any such filing requirement shall be subject to a civil penalty not to exceed fifty thousand dollars (\$50,000).

Section 1204. Registration of Insurers.--(a) (1) Every insurer which is authorized to do business in this Commonwealth and which is a member of an insurance holding company system shall register with the department, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which

1 are substantially similar to those contained in sections 1204
2 and 1205(a)(1) and (2), (b) and (d). Each registered insurer
3 shall keep current the information required to be disclosed in
4 its registration statement by reporting all material changes or
5 additions within fifteen (15) days after the end of the month in
6 which it learns of each such change or addition.

7 (2) Any insurer which is subject to registration under this
8 section shall register within fifteen (15) days after it becomes
9 subject to registration, and annually thereafter by the thirty-
10 first day of March of each year for the previous calendar year,
11 unless the department for good cause shown extends the time for
12 registration, and then within such extended time. The department
13 may require any insurer authorized to do business in this
14 Commonwealth which is a member of a holding company system, and
15 which is not subject to registration under this section, to
16 furnish a copy of the registration statement, the summary
17 specified in subsection (c) or other information filed by such
18 insurance company with the insurance regulatory authority of its
19 domiciliary jurisdiction.

20 (b) Every insurer subject to registration shall file the
21 registration statement on a form prescribed by a national
22 association of insurance commissioners, which shall contain all
23 of the following current information:

24 (1) The capital structure, general financial condition,
25 ownership and management of the insurer and any person
26 controlling the insurer.

27 (2) The identity and relationship of every member of the
28 insurance holding company system.

29 (3) All of the following agreements in force and
30 transactions currently outstanding or which have occurred during

the last calendar year between such insurer and its affiliates:

(i) Loans and other investments, and the purchase, sale or exchange of securities of an affiliate by the insurer or of the insurer by an affiliate.

(ii) Purchases, sales or exchange of assets.

(iii) Transactions not in the ordinary course of business.

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(v) All management agreements, service contracts and all cost-sharing arrangements.

(vi) Reinsurance agreements.

(vii) Dividends and other distributions to shareholders.

(viii) Consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(5) Any other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the department.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the department by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit,

investments, or guarantees involving one-half of one per centum
(0.5%) or less of an insurer's admitted assets as of the thirty-
first day of December next preceding shall not be deemed
material for purposes of this section.

(e) Subject to section 1205(b), each registered insurer
shall report to the department all dividends and other
distributions to shareholders within fifteen (15) business days
following the declaration thereof.

(f) Any person within an insurance holding company system
subject to registration shall be required to provide complete
and accurate information to an insurer, where such information
is reasonably necessary to enable the insurer to comply with the
provisions of this article.

(g) The department shall terminate the registration of any
insurer which demonstrates that it no longer is a member of an
insurance holding company system.

(h) The department may require or allow two or more
affiliated insurers subject to registration hereunder to file a
consolidated registration statement.

(i) The department may allow an insurer which is authorized
to do business in this Commonwealth and which is part of an
insurance holding company system to register on behalf of any
affiliated insurer which is required to register under
subsection (a) and to file all information and material required
to be filed under this section.

(j) The provisions of this section shall not apply to any
insurer, information or transaction if and to the extent that
the department by rule, regulation or order shall exempt the
same from the provisions of this section.

(k) Any person may file with the department a disclaimer of

1 affiliation with any authorized insurer or such a disclaimer may
2 be filed by such insurer or any member of an insurance holding
3 company system. The disclaimer shall fully disclose all material
4 relationships and bases for affiliation between such person and
5 such insurer as well as the basis for disclaiming such
6 affiliation. After a disclaimer has been filed, the insurer
7 shall be relieved of any duty to register or report under this
8 section which may arise out of the insurer's relationship with
9 such person unless and until the department disallows such a
10 disclaimer. The department shall disallow such a disclaimer only
11 after furnishing all parties in interest with notice and
12 opportunity to be heard and after making specific findings of
13 fact to support such disallowance.

14 (1) The failure to file a registration statement or any
15 summary of the registration statement thereto required by this
16 section within the time specified for such filing shall be a
17 violation of this section.

18 Section 1205. Standards and Management of an Insurer within
19 a Holding Company System.--(a) (1) Transactions within a
20 holding company system to which an insurer subject to
21 registration is a party shall be subject to all of the following
22 standards:

23 (i) The terms shall be fair and reasonable.

24 (ii) Charges or fees for services performed shall be
25 reasonable.

26 (iii) Expenses incurred and payment received shall be
27 allocated to the insurer in conformity with customary insurance
28 accounting practices consistently applied and all cost-sharing
29 or expense allocation arrangements must be formalized in writing
30 and authorized by the board of directors of the domestic

1 insurer.

2 (iv) The books, accounts and records of each party to all
3 such transactions shall be so maintained as to clearly and
4 accurately disclose the nature and details of the transactions,
5 including such accounting information as is necessary to support
6 the reasonableness of the charges or fees to the respective
7 parties.

8 (v) The insurer's surplus as regards policyholders following
9 any dividends or distributions to shareholder affiliates shall
10 be reasonable in relation to the insurer's outstanding
11 liabilities and adequate to its financial needs.

12 (2) The following transactions involving a domestic insurer
13 and any person in its holding company system may not be entered
14 into unless the insurer has notified the department in writing
15 of its intention to enter into such transaction at least thirty
16 (30) days prior thereto, or such shorter period as the
17 department may permit and the department has not disapproved it
18 within such period:

19 (i) Sales, purchases, exchanges, loans or extensions of
20 credit, guarantees or investments, including assets to be
21 received by the domestic insurer as contributions to its
22 surplus, provided such transactions are equal to or exceed:

23 (A) with respect to nonlife insurers, the lesser of five per
24 centum (5%) of the insurer's admitted assets or thirty-five per
25 centum (35%) of surplus as regards policyholders;

26 (B) with respect to life insurers, three per centum (3%) of
27 the insurer's admitted assets, each as of the thirty-first day
28 of December next preceding.

29 (ii) Loans or extensions of credit to any person who is not
30 an affiliate, where the insurer makes such loans or extensions

of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of five per centum (5%) of the insurer's admitted assets or thirty-five per centum (35%) of surplus as regards policyholders;

(B) with respect to life insurers, three per centum (3%) of the insurer's admitted assets, each as of the thirty-first day of December next preceding.

(iii) For domestic insurers which have experienced a decline in policyholder surplus in an amount of ten per centum (10%) or more for two consecutive years and net loss from operations in both those years, reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per centum (5%) of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer. Nothing in this paragraph shall affect or limit the requirements and applicability of section 3 of the act of July 31, 1968 (P.L.941, No.288), entitled "An act providing for reporting to the Insurance Commissioner by domestic insurance companies, associations, or exchanges, of certain conveyances of interests in the assets of such

1 companies, associations, or exchanges."

2 (iv) Any material transactions, specified by regulation,
3 which the department determines may adversely affect the
4 interests of the insurer's policyholders.

5 Nothing in this paragraph shall be deemed to authorize or permit
6 any transactions which, in the case of an insurer not a member
7 of the same holding company system, would be otherwise contrary
8 to law.

9 (3) A domestic insurer may not enter into transactions which
10 are part of a plan or series of like transactions with persons
11 within the holding company system if the purpose of those
12 separate transactions is to avoid the statutory threshold amount
13 and thus avoid the review that would occur otherwise. If the
14 department determines that such separate transactions were
15 entered into over any twelve-month period for such purpose, it
16 may exercise its authority under section 1211.

17 (4) The department, in reviewing transactions pursuant to
18 paragraph (2), shall consider whether the transactions comply
19 with the standards set forth in paragraph (1) and whether they
20 may adversely affect the interests of policyholders. The
21 department may retain at the insurer's expense any attorneys,
22 actuaries, accountants and other experts not otherwise a part of
23 the department's staff as may be reasonably necessary to assist
24 the department in reviewing the transaction.

25 (5) The department shall be notified within thirty (30) days
26 of any investment of the domestic insurer in any one corporation
27 if the total investment in such corporation by the insurance
28 holding company system exceeds ten per centum (10%) of such
29 corporations' voting securities.

30 (b) (1) No domestic insurer shall pay any extraordinary

dividend to its stockholders without prior approval of the
commissioner.

(2) For purposes of this subsection, an extraordinary
dividend is any dividend or other distribution which, together
with other dividends and distributions made within the preceding
twelve (12) months, exceeds the lesser of:

(i) ten per centum (10%) of such insurer's earned surplus as
regards policyholders as shown on its last annual statement on
file with the commissioner; or

(ii) the net gain from operations after dividends to
policyholders and Federal income taxes and before realized gains
or losses, of such insurer, if such insurer is a life insurer, or
the net investment income earned, excluding net realized capital
gains or losses, if such insurer is not a life insurer, for the
period covered by such statement, but shall not include pro rata
distributions of any class of the insurer's own securities.

(c) (1) Notwithstanding the control of a domestic insurer
by any person, the officers and directors of the insurer shall
not thereby be relieved of any obligation or liability to which
they would otherwise be subject by law, and the insurer shall be
managed so as to assure its separate operating identity
consistent with this article.

(2) Nothing herein shall preclude a domestic insurer from
having or sharing a common management or cooperative or joint
use of personnel, property or services with one or more other
persons under arrangements meeting the standards of subsection
(a)(1).

(3) Not less than one-third of the directors of a domestic
insurer, and not less than one-third of the members of each
committee of the board of directors of any domestic insurer

1 shall be persons who are not officers or employees of such
2 insurer or of any entity controlling, controlled by, or under
3 common control with such insurer and who are not beneficial
4 owners of a controlling interest in the voting stock of such
5 insurer or any such entity. At least one such person must be
6 included in any quorum for the transaction of business at any
7 meeting of the board of directors or any committee thereof.

8 (4) The board of directors of a domestic insurer shall
9 establish one or more committees comprised solely of directors
10 who are not officers or employees of the insurer or of any entity
11 controlling, controlled by, or under common control with the
12 insurer and who are not beneficial owners of a controlling
13 interest in the voting stock of the insurer or any such entity.
14 The committee or committees shall have responsibility for
15 recommending the selection of independent certified public
16 accountants, reviewing the insurer's financial condition, the
17 scope and results of the independent audit and any internal
18 audit, nominating candidates for director for election by
19 shareholders or policyholders, evaluating the performance of
20 officers deemed to be principal officers of the insurer and
21 recommending to the board of directors the selection and
22 compensation of the principal officers.

23 (5) The provisions of paragraphs (3) and (4) shall not apply
24 to a domestic insurer if the person controlling such insurer is
25 an insurer or a publicly held corporation having a board of
26 directors and committees thereof which already meet the
27 requirements of paragraphs (3) and (4).

28 (d) For purposes of this article, in determining whether an
29 insurer's surplus as regards policyholders is reasonable in
30 relation to the insurer's outstanding liabilities and adequate

to its financial needs, the following factors, among others,
shall be considered:

(1) The size of the insurer as measured by its assets,
capital and surplus, reserves, premium writings, insurance in
force and other appropriate criteria.

(2) The extent to which the insurer's business is
diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of
business.

(4) The extent of the geographical dispersion of the
insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance
program.

(6) The quality, diversification and liquidity of the
insurer's investment portfolio.

(7) The recent past and projected future trend in the size
of the insurer's investment portfolio.

(8) The surplus as regards policyholders maintained by other
comparable insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in affiliates.

The department may treat any such investment as a disallowed
asset for purposes of determining the adequacy of surplus as
regards policyholders whenever in its judgment such investment
so warrants.

Section 1206. Regulations to restrict pyramiding.--The
commissioner may adopt regulations designed to prevent an
insurer from pyramiding subsidiaries to a degree that, in the
judgment of the commissioner, would be materially adverse to the
interests of policyholders, subscribers and the people of this

1 Commonwealth.

2 Section 1207. Examination.--(a) Subject to the limitation
3 contained in this section and in addition to the powers which
4 the department has under law relating to the examination of
5 insurers, the department shall also have the power to order any
6 insurer registered under section 1204 to produce such records,
7 books or other information papers in the possession of the
8 insurer or its affiliates as are reasonably necessary to
9 ascertain the financial condition of such insurer or to
10 determine compliance with this article. In the event an insurer
11 fails to comply with such order, the department shall have the
12 power to examine affiliates to obtain this information.

13 (b) The department may retain at the registered insurer's
14 expense such attorneys, actuaries, accountants and other experts
15 not otherwise a part of the department's staff as shall be
16 reasonably necessary to assist in the conduct of the examination
17 under subsection (a). Any persons so retained shall be under the
18 direction and control of the commissioner and shall act in a
19 purely advisory capacity.

20 (c) Each registered insurer producing for examination
21 records, books and papers pursuant to subsection (a) shall be
22 liable for and shall pay the expense of such examination as
23 provided for in Article IX of the act of May 17, 1921 (P.L.789,
24 No.285), known as "The Insurance Department Act of one thousand
25 nine hundred and twenty-one."

26 Section 1208. Confidential Treatment.--All information,
27 documents and copies thereof obtained by or disclosed to the
28 department or any other person in the course of an examination
29 or investigation made pursuant to section 1207 and all
30 information reported pursuant to sections 1204 and 1205 shall be

1 given confidential treatment and shall not be subject to
2 subpoena and shall not be made public by the department or any
3 other person, except to insurance departments of other states,
4 without the prior written consent of the insurer to which it
5 pertains unless the department, after giving the insurer and its
6 affiliates who would be affected thereby, notice and opportunity
7 to be heard, determines that the interest of policyholders,
8 shareholders or the public will be served by the publication
9 thereof, in which event it may publish all or any part thereof
10 in such manner as he may deem appropriate.

11 Section 1209. Rules and Regulations.--The department may, in
12 the manner provided by law, promulgate the rules and
13 regulations, and may issue such orders as are necessary to carry
14 out this article.

15 Section 1210. Injunctions and Certain Prohibitions.--(a)
16 Whenever it appears to the department that any insurer or any
17 director, officer, employe or agent thereof has committed or is
18 about to commit a violation of this article or of any rule,
19 regulation or order issued by the department hereunder, the
20 department may apply to the Commonwealth Court for an order
21 enjoining such insurer or such director, officer, employe or
22 agent thereof from violating or continuing to violate this
23 article or any such rule, regulation or order, and for such
24 other equitable relief as the nature of the case and the
25 interest of the insurer's policyholders, creditors and
26 shareholders or the public may require.

