

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 30

Session of 1987

INTRODUCED BY HOLL, JANUARY 15, 1987

SENATOR HOLL, BANKING AND INSURANCE, RE-REPORTED AS AMENDED, JUNE 1, 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:

ARTICLE X-A.

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

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

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

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

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

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

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

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

23 (1) To own property.

24 (2) To enter into contracts.

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

27 Section 1003-A. Purpose.--The purpose of the Plan is to
28 assist in the placement of commercial liability insurance for
29 eligible Pennsylvania commercial risks and public entities that
30 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 eligible surplus lines insurers or <—
7 their agents THE SURPLUS LINES INDUSTRY 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 ~~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 following data~~
15 ~~shall be reported by insurers on a countrywide basis for each~~
16 ~~line of insurance:~~

17 ~~(1) Written premium.~~

18 ~~(2) Earned premium.~~

19 ~~(3) Earned premium at current level.~~

20 ~~(4) Paid losses.~~

21 ~~(5) Outstanding reported case reserves.~~

22 ~~(6) Increment for loss development.~~

23 ~~(7) Paid allocated loss adjustment expenses.~~

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

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

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

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

3 ~~(1) Written premium.~~

4 ~~(2) Earned premium.~~

5 ~~(3) Earned premium at current level.~~

6 ~~(4) Paid losses.~~

7 ~~(5) Outstanding reported case reserves.~~

8 ~~(6) Increment for loss development.~~

9 ~~(7) Paid allocated loss adjustment expenses.~~

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

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

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

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

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

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

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

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

27 ~~Section 1004 B. Filing Dates. The initial report by~~
28 ~~insurers on the items identified in section 1002 B(a)(1), (2)~~
29 ~~and (4) shall consist of calendar accident years 1986 and 1987~~
30 ~~evaluated as of May 31, 1988. For items identified in section~~

1 ~~1002 B(a)(3) and (5), the initial report shall consist of policy~~
2 ~~years ending 1986 and 1987 evaluated as of May 31, 1988. The two~~
3 ~~years shall be separately reported. Subsequent reports shall~~
4 ~~include the latest two years, evaluated as of May 31. The~~
5 ~~initial report by insurers shall be filed on or before July 31,~~
6 ~~1988. Each subsequent report shall be filed on or before July 31~~
7 ~~following the May 31 evaluation date. All insurer reports shall~~
8 ~~be accompanied by an affidavit, signed by an officer of the~~
9 ~~insurer, certifying the completeness and accuracy of the~~
10 ~~reports.~~

11 ~~Section 1005 B. Commissioner's Duty to Report Data~~
12 ~~Compiled. The commissioner or his designee shall compile the~~
13 ~~initial individual reports and the commissioner shall prepare~~
14 ~~findings, if any, by November 1, 1988. Subsequent reports and~~
15 ~~findings of the commissioner shall be compiled on or before~~
16 ~~November 1 of each year. All reports compiled by the~~
17 ~~commissioner shall be filed by the commissioner with the~~
18 ~~standing committees of the General Assembly having~~
19 ~~responsibility for insurance affairs and shall be deemed public~~
20 ~~records for the purposes of the act of June 21, 1957 (P.L.390,~~
21 ~~No.212), referred to as the "Right to Know Law."~~

22 ~~Section 1006 B. Future Regulations. The commissioner may,~~
23 ~~by regulation, adopt new data disclosure requirements developed~~
24 ~~by the National Association of Insurance Commissioners. Such~~
25 ~~regulations shall supersede specific data disclosure~~
26 ~~requirements of this article if the commissioner, after notice~~
27 ~~and hearing, determines that such data disclosure requirements~~
28 ~~are, in total, at least as effective as the data disclosure~~
29 ~~requirements of this article.~~

30 ~~Section 1007 B. Penalty. Insurers which fail to comply with~~

1 ~~any reporting requirements under this section shall pay a fine~~
2 ~~of five thousand dollars (\$5,000) and a fine of two hundred~~
3 ~~dollars (\$200) daily until the reporting requirements are fully~~
4 ~~satisfied.~~

5 ~~Section 2. The provisions of this act relating to the~~
6 ~~Pennsylvania Liability Underwriting Services Plan shall expire~~
7 ~~December 31, 1990.~~

