

INSURANCE DEPARTMENT ACT OF 1921, THE - OMNIBUS AMENDMENTS
Act of Dec. 18, 1992, P.L. 1496, No. 177 **Cl. 40**
Session of 1992
No. 1992-177

HB 1669

AN ACT

Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as amended, "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," further providing for certificates of authority, for the computation of certain reserves, for the powers and duties of the Insurance Commissioner and the Insurance Department; adding provisions relating to reinsurance intermediaries, managing general agents and the examination of insurers; further providing for enforcement and penalties; making repeals; and making an editorial change.

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

Section 1. Section 102 of 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, is amended to read:

Section 102. Short Title.--This act shall be known and may be cited as "The Insurance Department Act of [one thousand nine hundred and twenty-one] **1921.**"

Section 2. Section 208(c) of the act, amended July 31, 1968 (P.L.763, No.239), is amended to read:

Section 208. Certificates of Authority To Do Business.--* * *

(c) **(1)** Whenever the commissioner believes, from evidence satisfactory to him, that any insurance company, association, or exchange is doing an insurance business within this Commonwealth in violation of any provision of this act or any order or requirement of the commissioner issued or promulgated pursuant to authority expressly granted the commissioner by any provision of this act or by law, or is about to violate any such provision, order, or requirement, the commissioner may, [after approval by the Attorney General, bring an action in the Court of Common Pleas of Dauphin County against such company, association, or exchange to enjoin such company, association, or exchange from continuing such violation or engaging therein or doing any act in furtherance thereof. In such action an order or judgment may be entered awarding such preliminary or final injunction as is proper.] **in his discretion, take against the offending party or parties any one or more of the following courses of action:**

(i) **Revoke the certificate of authority of such offending company, association or exchange.**

(ii) **Refuse to renew the certificate of authority of such offending company, association or exchange.**

This remedy is in addition to any other remedy provided by this act or by law.

(2) Before the Insurance Commissioner shall take any action as set forth in clause (1), he shall give written notice to the person, company, association or exchange accused of violating the laws, stating specifically the nature of such alleged violation and fixing a time and place, at least ten days thereafter, when a hearing before the Insurance Commissioner regarding the matter shall be held.

* * *

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

Section 223. Jurisdiction Over Providers of Health Care Benefits.--(a) Notwithstanding any other provision of law and except as provided in this section, any person or other entity which provides benefits in this Commonwealth for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital or optometric expenses, whether the benefits are provided by direct payment, reimbursement or otherwise, shall comply with the requirements of section 208, unless the person or other entity shows that while providing those services it is subject to the jurisdiction of another agency of the Commonwealth, any subdivisions thereof, or the Federal Government with respect to financial solvency.

(b) A person or entity may show that it is subject to the jurisdiction of another agency of the Commonwealth, or any subdivision thereof, or of the Federal Government by providing to the Insurance Commissioner the appropriate certificate, license or other document issued by the other governmental agency which permits or qualifies it to provide those services. Such certificate, license or other document may constitute evidence that a person or entity is subject to the jurisdiction of another agency of the Commonwealth, or any subdivision thereof, or of the Federal Government, but such evidence is subject to rebuttal. A Department of Labor letter concerning an entity's purported status under the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 29 U.S.C. § 1001 et seq.) is not a certificate, license or other document within the meaning of this section which permits or qualifies an entity to provide services.

(c) Any person or entity which is unable to show under subsection (b) that it is subject to the jurisdiction of another agency of the Commonwealth, or any subdivision thereof, or the Federal Government shall submit to an examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity and to determine whether or not such person or entity complies with the applicable provisions of law. The person or entity examined shall be responsible for the Insurance Department's examination expenses to the same extent as a licensed insurance company would be responsible if the person or entity is found to be subject to the requirements of section 208.

(d) Any person or entity unable to show that it is subject to the jurisdiction of another agency of the Commonwealth, or any subdivision thereof, or of the Federal Government shall be subject to all appropriate provisions of law regarding the conduct of its business.