27 (b) No security which is the subject of any agreement or
28 arrangement regarding acquisition, or which is acquired or to be
29 acquired, in contravention of the provisions of this article or
30 of any rule, regulation or order issued by the department

1 hereunder may be voted at any shareholder's meeting, or may be
2 counted for quorum purposes, and any action of shareholders
3 requiring the affirmative vote of a percentage of shares may be
4 taken as though such securities were not issued and outstanding;
5 but no action taken at any such meeting shall be invalidated by
6 the voting of such securities, unless the action would
7 materially affect control of the insurer or unless the courts of
8 this Commonwealth have so ordered. If an insurer or the
9 department has reason to believe that any security of the
10 insurer has been or is about to be acquired in contravention of
11 the provisions of this article or of any rule, regulation or
12 order issued by the department hereunder, the insurer or the
13 department may apply to the Commonwealth Court to enjoin any
14 offer, request, invitation, agreement or acquisition made in
15 contravention of section 1202, or any rule, regulation or order
16 issued by the department thereunder to enjoin the voting of any
17 security so acquired, to void any vote of such security already
18 cast at any meeting of shareholders and for such other equitable
19 relief as the nature of the case and the interest of the
20 insurer's policyholders, creditors and shareholders or the
21 public may require.

22 (c) In any case where a person has acquired or is proposing
23 to acquire any voting securities in violation of this article or
24 any rule, regulation or order issued by the department
25 hereunder, the Commonwealth Court may, on such notice as the
26 court deems appropriate, upon the application of the insurer or
27 the department seize or sequester any voting securities of the
28 insurer owned directly or indirectly by such person, and issue
29 such order with respect thereto as may be appropriate to
30 effectuate the provisions of this article.

1 (d) Notwithstanding any other provisions of law, for the
2 purposes of this article, the situs of the ownership of the
3 securities of domestic insurers shall be deemed to be in this
4 Commonwealth.

5 Section 1211. Sanctions.--(a) Any insurer failing, without
6 just cause, to file any registration statement as required in
7 this article shall be required, after notice and hearing, to pay
8 a penalty not to exceed five hundred (\$500) dollars for each
9 day's delay. The maximum penalty under this section is twenty-
10 five thousand (\$25,000) dollars. The department may reduce the
11 penalty if the insurer demonstrates to the department that the
12 imposition of the penalty would constitute a financial hardship
13 to the insurer.

14 (b) Every director or officer of an insurance holding
15 company system who knowingly violates, participates in, or
16 assents to, or who knowingly shall permit any of the officers or
17 agents of the insurer to engage in transactions or make
18 investments which have not been properly reported or submitted
19 pursuant to section 1204(a) or 1205(a)(2) and (b), or which
20 violate this article shall pay, in their individual capacity, a
21 civil forfeiture of not more than twenty-five thousand (\$25,000)
22 dollars per violation, after notice and hearing before the
23 department. In determining the amount of the civil forfeiture,
24 the department shall take into account the appropriateness of
25 the forfeiture with respect to the gravity of the violation, the
26 history of previous violations, and such other matters as
27 justice may require.

28 (c) Whenever it appears to the department that any insurer
29 subject to this article or any director, officer, employe or
30 agent thereof has engaged in any transaction or entered into a

1 contract which is subject to section 1205 and which would not
2 have been approved had such approval been requested, the
3 department may order the insurer to cease and desist immediately
4 any further activity under the transaction or contract. After
5 notice and hearing the department may also order the insurer to
6 void any such contracts and restore the status quo if such
7 action is in the best interest of the policyholders, creditors
8 or the public.

9 (d) Whenever it appears to the department that any insurer
10 or any director, officer, employe or agent thereof has committed
11 a wilful violation of this article, the department may cause
12 criminal proceedings to be instituted in the common pleas court
13 for the county in which the principal office of the insurer is
14 located or if such insurer has no such office in this State,
15 then in any other court having jurisdiction against such insurer
16 or the responsible director, officer, employe or agent thereof.
17 Any insurer which wilfully violates this article may be fined
18 not more than one hundred thousand (\$100,000) dollars. Any
19 individual who wilfully violates this article may be fined in
20 his individual capacity not more than fifty thousand (\$50,000)
21 dollars or be imprisoned for not more than one to three years,
22 or both.

23 (e) Any officer, director or employe of an insurance holding
24 company system who wilfully and knowingly subscribes to or makes
25 or causes to be made any false statements or false reports or
26 false filings with the intent to deceive the department in the
27 performance of its duties under this article shall, upon
28 conviction, be sentenced to pay a fine of one hundred thousand
29 (\$100,000) dollars or to imprisonment for not more than three
30 years, or both. Any fines imposed shall be paid by the officer,

1 director or employe in his individual capacity.

2 Section 1212. Receivership.--Whenever it appears to the
3 department that any person has committed a violation of this
4 article which so impairs the financial condition of a domestic
5 insurer as to threaten insolvency or make the further
6 transaction of business by it hazardous to its policyholders,
7 creditors, shareholders or the public, the department may
8 proceed, in the manner provided by law, to take possession of
9 the property of such domestic insurer and to conduct the
10 business thereof.

11 Section 1213. Recovery.--(a) If an order for liquidation or
12 rehabilitation of a domestic insurer has been entered, the
13 statutory liquidator appointed under such order shall have a
14 right to recover on behalf of the insurer:

15 (i) from any parent corporation or holding company or person
16 or affiliate who otherwise controlled the insurer, the amount of
17 distributions, other than the distributions of shares of the
18 same class of stock, paid by the insurer on its capital stock;
19 or

20 (ii) any payment in the form of a bonus, termination
21 settlement or extraordinary lump sum salary adjustment made by
22 the insurer or its subsidiaries to a director, officer or
23 employe, where the distribution or payment pursuant to this
24 subsection is made at any time during the one year preceding the
25 petition for liquidation, conservation or rehabilitation, as the
26 case may be, subject to the limitations of subsections (b), (c)
27 and (d).

28 (b) No such distribution shall be recoverable if the parent
29 or affiliate shows that when paid such distribution was lawful
30 and reasonable, and that the insurer did not know and could not

1 reasonably have known that such distribution might adversely
2 affect the ability of the insurer to fulfill its contractual
3 obligations.

4 (c) Any person who was a parent corporation or holding
5 company or a person who otherwise controlled the insurer or
6 affiliate at the time such distributions were paid shall be
7 liable up to the amount of distributions or payments under
8 subsection (a) such person received. Any person who otherwise
9 controlled the insurer at the time such distributions were
10 declared shall be liable up to the amount of distributions he
11 would have received if they had been paid immediately. If two or
12 more persons are liable with respect to the same distributions,
13 they shall be jointly and severally liable.

14 (d) The maximum amount recoverable under this section shall
15 be the amount needed in excess of all other available assets of
16 the impaired or insolvent insurer to pay the contractual
17 obligations of the impaired or insolvent insurer and to
18 reimburse any guaranty funds.

19 (e) To the extent that any person liable under subsection
20 (c) of this section is insolvent or otherwise fails to pay
21 claims due from it pursuant to that subsection, its parent
22 corporation or holding company or person who otherwise
23 controlled it at the time the distribution was paid, shall be
24 jointly and severally liable for any resulting deficiency in the
25 amount recovered from such parent corporation or holding company
26 or person who otherwise controlled it.

27 Section 1214. Revocation, Suspension or Nonrenewal of
28 Insurer's License.--Whenever it appears to the department that
29 any person has committed a violation of this article which makes
30 the continued operation of an insurer contrary to the interests

1 of policyholders or the public, the department may, after giving
2 notice and an opportunity to be heard, determine to suspend,
3 revoke or refuse to renew such insurer's license or authority to
4 do business in this Commonwealth for such period as it finds is
5 required for the protection of policyholders or the public. Any
6 such determination shall be accompanied by specific findings of
7 fact and conclusions of law.

8 ARTICLE XIII

9 RISK RETENTION

10 Section 1301. Statement of Purpose.--The purpose of this
11 article is to regulate the formation and operation of risk
12 retention groups and purchasing groups in this Commonwealth
13 formed pursuant to the Risk Retention Amendments of 1986 (Public
14 Law 99-563, 100 Stat. 3170) to the extent permitted by such law.

15 Section 1302. Definitions.--As used in this article the
16 following words and phrases shall have the meanings given to
17 them in this section:

18 "Actuary." An individual who has demonstrated to the
19 satisfaction of the department that the individual has the
20 educational background necessary for the practice of actuarial
21 science.

22 "Admitted insurer." An insurer with a valid certificate of
23 authority to do insurance business in this Commonwealth.

24 "Commissioner." The Insurance Commissioner of the
25 Commonwealth.

26 "Completed operations liability." Liability arising out of
27 the installation, maintenance or repair of any product at a site
28 which is not owned or controlled by:

29 (1) any person who performs that work; or

30 (2) any person who hires an independent contractor to

1 perform that work;
2 but shall include liability for activities which are completed
3 or abandoned before the date of the occurrence giving rise to
4 the liability.

5 "Department." The Insurance Department of the Commonwealth.

6 "Doing business." Those acts which constitute the doing of
7 insurance business in this Commonwealth as set forth in section
8 208(b) of the act of May 17, 1921 (P.L.789, No.285), known as
9 "The Insurance Department Act of one thousand nine hundred and
10 twenty-one," except that risk retention groups and purchasing
11 groups are not doing business when responding to a request for
12 coverage received directly from a Pennsylvania resident and not
13 as a result of solicitation.

14 "Domicile." For purposes of determining the state in which a
15 purchasing group is domiciled, the term means the following:

16 (1) For a corporation, the state in which the purchasing
17 group is incorporated.

18 (2) For an unincorporated entity, the state of its principal
19 place of business.

20 "Eligible surplus lines insurer." A nonadmitted insurer
21 doing business in this Commonwealth in conformance with Article
22 XIV.

23 "Hazardous financial condition." A condition in which, based
24 on its present or reasonably anticipated financial condition, a
25 risk retention group, although not yet financially impaired or
26 insolvent, is unlikely to be able:

27 (1) to meet obligations to policyholders with respect to
28 known claims and reasonably anticipated claims; or

29 (2) to pay other obligations in the normal course of
30 business.

1 "Insurance." Primary insurance, excess insurance,
2 reinsurance, surplus lines insurance and any other arrangement
3 for shifting and distributing risk which is determined to be
4 insurance under the laws of this Commonwealth.

5 "Liability."

6 (1) The term means legal liability for damages (including
7 costs of defense, legal costs and fees and other claims
8 expenses) because of injuries to other persons, damage to their
9 property, or other damage or loss to such other persons
10 resulting from or arising out of:

11 (i) any business (whether profit or nonprofit), trade,
12 product, services (including professional services), premises or
13 operations; or

14 (ii) any activity of any state or local government, or any
15 agency or political subdivision thereof.

16 (2) The term does not include personal risk liability and an
17 employer's liability with respect to its employees other than
18 legal liability under the Employers' Liability Act (45 U.S.C. §
19 51 et seq.).

20 "Nonadmitted insurer." An insurer that does not have a
21 certificate of authority to do insurance business in this
22 Commonwealth. The term includes insurance exchanges authorized
23 under laws of various states.

24 "Personal risk liability." A liability for damages because
25 of injury to any person, damage to property or other loss or
26 damage resulting from any personal, familial or household
27 responsibilities or activities, rather than from
28 responsibilities or activities referred to in the definition of
29 "liability."

30 "Plan of operation or a feasibility study." An analysis

which presents the expected activities and results of a risk retention group, including, at a minimum, all of the following:

(1) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations.

(2) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates and rating classification systems for each kind of liability insurance the group intends to offer.

(3) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available.

(4) Pro forma financial statements and projections.

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

(6) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements.

(7) The states in which the risk retention group intends to operate or is currently operating.

(8) Such other matters as may be prescribed by the department for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

"Product liability." Liability for damages because of any personal injury, death, emotional harm, consequential economic

1 damage or property damage (including damages resulting from the
2 loss of use of property) arising out of the manufacture, design,
3 importation, distribution, packaging, labeling, lease or sale of
4 a product. The term does not include the liability of any person
5 for these damages if the product involved was in the possession
6 of such a person when the incident giving rise to the claim
7 occurred.

8 "Purchasing group." Any group which:

9 (1) has as one of its purposes the purchase of liability
10 insurance on a group basis;

11 (2) purchases such insurance only for its group members and
12 only to cover their similar or related liability exposure, as
13 described in paragraph (3);

14 (3) is composed of members whose businesses or activities
15 are similar or related with respect to the liability to which
16 members are exposed by virtue of any related, similar or common
17 business, trade, product, services, premises or operations; and

18 (4) is domiciled in any state.

19 "Risk retention group." Any corporation or other limited
20 liability association:

21 (1) whose primary activity consists of assuming and
22 spreading all, or any portion, of the liability exposure of its
23 group members;

24 (2) which is organized for the primary purpose of conducting
25 the activity described under paragraph (1);

26 (3) which:

27 (i) is chartered and licensed as an insurance company to
28 write liability insurance and authorized to engage in the
29 business of insurance under the laws of any state; or

30 (ii) before January 1, 1985, was chartered or licensed and

1 authorized to engage in the business of insurance under the laws
2 of Bermuda or the Cayman Islands and, before such date, had
3 certified to the insurance department of at least one state that
4 it satisfied the capitalization requirements of such state,
5 except that any such group shall be considered to be a risk
6 retention group only if it has been engaged in business
7 continuously since such date and only for the purpose of
8 continuing to provide insurance to cover product liability or
9 completed operations liability, as such terms were defined in
10 the Product Liability Risk Retention Act of 1981 (Public Law 97-
11 45, 95 Stat. 949), before the date of the enactment of the Risk
12 Retention Amendments of 1986 (Public Law 99-563, 100 Stat.
13 3170);

14 (4) which does not exclude any person from membership in the
15 group solely to provide for members of such a group a
16 competitive advantage over such a person;

17 (5) which:

18 (i) has as its owners only persons who comprise the
19 membership of the risk retention group and who are provided
20 insurance by such group; or

21 (ii) has as its sole owner an organization which has as its
22 members only persons who comprise the membership of the risk
23 retention group and which organization has as its owners only
24 persons who comprise the membership of the risk retention group
25 and who are provided insurance by the risk retention group;

26 (6) whose members are engaged in businesses or activities
27 similar or related with respect to the liability of which such
28 members are exposed by virtue of any related, similar or common
29 business trade, product, services, premises or operations;

30 (7) whose activities do not include the provision of

insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group (or any members of such other risk retention group) which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph (6) for membership in the risk retention group which provides such reinsurance; and

(8) the name of which includes the phrase "Risk Retention Group."

