

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 30

Session of
1987

INTRODUCED BY HOLL, JANUARY 15, 1987

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED,
JANUARY 28, 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

to them in this section unless the context clearly indicates otherwise:

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

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

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

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

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

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

(1) To own property.

(2) To enter into contracts.

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

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

1 Section 1004-A. Membership.--Every commercial liability
2 insurer admitted to do business in this Commonwealth shall, as a
3 condition of its authority to write such kinds of insurance
4 within this Commonwealth, be a member of the Plan and have the
5 rights and obligations as hereinafter described. The
6 commissioner may require that the surplus lines market ELIGIBLE <—
7 SURPLUS LINES INSURERS OR THEIR AGENTS TO participate in the
8 Plan.

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

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

30 Section 1007-A. Voting Rights.--Whenever so designated by

1 the board pursuant to its plan of operation, each commercial
2 liability insurer shall be allotted votes in proportion to its
3 share of the Statewide total written premium during the prior
4 year relating to general liability coverage, plus the liability
5 portion, as determined by the commissioner, of commercial multi-
6 peril coverage.

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

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

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

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

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

22 (1) Insurance on motor vehicles.

23 (2) Insurance for pollution or environmental impairment.

24 (3) Insurance for workers' compensation and employers'
25 liability.

26 (4) Insurance for medical malpractice professional
27 liability.

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

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

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

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

14 ARTICLE X-B.

15 FINANCIAL DISCLOSURE.

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

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

1 per centum (1%) of the total Pennsylvania premium volume for the
2 following lines of insurance:

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

5 (2) Commercial auto liability, including first party
6 coverage.

7 (3) Medical malpractice liability.

8 (4) Workmen's compensation.

9 (5) Other liability.

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

14 Section 1003-B. Data Comparisons.--(a) ~~The commissioner~~ <—
15 ~~shall have the authority to require insurers to report on a THE~~ <—
16 FOLLOWING DATA SHALL BE REPORTED BY INSURERS ON A countrywide
17 basis for each line of insurance:; ~~the following data:~~ <—

18 (1) Written premium ~~and written exposure units.~~ <—

19 (2) Earned premium ~~and earned exposure units.~~ <—

20 (3) Earned premium at current level.

21 (4) Paid losses.

22 (5) Outstanding reported case reserves.

23 (6) Increment for loss development.

24 (7) Paid allocated loss adjustment expenses.

25 (8) Reported case reserves for allocated loss adjustment
26 expenses ~~where separately reserved and identified.~~ <—

27 (9) Increment for allocated loss adjustment expense
28 development.

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

1 trend.

2 (b) The following data shall be reported by insurers on a
3 Statewide basis for each line of insurance:

4 (1) Written premium and written exposure units. <—

5 (2) Earned premium and earned exposure units. <—

6 (3) Earned premium at current level.

7 (4) Paid losses.

8 (5) Outstanding reported case reserves.

9 (6) Increment for loss development.

10 (7) Paid allocated loss adjustment expenses.

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

13 (9) Increment for allocated loss adjustment expense
14 development.

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

18 (11) Dollars of Pennsylvania commission and acquisition
19 expenses.

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

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

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

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

28 ~~Section 1004 B. Filing Dates. The initial report by~~ <—
29 ~~insurers shall consist of policy or calendar accident years 1985~~
30 ~~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 as of March 31. The initial report by insurers shall be filed on or before May 31, 1987. Each subsequent report shall be filed on or before May 31 following the March 31 evaluation date. All insurer reports shall be accompanied by an affidavit, signed by an officer of the insurer, certifying the completeness and accuracy of the reports.~~

SECTION 1004-B. FILING DATES.--THE INITIAL REPORT BY
INSURERS ON THE ITEMS IDENTIFIED IN SECTION 1002-B(A)(1), (2)
AND (4) SHALL CONSIST OF CALENDAR ACCIDENT YEARS 1986 AND 1987
EVALUATED AS OF MAY 31, 1988. FOR ITEMS IDENTIFIED IN SECTION
1002-B(A)(3) AND (5), THE INITIAL REPORT SHALL CONSIST OF POLICY
YEARS ENDING 1986 AND 1987 EVALUATED AS OF MAY 31, 1988. THE TWO
YEARS SHALL BE SEPARATELY REPORTED. SUBSEQUENT REPORTS SHALL
INCLUDE THE LATEST TWO YEARS, EVALUATED AS OF MAY 31. THE
INITIAL REPORT BY INSURERS SHALL BE FILED ON OR BEFORE JULY 31,
1988. EACH SUBSEQUENT REPORT SHALL BE FILED ON OR BEFORE JULY 31
FOLLOWING THE MAY 31 EVALUATION DATE. ALL INSURER REPORTS SHALL
BE ACCOMPANIED BY AN AFFIDAVIT, SIGNED BY AN OFFICER OF THE
INSURER, CERTIFYING THE COMPLETENESS AND ACCURACY OF THE
REPORTS.

Section 1005-B. Commissioner's Duty to Report Data
Compiled.--The commissioner or his designee shall compile the
initial individual reports and the commissioner shall prepare
findings, if any, by November 1, 1987 1988. Subsequent reports
and findings of the commissioner shall be compiled on or before
November 1 of each year. All reports compiled by the
commissioner shall be filed by the commissioner with the
standing committees of the General Assembly having

1 responsibility for insurance affairs and shall be deemed public
2 records for the purposes of the act of June 21, 1957 (P.L.390,
3 No.212), referred to as the "Right-to-Know Law."

4 SECTION 1006-B. FUTURE REGULATIONS.--THE COMMISSIONER MAY, <—
5 BY REGULATION, ADOPT NEW DATA DISCLOSURE REQUIREMENTS DEVELOPED
6 BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. SUCH
7 REGULATIONS SHALL SUPERSEDE SPECIFIC DATA DISCLOSURE
8 REQUIREMENTS OF THIS ARTICLE IF THE COMMISSIONER, AFTER NOTICE
9 AND HEARING, DETERMINES THAT SUCH DATA DISCLOSURE REQUIREMENTS
10 ARE, IN TOTAL, AT LEAST AS EFFECTIVE AS THE DATA DISCLOSURE
11 REQUIREMENTS OF THIS ARTICLE.

12 Section ~~1006-B~~ 1007-B. Penalty.--Insurers which fail to <—
13 comply with any reporting requirements under this section shall
14 pay a fine of five thousand dollars (\$5,000) and a fine of two
15 hundred dollars (\$200) daily until the reporting requirements
16 are fully satisfied.

17 Section 2. The provisions of this act relating to the
18 Pennsylvania Liability Underwriting Services Plan shall expire
19 December 31, ~~1988~~ 1990. <—

20 Section 3. This act shall take effect immediately.