(e) Any person, entity, agent or administrator which advertises, sells, transacts or administers in this Commonwealth the benefits described in subsection (a) and which is required to submit to an examination by the Insurance Commissioner under subsection (c) shall, if said benefits are not fully insured or otherwise fully covered by any insurer licensed to do the business of insurance in this Commonwealth, nonprofit hospital service plan or nonprofit health care plan, give notice to every purchaser, prospective

purchaser and covered person of such lack of insurance or other coverage and lack of State insurance insolvency guaranty funds protection.

(f) Any administrator which advertises or administers in this Commonwealth the benefits described in subsection (a) and which is required to submit to an examination by the Insurance Commissioner under subsection (c) shall give notice to any person or agent, as described in subsection (e), of the elements of the coverage, including, but not limited to, the amount of "stop-loss" insurance in effect and lack of State insurance insolvency guaranty funds protection.

(g) The notice described in subsections (e) and (f) shall be in ten-point type on any solicitation, application, description of benefits, renewal form or any other form provided to any person covered by a person or entity described in subsection (a).

(h) Upon satisfactory evidence of the violation of any of the provisions of this section, the Insurance Commissioner may in his discretion pursue any one or more of the following courses of action, regardless of whether such person, entity, agent, solicitor, broker or company is licensed or not licensed by the Insurance Commissioner:

(1) Suspend or revoke or refuse to renew the license of such offending party or parties.

(2) Impose a civil penalty of not more than one thousand dollars (\$1,000) for each and every act in violation of any of said sections by said party or parties.

Section 4. Section 301.1(a) of the act, amended June 23, 1976 (P.L.403, No.90), is amended to read:

Section 301.1. Computation of Reserve Liability; Health and Accident Insurance.--(a) The Insurance Commissioner shall each year value or cause to be valued, or shall annually require the insurer to value or cause to be valued, the reserve liabilities, as of the thirty-first day of December of the preceding year, of every life insurance company doing business in this Commonwealth, with respect to all of its health and accident insurance policies. For all such policies, the company shall maintain **a claim reserve for incurred but unpaid claims and** an active life reserve which shall place a sound value on its liabilities [under such policies] and be not less than the reserve according to appropriate standards set forth in regulations issued by the Insurance Commissioner [and, in]. **In no event[,]** shall the active life reserve be less in the aggregate than the pro rata gross unearned premiums for such policies.

* * *

Section 5. Section 311 of the act, amended May 20, 1949 (P.L.1498, No.449), is amended to read:

Section 311. Computation of Reserve Against Unpaid Losses in Casualty Insurance Other Than Non-Cancellable Health and Accident Insurance.--The Insurance Commissioner shall, in calculating the reserve against unpaid losses of [casualty insurance companies, other than losses under] **any insurance company, other than life insurance companies, for losses other than under** noncancellable health and accident insurance issued on and after January first, one thousand nine hundred fifty, [liability and workmen's compensation policies,] set down, by careful estimate in each case, the loss likely to be incurred against every claim presented or that may be presented in pursuance of notice from the insured of the occurrence of an event that may result in a loss. The sum of the items so estimated shall be the total amount of the reserve, except that, in credit insurance, fifty per centum of the premiums on all credit policies expiring in the months of October, November, and December of the current year, less the amount of losses paid

on such policies, shall, in addition thereto, be charged in the loss reserve.

Section 6. Section 311.1(a) of the act, amended June 23, 1976 (P.L.403, No.90), is amended to read:

Section 311.1. Computation of Reserve Liability; Health and Accident Insurance.--(a) The Insurance Commissioner shall each year value or cause to be valued, or shall annually require the insurer to value or cause to be valued, the reserve liabilities, as of the thirty-first day of December of the preceding year, of every casualty insurance company doing business in this Commonwealth, with respect to all of its health and accident insurance policies. For all such policies the company shall maintain **a claim reserve for incurred but unpaid claims and** an active life reserve which shall place a sound value on its liabilities [under such policies] and be not less than the reserve according to appropriate standards set forth in [regulation] **regulations** issued by the Insurance Commissioner [and, in]. **In no event[,]** shall the **active life reserve be** less in the aggregate than the pro rata gross unearned premiums for such policies.