"State." Any state of the United States or the District of Columbia.

Section 1303. Risk Retention Groups Chartered in this Commonwealth.--(a) A domestic risk retention group shall, pursuant to this act and the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," be chartered and licensed as a domestic fire or casualty insurance company to write only liability insurance pursuant to this article and, except as provided elsewhere in this article, shall comply with all the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this Commonwealth and with section 1304 to the extent that such requirements are not a limitation of laws, rules, regulations or requirements of this Commonwealth.

(b) Before it may offer insurance in any state, each domestic risk retention group shall also submit for approval to the department a plan of operation or a feasibility study. In the event of any subsequent material change in any item of the

plan of operation or feasibility study, the risk retention group shall submit an appropriate revision within ten (10) days of any such change. The group shall not offer any additional kinds of liability insurance in this Commonwealth or in any other state until a revision of such plan or study is approved by the department.

(c) The provisions of subsection (b), relating to the submission of a plan of operation or feasibility study, shall not apply with respect to any kind or classification of liability insurance which:

(1) was defined in the Product Liability Risk Retention Act of 1981 (Public Law 97-45, 95 Stat. 949), before October 27, 1986; and

(2) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date.

(d) At the time of filing its application for charter, the risk retention group shall provide to the department in summary form the following information:

(1) The identity of the initial members of the group.

(2) The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group.

(3) The amount and nature of initial capitalization.

(4) The coverages to be afforded.

(5) The states in which the group intends to operate.

Section 1304. Risk Retention Groups not Chartered in this Commonwealth.--(a) A risk retention group chartered and licensed in a state other than this Commonwealth and seeking to do business as a risk retention group in this Commonwealth shall

1 comply with the laws of this Commonwealth, as provided in this
2 section.

3 (b) Before doing business in this Commonwealth, a risk
4 retention group shall submit to the department all of the
5 following:

6 (1) A statement identifying the state or states in which the
7 risk retention group is chartered and licensed as an insurance
8 company to write liability insurance, the charter date, its
9 principal place of business and such other information,
10 including information on its membership, as the department may
11 require to verify that the risk retention group is qualified
12 under the definition of "risk retention group" in section 1302.

13 (2) A copy of its plan of operations or a feasibility study
14 and copies of all revisions of such plan or study submitted to
15 the state in which the risk retention group is chartered and
16 licensed, provided that the provision relating to the submission
17 of a plan of operation or a feasibility study shall not apply
18 with respect to any kind or classification of liability
19 insurance which:

20 (i) was defined in the Product Liability Risk Retention Act
21 of 1981 (Public Law 97-45, 95 Stat. 949 et seq.) before October
22 27, 1986; and

23 (ii) was offered before such date by any risk retention
24 group which had been chartered and was operating for not less
25 than three years before such date.

26 (3) A copy of the most recent annual statement as described
27 in subsection (d)(1).

28 (4) (i) A statement of registration for which a filing fee
29 shall be imposed, which statement appoints the department as its
30 agent for the purpose of receiving service of legal documents or

1 process.

2 (ii) The appointment of the department shall be accompanied
3 by written designation of the name and address of the officer,
4 agent or other person to whom such process shall be forwarded by
5 the department or its deputy on behalf of such risk retention
6 group. In the event such designation is changed, a new
7 certificate of designation shall be filed with the department
8 within ten (10) days of such change.

9 (iii) Service of process upon a risk retention group
10 pursuant to this paragraph shall be made by serving the
11 department, or any deputy thereof or any salaried employe of the
12 department whom the department designates for such purpose, with
13 two copies thereof and the payment of a fee to be published by
14 notice in the Pennsylvania Bulletin. The department shall
15 forward a copy of such process by registered or certified mail
16 to the risk retention group at the address given in its written
17 certificate of designation and shall keep a record of all
18 process so served upon him. Service of process so made shall be
19 deemed made within the territorial jurisdiction of any court in
20 this Commonwealth.

21 (c) The risk retention group shall submit a copy of any
22 revision to its plan of operation or feasibility study required
23 by section 1303(b) at the same time that such revision is
24 submitted to the department of its chartering state.

25 (d) Any risk retention group doing business in this
26 Commonwealth shall submit annually to the department, on or
27 before March 1, all of the following:

28 (1) A copy of the group's financial statement submitted to
29 the state in which the risk retention group is chartered and
30 licensed, which shall be certified by an independent public

accountant and shall contain a statement of opinion on loss and loss adjustment expense reserves made by an actuary or a qualified loss reserve specialist.

(2) A copy of the most recent examination of the risk retention group as certified by the department or public official conducting the examination.

(3) Upon request by the department, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group.

(4) Such information as may be required to verify its continuing qualification as a risk retention group, as defined in section 1302.

(e) If a risk retention group is found to be in a hazardous financial condition by any court of competent jurisdiction, the risk retention group shall submit a copy of the court order to the department within ten (10) days of the date of the order.

(f) A risk retention group shall be liable for a fine of two hundred (\$200) dollars per day of delinquency for either of the following:

(1) Failure to file the annual statement as provided by law on the first day of March, except that, for good cause shown, the department may grant, after written request, a reasonable extension of time within which such statement may be filed.

(2) Failure to submit to the department a copy of the order of a court of competent jurisdiction finding the risk retention group to be in a hazardous financial condition or financially impaired within ten (10) days of the date of such order.

(g) (1) Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this Commonwealth

1 and shall report to the department the gross direct premiums,
2 less returns thereon, written for risks resident or located
3 within this Commonwealth. Such risk retention group shall be
4 subject to taxation and any applicable fines and penalties
5 related thereto on the same basis as a foreign admitted insurer,
6 pursuant to section 902 of the act of March 4, 1971 (P.L.6,
7 No.2), known as the "Tax Reform Code of 1971."

8 (2) To the extent that licensed agents, brokers or surplus
9 lines agents with Pennsylvania licenses are utilized pursuant to
10 section 1305, they shall report to the department the premiums
11 for direct business for risks resident or located within this
12 Commonwealth which such licensees have placed with or on behalf
13 of a risk retention group not chartered and licensed in this
14 Commonwealth.

15 (h) Any risk retention group and its agents and
16 representatives shall comply with the act of July 22, 1974
17 (P.L.589, No.205), known as the "Unfair Insurance Practices
18 Act," insofar as its provisions apply to unfair claims practices
19 and deceptive, false or fraudulent practices. However, if the
20 department seeks an injunction regarding such conduct, the
21 injunction must be obtained from a court of competent
22 jurisdiction.

23 (i) Any risk retention group shall submit to an examination
24 by the Insurance Department of the Commonwealth to determine its
25 financial condition if the department of the jurisdiction in
26 which the group is chartered and licensed has not initiated an
27 examination or does not initiate an examination within sixty
28 (60) days after a request by the Insurance Commissioner of the
29 Commonwealth. Any such examination shall be coordinated with
30 other jurisdictions to the extent feasible in order to avoid

unjustified repetition and shall be conducted in an expeditious manner and in accordance with an examination handbook approved by a national association of insurance commissioners.

(j) The terms of any insurance policy issued by such risk retention group shall not provide or be construed to provide insurance policy coverage prohibited generally by state statute or declared unlawful by the highest court of the state whose law applies to such policy.

(k) A risk retention group doing business in this Commonwealth shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance department if there has been a finding of hazardous financial condition or financial impairment after an examination under subsection (i).

(l) Any risk retention groups doing business in this Commonwealth prior to the enactment of this article shall, within thirty (30) days after the effective date of this article, comply with the provisions of this section.

(m) A risk retention group which violates any provision of this article shall be subject to fines and penalties applicable to admitted insurers generally, including revocation of its right to do business in this Commonwealth.

Section 1305. Notice and Prohibited Acts.--(a) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain, in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the

insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(b) The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group.

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that has been found by a court of competent jurisdiction to be in a hazardous financial condition or financially impaired.

(c) No risk retention groups shall be allowed to do business in this Commonwealth if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

Section 1306. Guaranty Funds and Compulsory Associations.--

(a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this Commonwealth, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by such risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not admitted in this Commonwealth or from a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this Commonwealth.

1 (c) When a purchasing group obtains insurance covering its
2 members' risks from an admitted insurer, only covered claims as
3 defined in the act of November 25, 1970 (P.L.716, No.232), known
4 as "The Pennsylvania Insurance Guaranty Association Act," shall
5 be covered by the State guaranty fund.

6 (d) The department may require risk retention groups not
7 chartered in this Commonwealth to participate, and may exempt
8 domestic risk retention groups from participation, in any
9 mechanism established or authorized under the laws of this
10 Commonwealth for the equitable apportionment among insurers of
11 liability insurance losses and expenses incurred on policies
12 written through such mechanism; and such risk retention groups
13 shall submit sufficient information to the department to enable
14 the department to apportion on a nondiscriminatory basis the
15 risk retention group's proportionate share of such losses and
16 expenses.

17 Section 1307. Countersignatures not Required.--A policy of
18 insurance issued by a risk retention group to any member of that
19 group or by an insurer to a purchasing group or any member of a
20 purchasing group shall not be required to be countersigned by an
21 insurance agent or broker residing in this Commonwealth.

22 Section 1308. Exemption.--(a) A purchasing group and its
23 insurer or insurers shall be subject to all applicable laws of
24 this Commonwealth, except that the purchasing group and its
25 insurer or insurers shall be exempt, in regard to liability
26 insurance for the purchasing group, from any law that would do
27 any of the following:

28 (1) Prohibit the establishment of a purchasing group.

29 (2) Make it unlawful for an insurer to provide or offer to
30 provide insurance on a basis providing, to a purchasing group or

its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages or other matters.

(3) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in paragraph (2).

(4) Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) Require that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) Otherwise discriminate against a purchasing group or any of its members.

(b) An insurer shall be exempt from any laws of this Commonwealth which prohibits providing or offering to provide, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages or other matters.

Section 1309. Notice and Registration Requirements.--(a) A purchasing group which intends to do business in this Commonwealth shall, prior to doing such business, furnish notice to the department which notice shall do all of the following:

(1) Identify the state in which the group is domiciled.

(2) Identify the principal place of business of the group.

(3) Identify all other states in which the group intends to do business or is doing business.

1 (4) Specify the kinds and classifications of liability
2 insurance which the purchasing group intends to purchase.

3 (5) Specify the method by which, and the person or persons,
4 if any, through whom, insurance will be offered to its members
5 whose risks are resident or located in this Commonwealth.

6 (6) Identify the names and chartering jurisdictions of the
7 insurance company or companies from which the group intends to
8 purchase its insurance.

9 (7) Confirm that the insurer from which the purchasing group
10 intends to purchase insurance has filed with the department,
11 pursuant to section 354, and all other provisions of insurance
12 laws, rules and regulations governing policy form and rate
13 standards, the rates and forms it intends to use to provide
14 coverage for the risks resident in this Commonwealth.

15 (8) Provide such other information as may be required by the
16 department to verify that the purchasing group is qualified
17 under the definition of "purchasing group" in section 1302.

18 (b) A purchasing group shall notify the department within
19 ten (10) days as to any subsequent changes in any of the items
20 set forth in subsection (a).

21 (c) Each purchasing group which is required to give notice
22 pursuant to subsection (a) shall also furnish such information
23 as may be required by the department to do any of the following:

24 (1) Verify that the entity qualifies as a purchasing group.

25 (2) Determine the location of the purchasing group.

26 (3) Determine appropriate tax treatment.

27 (d) (1) The purchasing group shall submit a statement of
28 registration, for which a filing fee shall be imposed, which
29 designates the department as its agent solely for the purpose of
30 receiving service of legal documents or process.

1 (2) The designation of the department shall be accompanied
2 by written designation of the name and address of the officer,
3 agent or other person to whom such process shall be forwarded by
4 the department or its deputy on behalf of such purchasing group.
5 In the event such designation is changed, a new certificate of
6 designation shall be filed with the department within ten (10)
7 days of such change.

8 (3) Service of process upon a purchasing group pursuant to
9 this subsection shall be made by serving the department, any
10 deputy thereof or any salaried employe of the department whom
11 the department designates for such purpose with two copies
12 thereof and the payment of a fee to be published by notice in
13 the Pennsylvania Bulletin. The department shall forward a copy
14 of such process by registered or certified mail to the
15 purchasing group at the address given in its written certificate
16 of designation, and shall keep a record of all process so served
17 upon him. Service of process so made shall be deemed made within
18 the territorial jurisdiction of any court in this Commonwealth.

19 (4) Such requirements shall not apply in the case of a
20 purchasing group which only purchases insurance that was
21 authorized under the Products Liability Risk Retention Act of
22 1981 (Public Law 97-45, 95 Stat. 949); and

23 (i) which in any state of the United States:

24 (A) was domiciled before April 1, 1986; and

25 (B) is domiciled on and after October 27, 1986; and

26 (ii) which:

27 (A) before October 27, 1986, purchased insurance from an
28 insurance company licensed in any state;

29 (B) since October 27, 1986, purchased its insurance from an
30 insurance company licensed in any state;

1 (C) was a purchasing group under the requirements of the
2 Product Liability Risk Retention Act of 1981 before October 27,
3 1986; and

4 (D) does not purchase insurance that was not authorized for
5 purposes of an exemption under that article, as in effect before
6 October 27, 1986.

7 (e) Any purchasing group which was doing business in this
8 Commonwealth prior to the enactment of this act shall, within
9 thirty (30) days after the effective date of this article,
10 furnish notice to the department pursuant to the provisions of
11 subsection (a) and furnish such information as may be required
12 pursuant to subsections (b), (c) and (d).

13 Section 1310. Restrictions on Insurance Purchased by
14 Purchasing Groups.--(a) A purchasing group may purchase
15 liability insurance for its members who are residents of this
16 Commonwealth only from:

17 (1) a risk retention group chartered and licensed in this
18 Commonwealth;

19 (2) an admitted insurer;

20 (3) a risk retention group not chartered and licensed in
21 this Commonwealth which has complied with section 1303; or

22 (4) an eligible surplus lines insurer if the liability
23 insurance is obtained through surplus lines agents acting
24 pursuant to Article XIV.

