

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 389 Session of
1995

INTRODUCED BY D. R. WRIGHT, ITKIN, M. COHEN, COY, GORDNER,
HALUSKA, BLAUM, JOSEPHS, PESCI, ROONEY, SANTONI, STABACK,
STURLA, SURRA, TRELLO, RICHARDSON, CURRY, BELFANTI AND
PETRARCA, JANUARY 27, 1995

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 27, 1995

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," establishing the Office of
21 Consumer Advocate for Insurance as an independent office
22 within the Governor's Office and prescribing its powers and
23 duties.

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

26 Section 1. The act of April 9, 1929 (P.L.177, No.175), known
27 as The Administrative Code of 1929, is amended by adding an

1 article to read:

2 ARTICLE IX-C

3 OFFICE OF CONSUMER ADVOCATE FOR INSURANCE

4 Section 901-C. Definitions.--As used in this article:

5 "Consumer" means any person who is a named insured, insured
6 or beneficiary of a policy of insurance, other than worker's
7 compensation insurance, or any other person who may be affected
8 in any way by the Insurance Department's exercise of or the
9 failure to exercise its authority, except with respect to
10 worker's compensation insurance.

11 "Department" means the Insurance Department of the
12 Commonwealth and includes the Insurance Commissioner.

13 "Insurer" means any "company," "association" or "exchange" as
14 such terms are defined in section 101 of the act of May 17, 1921
15 (P.L.789, No.285), known as "The Insurance Department Act 1921."

16 Section 902-C. Office of Consumer Advocate for Insurance.--

17 (a) There is hereby established as an independent office within
18 the Governor's Office an Office of Consumer Advocate for
19 Insurance to represent the interest of consumers before the
20 department.

21 (b) The Office of Consumer Advocate for Insurance shall be
22 headed by the Consumer Advocate for Insurance, who shall be
23 appointed by the Governor, by and with the advice and consent of
24 a majority of the members elected to the Senate. The Consumer
25 Advocate for Insurance shall be a person who by reason of
26 training, experience and attainment is qualified to represent
27 the interest of consumers. Compensation shall be set by the
28 Executive Board.

29 (c) No individual who serves as a Consumer Advocate for
30 Insurance shall, while serving in the position, engage in any

business, vocation or other employment, or have other interests,
inconsistent with the official responsibilities, nor shall the
individual seek or accept employment nor render beneficial
services for compensation with any insurer subject to the
authority of the office during the tenure of the appointment and
for a period of two years immediately after the appointment is
served or terminated.

(d) Any individual who is appointed to the position of
Consumer Advocate for Insurance shall not seek election nor
accept appointment to any elective office during the tenure as
Consumer Advocate for Insurance and for a period of two years
after the appointment is served or terminated.

Section 903-C. Assistant Consumer Advocates for Insurance;
Employees.--The Consumer Advocate for Insurance shall appoint
attorneys as assistant consumer advocates for insurance and
additional clerical, technical and professional staff as may be
appropriate, and may contract for additional services as shall
be necessary for the performance of the duties imposed by this
article. The compensation of assistant consumer advocates for
insurance and clerical, technical and professional staff shall
be set by the Executive Board. No assistant consumer advocate
for insurance or other staff employe shall, while serving in the
position, engage in any business, vocation or other employment,
or have other interests, inconsistent with official
responsibilities.

Section 904-C. Powers and Duties of the Consumer Advocate
for Insurance.--(a) In addition to any other authority
conferred by this article, the Consumer Advocate for Insurance
is authorized to and shall, in carrying out the responsibilities
under this article, represent the interest of consumers as a

1 party, or otherwise participate for the purpose of representing
2 an interest of consumers, before the department in any matter
3 properly before the department, and before any court or agency,
4 initiating proceedings if, in the judgment of the Consumer
5 Advocate for Insurance, the representation may be necessary, in
6 connection with any matter involving regulation by the
7 department, whether on appeal or otherwise initiated.

8 (b) The Consumer Advocate for Insurance may exercise
9 discretion in determining the interests of consumers which will
10 be advocated in any particular proceeding and in determining
11 whether or not to participate in or initiate any particular
12 proceeding and, in so determining, shall consider the public
13 interest, the resources available and the substantiality of the
14 effect of the proceeding on the interest of consumers. The
15 Consumer Advocate for Insurance may refrain from intervening
16 when, in the judgment of the Consumer Advocate for Insurance,
17 intervention is not necessary to represent adequately the
18 interest of consumers.

19 (c) In addition to any other authority conferred by this
20 article, the Consumer Advocate for Insurance is authorized to
21 represent an interest of consumers which is presented for
22 consideration, upon petition in writing, by a substantial number
23 of persons who are consumers of an insurer subject to regulation
24 by the department. The Consumer Advocate for Insurance shall
25 notify the principal sponsors of the petition within a
26 reasonable time after receipt of the petition of the action
27 taken or intended to be taken with respect to the interest of
28 consumers presented in that petition. If the Consumer Advocate
29 for Insurance declines or is unable to represent the interest,
30 written notification and the reasons for the action shall be

1 given to the sponsors.