* * *

Section 7. Section 313 of the act, amended December 19, 1975 (P.L.571, No.163), is amended to read:

Section 313. Computation of Reserve.--[The reserve required of stock and mutual insurance companies and exchanges for outstanding losses under insurance against loss or damage from accident to, or injuries suffered by, an employe or other person, and for which the insured is liable, shall be computed as follows:

(b) For all liability premiums earned during the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty per centum of the earned liability premiums of each of such three years, less all loss and loss expense payments made under liability policies written in the corresponding years.

(c) For all compensation claims under policies written more than three years prior to the date as of which the statement is made, the present value, at four per centum interest, of the determined and estimated future payments.

(d) For all compensation premiums earned in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five per centum of the earned compensation premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years, but, in any event, such reserve shall be not less than the present value, at four per centum interest, of the determined and the estimated unpaid compensation claims under policies written during each of such years.] **In addition to the reserves required by section 311, any insurance company, other than life insurance companies, is required to establish statutory reserves for those lines of insurance reported in schedule "P" of the Annual Statement Blank, as adopted for use in Pennsylvania by the commissioner, in accordance with the instructions for calculation of such statutory reserves as published by the National Association of Insurance Commissioners.**

Section 8. Sections 314 and 315 of the act are repealed.

Section 9. Section 316 of the act is amended to read:

Section 316. Power of Insurance Commissioner To Fix Amount of Reserves.--Whenever, in the judgment of the Insurance Commissioner, the [liability or compensation] loss reserves of any insurer under his supervision, calculated in accordance with the foregoing provisions, are inadequate, he may, in his discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise; or whenever a satisfactory

mathematical or actuarial table for valuing compensation loss reserves is promulgated and approved by the Insurance Commissioner, he may require any insurer under his supervision to maintain, upon such tabular basis, greater or lesser reserves than those hereinbefore provided for.

Section 10. Section 660 of the act, added December 3, 1975 (P.L.469, No.136), is amended to read:

Section 660. Action for Injunction or Other Process Authorized.--(a) The Insurance Commissioner or a duly designated deputy, upon advice of the Attorney General, may maintain as hereinafter provided an action in the name of the Commonwealth for an injunction or other process against any person, partnership, copartnership, association, company, corporation or other entity to restrain and prevent any of the foregoing from transacting business as an agent or solicitor of any insurance company, association or exchange or as an insurance broker or as a manager or exclusive general agent of a domestic insurance company, association or exchange without a license whenever a license to engage in aforementioned activities is required by law and such licenses are issued by the Insurance Commissioner.

(b) The action described in subsection (a) may also be brought to restrain or prevent unlicensed activity as a reinsurance intermediary in violation of Article VII or as a managing general agent under Article VIII.

Section 11. Article VII of the act is repealed.

Section 12. The act is amended by adding articles to read:

ARTICLE VII.

REINSURANCE INTERMEDIARIES.

Section 701. Definitions.--The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Actuary" means an individual who is a member in good standing of the American Academy of Actuaries.

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed the management, control or activities of the reinsurance intermediary.

"Department" means the Insurance Department of the Commonwealth.

"Insurer" means any person, firm, association or corporation duly licensed in this Commonwealth pursuant to the applicable provisions of the insurance law of the Commonwealth as an insurer.

"Licensed producer" means an agent, broker or reinsurance intermediary licensed pursuant to the applicable provisions of the insurance laws of the Commonwealth.

"Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in this section.