25 (b) The terms of any liability insurance policy obtained by
26 a purchasing group shall not provide or be construed to provide
27 insurance coverage prohibited generally by state statute or
28 declared unlawful by the highest court of the state whose law
29 applies to such policy. If the laws of this Commonwealth apply
30 to an insurance policy obtained by a purchasing group, the terms

of that policy shall not provide or be construed to provide insurance coverage prohibited generally by state statute or declared unlawful by the highest court of this Commonwealth which has construed such coverage.

(c) A purchasing group which obtains liability insurance from a nonadmitted insurer that is an eligible surplus lines insurer in this Commonwealth or from a risk retention group shall inform each of the members of such purchasing group which has a risk resident or located in this Commonwealth that such risk is not protected by an insurance insolvency guaranty fund in this Commonwealth, and that such risk retention group or such nonadmitted insurer may not be subject to all insurance laws and regulations of this Commonwealth.

(d) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(e) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

Section 1311. Insurance Company Interest in Purchasing Groups Doing Business in this Commonwealth Prohibited.--No insurer, or director, officer or employee of an insurer, may have any interest in a purchasing group doing business in this Commonwealth. Prohibited interest includes, but is not limited to, soliciting members for the purchasing group, and belonging to the purchasing group as a member, provided that nothing in this section will prohibit a purchasing group composed entirely of insurers, or directors, officers or employees of insurers, if coverage is obtained from a company not related to the group

1 members.

2 Section 1312. Taxation of Premiums Paid by Purchasing
3 Groups.--(a) (1) Premiums paid for coverage obtained from
4 admitted insurers and risk retention groups doing business in
5 this Commonwealth shall be taxed on the same basis as premiums
6 paid to admitted insurers under section 902 of the act of March
7 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

8 (2) Premiums paid for coverage obtained from a nonadmitted
9 insurer in compliance with this article shall be taxed at the
10 rate applicable to premiums paid to surplus lines insurers
11 pursuant to section 1421(a).

12 (b) (1) To the extent that the purchasing group or its
13 members pay premiums for coverage of risks resident or located
14 within this Commonwealth to admitted insurers or risk retention
15 groups doing business in this Commonwealth, the insurer or risk
16 retention group receiving those premiums is responsible for
17 remitting the tax to the Department of Revenue.

18 (2) To the extent that the purchasing group or its members
19 pay premiums for coverage of risks resident or located within
20 this Commonwealth to a nonadmitted insurer, the surplus lines
21 agent who places the business shall collect and remit the taxes
22 for premiums.

23 (3) To the extent a surplus lines agent does not effect
24 coverage, the purchasing group shall collect and remit the tax
25 for coverage of risks resident or located in this Commonwealth.
26 To the extent the purchasing group does not remit the tax, the
27 purchasing group shall inform each member of the responsibility
28 for individual remittance of the tax.

29 Section 1313. Administrative and Procedural Authority
30 Regarding Risk Retention Groups and Purchasing Groups.--The

1 department is authorized to make use of any of the powers
2 established under the insurance laws of this Commonwealth to
3 enforce the laws of this Commonwealth not specifically preempted
4 by the Risk Retention Amendments of 1986 (Public Law 99-563, 100
5 Stat. 3170), including the department's administrative authority
6 to investigate, issue subpoenas, conduct depositions and
7 hearings, issue orders, impose penalties and seek injunctive
8 relief. With regard to any investigation, administrative
9 proceedings or litigation, the department may rely on the
10 procedural laws of this Commonwealth. The injunctive authority
11 of the department in regard to risk retention groups is
12 restricted by the requirement that any injunction be issued by a
13 court of competent jurisdiction.

14 Section 1314. Duty of Agent or Broker to Obtain License.--
15 (a) (1) No person, firm, association or corporation shall act
16 or aid in any manner in soliciting, negotiating or procuring
17 liability insurance in this Commonwealth for a risk retention
18 group unless such person, firm, association or corporation is
19 licensed either as an insurance agent in accordance with section
20 603 of the act of May 17, 1921 (P.L.789, No.285), known as "The
21 Insurance Department Act of one thousand nine hundred and
22 twenty-one," or as an insurance broker in accordance with
23 section 622 of "The Insurance Department Act of one thousand
24 nine hundred and twenty-one."

25 (2) No person, firm, association or corporation shall act or
26 aid in any manner in negotiating or procuring liability
27 insurance in this Commonwealth for a purchasing group or for any
28 of its members from an admitted insurer or a risk retention
29 group unless such person, firm, association or corporation is
30 licensed either as an insurance agent in accordance with section

1 603 of "The Insurance Department Act of one thousand nine
2 hundred and twenty-one," or as an insurance broker in accordance
3 with section 622 of "The Insurance Department Act of one
4 thousand nine hundred and twenty-one."

5 (b) (1) No person, firm, association or corporation shall
6 act or aid in any manner in negotiating or procuring liability
7 insurance from a nonadmitted insurer on behalf of a purchasing
8 group unless such person, firm, association or corporation is
9 licensed as a surplus lines agent in accordance with section
10 1415.

11 (2) Notwithstanding the provisions of section 1415, a
12 nonresident of this Commonwealth who acts in this Commonwealth
13 solely on behalf of a purchasing group in obtaining liability
14 insurance with a nonadmitted insurer is exempt from the
15 requirements of maintaining an office in this Commonwealth in
16 order to obtain a surplus lines agent's license for the limited
17 purpose of effecting coverage for such purchasing group.

18 (c) Every person, firm, association or corporation licensed
19 pursuant to the provisions of this section shall inform each
20 prospective insured of the provisions of the notice required by
21 section 1305(a) in the case of a risk retention group and by
22 section 1310(c) in the case of a purchasing group.

23 (d) This section shall not apply to officers or salaried
24 employees of any risk retention group or purchasing group who do
25 not solicit, negotiate or place risks.

26 Section 1315. Financial Responsibility.--(a) Whenever,
27 pursuant to the laws of this Commonwealth or any local law, a
28 demonstration of financial responsibility is required as a
29 condition for obtaining a license or permit to undertake
30 specified activities, if any such requirement may be satisfied

1 only by obtaining insurance coverage from an admitted insurer or
2 nonadmitted insurer that qualifies as an eligible surplus lines
3 insurer, such requirement may not be satisfied by purchasing
4 insurance from a risk retention group not chartered and licensed
5 in this Commonwealth or through a purchasing group which has
6 purchased coverage from a risk retention group not chartered and
7 licensed in this Commonwealth.

8 (b) Any risk retention group and any insurer who transacts
9 the business of insurance in this Commonwealth with a purchasing
10 group or its members shall not be exempt from the policy form or
11 coverage requirements of 75 Pa.C.S. Ch. 17 (relating to
12 financial responsibility).

13 Section 1316. Order of United States District Court.--An
14 order issued by any district court of the United States
15 enjoining a risk retention group from soliciting or selling
16 insurance, or operating in any state, or in all states or in any
17 territory or possession of the United States, upon a finding
18 that such a group is in a hazardous financial or financially
19 impaired condition shall be enforceable in the courts of this
20 Commonwealth.

21 ARTICLE XIV

22 SURPLUS LINES

23 Section 1401. Purpose.--The purpose of this article is to
24 protect the public interest by:

25 (1) Protecting persons seeking insurance in this
26 Commonwealth.

27 (2) Permitting surplus lines insurance to be placed with
28 reputable and financially sound nonadmitted insurers and
29 exported from this Commonwealth pursuant to this article.

30 (3) Establishing a system of regulation which will permit

orderly access to surplus lines insurance in this Commonwealth
and encouraging insurers to make new and innovative types of
insurance available to consumers in this Commonwealth.

(4) Protecting revenues of this Commonwealth.

Section 1402. Definitions.--As used in this article the
following words and phrases shall have the meanings given to
them in this section:

"Admitted insurer." An insurer licensed to do an insurance
business in this Commonwealth.

"Capital." The term, as used in the financial requirements
of section 1405, means funds paid for stock or other evidence of
ownership.

"Commissioner." The Insurance Commissioner of the
Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Eligible surplus lines insurer." A nonadmitted insurer with
which a surplus lines licensee may place surplus lines insurance
under section 1404.

"Export." To place surplus lines insurance with either a
nonadmitted insurer or an eligible surplus lines insurer in
accordance with this article.

"Independently procured insurance." Any insurance which a
resident of this Commonwealth directly negotiates, purchases,
continues or renews from either a nonadmitted insurer or an
eligible surplus lines insurer without securing the services of
an insurance agent, broker or surplus lines licensee, whether
the agent or broker holds a resident or nonresident license
issued by the department.

"Kind of insurance." One of the types of insurance required
to be reported in the annual statement which must be filed with

1 the department by admitted insurers.

2 "Nonadmitted insurer." An insurer not authorized and not
3 licensed to do an insurance business in this Commonwealth. The
4 term includes insurance exchanges as authorized under the laws
5 of various states.

6 "Producing broker." The broker dealing directly with the
7 party seeking insurance.

8 "Purchasing group." An entity formed to purchase liability
9 insurance under the Risk Retention Amendments of 1986 (Public
10 Law 99-563, 100 Stat. 3170).

11 "Risk retention group." An insurer organized to do business
12 under the Risk Retention Amendments of 1986 (Public Law 99-563,
13 100 Stat. 3170).

14 "Surplus." The term, as used in the financial requirements
15 of section 1405, means funds over and above liabilities and
16 capital of the company for the protection of its policyholders.

17 "Surplus lines insurance." Any insurance of risks resident,
18 located or to be performed in this Commonwealth, permitted to be
19 placed through a surplus lines licensee with a nonadmitted
20 insurer eligible to accept such insurance, other than
21 reinsurance, wet marine and transportation insurance,
22 independently procured insurance, life and health insurance and
23 annuities and coverage obtained from risk retention groups under
24 the Risk Retention Amendments of 1986 (Public Law 99-563, 100
25 Stat. 3170).

26 "Surplus lines licensee." An individual, partnership or
27 corporation licensed under section 1415 to place surplus lines
28 insurance with nonadmitted insurers eligible to accept such
29 insurance.

30 "Wet marine and transportation insurance." Any of the

1 following:

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

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

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

8 (4) Insurance of personal property and interest therein, in
9 the course of exportation from or importation into any country,
10 or in the course of transportation coastwise or on inland
11 waters, including transportation by land, water or air from
12 point of origin to final destination, in connection with any and
13 all risks or periods of navigation, transit or transportation,
14 and while being prepared for and while awaiting shipment, and
15 during any delays, transshipment or reshipment incident thereto.

16 Section 1403. Acting for or Aiding Nonadmitted Insurers.--

17 (a) No person in this Commonwealth shall directly or indirectly
18 act as agent for, or otherwise represent or aid on behalf of
19 another, any nonadmitted insurer in the solicitation,
20 negotiation, procurement or effectuation of insurance, or
21 renewals thereof, or forwarding of applications, or delivery of
22 policies or contracts or inspection of risks, or fixing of
23 rates, or investigation or adjustment of claims or losses, or
24 collection or forwarding of premiums, or in any other manner
25 represent or assist such insurer in the transaction of
26 insurance.

27 (b) If the nonadmitted insurer is not an eligible surplus
28 lines insurer and fails to pay a claim or loss within the
29 provisions of the insurance contract, a person who assisted or
30 in any manner aided, directly or indirectly, in the procurement

1 of the insurance contract shall be liable to the insured for the
2 full amount payable under the provisions of the insurance
3 contract.

4 (c) This section does not apply to any of the following:

5 (1) Surplus lines insurance if it is effected and written
6 pursuant to this article.

7 (2) Insurance effected with a nonadmitted insurer pursuant
8 to sections 1406 and 1410.

9 (3) Transactions for which a certificate of authority to do
10 business is not required of an insurer under the insurance laws
11 of this Commonwealth.

12 (4) Reinsurance.

13 (5) Wet marine and transportation insurance.

14 (6) Transactions subsequent to issuance of a policy not
15 covering domestic risks at time of issuance and lawfully
16 solicited, written or delivered outside of this Commonwealth.

17 (7) Transactions involving risk retention groups chartered
18 and licensed outside of this Commonwealth.

19 Section 1404. Placement of Surplus Lines Insurance.--
20 Insurance may be procured through a surplus lines licensee from
21 nonadmitted insurers if the following requirements are met:

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

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

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

1 (ii) The full amount or kind of insurance cannot be obtained
2 from any admitted insurers because no such insurers are writing
3 that kind of insurance.

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

7 (3) The policy or contract form used by the insurer does not
8 differ materially from policies or contracts customarily used by
9 admitted insurers for the kind of insurance involved. Coverage
10 may be placed in an eligible surplus lines insurer using a
11 unique form or policy designed for the kind of insurance if a
12 copy of such form is filed with the department by the surplus
13 lines licensee desiring to use it simultaneously with the
14 affidavit required by section 1409.

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

16 Section 1405. Requirements for Eligible Surplus Lines
17 Insurers.--(a) No surplus lines licensee shall place any
18 coverage with a nonadmitted insurer unless, at the time of
19 placement, such nonadmitted insurer:

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

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

22 (i) Has policyholder surplus equal to or greater than two
23 times the minimum capital and surplus required to be fully
24 licensed in this Commonwealth. Two years from the effective date
25 of this article is granted to allow those nonadmitted insurers
26 which are eligible surplus lines insurers on the effective date
27 of this article to achieve this capital and surplus requirement.
28 If an alien insurer, as defined by the act of December 10, 1974
29 (P.L.804, No.266), referred to as the Alien Insurer
30 Domestication Law, it shall maintain in the United States an

1 irrevocable trust fund in either a national bank or a member of
2 the Federal Reserve System, in an amount not less than that
3 currently required by a national association of insurance
4 commissioners for the protection of all of its policyholders in
5 the United States, and such trust fund consists of cash,
6 securities, letters of credit or investments of substantially
7 the same character and quality as those which are eligible
8 investments for admitted insurers authorized to write like kinds
9 of insurance in this Commonwealth. Such trust fund will be in
10 addition to the capital and surplus required in this
11 subparagraph and shall have an expiration date which at no time
12 shall be less than five years.

13 (ii) Is any unincorporated group of alien individual
14 insurers that maintains a trust fund of not less than fifty
15 million (\$50,000,000) dollars as security to the full amount
16 thereof for all policyholders and creditors in the United States
17 of each member of the group. Such trust funds shall likewise
18 comply with the terms and conditions established in subparagraph
19 (i) for alien insurers.