2 (d) Any action brought by the Consumer Advocate for
3 Insurance before a court or an agency of this Commonwealth shall
4 be brought in the name of the Consumer Advocate for Insurance:
5 Provided, That the Consumer Advocate for Insurance may name a
6 consumer or group of consumers in whose name the action may be
7 brought or may join with a consumer or group of consumers in
8 bringing the action.

9 (e) At a time as the Consumer Advocate for Insurance
10 determines, in accordance with applicable time limitations, to
11 initiate, intervene or otherwise participate in any department,
12 agency or court proceeding, the Consumer Advocate for Insurance
13 shall issue publicly a written statement, a copy of which shall
14 be filed in the proceeding in addition to any required entry of
15 appearance, stating concisely the specific interest of consumers
16 to be protected.

17 (f) The Consumer Advocate for Insurance shall be served with
18 copies of all filings, correspondence or other documents filed
19 by insurers with the department unless the Consumer Advocate for
20 Insurance informs the insurer that specific types of classes of
21 documents need not be so served. The department shall not accept
22 a document as timely filed if the document is also required to
23 be served on the Consumer Advocate for Insurance and the insurer
24 has not indicated that service has or is being made on the
25 Consumer Advocate for Insurance. Insurers shall provide any
26 other nonprivileged information or data requested by the
27 Consumer Advocate for Insurance to the extent that the request
28 is reasonably related to the performance of his duties under
29 this article.

30 Section 905-C. Duties of the Department.--In dealing with

any proposed action which may substantially affect the interest of consumers, including, but not limited to, a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, the department shall:

(1) Notify the Consumer Advocate for Insurance and provide, free of charge, copies of all related documents when notice of the proposed action is given to the public or at a time fixed by agreement between the Consumer Advocate for Insurance and the department in a manner to assure the Consumer Advocate for Insurance reasonable notice and adequate time to determine whether to intervene in the matter.

(2) Consistent with its other statutory responsibilities, take action with due consideration to the interest of consumers.

Section 906-C. Savings Provision; Construction.--(a) Nothing contained in this article shall in any way limit the right of any consumer to bring a proceeding before either the department or a court.

(b) Nothing contained in this article shall be construed to impair the statutory authority or responsibility of the department to regulate insurers in the public interest.

Section 907-C. Reports.--The Consumer Advocate for Insurance shall annually transmit to the Governor and to the General Assembly, and shall make available to the public, an annual report on the conduct of the Office of Consumer Advocate for Insurance. The Consumer Advocate for Insurance shall make recommendations as may, from time to time, be necessary or desirable to protect the interest of consumers.

Section 908-C. Assessment Upon Insurers; Disposition, Appropriation and Disbursement of such Assessments.--(a) Before

1 November 1 of each year the Consumer Advocate for Insurance
2 shall estimate the total expenditures for the Office of Consumer
3 Advocate for Insurance and submit the estimate to the Governor
4 in accordance with section 610. At the same time the Consumer
5 Advocate for Insurance submits his estimate to the Governor, the
6 Consumer Advocate for Insurance shall also submit the estimate
7 to the General Assembly. The estimate shall not exceed 0.0125%
8 of the total gross intrastate revenues of all insurers subject
9 to the jurisdiction of the department for the preceding calendar
10 year. The Consumer Advocate for Insurance, or his designated
11 representatives, shall be afforded an opportunity to appear
12 before the Governor, the Appropriations Committee of the Senate
13 and the Appropriations Committee of the House of Representatives
14 regarding his estimate. If the General Assembly fails to approve
15 the budget of the Consumer Advocate for Insurance for the
16 purposes of this section by March 20, the department shall
17 assess insurers on the basis of the last-approved allocation.
18 When the General Assembly approves the proposed budget, the
19 Consumer Advocate for Insurance and the department shall make an
20 adjustment in the assessment to reflect the approved budget. The
21 Office of Consumer Advocate for Insurance shall subtract from
22 the budget finally approved by the General Assembly any balance
23 of the appropriation to be carried over into the fiscal year
24 from the preceding one. The remainder so determined shall
25 constitute the total assessment and shall be allocated to and
26 paid by insurers in the manner hereafter prescribed.

27 (b) For each fiscal year the allocation shall be made as
28 follows:

29 (1) The Office of Consumer Advocate for Insurance shall
30 determine for the preceding calendar year the amount of its

expenditures directly attributable, or in its judgment properly allocable, to its activities in connection with each group of insurers furnishing the same kind of insurance and debit the amount so determined to such group.

(2) The Office of Consumer Advocate for Insurance shall then allocate the total assessment prescribed in subsection (a) to each group in the proportion which the sum of the debits made to it bears to the sum of the debits made to all groups. The Office of Consumer Advocate for Insurance shall transmit to the department the result of the aforesaid allocation.

