

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1669 Session of  
1991

INTRODUCED BY MURPHY, FREIND, JOSEPHS, TANGRETTI, HAYDEN,  
MAIALE, VAN HORNE, MICHLOVIC, CARN, BUTKOVITZ, McNALLY,  
ULIANA, GLADECK, LaGROTTA, VEON, MELIO, COLAIZZO, GANNON,  
GODSHALL, WAMBACH, JAMES, DURHAM, VROON AND DEMPSEY,  
JUNE 12, 1991

REFERRED TO COMMITTEE ON INSURANCE, JUNE 12, 1991

AN ACT

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

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

22 Section 1. Section 102 of the act of May 17, 1921 (P.L.789,  
23 No.285), known as The Insurance Department Act of one thousand  
24 nine hundred and twenty-one, is amended to read:

25 Section 102. Short Title.--This act shall be known and may

1 be cited as "The Insurance Department Act of [one thousand nine  
2 hundred and twenty-one] 1921."

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

5 Section 208. Certificates of Authority To Do Business.--\* \*  
6 \*

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

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

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

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

30 (2) Before the Insurance Commissioner shall take any action

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

7 \* \* \*

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

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

22 (b) A person or entity may show that it is subject to the  
23 jurisdiction of another agency of the Commonwealth, or any  
24 subdivision thereof, or of the Federal Government, by providing  
25 to the Insurance Commissioner the appropriate certificate,  
26 license or other document issued by the other governmental  
27 agency which permits or qualifies it to provide those services.  
28 Such certificate, license or other document may constitute  
29 evidence that a person or entity is subject to the jurisdiction  
30 of another agency of the Commonwealth, or any subdivision

1 thereof, or of the Federal Government, but such evidence is  
2 subject to rebuttal. A Department of Labor letter concerning an  
3 entity's purported status under the Employee Retirement Income  
4 Security Act of 1974 (Public Law 93-406, 29 U.S.C. § 1001 et  
5 seq.) is not a certificate, license or other document, within  
6 the meaning of this section which permits or qualifies an entity  
7 to provide services.

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

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

25 (e) Any person, entity, agent or administrator which  
26 advertises, sells, transacts or administers in this Commonwealth  
27 the benefits described in subsection (a), and which is required  
28 to submit to an examination by the Insurance Commissioner under  
29 subsection (c), shall, if said benefits are not fully insured or  
30 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 \$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,

1 1976 (P.L.403, No.90), is amended to read:

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

17 \* \* \*

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

20 Section 311. Computation of Reserve Against Unpaid Losses in  
21 Casualty Insurance Other Than Non-Cancellable Health and  
22 Accident Insurance.--The Insurance Commissioner shall, in  
23 calculating the reserve against unpaid losses of [casualty  
24 insurance companies, other than losses under] any insurance  
25 company, other than life insurance companies, for losses other  
26 than under noncancellable health and accident insurance issued  
27 on and after January first, one thousand nine hundred fifty,  
28 [liability and workmen's compensation policies,] set down, by  
29 careful estimate in each case, the loss likely to be incurred  
30 against every claim presented or that may be presented in

1   pursuance of notice from the insured of the occurrence of an  
2   event that may result in a loss. The sum of the items so  
3   estimated shall be the total amount of the reserve, except that,  
4   in credit insurance, fifty per centum of the premiums on all  
5   credit policies expiring in the months of October, November, and  
6   December of the current year, less the amount of losses paid on  
7   such policies, shall, in addition thereto, be charged in the  
8   loss reserve.