20 (iii) Is an insurance exchange created by the laws of
21 individual states that maintains capital and surplus, or the
22 substantial equivalent thereof, of not less than fifteen million
23 (\$15,000,000) dollars in the aggregate. For insurance exchanges
24 which maintain funds for the protection of all insurance
25 exchange policyholders, each individual syndicate shall maintain
26 minimum capital and surplus, or the substantial equivalent
27 thereof, of not less than one million five hundred thousand
28 (\$1,500,000) dollars. In the event the insurance exchange does
29 not maintain funds for the protection of all insurance exchange
30 policyholders, each individual syndicate shall meet the minimum

1 capital and surplus requirements of subparagraph (i).

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

7 (i) certified by the regulatory authority in the domicile of
8 the insurer; or

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

11 In the case of an insurance exchange, the statement may be an
12 aggregate statement of all underwriting syndicates operating
13 during the period reported.

14 (b) In addition to meeting the requirements in subsection
15 (a), a nonadmitted insurer shall be an eligible surplus lines
16 insurer if it appears on the most recent list of eligible
17 surplus lines insurers published by the department from time to
18 time but at least semiannually. Nothing in this section shall
19 require the department to place or maintain the name of any
20 nonadmitted insurer on the list of eligible surplus lines
21 insurers.

22 Section 1406. Other Nonadmitted Insurers.--Only that
23 portion, not to exceed twenty-five per centum (25%), of any risk
24 eligible for export for which the full amount of coverage is not
25 procurable from either admitted insurers or eligible surplus
26 lines insurers may be placed with any other nonadmitted insurer
27 which does not appear on the list of eligible surplus lines
28 insurers published by the department pursuant to section 1405(b)
29 but nonetheless meets the requirements set forth in section
30 1405(a) and any regulations of the department. The surplus lines

1 licensee seeking to provide coverage through a nonadmitted
2 insurer which is not an eligible surplus lines insurer shall
3 make a filing specifying the amount and percentage of each risk
4 along with a full explanation of why the risk could not be
5 placed with admitted or eligible surplus lines insurers and
6 naming the nonadmitted insurer with which placement is intended.
7 At the time of presenting a quotation to the insured, the
8 surplus lines licensee shall present to the insured, or to the
9 producing broker, written notice that a portion of the insurance
10 will be placed with such nonadmitted insurer.

11 Section 1407. Withdrawal of Eligibility from a Surplus Lines
12 Insurer.--If at any time the department has reason to believe
13 that an eligible surplus lines insurer:

14 (1) is in unsound financial condition;
15 (2) is no longer eligible under section 1405;
16 (3) has wilfully violated the laws of this Commonwealth; or
17 (4) does not make reasonably prompt payment of just losses
18 and claims in this Commonwealth or elsewhere;
19 the department may declare it ineligible. The department shall
20 promptly mail notice of all such declarations to each surplus
21 lines licensee and, in the event the department's action is
22 based upon paragraph (4), the notice shall be issued at least
23 thirty (30) days prior to the effective date of the withdrawal
24 of eligibility.

25 Section 1408. Surplus Lines Licensee's Duty to Notify
26 Insured.--At the time of presenting a quotation to the insured,
27 the surplus lines licensee shall present to the insured, or to
28 the producing broker, written notice that the insurance, or a
29 portion thereof, involves placement with nonadmitted insurers.
30 The licensee shall, either directly or through the producing

1 broker, give notice to the insured that:

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

5 (2) in the event of the insolvency of an eligible surplus
6 lines insurer, losses will not be paid by the Pennsylvania
7 Insurance Guaranty Association.

8 Section 1409. Declarations.--(a) In the case of each
9 placement of insurance in accordance with this article:

10 (1) Within thirty (30) days after the surplus lines licensee
11 has placed insurance with an eligible surplus lines insurer, the
12 producing broker must execute and forward to the surplus lines
13 licensee a written statement, in a form prescribed by the
14 department, declaring that:

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

17 (ii) The insured was expressly advised, in writing, prior to
18 placement of the insurance that:

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

22 (B) in the event of the insolvency of the insurer, losses
23 will not be paid by the Pennsylvania Insurance Guaranty
24 Association.

25 This written declaration shall be open to public inspection.

26 (2) Within forty-five (45) days after insurance has been
27 placed in an eligible surplus lines insurer, the surplus lines
28 licensee shall file with the department a written declaration of
29 his lack of knowledge of how the coverage could have been
30 procured from admitted insurers. The surplus lines licensee

1 shall simultaneously file the written declaration of the
2 producing broker, as set forth in paragraph (1).

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

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

14 Section 1410. Exempt Risks.--(a) The diligent search
15 requirements of section 1404(2), the reporting requirements of
16 section 1409(a) and the twenty-five per centum (25%) limitation
17 of section 1406 are not applicable to placements of insurance
18 with nonadmitted insurers for risks of an insured which meets at
19 least three of the following requirements:

20 (1) The insured employs a full-time risk manager or
21 contracts for services from a qualified risk management service.

22 (2) The insured has gross sales in excess of one hundred
23 million (\$100,000,000) dollars.

24 (3) The insured regularly employs in excess of 250 full-time
25 employees.

26 (4) The insured has assets in excess of one hundred million
27 (\$100,000,000) dollars.

28 (5) The insured has insurance premiums for property and
29 casualty insurance, excluding employee benefits, in excess of two
30 hundred fifty thousand (\$250,000) dollars.

1 (6) The insured is seeking insurance for risks resident,
2 located or to be performed in one or more states other than this
3 Commonwealth, and the portion of the total risk ascribable to
4 states other than this Commonwealth exceeds fifty per centum
5 (50%).

6 (b) (1) The diligent search requirement of section 1404(2)
7 and the reporting requirements of section 1409(a) are not
8 applicable to placements of insurance with eligible surplus
9 lines insurers for:

10 (i) Risks of members of a purchasing group established under
11 the Risk Retention Amendments of 1986 (Public Law 99-563, 100
12 Stat. 3170) if all of the insured members of the purchasing
13 group are covered under its group policy or if the members are
14 additional named insureds under the group's policy.

15 (ii) Risks of members of a risk retention group established
16 under the Risk Retention Amendments of 1986.

17 (2) Within forty-five (45) days after insurance has been
18 placed with an eligible surplus lines insurer for members of a
19 purchasing group or risk retention groups by a surplus lines
20 licensee, the licensee shall file with the department his
21 written declaration, reporting the transaction on a form
22 prescribed by the department.

23 Section 1411. Surplus Lines Advisory Organizations.--(a) A
24 surplus lines advisory organization of surplus lines licensees
25 may be formed to:

26 (1) Facilitate and encourage compliance by its members with
27 the laws of this Commonwealth and the rules and regulations of
28 the department relative to surplus lines insurance.

29 (2) Provide means for the examination, which shall remain
30 confidential, of all surplus lines coverages written by its

1 members to determine whether such coverages comply with such
2 laws and regulations.

3 (3) Communicate with organizations of admitted insurers with
4 respect to the proper use of the surplus lines market.

5 (4) Receive and disseminate to its members information
6 relative to surplus lines insurance.

7 (b) The functions of the organization shall in no way
8 supplant or delegate current regulatory authority of the
9 department to administer the provisions of this article.

10 (c) Each such advisory organization shall file with the
11 department for approval:

12 (1) A copy of its constitution, its articles of agreement or
13 association or its certificate of incorporation.

14 (2) A copy of its bylaws, rules and regulations governing
15 its activities.

16 (3) A current list of its members.

17 (4) The name and address of a resident of this Commonwealth
18 upon whom notices or orders of the department or processes
19 issued at its direction may be served.

20 (5) An agreement that the department may examine such
21 advisory organization in accordance with the provisions of this
22 section.

23 (d) The department shall, at least once every four years,
24 make or cause to be made an examination of each such advisory
25 organization. The reasonable cost of any such examination shall
26 be paid by the advisory organization upon presentation to it by
27 the department of a detailed account of each cost. The officers,
28 managers, agents and employes of such advisory organization may
29 be examined at any time, under oath, and shall exhibit all
30 books, records, accounts, documents or agreements governing its

1 method of operation. The department shall furnish two copies of
2 the examination report to the advisory organization examined and
3 shall notify such organization that it may, within twenty (20)
4 days thereof, request a hearing on the report or on any facts or
5 recommendations therein. If the department finds such advisory
6 organization or any member thereof to be in violation of this
7 article, it may issue a cease and desist order requiring the
8 discontinuance of such violation and may impose any other
9 penalties as set forth in this article.

10 (e) The department may contract with a surplus lines
11 advisory organization to render advice and assistance in
12 carrying out the purposes of this article. The services
13 performed by the advisory organization pursuant to such contract
14 may be funded by a stamping fee assessed on each surplus lines
15 policyholder whose policy is submitted to the advisory
16 organization. The stamping fee shall be established by the board
17 of governors of the advisory organization, from time to time,
18 and shall be subject to approval by the department.

19 (f) The advisory organization may submit reports and make
20 recommendations to the department regarding the financial
21 condition of any eligible surplus lines insurer. These reports
22 and recommendations shall not be considered to be public
23 information or subject to any Federal or State freedom of
24 information law. There shall be no liability on the part of, nor
25 shall any cause of action of any nature be sustained against,
26 eligible surplus lines insurers, the advisory organization or
27 its members, agents, employees or directors, or the department or
28 authorized representatives of the department, for statements and
29 any reports or recommendations made by them in good faith under
30 this section.

1 (g) By order of the department, a surplus lines licensee may
2 be compelled to join an advisory organization as a condition of
3 continued licensure under this article.

4 Section 1412. Evidence of Insurance.--(a) Upon placing
5 surplus lines insurance, the surplus lines licensee shall
6 deliver to the insured or the producing broker the contract of
7 insurance. If the contract of insurance is not immediately
8 available, a cover note, binder or other evidence of insurance
9 shall be delivered by the surplus lines licensee to the insured
10 or the producing broker and shall, at a minimum, show the
11 description and location of the subject of insurance, coverages,
12 including any material limitations other than those in standard
13 forms, the premium and rate charged and taxes to be collected
14 from the insured, the name and address of the insured and the
15 eligible surplus lines insurer and other nonadmitted insurer
16 involved under section 1406 and proportion of the risk assumed
17 by each, and the name of the surplus lines licensee.

18 (b) No surplus lines licensee shall bind or provide evidence
19 of insurance unless he has authority from the eligible surplus
20 lines insurer or other nonadmitted insurer to bind the risk or
21 has received information from the insurer in the regular course
22 of business that it has assumed the risk.

23 (c) If, after delivery of any such evidence of insurance,
24 there is any change in the identity of the eligible surplus
25 lines insurer, or the proportion of the risk assumed by any
26 nonadmitted insurer, or any other material change in coverage as
27 stated in the surplus lines licensee's original evidence of
28 insurance, or any other material change as to the insurance
29 coverage so evidenced, the surplus lines licensee shall promptly
30 issue and deliver to the insured or to the original producing

broker an appropriate substitute for, or endorsement of, the original document accurately showing the current status of the coverage and the insurer responsible thereunder.

(d) Every evidence of insurance negotiated, placed or procured under the provisions of this article issued by the surplus lines licensee shall bear the name of the licensee and the following legend in 10-point type: "The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association."

Section 1413. Valid Surplus Lines Insurance.--Contracts of insurance procured under this article shall be valid and enforceable as to all parties. Nothing in this article shall be interpreted to prevent an insured from enforcing his rights under the terms and conditions of a contract of insurance entered into in violation of this article.

Section 1414. Effect of Payment to Surplus Lines Licensee.--A payment of premium to the producing broker or to a surplus lines licensee acting for a person other than himself in negotiating, continuing or reviewing any contract of insurance under this article shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the contract notwithstanding.

Section 1415. 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 of this Commonwealth who is a qualified holder of a current property and casualty broker's license, but only when the broker has complied with the following:

(1) Remitted the license fee to the department.

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

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

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

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

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

(2) Only those employees resident in this Commonwealth 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 1416. Surplus Lines Licensees May Accept Business
11 from Brokers.--A surplus lines licensee may originate surplus
12 lines insurance or accept such insurance from any broker duly
13 licensed as to the kind or kinds of insurance involved, and the
14 surplus lines licensee may compensate such broker therefor.

15 Section 1417. Compliance with Law by Two or More Surplus
16 Lines Licensees.--(a) When two or more surplus lines licensees
17 are involved in a transaction subject to this article, the
18 surplus lines licensee dealing directly with or closest to the
19 insured is responsible for compliance with sections 1404, 1408,
20 1409, 1412, 1419 and 1421.

21 (b) This provision shall not serve to relieve any surplus
22 lines licensee involved in any transaction subject to this
23 article from compliance with any other section of this article.

24 Section 1418. Surplus Lines Licensee with Binding
25 Authority.--Any surplus lines licensee who is granted binding or
26 underwriting authority by an eligible surplus lines insurer
27 shall be subject to regulations and rules promulgated, from time
28 to time, by the department.

29 Section 1419. Records of Surplus Lines Licensee.--(a) Each
30 surplus lines licensee shall keep in its office in this

Commonwealth a full and true record of each surplus lines insurance contract placed by or through it, including a copy of the policy, certificate, cover note or other evidence of insurance, showing such of the following items as may be applicable:

(1) Amount of the insurance and perils insured.

(2) Brief description of the risk insured and its location.

(3) Gross premium charged.

(4) Any return premium paid.

(5) Rate of premium charged for each risk insured.

(6) Effective date and terms of the contract.

(7) Name and address of the insured.

(8) Name and address of the eligible surplus lines insurer and any nonadmitted insured involved pursuant to section 1406.

(9) Amount of tax and other sums to be collected from the insured.

(10) Identity of the producing broker, any confirming correspondence from the insurer or its representative and the application.

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

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

Section 1420. Monthly Reports.--Within thirty (30) days following the end of each month, each surplus lines licensee shall file with the department, on forms prescribed by the department, a verified report in duplicate of all surplus lines insurance transacted during the preceding month.

Section 1421. Surplus Lines Tax.--(a) There is hereby

levied a tax of three per centum (3%) on all premiums charged for insurance which is placed with either an eligible surplus lines insurer (other than a risk retention group) or other nonadmitted insurer in accordance with this article, such taxes to be based on the gross premiums charged less any return premiums. This tax shall be in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any unearned portion of the premium shall be returned to the insured.

