

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 30

Session of
1987

INTRODUCED BY HOLL, JANUARY 15, 1987

REFERRED TO BANKING AND INSURANCE, JANUARY 15, 1987

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," establishing the Pennsylvania
12 Liability Underwriting Services Plan; and providing for
13 financial disclosure.

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

16 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
17 as The Insurance Company Law of 1921, is amended by adding
18 articles to read:

19 ARTICLE X-A.

20 PENNSYLVANIA LIABILITY UNDERWRITING SERVICES PLAN.

21 Section 1001-A. Definitions.--The following words and
22 phrases when used in this article shall have the meanings given
23 to them in this section unless the context clearly indicates

1 otherwise:

2 (1) "Board," means the board of directors of the Plan.

3 (2) "Commercial liability insurance," means the insurance
4 coverage against the legal liability of the insured against
5 loss, damage or expense incident to a claim arising out of the
6 death or injury of any person or property damage as the result
7 of or incident to the lawful conduct of a business enterprise or
8 public purpose.

9 (3) "Commissioner," means the Insurance Commissioner of the
10 Commonwealth.

11 (4) "Department," means the Insurance Department of the
12 Commonwealth.

13 (5) "Plan," means the Pennsylvania Liability Underwriting
14 Services Plan.

15 Section 1002-A. Creation of Plan.--The commissioner shall be
16 authorized to establish, from time to time, as may be necessary,
17 the Pennsylvania Liability Underwriting Services Plan as a legal
18 entity to operate during periods of time designated by the
19 commissioner with all the rights which are reasonable and
20 necessary to fulfill its purpose, including, but not limited to,
21 the following:

22 (1) To own property.

23 (2) To enter into contracts.

24 (3) To sue and be sued, provided that no judgment against
25 the Plan shall create any liability in the individual members.

26 Section 1003-A. Purpose.--The purpose of the Plan is to
27 assist in the placement of commercial liability insurance for
28 eligible Pennsylvania commercial risks and public entities that
29 have tried and failed to find such coverage.

30 Section 1004-A. Membership.--Every commercial liability

1 insurer admitted to do business in this Commonwealth shall, as a
2 condition of its authority to write such kinds of insurance
3 within this Commonwealth, be a member of the Plan and have the
4 rights and obligations as hereinafter described. The
5 commissioner may require that the surplus lines market
6 participate in the Plan.

7 Section 1005-A. Participation.--Each member of the Plan
8 shall participate in funding the administrative costs of the
9 plan, to the extent that application fees do not defray those
10 costs, and in the review of applications for insurance. Each
11 member's share of participation obligations shall be equitable
12 and set forth in the plan of operation. However, members of the
13 Plan shall not be required to review application of eligible
14 commercial risks or public entities where the member has not
15 underwritten such coverage for two consecutive years preceding
16 the effective date of this section.

17 Section 1006-A. Board of Directors.--The Plan shall be
18 governed by nine directors and the Insurance Commissioner, who
19 shall serve as a non-voting ex officio chairman. The nine
20 directors shall be appointed to the board as voting members by
21 the commissioner, each to serve a term of two years. Five
22 members shall be representatives of insurance companies, two
23 members shall be licensed insurance agents or brokers and two
24 members shall be consumers of commercial insurance. Members
25 shall serve as representatives of their employers, who may have
26 the right to substitute individuals with the prior approval of
27 the commissioner.

28 Section 1007-A. Voting Rights.--Whenever so designated by
29 the board pursuant to its plan of operation, each commercial
30 liability insurer shall be allotted votes in proportion to its

share of the Statewide total written premium during the prior year relating to general liability coverage, plus the liability portion, as determined by the commissioner, of commercial multi-peril coverage.

Section 1008-A. Organization.--(a) Within sixty (60) days following the issuance of an order by the commissioner to establish a plan the board shall submit to the commissioner, for his review, a proposed plan of operation of the Plan, consistent with the provisions of this act, which shall provide for the formation of the Plan and the economical and efficient administration of the Plan, including, but not limited to, management of the Plan, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities within this Commonwealth, assessment of members to defray continuing expenses, limits of liability, eligibility requirements, procedures for securing timely referrals and quotes on insurance applications and governance of the Plan.

(b) The plan of operation shall be subject to approval by the commissioner and shall take effect ten (10) days after having been approved by him. If the commissioner disapproves the proposed plan of operation, the commissioner shall specify his objections and how the plan of operation may be made acceptable. Following the receipt of objections from the commissioner, the Plan shall, within fifteen (15) days, submit for review an appropriately revised plan of operation, and, if the Plan fails to do so or if the revised Plan so filed is unacceptable, the commissioner shall promulgate a plan of operation.

(c) The Plan may, by its own initiative, subject to prior approval by the commissioner, amend the plan of operation.

1 Section 1009-A. Application Fees.--Subject to approval by
2 the commissioner, the Plan shall require applications to be
3 accompanied by reasonable application fees, which may vary for
4 different classes of applicants. Initially, application fees
5 should not exceed one hundred dollars (\$100) nor be less than
6 ten dollars (\$10) for any class of insured and shall be reviewed
7 annually by the commissioner. The application fee is non-
8 refundable if the applicant is determined to be eligible for
9 coverage, regardless of whether coverage is found for the
10 applicant through the Plan.

11 Section 1010-A. Eligibility.--All applications for
12 commercial liability coverage may be eligible for consideration
13 by the Plan if they are accompanied by the application fee
14 appropriate to that class of risk, three refusals of coverage
15 from admitted Pennsylvania commercial lines writers and one
16 refusal of coverage from a licensed surplus lines agent, and a
17 completed questionnaire as shall be supplied to the applicant by
18 the Plan and approved by the commissioner, except for
19 applications relating to:

20 (1) Insurance on motor vehicles.