(c) The department shall thereafter complete the assessment procedure and collect the assessments as follows: Each insurer within a group shall then be assessed for and shall pay to the department such proportion of the amount allocated to its group as the gross intrastate revenues of the insurer for the preceding calendar year bear to the total gross intrastate revenues of its group for that year. The department shall give notice by registered mail to each insurer of the amount lawfully charged against it under the provisions of this section, which amount shall be paid by the insurer within thirty days of receipt of the notice, unless the department specifies on the notices sent to all insurers an installment plan of payment, in which case each insurer shall pay each installment on or before the date specified by the department. Within fifteen days after receipt of the notice, the insurer against which the assessment has been made may file with the department objections setting out in detail the grounds upon which the objector regards the assessment to be excessive, erroneous, unlawful or invalid. The department, after notice to the objector, shall hold a hearing upon the objections. After the hearing, the department shall

1 record upon its minutes its findings on the objections and shall
2 transmit to the objector, by certified mail, notice of the
3 amount, if any, charged against it in accordance with the
4 findings, which amount, or any installment then due, shall be
5 paid by the objector within ten days after receipt of the notice
6 of the findings of the department with respect to the
7 objections. If any payment prescribed by this subsection is not
8 made as aforesaid, the department may suspend or revoke
9 certificates of authority to do business in this Commonwealth,
10 certify automobile registrations to the Secretary of
11 Transportation for suspension or revocation or, through the
12 Office of Attorney General, may institute an appropriate action
13 at law for the amount lawfully assessed, together with any
14 additional cost incurred by the department or the Office of
15 Attorney General by virtue of an insurer's failure to pay.

16 (d) No suit or proceeding shall be maintained in any court
17 for the purpose of restraining or in any way delaying the
18 collection or payment of any assessment made under subsection
19 (a), (b) or (c), but every insurer against which an assessment
20 is made shall pay the same as provided in subsection (c). Any
21 insurer making any such payment may, at any time within two
22 years from the date of payment, sue the Commonwealth in an
23 action at law to recover the amount paid, or any part thereof,
24 upon the ground that the assessment was excessive, erroneous,
25 unlawful or invalid, in whole or in part, provided that
26 objections, as hereinbefore provided, were filed with the
27 department and payment of the assessment was made under protest
28 either as to all or part thereof. In any action for recovery of
29 any payments made under this section, the claimant shall be
30 entitled to raise every relevant issue of law, but the findings

1 of fact made by the department, pursuant to this section, shall
2 be prima facie evidence of the facts therein stated. Any
3 records, books, data, documents and memoranda relating to the
4 expenses of the Office of Consumer Advocate for Insurance shall
5 be admissible in evidence in any court and shall be prima facie
6 evidence of the truth of their contents. If it is finally
7 determined in any such action that all or any part of the
8 assessment for which payment was made under protest was
9 excessive, erroneous, unlawful or invalid, the Office of
10 Consumer Advocate for Insurance shall make a refund to the
11 claimant out of the appropriation specified herein as directed
12 by the court.

13 (e) The procedure in this section providing for the
14 determination of the lawfulness of assessments and the recovery
15 back of payments made pursuant to such assessments shall be
16 exclusive of all other remedies and procedures.

17 (f) It is the intent and purpose of this section that each
18 insurer shall advance to the Office of Consumer Advocate for
19 Insurance its reasonable share of the cost of administering this
20 act. The Office of Consumer Advocate for Insurance shall keep
21 records of the costs incurred in connection with the
22 administration and enforcement of this act or any other act. The
23 Office of Consumer Advocate for Insurance and the department
24 shall also keep a record of the manner in which it shall have
25 computed the amount assessed against every insurer. Such records
26 shall be open to inspection by all interested parties. The
27 determination of such costs and assessments by the Office of
28 Consumer Advocate for Insurance and the department, and the
29 records and data upon which the same are made, shall be
30 considered prima facie correct. In any proceeding instituted to

1 challenge the reasonableness or correctness of any assessment
2 under this section, the party challenging the same shall have
3 the burden of proof.

4 (g) All assessments received, collected or recovered under
5 this act shall be paid by the department into the General Fund
6 of the State Treasury through the Department of Revenue.

7 (h) All such assessments, allocated to and paid by insurers,
8 shall be held in trust solely for the purpose of defraying the
9 cost of the administration and performance of the duties of the
10 Office of Consumer Advocate for Insurance relating to
11 proceedings before the department, the corresponding regulatory
12 agencies of the United States, related judicial proceedings and
13 other such matters within the jurisdiction of the Office of
14 Consumer Advocate for Insurance, and shall be earmarked for the
15 use of, and annually appropriated to, the Office of Consumer
16 Advocate for Insurance for disbursement solely for that purpose.

17 (i) All requisitions upon such appropriation shall be signed
18 by the Consumer Advocate for Insurance or such deputies as he
19 may designate in writing to the State Treasurer and shall be
20 presented to the State Treasurer and dealt with by him and the
21 Treasury Department in the manner prescribed by the act of April
22 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

23 Section 2. This act shall take effect in 90 days.