"Reinsurance intermediary-broker" or "RB" means any person, other than an officer or employe of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

"Reinsurance intermediary-manager" or "RM" means any person, firm, association or corporation who has authority to bind or to manage all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as an RM, manager or other similar term. Notwithstanding the above, the following persons shall not be

considered an RM with respect to such reinsurer, for the purposes of this article:

(1) An employe of the reinsurer.
(2) A United States manager of the United States branch of an alien reinsurer.

(3) An underwriting manager which pursuant to contract manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Article XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and whose compensation is not based on the volume of premiums written.

(4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the Insurance Commissioner of the state in which the manager's principal business office is located.

"Reinsurer" means any person, firm, association or corporation duly licensed in this Commonwealth pursuant to the applicable provisions of the insurance laws of the Commonwealth as an insurer with the authority to assume reinsurance.

"Qualified United States financial institution" means an institution that meets all of the following:

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

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

(3) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

"To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this article.

Section 702. Licensure.--(a) No person, firm, association or corporation shall act as an RB in this Commonwealth if the RB maintains an office either directly or as a member or employe of a firm or association or an officer, director or employe of a corporation:

(1) in this Commonwealth unless the RB is a licensed producer in this Commonwealth; or

(2) in another state unless the RB is a licensed producer in this Commonwealth or another state having a law substantially similar to this article or the RB is licensed in this Commonwealth as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation shall act as an RM:

(1) For a reinsurer domiciled in this Commonwealth unless the RM is a licensed producer in this Commonwealth.

(2) In this Commonwealth if the RM maintains an office either directly or as a member or employe of a firm or association or an officer, director or employe of a corporation in this Commonwealth unless the RM is a licensed producer in this Commonwealth.

(3) In another state for a nondomestic insurer unless the RM is a licensed producer in this Commonwealth or another state having a law substantially similar to this article or the person is licensed in this Commonwealth as a nonresident reinsurance intermediary.

(c) The department may require an RM subject to subsection (b) to:

(1) file a bond in an amount from an insurer acceptable to the department for the protection of the reinsurer; and

(2) maintain an errors and omissions policy in an amount acceptable to the department.

(d) The department may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this article. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of that corporation, and all such persons shall be named in the application and any supplements thereto.

(e) The department may refuse to issue a reinsurance intermediary license if, in its judgment, the applicant, anyone named on the application or any member, principal, officer or director of the applicant is not trustworthy or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary or that any of the foregoing has given cause for revocation or suspension of a license or has failed to comply with any prerequisite for the issuance of a license. Upon written request therefor, the department shall furnish a summary of the basis for refusal to issue a license which document shall be confidential and not subject to disclosure to any other party by the department.

(f) Licensed attorneys at law of this Commonwealth when acting in their professional capacity shall be exempt from this section.

Section 703. Required Contract Provisions for Reinsurance Intermediary-Brokers.--Transactions between an RB and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization specifying the responsibilities of each party. The authorization shall at a minimum contain provisions which provide as follows:

(1) The insurer may terminate the RB's authority at any time.

(2) The RB will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owing to the RB and remit all funds due to the insurer within thirty days of receipt.

(3) All funds collected for the insurer's account will be held by the RB in a fiduciary capacity in a bank which is a qualified United States financial institution.

(4) The RB will comply with section 704.

(5) The RB will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Section 704. Books and Records of Reinsurance Intermediary-Brokers.--(a) For at least three years after expiration of each contract of reinsurance transacted by the RB with respect to first party coverages and for at least ten years after expiration of each contract of reinsurance transacted by the RB with respect to all other coverages, the RB will keep a complete record for each transaction showing all of the following:

(1) The type of contract, limits, underwriting restrictions, classes or risks and territory.

(2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation.

(3) Reporting and settlement requirements of balances.