(b) Neither the surplus lines licensee, nor the producing broker, shall pay directly or indirectly such tax or any portion thereof, either as an inducement to the insured to purchase the insurance or for any other reason.

(c) The surplus lines licensee shall collect from the insured or the producing broker the amount of the tax at the time of delivery of the initial policy, cover note or other evidence of insurance or at such time thereafter as is reasonably consistent with normal credit terms customary in the business. Each surplus lines licensee shall, on or before January 31 of each year, file with the Department of Revenue a report of all transactions involving the placement of insurance with either an eligible surplus lines insurer or other nonadmitted insurers during the previous calendar year. The report shall set forth the name of the insured, identification of the insurer, the type of insurance, gross premiums charged less any return premiums allowed and the tax due as provided in this section. The remittance for the taxes due shall accompany this report. Such report shall be made on forms prescribed and furnished by the Department of Revenue. A copy of the report shall be filed with the commissioner by the surplus lines

1 licensee.

2 (d) In the event that a placement of insurance involves
3 subjects of insurance resident, located or to be performed in
4 one or more states other than this Commonwealth, then the
5 premium taxes provided for in this section shall be levied only
6 on that portion of the premium reasonably ascribable to that
7 portion of the risk situated in this Commonwealth.

8 (e) With respect to insurance placed with or issued by a
9 risk retention group which is an eligible surplus lines insurer,
10 there is hereby levied a tax of two per centum (2%) on all
11 premiums charged for risks resident, located or to be performed
12 in this Commonwealth. The risk retention group shall be
13 responsible for the payment of the taxes levied in this article
14 in accordance with procedures set forth in Article XIII.

15 (f) The settlement and resettlement of taxes imposed by this
16 article, including the granting of extensions of time to file
17 reports and the rights of the taxpayers to present and prosecute
18 a petition for resettlement, a petition for review or an appeal
19 to court or to file a petition for refund and the imposition of
20 interest and penalties, shall be governed by the provisions of
21 the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform
22 Code of 1971," as approved in the case of capital stock and
23 franchise taxes.

24 Section 1422. Tax on Independently Procured Insurance.--The
25 tax provided by section 1421(a) is imposed upon an insured who
26 procures insurance on a subject of insurance resident, located
27 or to be performed in this Commonwealth from a nonadmitted
28 insurer or continues or renews such insurance, other than
29 insurance procured through a surplus lines licensee in
30 accordance with this article. The insured shall, within thirty

1 (30) days after the date when such insurance was procured,
2 continued or renewed, report such transaction on forms
3 prescribed by the Department of Revenue. This report shall set
4 forth the information required of surplus lines licensees as
5 required in section 1421(c). The tax of three per centum (3%)
6 shall be paid on the date the report is due as provided in this
7 section. If the independently procured insurance covers risks
8 resident, located or to be performed in one or more states other
9 than this Commonwealth, the premium taxes shall be prorated in
10 accordance with provisions in section 1421(d). A copy of such
11 report shall be filed with the commissioner by the insured.

12 Section 1423. Suspension, Revocation or Nonrenewal of
13 Surplus Lines Licensee's License.--The department may suspend,
14 revoke or refuse to renew the license of a surplus lines
15 licensee after notice and a hearing, as provided under the
16 applicable provision of the laws of this Commonwealth, upon any
17 one or more of the following grounds:

18 (1) Removal of the resident surplus lines licensee's office
19 from this Commonwealth.

20 (2) Removal of the resident surplus lines licensee's
21 accounts and records from this Commonwealth during the period
22 during which such accounts and records are required to be
23 maintained under section 1419.

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

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

28 (5) Failure to transmit required tax on surplus lines
29 premiums.

30 (6) Failure to maintain required bonds.

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

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

5 (9) For any other cause for which an insurance agent's or
6 broker's license could be denied, revoked or suspended or
7 refused upon renewal.

8 Section 1424. Service of Process in Actions Against Surplus
9 Lines Insurer.--(a) An eligible surplus lines insurer may be
10 sued upon any cause of action arising in this Commonwealth under
11 any surplus lines insurance contract made by it or evidence of
12 insurance issued or delivered by the surplus lines licensee.
13 Service of process shall be made pursuant to the procedures
14 provided by 42 Pa.C.S. Ch.53 Subch. B (relating to interstate
15 and international procedure). Any such policy delivered by the
16 surplus lines licensee shall contain a provision stating the
17 substance of this section and designating the person to whom
18 process shall be mailed.

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

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

25 Section 1425. Penalties.--(a) Any surplus lines licensee
26 who, in this Commonwealth, represents or aids a nonadmitted
27 insurer in violation of this article commits a misdemeanor of
28 the third degree and shall, upon conviction, be sentenced to pay
29 a fine of not more than one thousand (\$1,000) dollars.

30 (b) In addition to any other penalty provided for in

1 subsection (a) or otherwise provided by law, including any
2 suspension, revocation or refusal to renew a license, any
3 person, firm, association or corporation violating any provision
4 of this article shall be liable to a civil penalty not exceeding
5 one thousand (\$1,000) dollars for the first offense, and not
6 exceeding two thousand (\$2,000) dollars for each succeeding
7 offense.

8 (c) The penalties in this section are not exclusive
9 remedies. Penalties may also be assessed under the act of July
10 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance
11 Practices Act," and any other applicable statute.

12 ARTICLE XV.

13 LIFE AND HEALTH INSURANCE

14 GUARANTY ASSOCIATION

15 Section 1501. Purpose.--The purpose of this article is to
16 protect, subject to certain limitations, the persons specified
17 in section 1503(a) against failure in the performance of
18 contractual obligations, under life and health insurance
19 policies and annuity contracts specified in section 1503(b),
20 because of the impairment or insolvency of the member insurer
21 that issued the policies or contracts. To provide this
22 protection, an association of insurers is created to pay
23 benefits and to continue coverages as limited herein, and
24 members of the association are subject to assessment to provide
25 funds to carry out the purpose of this article.

26 Section 1502. Definitions.--As used in this article the
27 following words and phrases shall have the meanings given to
28 them in this section:

29 "Account." Any of the two accounts created under section
30 1504.

1 "Association." The Pennsylvania Life and Health Insurance
2 Guaranty Association created under section 1504.

3 "Commissioner." The Insurance Commissioner of the
4 Commonwealth.

5 "Contractual obligation." Any obligation under a policy or
6 contract or certificate under a group policy or contract, or
7 portion thereof, for which coverage is provided under section
8 1503.

9 "Covered policy." Any policy or contract within the scope of
10 this article under section 1503.

11 "Department." The Insurance Department of the Commonwealth.

12 "Employee Retirement Income Security Act of 1974" or "ERISA."
13 The Employee Retirement Income Security Act of 1974 (Public Law
14 93-406, 29 U.S.C. § 1001 et seq.).

15 "Impaired insurer." A member insurer which, after the
16 effective date of this article, is not an insolvent insurer,
17 and;

18 (1) is deemed by the Insurance Commissioner to be potentially
19 unable to fulfill its contractual obligations; or

20 (2) is placed under an order of rehabilitation or
21 conservation by a court of competent jurisdiction.

22 "Insolvent insurer." A member insurer which after the
23 effective date of this article is placed under an order of
24 liquidation by a court of competent jurisdiction with a finding
25 of insolvency.

26 "Internal Revenue Code of 1986." The Internal Revenue Code
27 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

28 "Member insurer." Any insurer licensed or which holds a
29 certificate of authority to transact in this Commonwealth any
30 kind of insurance for which coverage is provided under section

1503 and includes any insurer whose license or certificate of authority in this Commonwealth may have been suspended, revoked, not renewed or voluntarily withdrawn. The term does not include any of the following:

(1) A nonprofit hospital or medical service organization.

(2) A health maintenance organization.

(3) A fraternal benefit society.

(4) A mandatory State pooling plan.

(5) A mutual assessment company or any entity that operates on an assessment basis.

(6) An insurance exchange.

(7) Any entity similar to any of the above.

"Moody's Corporate Bond Yield Average." The Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

"Person." Any individual, corporation, partnership, association or voluntary organization.

"Premiums." The amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. The term does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 1503(b) except that assessable premium shall not be reduced on account of sections 1503(b)(2)(ii) relating to interest limitations and 1503(c)(1)(ii) relating to limitations with respect to any one individual, any one participant and any one contract holder. The term does not include any premiums in excess of five million (\$5,000,000) dollars on any unallocated annuity contract not issued under a governmental retirement plan established under

section 401, 403(b) or 457 of the Internal Revenue Code of 1986
(Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Resident." Any person who resides in this Commonwealth at
the time a member insurer is determined to be an impaired or
insolvent insurer and to whom a contractual obligation is owed.
A person may be a resident of only one state, which in the case
of a person other than a natural person shall be its principal
place of business.

"Supplemental contract." Any agreement entered into for the
distribution of policy or contract proceeds.

"Unallocated annuity contract." Any annuity contract or
group annuity certificate which is not issued to and owned by an
individual, except to the extent of any annuity benefits
guaranteed to an individual by an insurer under such contract or
certificate.

Section 1503. Coverage and Limitations.--(a) This article
shall provide coverage to the following persons for the policies
and contracts specified in subsection (b):

(1) To persons who, regardless of where they reside, except
for nonresident certificate holders under group policies or
contracts, are the beneficiaries, assignees or payees of the
persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders
under these policies or contracts or, in the case of unallocated
annuity contracts, to the persons who are the contract holders,
and who:

(i) are residents; or

(ii) are not residents, but only under all of the following
conditions:

(A) the insurers which issued such policies or contracts are

1 domiciled in this Commonwealth;

2 (B) such insurers never held a license or certificate of
3 authority in the states in which such persons reside;

4 (C) these states have associations similar to the
5 association created by this article; and

6 (D) these persons are not eligible for coverage by those
7 associations.

8 (b) (1) This article shall provide coverage to the persons
9 specified in subsection (a) for direct, nongroup life, health,
10 annuity and supplemental policies or contracts, for certificates
11 under direct group policies and contracts, and for unallocated
12 annuity contracts issued by member insurers, except as limited
13 by this article. Annuity contracts and certificates under group
14 annuity contracts include, but are not limited to, guaranteed
15 investment contracts, deposit administration contracts,
16 unallocated funding agreements, allocated funding agreements,
17 structured settlement agreements, lottery contracts and any
18 immediate or deferred annuity contracts.

19 (2) This article shall not provide coverage for any of the
20 following:

21 (i) Any portion of a policy or contract not guaranteed by
22 the insurer, or under which the risk is borne by the policy or
23 contract holder.

24 (ii) Any policy or contract of reinsurance, unless
25 assumption certificates have been issued.

26 (iii) Any portion of a policy or contract to the extent that
27 the rate of interest on which it is based:

28 (A) averaged over the period of four (4) years prior to the
29 date on which the association becomes obligated with respect to
30 such policy or contract, exceeds a rate of interest determined

by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for such lesser period if the policy or contract was issued less than four (4) years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's Corporate Bond Yield Average as most recently available.

(iv) Any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or similar entity under:

(A) a Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract.

(v) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances to be paid to any person, including the policyholder or contract holder, in connection with the service to or administration of such policy or contract.

(vi) Any policy or contract issued in this Commonwealth by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this Commonwealth.

1 (vii) Any unallocated annuity contract issued to an employee
2 benefit plan protected under the Federal Pension Benefit
3 Guaranty Corporation.

4 (viii) Any portion of any unallocated annuity contract which
5 is not issued to or in connection with a specific employee, union
6 or association of natural persons benefit plan or a government
7 lottery.

8 (c) (1) The benefits for which the association may become
9 liable shall in no event exceed the lesser of:

10 (i) the contractual obligations for which the insurer is
11 liable or would have been liable if it were not an impaired or
12 insolvent insurer; or

13 (ii) (A) With respect to any one life, regardless of the
14 number of policies or contracts, the following shall apply:

15 (I) Three hundred thousand (\$300,000) dollars in life
16 insurance death benefits, but not more than one hundred thousand
17 (\$100,000) dollars in net cash surrender and net cash withdrawal
18 values for life insurance.

19 (II) One hundred thousand (\$100,000) dollars in health
20 insurance benefits, including any net cash surrender and net
21 cash withdrawal values.

22 (III) Three hundred thousand (\$300,000) dollars in annuity
23 benefits, including one hundred thousand (\$100,000) dollars in
24 net cash surrender and net cash withdrawal values.

25 (B) With respect to each individual participating in a
26 governmental retirement plan established under section 401,
27 403(b) or 457 of the Internal Revenue Code of 1986 covered by an
28 unallocated annuity contract or the beneficiaries of each such
29 individual if deceased, in the aggregate, three hundred thousand
30 (\$300,000) dollars in annuity benefits, including one hundred

1 thousand (\$100,000) dollars in net cash surrender and net cash
2 withdrawal values.

3 (C) With respect to any one contract holder covered by any
4 unallocated annuity contract not included in clause (B), five
5 million (\$5,000,000) dollars in benefits, irrespective of the
6 number of such contracts held by that contract holder.

7 (2) The association shall not, however, be liable to expend
8 more than three hundred thousand (\$300,000) dollars in the
9 aggregate with respect to any one individual under subparagraph
10 (ii)(A) and (B) of paragraph (1).

11 Section 1504. Creation of Association.--(a) There is hereby
12 created a nonprofit, unincorporated association to be known as
13 the Pennsylvania Life and Health Insurance Guaranty Association.
14 All member insurers shall be and remain members of the
15 association as a condition of their authority to transact
16 insurance in this Commonwealth. The association shall perform
17 its functions under the plan of operation established and
18 approved under section 1509 and shall exercise its powers
19 through a board of directors established under section 1505. For
20 purposes of administration and assessment the association shall
21 maintain two accounts:

22 (1) The life insurance and annuity account which includes
23 the following subaccounts:

24 (i) Life insurance account.

25 (ii) Annuity account.

26 (iii) Unallocated annuity account which shall include
27 contracts qualified under section 403(b) of the Internal Revenue
28 Code of 1986.

29 (2) The health insurance account.

30 (b) The association shall come under the immediate

1 supervision of the commissioner and shall be subject to the
2 applicable provisions of the insurance laws of this
3 Commonwealth. Meetings or records of the association may be
4 opened to the public upon majority vote of the board of
5 directors of the association.