21 (2) Insurance for pollution or environmental impairment.

22 (3) Insurance for workers' compensation and employers'
23 liability.

24 (4) Insurance for medical malpractice professional
25 liability.

26 (5) Insurance on activities conducted substantially outside
27 this Commonwealth unless the insurance is required by
28 Pennsylvania or Federal statute.

29 (6) Other risks as may be excluded by the Plan and approved
30 by the commissioner.

1 Section 1011-A. Immunity.--There shall be no liability or
2 cause of action against any member of the Plan or its agents or
3 employees, the Plan or its agents or employees, members of the
4 board of directors or the department or its representatives for
5 any action taken by or statement made by them in the performance
6 of their powers and duties under this article.

7 Section 1012-A. Funds.--All fees, assessments and other
8 moneys received by the Plan shall be deposited into a restricted
9 revenue account within the General Fund and are hereby
10 appropriated to the board for the purposes set forth in this
11 article.

12 ARTICLE X-B.

13 FINANCIAL DISCLOSURE.

14 Section 1001-B. Reporting of Loss and Expense Experience.--
15 Insurers licensed and admitted to write property or casualty
16 insurance in this Commonwealth are required to record and report
17 annually to the Insurance Commissioner loss and expense
18 experience data necessary to review insurance rates. The
19 commissioner may designate one or more rate service
20 organizations to gather and compile such data. The commissioner
21 shall prescribe the form and method by which all data shall be
22 furnished to the Insurance Department or its designee.

23 Section 1002-B. Insurers with Duty to Report.--(a) Insurers
24 reporting annually to the commissioner shall be those identified
25 in the latest annual report of the Insurance Commissioner, as
26 provided by section 219 of the act of May 17, 1921 (P.L.789,
27 No.285), known as "The Insurance Department Act of one thousand
28 nine hundred and twenty-one," and have underwritten at least one
29 per centum (1%) of the total Pennsylvania premium volume for the
30 following lines of insurance:

1 (1) Private passenger auto liability, including first party
2 coverage.

3 (2) Commercial auto liability, including first party
4 coverage.

5 (3) Medical malpractice liability.

6 (4) Workmen's compensation.

7 (5) Other liability.

8 (b) Information reported by insurers shall consist of
9 business, written on a direct basis, for all classes combined,
10 and based on total limits information for each line of insurance
11 set forth in subsection (a).

12 Section 1003-B. Data Comparisons.--(a) The commissioner
13 shall have the authority to require insurers to report on a
14 countrywide basis for each line of insurance, the following
15 data:

16 (1) Written premium and written exposure units.

17 (2) Earned premium and earned exposure units.

18 (3) Earned premium at current level.

19 (4) Paid losses.

20 (5) Outstanding reported case reserves.

21 (6) Increment for loss development.

22 (7) Paid allocated loss adjustment expenses.

23 (8) Reported case reserves for allocated loss adjustment
24 expenses where separately reserved and identified.

25 (9) Increment for allocated loss adjustment expense
26 development.

27 (10) Increment for trend, including annual percentage
28 change, basis for the annual percentage change and length of
29 trend.

30 (b) The following data shall be reported by insurers on a

Statewide basis for each line of insurance:

(1) Written premium and written exposure units.

(2) Earned premium and earned exposure units.

(3) Earned premium at current level.

(4) Paid losses.

(5) Outstanding reported case reserves.

(6) Increment for loss development.

(7) Paid allocated loss adjustment expenses.

(8) Reported case reserves for allocated loss adjustment expenses.

(9) Increment for allocated loss adjustment expense development.

(10) Increment for trend, including annual percentage change, basis for the annual percentage change and length of trend.

(11) Dollars of Pennsylvania commission and acquisition expenses.

(12) Dollars of Pennsylvania taxes, licenses and fees.

(13) Dollars of general expenses allocated by line to Pennsylvania.

(14) Dollars of unallocated loss adjustment expenses by line to Pennsylvania.

(15) Dollars of investment income on assets equivalent to Pennsylvania unearned premiums and loss reserves and the rate of return on invested funds.

Section 1004-B. Filing Dates.--The initial report by insurers shall consist of policy or calendar accident years 1985 and 1986 evaluated as of March 31, 1987. The two calendar accident years shall be separately reported. Subsequent reports shall include the latest two calendar accident years, evaluated

1 as of March 31. The initial report by insurers shall be filed on
2 or before May 31, 1987. Each subsequent report shall be filed on
3 or before May 31 following the March 31 evaluation date. All
4 insurer reports shall be accompanied by an affidavit, signed by
5 an officer of the insurer, certifying the completeness and
6 accuracy of the reports.

7 Section 1005-B. Commissioner's Duty to Report Data
8 Compiled.--The commissioner or his designee shall compile the
9 initial individual reports and the commissioner shall prepare
10 findings, if any, by November 1, 1987. Subsequent reports and
11 findings of the commissioner shall be compiled on or before
12 November 1 of each year. All reports compiled by the
13 commissioner shall be filed by the commissioner with the
14 standing committees of the General Assembly having
15 responsibility for insurance affairs and shall be deemed public
16 records for the purposes of the act of June 21, 1957 (P.L.390,
17 No.212), referred to as the "Right-to-Know Law."

18 Section 1006-B. Penalty.--Insurers which fail to comply with
19 any reporting requirements under this section shall pay a fine
20 of five thousand dollars (\$5,000) and a fine of two hundred
21 dollars (\$200) daily until the reporting requirements are fully
22 satisfied.

23 Section 2. The provisions of this act relating to the
24 Pennsylvania Liability Underwriting Services Plan shall expire
25 December 31, 1988.

26 Section 3. This act shall take effect immediately.