- (4) The rate used to compute the reinsurance premium.
- (5) Names and addresses of assuming reinsurers.
- (6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RB.
- (7) Related correspondence and memoranda.
- (8) Proof of placement.
- (9) Details regarding retrocessions handled by the RB, including the identity of retrocessionaires and percentage of each contract assumed or ceded.
- (10) Financial records, including, but not limited to, premium and loss accounts.
- (11) When the RB procures a reinsurance contract on behalf of a licensed ceding insurer:
 - (i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (ii) if placed through a representative of the assuming reinsurer other than an employe, written evidence that such reinsurer has delegated binding authority to the representative.
- (b) The insurer shall have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

Section 705. Duties of Insurers Utilizing the Services of a Reinsurance Intermediary-Broker.--(a) An insurer shall not engage the services of any person, firm, association or corporation to act as an RB on its behalf unless such person is licensed as required by section 702(a).

(b) An insurer may not employ an individual who is employed by an RB with which it transacts business unless the RB is under common control with the insurer and subject to Article XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

(c) The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business.

Section 706. Required Contract Provisions for Reinsurance Intermediary-Managers.--Transactions between an RM and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract specifying the responsibilities of each party which shall be approved by the reinsurer's board of directors. At least thirty days before such reinsurer assumes or cedes business through such licensed producer, a true copy of the approved contract shall be filed with the department for approval. The contract shall at a minimum contain the following provisions:

(1) The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank which is a qualified United States financial institution. The RM may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least three years after expiration of each contract of reinsurance transacted by the RM with respect to first party coverages and for at least ten years after expiration of each contract of reinsurance transacted by the RM with respect to all other coverages, the RM will keep a complete record for each transaction showing all of the following:

- (i) The type of contract, limits, underwriting restrictions, classes or risks and territory.
- (ii) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation and disposition of outstanding reserves on covered risks.
- (iii) Reporting and settlement requirements of balances.
- (iv) Rate used to compute the reinsurance premium.
- (v) Names and addresses of reinsurers.
- (vi) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM.
- (vii) Related correspondence and memoranda.
- (viii) Proof of placement.
- (ix) Details regarding retrocessions handled by the RM as permitted by section 708(d), including the identity of retrocessionaires and percentage of each contract assumed or ceded.
- (x) Financial records, including, but not limited to, premium and loss accounts.
- (xi) When the RM places a reinsurance contract on behalf of a ceding insurer:
 - (A) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (B) if placed through a representative of the assuming reinsurer other than an employe, written evidence that such reinsurer has delegated binding authority to the representative.
- (5) The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer.
- (6) The contract cannot be assigned in whole or in part by the RM.
- (7) The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.
- (8) Provisions setting forth the rates, terms and purposes of commissions, charges and other fees which the RM may levy against the reinsurer.
- (9) If the contract permits the RM to settle claims on behalf of the reinsurer the following shall apply:
 - (i) All claims will be reported to the reinsurer in a timely manner.
 - (ii) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (A) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
 - (B) involves a coverage dispute;
 - (C) may exceed the RM's claims settlement authority;
 - (D) is open for more than six months; or
 - (E) is closed by payment of the lesser of an amount set by the department or an amount set by the reinsurer.
 - (iii) All claim files will be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer such files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis.
 - (iv) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
- (10) If the contract provides for a sharing of interim profits by the RM, that such interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the department for

specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to section 708(c).

(11) The RM will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall periodically (at least semi-annually) conduct an onsite review of the underwriting and claims processing operations of the RM.

(13) The RM will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract.

(14) The acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

Section 707. Prohibited Acts.--The RM shall not:

(1) Bind retrocessions on behalf of the reinsurer except that the RM may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one per centum of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer.

(7) Appoint a sub-RM.

Section 708. Duties of Reinsurers Utilizing the Services of a Reinsurance Intermediary-Manager.--(a) A reinsurer shall not engage the services of any person, firm, association or corporation to act as an RM on its behalf unless such person is licensed as required by section 702(b).

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which such reinsurer has engaged, prepared by an independent certified accountant in a form acceptable to the department.