6 Section 1505. Board of Directors.--(a) The board of
7 directors of the association shall consist of not less than five
8 (5) nor more than nine (9) member insurers serving terms as
9 established in the plan of operation. The members of the board
10 shall be selected by member insurers subject to the approval of
11 the commissioner. Vacancies on the board shall be filled for the
12 remaining period of the term by a majority vote of the remaining
13 board members, subject to the approval of the commissioner. To
14 select the initial board of directors, and initially organize
15 the association, the commissioner shall give notice to all
16 member insurers of the time and place of the organizational
17 meeting. In determining voting rights at the organizational
18 meeting, each member insurer shall be entitled to one (1) vote
19 in person or by proxy. If the board of directors is not selected
20 within sixty (60) days after notice of the organizational
21 meeting, the commissioner may appoint the initial members.

22 (b) In approving selections or in appointing members to the
23 board, the commissioner shall consider, among other things,
24 whether all member insurers are fairly represented.

25 (c) Members of the board may be reimbursed from the assets
26 of the association for expenses incurred by them as members of
27 the board of directors but members of the board shall not
28 otherwise be compensated by the association for their services.

29 Section 1506. Powers and Duties of Association.--(a) If a
30 member insurer is an impaired domestic insurer, the association

1 may, in its discretion, and subject to any conditions imposed by
2 the association that do not impair the contractual obligations
3 of the impaired insurer, that are approved by the commissioner,
4 and that are, except in cases of court-ordered conservation or
5 rehabilitation, also approved by the impaired insurer:

6 (1) guarantee, assume or reinsure, or cause to be
7 guaranteed, assumed or reinsured, any or all of the policies or
8 contracts of the impaired insurer;

9 (2) provide such moneys, pledges, notes, guarantees or other
10 means as are proper to effectuate paragraph (1) and assure
11 payment of the contractual obligations of the impaired insurer
12 pending action under paragraph (1); or

13 (3) loan money to the impaired insurer.

14 (b) (1) If a member insurer is an impaired insurer, whether
15 domestic, foreign or alien, and the insurer is not paying claims
16 timely; then subject to the preconditions specified in paragraph
17 (2), the association shall, in its discretion, either:

18 (i) take any of the actions specified in subsection (a),
19 subject to the conditions therein; or

20 (ii) provide substitute benefits in lieu of the contractual
21 obligations of the impaired insurer solely for health claims,
22 periodic annuity benefit payments, death benefits, supplemental
23 benefits, and cash withdrawals for policy or contract owners who
24 petition therefor under claims of emergency or hardship in
25 accordance with standards proposed by the association and
26 approved by the commissioner.

27 (2) The association shall be subject to the requirements of
28 paragraph (1) only if:

29 (i) the laws of its state of domicile provide that until all
30 payments of or on account of the impaired insurer's contractual

obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(A) the delinquency proceeding shall not be dismissed;

(B) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;

(C) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored;

(ii) in the case where the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this Commonwealth; or

(iii) in the case where the impaired insurer is a foreign or alien insurer, it has been prohibited from soliciting or accepting new business in this Commonwealth, its certificate of authority has been suspended or revoked in this Commonwealth, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(1) guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer;

(2) assure payment of the contractual obligations of the insolvent insurer, and provide such moneys, pledges, guarantees or other means as are reasonably necessary to discharge such duties; or

(3) with respect only to life and health insurance policies,
provide benefits and coverages in accordance with subsection
(d).

(d) (1) When proceeding under subsection (b)(1)(ii) or
(c)(3), the association shall, with respect to only life and
health insurance policies, do all of the following:

(i) Assure payment of benefits for premiums identical to the
premiums and benefits (except for terms of conversion and
renewability) that would have been payable under the policies of
the insolvent insurer, for claims incurred as follows:

(A) With respect to group policies, not later than the
earlier of the next renewal date under such policies or
contracts or forty-five (45) days, but in no event less than
thirty (30) days, after the date on which the association
becomes obligated with respect to such policies.

(B) With respect to individual policies, not later than the
earlier of the next renewal date (if any) under such policies or
one year, but in no event less than thirty (30) days, from the
date on which the association becomes obligated with respect to
such policies.

(ii) Make diligent efforts to provide all known insureds or
group policyholders with respect to group policies thirty (30)
days notice of the termination of the benefits provided.

(iii) With respect to individual policies, make available to
each known insured, or owner if other than the insured, and with
respect to an individual formerly insured under a group policy
who is not eligible for replacement group coverage, make
available substitute coverage on an individual basis in
accordance with the provisions of paragraph (4), if the insureds
had a right under law or the terminated policy to convert

coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(2) (i) In providing the substitute coverage required under paragraph (1)(iii), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any alternative or reissued policy.

(3) (i) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies shall contain at least the minimum statutory provisions required in this Commonwealth and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued

1 by the impaired or insolvent insurer, as determined by the
2 association.

3 (4) If the association elects to reissue terminated coverage
4 at a premium rate different from that charged under the
5 terminated policy, the premium shall be set by the association
6 in accordance with the amount of insurance provided and the age
7 and class of risk, subject to approval of the commissioner or by
8 a court of competent jurisdiction.

9 (5) The association's obligations with respect to coverage
10 under any policy of the impaired or insolvent insurer or under
11 any reissued or alternative policy shall cease on the date such
12 coverage or policy is replaced by another similar policy by the
13 policyholder, the insured or the association.

14 (e) When proceeding under subsection (b)(1)(ii) or (c) with
15 respect to any policy or contract carrying guaranteed minimum
16 interest rates, the association shall assure the payment or
17 crediting of a rate of interest consistent with section
18 1503(b)(2)(iii).

19 (f) Nonpayment of premiums within thirty-one (31) days after
20 the date required under the terms of any guaranteed, assumed,
21 alternative or reissued policy or contract or substitute
22 coverage shall terminate the association's obligations under
23 such policy or coverage under this article with respect to such
24 policy or coverage, except with respect to any claims incurred
25 or any net cash surrender value which may be due in accordance
26 with the provisions of this article.

27 (g) Premiums due for coverage after entry of an order of
28 liquidation of an insolvent insurer shall belong to and be
29 payable at the direction of the association, and the association
30 shall be liable for unearned premiums due to policy or contract

owners arising after the entry of such order.

(h) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this Commonwealth by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this Commonwealth.

(i) In carrying out its duties under subsections (b) and (c) and subject to approval by the court, the association may do the following:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest.

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in subsections (b)(1)(ii), (c) and (d) the commissioner shall have the powers and duties of the association under this article with respect to impaired or insolvent insurers.

(k) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation,

1 payment of claims, continuance of coverage, or the performance
2 of other contractual obligations of any impaired or insolvent
3 insurer.

4 (l) The association shall have standing to appear before any
5 court in this Commonwealth with jurisdiction over an impaired or
6 insolvent insurer concerning which the association is or may
7 become obligated under this article. Such standing shall extend
8 to all matters germane to the powers and duties of the
9 association, including, but not limited to, proposals for
10 reinsuring, modifying or guaranteeing the policies or contracts
11 of the impaired or insolvent insurer and the determination of
12 the policies or contracts and contractual obligations. The
13 association shall also have the right to appear or intervene
14 before a court in another state with jurisdiction over an
15 impaired or insolvent insurer for which the association is or
16 may become obligated or with jurisdiction over a third party
17 against whom the association may have rights through subrogation
18 of the insurer's policyholders.

19 (m) (1) Any person receiving benefits under this article
20 shall be deemed to have assigned the rights under, and any
21 causes of action relating to, the covered policy or contract to
22 the association to the extent of the benefits received because
23 of this article, whether the benefits are payments of or on
24 account of contractual obligations, continuation of coverage or
25 provision of substitute or alternative coverages. The
26 association may require an assignment to it of such rights and
27 cause of action by any payee, policy or contract owner,
28 beneficiary, insured or annuitant as a condition precedent to
29 the receipt of any rights or benefits conferred by this article
30 upon such person.

1 (2) The subrogation rights of the association under this
2 subsection shall have the same priority against the assets of
3 the impaired or insolvent insurer as that possessed by the
4 person entitled to receive benefits under this article.

5 (3) In addition to paragraphs (1) and (2), the association
6 shall have all common law rights of subrogation and any other
7 equitable or legal remedy which would have been available to the
8 impaired or insolvent insurer or holder of a policy or contract
9 with respect to such policy or contracts.

10 (n) The association may do the following:

11 (1) Enter into such contracts as are necessary or proper to
12 carry out the provisions and purposes of this article.

13 (2) Sue or be sued, including taking any legal actions
14 necessary or proper to recover any unpaid assessments under
15 section 1507 and to settle claims or potential claims against
16 it.

17 (3) Borrow money to effect the purposes of this article; any
18 notes or other evidence of indebtedness of the association not
19 in default shall be legal investments for domestic insurers and
20 may be carried as admitted assets.

21 (4) Employ or retain such persons as are necessary to handle
22 the financial transactions of the association, and to perform
23 such other functions as become necessary or proper under this
24 article.

25 (5) Take such legal action as may be necessary to avoid
26 payment of improper claims.

27 (6) Exercise, for the purposes of this article and to the
28 extent approved by the commissioner, the powers of a domestic
29 life or health insurer, but in no case may the association issue
30 insurance policies or annuity contracts other than those issued

1 to perform its obligations under this article.

2 (o) The association may join an organization of one or more
3 other state associations of similar purposes, to further the
4 purposes and administer the powers and duties of the
5 association.

6 Section 1507. Assessments.--(a) For the purpose of
7 providing the funds necessary to carry out the powers and duties
8 of the association, the board of directors shall assess the
9 member insurers, separately for each account, at such time and
10 for such amounts as the board finds necessary. Assessments shall
11 be due not less than thirty (30) days after prior written notice
12 to the member insurers and shall accrue interest at eight per
13 centum (8%) per annum on and after the due date.

14 (b) There shall be two assessments, as follows:

15 (1) Class A assessments shall be made for the purpose of
16 meeting administrative and legal costs and other expenses and
17 examinations conducted under the authority of section 1510(e).
18 Class A assessments may be made whether or not related to a
19 particular impaired or insolvent insurer.

20 (2) Class B assessments shall be made to the extent
21 necessary to carry out the powers and duties of the association
22 under section 1506 with regard to an impaired or an insolvent
23 insurer.

24 (c) (1) The amount of any Class A assessment shall be
25 determined by the board and may be made on a pro rata or non-pro
26 rata basis. If pro rata, the board may provide that it be
27 credited against future Class B assessments. A non-pro rata
28 assessment shall not exceed two hundred (\$200) dollars per
29 member insurer in any one calendar year. The amount of any Class
30 B assessment shall be allocated for assessment purposes among

1 the accounts pursuant to an allocation formula which may be
2 based on the premiums or reserves of the impaired or insolvent
3 insurer or any other standard deemed by the board in its sole
4 discretion as being fair and reasonable under the circumstances.

5 (2) Class B assessments against member insurers for each
6 account and subaccount shall be in the proportion that the
7 premiums received on business in this Commonwealth by each
8 assessed member insurer for policies or contracts covered by
9 each account for the three (3) most recent calendar years for
10 which information is available preceding the year in which the
11 insurer became impaired or insolvent, as the case may be, bears
12 to such premiums received on business in this Commonwealth for
13 such calendar years by all assessed member insurers.

14 (3) Assessments for funds to meet the requirements of the
15 association with respect to an impaired or insolvent insurer
16 shall not be made until necessary to implement the purposes of
17 this article. Classification of assessments under subsection (b)
18 and computation of assessments under this subsection shall be
19 made with a reasonable degree of accuracy, recognizing that
20 exact determinations may not always be possible.

21 (d) The association may abate or defer, in whole or in part,
22 the assessment of a member insurer if, in the opinion of the
23 board, payment of the assessment would endanger the ability of
24 the member insurer to fulfill its contractual obligations. In
25 the event an assessment against a member insurer is abated, or
26 deferred in whole or in part, the amount by which such
27 assessment is abated or deferred may be assessed against the
28 other member insurers in a manner consistent with the basis for
29 assessments set forth in this section.

30 (e) (1) The total of all assessments upon a member insurer

1 for the life and annuity account and for each subaccount
2 thereunder shall not in any one (1) calendar year exceed two per
3 centum (2%) and for the health account shall not in any one (1)
4 calendar year exceed two per centum (2%) of such insurer's
5 average premiums received in this Commonwealth on the policies
6 and contracts covered by the account during the three (3)
7 calendar years preceding the year in which the insurer became an
8 impaired or insolvent insurer. If the maximum assessment,
9 together with the other assets of the association in any
10 account, does not provide in any one (1) year in either account
11 an amount sufficient to carry out the responsibilities of the
12 association, the necessary additional funds shall be assessed as
13 soon thereafter as permitted by this article.

14 (2) The board may provide in the plan of operation a method
15 of allocating funds among claims, whether relating to one or
16 more impaired or insolvent insurers, when the maximum assessment
17 will be insufficient to cover anticipated claims.

18 (3) If a one per centum (1%) assessment for any subaccount
19 of the life and annuity account in any one (1) year does not
20 provide an amount sufficient to carry out the responsibilities
21 of the association, then pursuant to subsection (c)(2), the
22 board shall access all subaccounts of the life and annuity
23 account for the necessary additional amount, subject to the
24 maximum stated in subsection (e)(1).

25 (f) The board may, by an equitable method as established in
26 the plan of operation, refund to member insurers, in proportion
27 to the contribution of each insurer to that account, the amount
28 by which the assets of the account exceed the amount the board
29 finds is necessary to carry out during the coming year the
30 obligations of the association with regard to that account,

1 including assets accruing from assignment, subrogation, net
2 realized gains and income from investments. A reasonable amount
3 may be retained in any account to provide funds for the
4 continuing expenses of the association and for future losses.

5 (g) It shall be proper for any member insurer, in
6 determining its premium rates and policyowner dividends as to
7 any kind of insurance within the scope of this article, to
8 consider the amount reasonably necessary to meet its assessment
9 obligations under this article, provided that such insurer has
10 not elected to take tax credits as provided in section 1511(a).

11 (h) The association shall issue to each insurer paying an
12 assessment under this article, other than class A assessment, a
13 certificate of contribution, in a form prescribed by the
14 commissioner, for the amount of the assessment so paid. All
15 outstanding certificates shall be of equal dignity and priority
16 without reference to amounts or dates of issue. A certificate of
17 contribution may be shown by the insurer in its financial
18 statement as an asset in such form and for such amount, if any,
19 and period of time as the commissioner may approve.