8 ~~Section 3. This act shall take effect immediately.~~

9 SECTION 1001-B. CLAIMS DISCLOSURE.--IN ADDITION TO ANY OTHER ←
10 ANNUAL REPORTS REQUIRED BY LAW OR REGULATION, INSURERS LICENSED
11 AND ADMITTED TO WRITE PROPERTY AND CASUALTY INSURANCE IN THIS
12 COMMONWEALTH AND HAVING UNDERWRITTEN AT LEAST ONE PER CENTUM
13 (1%) OF THE TOTAL PENNSYLVANIA PREMIUM VOLUME FOR THE LINES OF
14 INSURANCE SPECIFIED IN SECTION 1002-B ARE REQUIRED TO REPORT
15 ANNUALLY TO THE INSURANCE COMMISSIONER, EITHER DIRECTLY OR
16 THROUGH ITS STATISTICAL AGENT, LOSS AND EXPENSE EXPERIENCE DATA
17 AS MAY BE NECESSARY TO DETERMINE WHETHER RATES ARE EXCESSIVE,
18 INADEQUATE OR UNFAIRLY DISCRIMINATORY. THE INSURANCE
19 COMMISSIONER SHALL DESIGNATE STATISTICAL AGENTS TO COLLECT AND
20 COMPILE SUCH DATA. THE COMMISSIONER SHALL PRESCRIBE THE FORM AND
21 METHOD BY WHICH ALL DATA SHALL BE FURNISHED TO THE INSURANCE
22 DEPARTMENT OR ITS DESIGNEE.

23 SECTION 1002-B. TYPES OF INSURANCE REQUIRED.--EACH REPORT
24 SUBMITTED PURSUANT TO SECTION 1001-B SHALL SEPARATELY STATE THE
25 REQUIRED INFORMATION FOR THE FOLLOWING TYPES OF INSURANCE:

26 (1) POLITICAL SUBDIVISION LIABILITY INSURANCE, REPORTED
27 SEPARATELY FOR MUNICIPALITIES, SCHOOL DISTRICTS AND OTHER
28 POLITICAL SUBDIVISIONS.

29 (2) LIABILITY INSURANCE FOR PURPOSES OF SECTION 497 OF THE
30 ACT OF APRIL 12, 1951 (P.L.90, NO.21), KNOWN AS THE "LIQUOR

1 CODE."

2 (3) DAY-CARE CENTER LIABILITY INSURANCE.

3 (4) OFFICERS AND DIRECTORS LIABILITY INSURANCE.

4 (5) PRODUCT LIABILITY INSURANCE.

5 (6) MEDICAL MALPRACTICE INSURANCE.

6 (7) ATTORNEY MALPRACTICE INSURANCE.

7 (8) ARCHITECT AND ENGINEER MALPRACTICE INSURANCE.

8 (9) ANY OTHER TYPE OF INSURANCE DEEMED NECESSARY BY THE

9 COMMISSIONER, AFTER PROPER NOTICE AND HEARING.

10 SECTION 1003-B. CONTENTS OF REPORT.--SUCH REPORT SHALL

11 INCLUDE THE FOLLOWING, WHICH SHALL BE SPECIFIC TO COVERAGE

12 WITHIN THIS COMMONWEALTH FOR THE PREVIOUS YEAR ENDING ON THE

13 THIRTY-FIRST DAY OF DECEMBER:

14 (1) DIRECT PREMIUMS WRITTEN.

15 (2) DIRECT PREMIUMS EARNED.