(c) If an RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

(e) Within thirty days of termination of a contract with an RM, the reinsurer shall provide written notification of such termination to the department.

(f) A reinsurer shall not appoint to its board of directors any officer, director, employe, controlling shareholder or subproducer of its RM. This subsection shall not apply to relationships governed by Articles XI or XII of the act of May 17,

1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

Section 709. Examination Authority.--(a) A reinsurance intermediary shall be subject to examination by the department. The department shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable by the department.

(b) An RM may be examined as if it were the reinsurer.

Section 710. Penalties and Liability.--(a) A reinsurance intermediary, insurer or reinsurer found by the commissioner, after a hearing conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure), to be in violation of any provision of this article, shall:

(1) for each separate violation, pay a civil penalty in an amount not exceeding five thousand dollars (\$5,000);

(2) be subject to revocation or suspension of its license; and

(3) if a violation was committed by the reinsurance intermediary such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

(b) The decision, determination or order of the commissioner pursuant to subsection (a) shall be subject to judicial review pursuant to 2 Pa.C.S.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance laws of the Commonwealth.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

ARTICLE VIII.

MANAGING GENERAL AGENTS.

Section 801. Definitions.--The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Actuary" means an individual who is a member in good standing of the American Academy of Actuaries.

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Department" means the Insurance Department of the Commonwealth.

"Insurer" means any company, association or exchange authorized by the Insurance Commissioner to transact the business of insurance in this Commonwealth, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

"Managing general agent" or "MGA" means:

(1) Any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term who, with or without the authority either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per centum of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following:

(i) adjusts or pays claims in excess of an amount determined by the Insurance Department; or

(ii) negotiates reinsurance on behalf of the insurer.

(2) Notwithstanding clause (1), the following persons shall not be considered as managing general agents for the purposes of this article:

(i) an employe of the insurer;

(ii) a United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to Article XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921," and whose compensation is not based on the volume of premiums written;

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney;

(v) any manager or exclusive general agent operating under any management contract or exclusive general agency agreement entered into prior to December 22, 1965, and therefor not subject to licensing pursuant to section 651: Provided, however, That any such management contract or exclusive general agency agreement shall subject the manager or exclusive general agent and the insurer to Article XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921": And further provided, That any sale, assignment or transfer of any management contract or exclusive general agency agreement, whether said contract or agreement was entered into before or after December 22, 1965, shall make the purchaser, assignee or transferee subject to licensing under this article.

"Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 802. Licensure.--(a) No person, firm, association or corporation shall act in the capacity of an MGA with respect to risks located in this Commonwealth for an insurer licensed in this Commonwealth unless such person is a licensed agent in this Commonwealth.

(b) No person, firm, association or corporation shall act in the capacity of an MGA representing an insurer domiciled in this Commonwealth with respect to risks located outside this Commonwealth unless that person is licensed as an agent in this Commonwealth. This license may be a nonresident license issued under this article.

(c) The department may require a bond in an amount acceptable to it for the protection of the insurer.

(d) The department may require the MGA to maintain an errors and omissions policy.

Section 803. Required Contract Provisions.--No person, firm, association or corporation acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function specifies the division of such responsibilities, and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(2) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than

three months' estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the MGA will be maintained. The insurer shall have access and the right to copy all accounts and the records related to its business in a form usable by the insurer, and the department shall have access to all books, bank accounts and records of the MGA in a form usable to the department. These records shall be retained according to the laws pertaining to the conduct of examinations.

(5) The contract may not be assigned in whole or part by the MGA.

(6) Appropriate underwriting guidelines, including all of the following:

- (i) The maximum annual premium volume.
- (ii) The basis of the rates to be charged.
- (iii) The types of risks which may be written.
- (iv) Maximum limits of liability.
- (v) Applicable exclusions.
- (vi) Territorial limitations.
- (vii) Policy cancellation provisions.
- (viii) The maximum policy period.