20 Section 1508. Plan of Operation.--(a) (1) The association
21 shall submit to the commissioner a plan of operation and any
22 amendments thereto necessary or suitable to assure the fair,
23 reasonable and equitable administration of the association. The
24 plan of operation and any amendments thereto shall become
25 effective upon the commissioner's written approval or unless he
26 has not disapproved it within thirty (30) days.

27 (2) If the association fails to submit a suitable plan of
28 operation within one hundred twenty (120) days following the
29 effective date of this article or if at any time thereafter the
30 association fails to submit suitable amendments to the plan, the

commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this article, contain the following:

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under section 1505.

(3) Establish regular places and times for meetings, including telephone conference calls of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under section 1507.

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under sections 1506(n)(3) and 1507, are delegated to a corporation, association or other organization which performs or will perform functions

similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.

Section 1509. Powers and Duties of the Commissioner.--(a) In addition to the powers and duties enumerated elsewhere in this article, the commissioner shall:

(1) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer.

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this act.

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this Commonwealth of any member insurer which fails to pay an assessment when due or fails to comply with the plan of

1 operation. As an alternative, the commissioner may levy a
2 forfeiture on any member insurer which fails to pay an
3 assessment when due. Such forfeiture shall not exceed five per
4 centum (5%) of the unpaid assessment per month, but no
5 forfeiture shall be less than one hundred (\$100) dollars per
6 month.

7 (c) Any action of the board of directors or the association
8 may be appealed to the commissioner by any member insurer if
9 such appeal is taken within sixty (60) days of the final action
10 being appealed. If a member company is appealing an assessment,
11 the amount assessed shall be paid to the association and
12 available to meet association obligations during the pendency of
13 an appeal. If the appeal on the assessment is upheld, the amount
14 paid in error or excess shall be returned to the member company.
15 Any final action or order of the commissioner shall be subject
16 to judicial review in a court of competent jurisdiction.

17 (d) The liquidator, rehabilitator or conservator of any
18 impaired insurer may notify all interested persons of the effect
19 of this article.

20 Section 1510. Prevention of Insolvencies.--(a) To aid in
21 the detection and prevention of insurer insolvencies or
22 impairments, it shall be the duty of the commissioner:

23 (1) To notify the commissioners of all the other states,
24 territories of the United States and the District of Columbia
25 when he takes any of the following actions against a member
26 insurer:

27 (i) revocation of license;

28 (ii) suspension of license; or

29 (iii) makes any formal order that such company restrict its
30 premium writing, obtain additional contributions to surplus,

withdraw from the Commonwealth, reinsure all or any part of its business, or increase capital, surplus or any other account for the security of policyholders or creditors.

This notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs.

(2) To report to the board of directors when he has taken any of the actions set forth in paragraph (1) or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be an impaired or insolvent insurer.

(4) To furnish to a national association of insurance commissioners financial statements as required by the Insurance Department and listings of companies not included in the ratios developed by a national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this Commonwealth.

1 (c) The board of directors may, upon majority vote, make
2 reports and recommendations to the commissioner upon any matter
3 germane to the solvency, liquidation, rehabilitation or
4 conservation of any member insurer or germane to the solvency of
5 any company seeking to do an insurance business in this
6 Commonwealth. Such reports and recommendations shall not be
7 considered public documents.

8 (d) It shall be the duty of the board of directors, upon
9 majority vote, to notify the commissioner of any information
10 indicating any member insurer may be an impaired or insolvent
11 insurer.

12 (e) (1) The board of directors may, upon majority vote,
13 request that the commissioner order an examination of any member
14 insurer which the board in good faith believes may be an
15 impaired or insolvent insurer. Within thirty (30) days of the
16 receipt of such request, the commissioner shall begin such
17 examination. The examination may be conducted by such persons as
18 the commissioner designates. The cost of such examination shall
19 be paid by the association and the examination report shall be
20 treated as are other examination reports. In no event shall such
21 examination report be released to the board of directors prior
22 to its release to the public, but this shall not preclude the
23 commissioner from complying with subsection (a).

24 (2) The commissioner shall notify the board of directors
25 when the examination is completed. The request for an
26 examination shall be kept on file by the commissioner but it
27 shall not be open to public inspection prior to the release of
28 the examination report to the public.

29 (f) The board of directors may, upon majority vote, make
30 recommendations to the commissioner for the detection and

1 prevention of insurer insolvencies.

2 (g) The board of directors shall, at the conclusion of any
3 insurer insolvency in which the association was obligated to pay
4 covered claims, prepare a report to the commissioner containing
5 such information as it may have in its possession bearing on the
6 history and causes of such insolvency. The board shall cooperate
7 with the boards of directors of guaranty associations in other
8 states in preparing a report on the history and causes of
9 insolvency of a particular insurer, and may adopt by reference
10 any report prepared by such other associations.

11 Section 1511. Credits for Assessments Paid.--(a) A member
12 insurer may offset against its premium tax liability to this
13 Commonwealth an assessment described in section 1508(h) to the
14 extent of twenty per centum (20%) of the amount of such
15 assessment for each of the five (5) calendar years following the
16 year in which such assessment was paid. In the event a member
17 insurer should cease doing business, all uncredited assessments
18 may be credited against its premium tax liability for the year
19 it ceases doing business. Tax credits shall not be taken when an
20 insurer has elected to include such assessments pursuant to a
21 ratefiling as provided in section 1507(g).

22 (b) Any sums which are acquired by refund, pursuant to
23 section 1508(f), from the association by member insurers, and
24 which have theretofore been offset against premium taxes as
25 provided in subsection (a), shall be paid by such insurers to
26 this Commonwealth in such manner as the tax authorities may
27 require. The association shall notify the commissioner that such
28 refunds have been made.

29 Section 1512. Miscellaneous Provisions.--(a) Nothing in
30 this article shall be construed to reduce the liability for

1 unpaid assessments of the insureds of an impaired or insolvent
2 insurer operating under a plan with assessment liability.

3 (b) Records shall be kept of all negotiations and meetings
4 in which the association or its representatives are involved to
5 discuss the activities of the association in carrying out its
6 powers and duties under section 1506. Records of such
7 negotiations or meetings shall be made public only upon the
8 termination of a liquidation, rehabilitation or conservation
9 proceeding involving the impaired or insolvent insurer, upon the
10 termination of the impairment or insolvency of the insurer, or
11 upon the order of a court of competent jurisdiction. Nothing in
12 this subsection shall limit the duty of the association to
13 render a report of its activities under section 1513.

14 (c) For the purpose of carrying out its obligations under
15 this article, the association shall be deemed to be a creditor
16 of the impaired or insolvent insurer to the extent of assets
17 attributable to covered policies reduced by any amounts to which
18 the association is entitled as subrogee pursuant to section
19 1506. Assets of the impaired or insolvent insurer attributable
20 to covered policies shall be used to continue all covered
21 policies and pay all contractual obligations of the impaired or
22 insolvent insurer as required by this article. Assets
23 attributable to covered policies, as used in this subsection,
24 are that proportion of the assets which the reserves that should
25 have been established for such policies bear to the reserves
26 that should have been established for all policies of insurance
27 written by the impaired or insolvent insurer.

28 (d) (1) Prior to the termination of any liquidation,
29 rehabilitation or conservation proceeding, the court may take
30 into consideration the contributions of the respective parties,

1 including the association, the shareholders and policyowners of
2 the insolvent insurer, and any other party with a bona fide
3 interest, in making an equitable distribution of the ownership
4 rights of such insolvent insurer. In such a determination,
5 consideration shall be given to the welfare of the policyholders
6 of the continuing or successor insurer.

7 (2) No distribution to stockholders, if any, of an impaired
8 or insolvent insurer shall be made until and unless the total
9 amount of valid claims of the association with interest thereon
10 for funds expended in carrying out its powers and duties under
11 section 1506 with respect to such insurer have been fully
12 recovered by the association.

13 (e) (1) If an order for liquidation or rehabilitation of an
14 insurer domiciled in this Commonwealth has been entered, the
15 receiver appointed under such order shall have a right to
16 recover on behalf of the insurer, from any affiliate that
17 controlled it, the amount of distributions, other than stock
18 dividends paid by the insurer on its capital stock, made at any
19 time during the five (5) years preceding the petition for
20 liquidation or rehabilitation subject to the limitations of
21 paragraphs (2) to (4).

22 (2) No such distribution shall be recoverable if the insurer
23 shows that when paid the distribution was lawful and reasonable,
24 and that the insurer did not know and could not reasonably have
25 known that the distribution might adversely affect the ability
26 of the insurer to fulfill its contractual obligations.

27 (3) Any person who was an affiliate that controlled the
28 insurer at the time the distributions were paid shall be liable
29 up to the amount of distributions he received. Any person who
30 was an affiliate that controlled the insurer at the time the

1 distributions were declared, shall be liable up to the amount of
2 distributions he would have received if they had been paid
3 immediately. If two or more persons are liable with respect to
4 the same distributions, they shall be jointly and severally
5 liable.

6 (4) The maximum amount recoverable under this subsection
7 shall be the amount needed in excess of all other available
8 assets of the insolvent insurer to pay the contractual
9 obligations of the insolvent insurer.

10 (5) If any person liable under paragraph (3) is insolvent,
11 all its affiliates that controlled it at the time distribution
12 was paid, shall be jointly and severally liable for any
13 resulting deficiency in the amount recovered from the insolvent
14 affiliate.

15 Section 1513. Examination of the Association and Annual
16 Report.--The association shall be subject to examination and
17 regulation by the commissioner. The board of directors shall
18 submit to the commissioner each year, not later than one hundred
19 twenty (120) days after the association's fiscal year, a
20 financial report in a form approved by the commissioner and a
21 report of its activities during the preceding fiscal year.

22 Section 1514. Tax Exemptions.--The association shall be
23 exempt from payment of all fees and all taxes levied by this
24 Commonwealth or any of its subdivisions, except taxes levied on
25 real property.

26 Section 1515. Immunity.--There shall be no liability on the
27 part of and no cause of action of any nature shall arise against
28 any member insurer or its agents or employees, the association or
29 its agents or employees, members of the board of directors, or
30 the commissioner or his representatives, for any action or

1 omission by them taken in good faith in the performance of their
2 powers and duties under this article. Such immunity shall extend
3 to the participation in any organization of one or more other
4 state associations of similar purposes and to any such
5 organization and its agents or employees.

6 Section 1516. Stay of Proceedings and Reopening Default
7 Judgments.--All proceedings in which the insolvent insurer is a
8 party in any court in this Commonwealth shall be stayed sixty
9 (60) days from the date an order of liquidation, rehabilitation
10 or conservation is final to permit proper legal action by the
11 association on any matters germane to its powers or duties. As
12 to judgment under any decision, order, verdict or finding based
13 on default, the association may apply to have such judgment set
14 aside by the same court that made such judgment and shall be
15 permitted to defend against such suit on the merits.

16 Section 1517. Prohibited Advertisement or Insurance Guaranty
17 Association Act in Insurance Sales.--(a) No person, including
18 an insurer, agent or affiliate of an insurer shall make,
19 publish, disseminate, circulate, or place before the public, or
20 cause directly or indirectly, to be made, published,
21 disseminated, circulated or placed before the public, in any
22 newspaper, magazine or other publication, or in the form of a
23 notice, circular, pamphlet, letter or poster, or over any radio
24 station or television station, or in any other way, any
25 advertisement, announcement or statement, written or oral, which
26 uses the existence of the association for the purpose of sales,
27 solicitation or inducement to purchase any form of insurance
28 covered by this article. Provided, however, that this section
29 shall not apply to the association or any other entity which
30 does not sell or solicit insurance.

1 (b) Within one hundred eighty (180) days of the effective
2 date of this article, the association shall prepare a summary
3 document describing the general purposes and current limitations
4 of the article and complying with subsection (c). This document
5 should be submitted to the commissioner for approval. Sixty (60)
6 days after receiving such approval, no insurer may deliver a
7 policy or contract described in section 1503(b)(1) to a
8 policyholder or contract holder, unless the document is
9 delivered to the policyholder or contract holder prior to or at
10 the time of delivery of the policy or contract except if
11 subsection (d) applies. The document should also be available
12 upon request by a policyholder. The distribution, delivery or
13 contents or interpretation of this document shall not mean that
14 either the policy or the contract or the holder thereof would be
15 covered in the event of the impairment or insolvency of a member
16 insurer. The description document shall be revised by the
17 association as amendments to the article may require. Failure to
18 receive this document does not give the policyholder, contract
19 holder, certificate holder or insured any greater rights than
20 those stated in this article.

21 (c) The document prepared under subsection (b) shall contain
22 a clear and conspicuous disclaimer on its face. The commissioner
23 shall promulgate a regulation establishing the form and content
24 of the disclaimer. The disclaimer shall:

25 (1) State the name and address of the association and
26 department.

27 (2) Prominently warn the policyholder or contract holder
28 that the association may not cover the policy or, if coverage is
29 available, it will be subject to substantial limitations and
30 exclusions and conditioned on continued residence in this

1 Commonwealth.

2 (3) State that the insurer and its agents are prohibited by
3 law from using the existence of the association for the purpose
4 of sales, solicitation or inducement to purchase any form of
5 insurance.

6 (4) Emphasize that the policyholder or contract holder
7 should not rely on coverage under the association when selecting
8 an insurer.

9 (5) Provide other information as directed by the
10 commissioner.

11 (d) No insurer or agent may deliver a policy or contract
12 described in section 1503(b)(1) and excluded under section
13 1503(b)(2) from coverage under this article unless the insurer
14 or agent, prior to or at the time of delivery, gives the
15 policyholder or contract holder a separate written notice which
16 clearly and conspicuously discloses that the policy or contract
17 is not covered by the association. The commissioner shall by
18 regulation specify the form and content of the notice.

19 Section 1518. Prospective Application.--This article shall
20 not apply to any insurer which is insolvent or unable to fulfill
21 its contractual obligations on the effective date of this
22 article.

23 Section 19. The following acts and parts of acts are
24 repealed:

25 Act of January 24, 1966 (1965 P.L.1509, No.531), referred to
26 as the Surplus Lines Insurance Law.

27 Act of November 26, 1978 (P.L.1188, No.280), known as the
28 Life and Health Insurance Guaranty Association Act.

29 Section 20. This act shall take effect in 120 days.