16 (3) PRO-RATA ESTIMATED NET INVESTMENT INCOME, INCLUDING NET

17 REALIZED CAPITAL GAINS AND LOSSES, USING APPROPRIATE ESTIMATES

18 WHERE NECESSARY.

19 (4) INCURRED CLAIMS, DEVELOPED AS THE SUM OF THE FOLLOWING,

20 WHICH SHALL INCLUDE DATA FOR EACH OF THE FOLLOWING CATEGORIES

21 USED TO DEVELOP THE SUM OF INCURRED CLAIMS:

22 (I) DOLLAR AMOUNT OF CLAIMS PAID WITH PAYMENT; PLUS

23 (II) RESERVES FOR OUTSTANDING REPORTED CLAIMS AT THE END OF

24 THE CURRENT YEAR; MINUS

25 (III) RESERVES FOR OUTSTANDING REPORTED CLAIMS AT THE END OF

26 THE PREVIOUS YEAR; PLUS

27 (IV) RESERVES FOR INCURRED BUT NOT REPORTED CLAIMS AT THE

28 END OF THE CURRENT YEAR; MINUS

29 (V) RESERVES FOR INCURRED BUT NOT REPORTED CLAIMS AT THE END

30 OF THE PREVIOUS YEAR; PLUS

- 1 (VI) PAID LOSS ADJUSTMENT EXPENSES; PLUS
2 (VII) RESERVES FOR LOSS ADJUSTMENT EXPENSE AT THE END OF THE
3 CURRENT YEAR; MINUS
4 (VIII) RESERVES FOR LOSS ADJUSTMENT EXPENSE AT THE END OF
5 THE PREVIOUS YEAR.
6 (5) ESTIMATED INCURRED EXPENSES ALLOCATED SEPARATELY TO
7 COMMISSIONS, OTHER ACQUISITION COSTS, ADVERTISING, GENERAL
8 OFFICE EXPENSES, TAXES, LICENSES AND FEES AND ALL OTHER
9 EXPENSES.
10 (6) NET UNDERWRITING GAIN OR LOSS.
11 (7) ESTIMATED NET OPERATING GAIN OR LOSS.
12 (8) THE TOTAL NUMBER AND TOTAL DOLLAR AMOUNT OF CLAIMS
13 CLOSED WITH PAYMENT, BY YEAR INCURRED AS OF THE LAST YEAR'S END.
14 (9) THE TOTAL NUMBER OF CLAIMS CLOSED WITHOUT PAYMENT.
15 (10) ANY OTHER REASONABLE INFORMATION REQUESTED BY THE
16 DEPARTMENT BY REGULATION OR ORDER.

17 SECTION 1004-B. DUTY OF DEPARTMENT TO REPORT.--IT SHALL BE
18 THE DUTY OF THE INSURANCE DEPARTMENT ANNUALLY TO COMPILE AND TO
19 REVIEW ALL SUCH REPORTS SUBMITTED BY STATISTICAL AGENTS PURSUANT
20 TO THIS ARTICLE TO DETERMINE THAT THE RATES FOR THE COMMERCIAL
21 PROPERTY AND CASUALTY INSURANCE SET FORTH IN THIS SECTION ARE
22 NOT INADEQUATE, EXCESSIVE OR UNFAIRLY DISCRIMINATORY. THE
23 DEPARTMENT'S FINDINGS AND THE FILINGS SHALL BE PUBLISHED AND
24 PROVIDED TO THE APPROPRIATE COMMITTEES OF THE GENERAL ASSEMBLY
25 AND MADE AVAILABLE TO ANY INTERESTED INSURED OR CITIZEN.

26 SECTION 1005-B. PENALTY.--ANY INSURER WHICH FAILS TO FILE
27 ANY REPORT UNDER THIS ARTICLE SHALL PAY A FINE OF FIVE THOUSAND
28 DOLLARS (\$5,000), AND A FINE OF TWO HUNDRED DOLLARS (\$200) DAILY
29 UNTIL THE REPORT REQUIRED IS FILED.

30 SECTION 2. THE INSURANCE COMMISSIONER SHALL, BY REGULATION,

1 ADOPT NEW DATA DISCLOSURE REQUIREMENTS DEVELOPED BY THE NATIONAL
2 ASSOCIATION OF INSURANCE COMMISSIONERS. SUCH REGULATIONS SHALL
3 SUPERSEDE SPECIFIC DATA DISCLOSURE REQUIREMENTS OF THIS ACT IF
4 THE INSURANCE COMMISSIONER, AFTER NOTICE AND HEARING, DETERMINES
5 THAT SUCH DATA DISCLOSURE REQUIREMENTS ARE, IN TOTAL, AT LEAST
6 AS EFFECTIVE AS THE DATA DISCLOSURE REQUIREMENTS OF THIS ACT.

7 SECTION 3. THE PROVISIONS OF THIS ACT SHALL EXPIRE DECEMBER
8 31, 1992.

9 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.