(7) The insurer shall have the right to cancel or nonrenew any policy of insurance, subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

(8) If the contract permits the MGA to settle claims on behalf of the insurer, the following shall apply:

(i) All claims must be reported to the company in a timely manner.

(ii) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(B) involves a coverage dispute;

(C) may exceed the MGA's claims settlement authority;

(D) is open for more than six months; or

(E) is closed by payment of an amount set by the department or an amount set by the company, whichever is less.

(iii) All claim files shall be the joint property of the insurer and the MGA. However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate. The MGA shall have reasonable access to and the right to copy the files on a timely basis.

(iv) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(9) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(10) If the contract provides for a sharing of interim profits by the MGA and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 805.

Section 804. Prohibited Acts.--An MGA shall not:

(1) Bind reinsurance or retrocessions on behalf of the insurer except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including,

for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and the commission schedules.

(2) Commit the insurer to participate in insurance or reinsurance syndicates.

(3) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of insurance for which he is appointed.

(4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one per centum of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.

(6) Permit its subagent to serve on the insurer's board of directors.

(7) Jointly employ an individual who is employed with the insurer.

(8) Appoint a sub-MGA.

Section 805. Duties of Insurers.--(a) The insurer shall have on file an independent financial examination, in a form acceptable to the department, of each MGA with which it has done business.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.

(c) The insurer shall periodically, at least semiannually, conduct an onsite review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who shall not be affiliated with the MGA.

(e) Within thirty days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the department. Notices of appointment of an MGA shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any agent has become, by operation of section 801, an MGA as defined in that section. If the insurer determines that an agent has become an MGA, the insurer shall promptly notify the agent and the department of such determination, and the insurer and agent must fully comply with the provisions of this article within thirty days.

(g) An insurer shall not appoint to its board of directors an officer, director, employe, subagent or controlling shareholder of its MGAs. This subsection shall not apply to relationships governed by Article XI or XII of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

Section 806. Examination Authority.--The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer in accordance with the law pertaining to the conduct of examinations.

Section 807. Penalties and Liability.--(a) If the commissioner finds after a hearing conducted in accordance with 2 Pa.C.S.

(relating to administrative law and procedure) that any person has violated any provision of this article, the commissioner may order:

(1) for each separate violation, a civil penalty not to exceed five thousand dollars (\$5,000);

(2) revocation or suspension of the agent's license; and

(3) the MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this article committed by the MGA.

(b) The decision, determination or order of the commissioner pursuant to subsection (a) shall be subject to judicial review pursuant to 2 Pa.C.S.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance laws of this Commonwealth.

(d) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

ARTICLE IX. EXAMINATIONS.

Section 901. Purpose.--The purpose of this article is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this Commonwealth and all persons otherwise subject to the jurisdiction of the department. The provisions of this article are intended to enable the department to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this Commonwealth.

Section 902. Definitions.--The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative or regulatory authority of the Insurance Department.

"Department" means the Insurance Department of the Commonwealth.

"Examiner" means any individual or firm having been authorized by the Insurance Department to conduct an examination under this article.

"Insurer" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, beneficial association and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters and also means health care plans as defined in 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations), 63 (relating to professional health services plan corporations), 65 (relating to fraternal benefit societies) and 67 (relating to beneficial societies) and the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act." For purposes of this article, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means any individual, aggregation of individuals, trust, association, partnership or corporation or any affiliate thereof. The term shall exclude agents.

Section 903. Authority, Scope and Scheduling of Examinations.--(a) Every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings

relating to its property, assets, business and affairs in such manner and for such time periods as the department, in its discretion, may require in order that its authorized representatives may readily verify the financial condition of the company or person and ascertain whether the company or person has complied with the laws of this Commonwealth.

(b) The department or any of its examiners may conduct an examination under this article of any company as often as the commissioner in his sole discretion deems appropriate but shall at a minimum conduct an examination of every insurer licensed in this Commonwealth not less frequently than once every five years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the Examiners' Handbook adopted by the NAIC and in effect when the commissioner exercises discretion under this subsection.

(c) For purposes of completing an examination of any company under this article, the department may examine or investigate any person or the business of any person insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(d) In lieu of an examination under this article of any foreign or alien insurer licensed in this Commonwealth, the department may accept an examination report on such company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if:

(1) the insurance department of the other state was at the time of the examination accredited under the NAIC Financial Regulation Standards and Accreditation Program; or

(2) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by that department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

Section 904. Conduct of Examinations.--(a) Upon determining that an examination should be conducted, the commissioner or his designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC. The department may also employ such other guidelines or procedures as it may deem appropriate.

(b) Every company or person from whom information is sought, its officers, directors and agents must provide to the examiners appointed under subsection (a) timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person must facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any company by its officers, directors, employees or agents to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the department's jurisdiction. Any such proceedings for suspension,

revocation or refusal of any license or authority shall be conducted pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

(c) The commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the department may petition a court of competent jurisdiction, and, upon proper showing, the court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this article, the department may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

(e) Nothing contained in this article shall be construed to limit the department's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this Commonwealth. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this article shall be construed to limit the department's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his sole discretion, deem appropriate.

Section 905. Examination Reports.--(a) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiners find reasonably warranted from such facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner or his designee shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

(1) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the department, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation;

(2) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling pursuant to subsection (a); or

(3) calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(d) (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed to the commissioner pursuant to 2 Pa.C.S. (relating to administrative law and procedure), and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) Any hearing conducted under subsection (c)(3) by the department or its authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the department's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection (c)(1).

(3) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or his representative shall be under oath and preserved for the record.

(4) The hearing shall proceed with the commissioner or his designee posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross examination shall be conducted only by the commissioner or his designee. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(5) Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(e) (1) Upon the adoption of the examination report under subsection (c)(1), the department shall continue to hold the content of the examination report as private and confidential information for a period of thirty days except to the extent provided in subsection (b). Thereafter, the department may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(2) Nothing contained in this article shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results or any matter relating thereto to the Insurance Department of this or any other state or country or to law enforcement officials of this or any other state or agency of the Federal Government at any time so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this article.

(3) In the event the department determines that regulatory action is appropriate as a result of any examination, it may initiate any proceedings or actions as provided by law.

(f) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the department or any other person in the course of an examination made under this article shall be given confidential treatment and are not subject to subpoena and may not be made public by the department or any other person except to the extent provided in subsection (e). Access may also be granted to the NAIC. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, unless the prior written consent of the company to which it pertains has been obtained.

Section 906. Conflict of Interest.--(a) No examiner may be appointed by the commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this article. This section shall not be construed to automatically preclude an examiner from being:

- (1) a policyholder or claimant under an insurance policy;
- (2) a grantor of a mortgage or similar instrument on such examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) an investment owner in shares of regulated diversified investment companies; or
- (4) a settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the department may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this article.

Section 907. Cost of Examinations.--All the expenses incurred in and about the examination of any company, including compensation of department employes assisting in said examination and any other professionals or specialists retained in accordance with section 904(d), shall be charged to and paid by the company examined in such manner as the commissioner shall by regulation prescribe.

Section 908. Immunity from Liability.--(a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this article.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner, his authorized representative or examiner or the department pursuant to an examination made under this article if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a).

(d) A person identified in subsection (a) shall be entitled to an award of attorney fees and costs if he is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of his activities in carrying out the provisions of this article and the party bringing the action was not

substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

Section 13. Managers and exclusive general agents licensed in accordance with section 651 of the act and subject to the provisions of Article VIII, as added by this amendatory act, shall be required to comply with Article VIII upon renewal of their existing license or upon the effective date of this act, whichever occurs later.

Section 14. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 15. This act shall take effect in 120 days.

APPROVED--The 18th day of December, A. D. 1992.

ROBERT P. CASEY