9       Section 6. Section 311.1(a) of the act, amended June 23,  
10   1976 (P.L.403, No.90), is amended to read:

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

27       \* \* \*

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

30       Section 313. Computation of Reserve.--[The reserve required

1 of stock and mutual insurance companies and exchanges for  
2 outstanding losses under insurance against loss or damage from  
3 accident to, or injuries suffered by, an employe or other  
4 person, and for which the insured is liable, shall be computed  
5 as follows:

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

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

16 (d) For all compensation premiums earned in the three years  
17 immediately preceding the date as of which the statement is  
18 made, such reserve shall be sixty-five per centum of the earned  
19 compensation premiums of each of such three years, less all loss  
20 and loss expense payments made in connection with such claims  
21 under policies written in the corresponding years, but, in any  
22 event, such reserve shall be not less than the present value, at  
23 four per centum interest, of the determined and the estimated  
24 unpaid compensation claims under policies written during each of  
25 such years.] In addition to the reserves required by section  
26 311, any insurance company, other than life insurance companies,  
27 is required to establish statutory reserves for those lines of  
28 insurance reported in schedule "P" of the Annual Statement  
29 Blank, as adopted for use in Pennsylvania by the commissioner,  
30 in accordance with the instructions for calculation of such



1 statutory reserves as published by a national association of  
2 insurance commissioners.

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

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

5 Section 316. Power of Insurance Commissioner To Fix Amount  
6 of Reserves.--Whenever, in the judgment of the Insurance  
7 Commissioner, the [liability or compensation] loss reserves of  
8 any insurer under his supervision, calculated in accordance with  
9 the foregoing provisions, are inadequate, he may, in his  
10 discretion, require such insurer to maintain additional reserves  
11 based upon estimated individual claims or otherwise; or whenever  
12 a satisfactory mathematical or actuarial table for valuing  
13 compensation loss reserves is promulgated and approved by the  
14 Insurance Commissioner, he may require any insurer under his  
15 supervision to maintain, upon such tabular basis, greater or  
16 lesser reserves than those hereinbefore provided for.

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

19 Section 660. Action for Injunction or Other Process  
20 Authorized.--(a) The Insurance Commissioner or a duly  
21 designated deputy, upon advice of the Attorney General, may  
22 maintain as hereinafter provided an action in the name of the  
23 Commonwealth for an injunction or other process against any  
24 person, partnership, copartnership, association, company,  
25 corporation or other entity to restrain and prevent any of the  
26 foregoing from transacting business as an agent or solicitor of  
27 any insurance company, association or exchange or as an  
28 insurance broker or as a manager or exclusive general agent of a  
29 domestic insurance company, association or exchange without a  
30 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 has demonstrated to the satisfaction of the Insurance Department that the individual has the educational background necessary for the practice of actuarial science.

"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.

"Retrocession" means the transaction whereby a reinsurer cedes all or part of the reinsurance it has assumed to another reinsurer.

"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 employee of a firm or association, or an officer director or employee 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 employee of a firm or association, or an officer, director or employee 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.

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

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

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

28    Section 703. Required Contract Provisions for Reinsurance  
29    Intermediary-brokers.--Transactions between an RB and the  
30    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 employee, 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



1 by an RB with which it transacts business, unless the RB is  
2 under common control with the insurer and subject to Article XII  
3 of the act of May 17, 1921 (P.L.682, No.284), known as "The  
4 Insurance Company Law of 1921."

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

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

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

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

27 (3) All funds collected for the reinsurer's account will be  
28 held by the RM in a fiduciary capacity in a bank which is a  
29 qualified United States financial institution. The RM may retain  
30 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 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:

(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

1 that the assuming reinsurer has agreed to assume the risk; or

2 (B) if placed through a representative of the assuming  
3 reinsurer, other than an employee, written evidence that such  
4 reinsurer has delegated binding authority to the representative.

5 (5) The reinsurer will have access and the right to copy all  
6 accounts and records maintained by the RM related to its  
7 business in a form usable by the reinsurer.

8 (6) The contract cannot be assigned in whole or in part by  
9 the RM.

10 (7) The RM will comply with the written underwriting and  
11 rating standards established by the insurer for the acceptance,  
12 rejection or cession of all risks.

13 (8) Provisions setting forth the rates, terms and purposes  
14 of commissions, charges and other fees which the RM may levy  
15 against the reinsurer.

16 (9) If the contract permits the RM to settle claims on  
17 behalf of the reinsurer the following shall apply:

18 (i) All claims will be reported to the reinsurer in a timely  
19 manner.

20 (ii) A copy of the claim file will be sent to the reinsurer  
21 at its request or as soon as it becomes known that the claim:

22 (A) has the potential to exceed the lesser of an amount  
23 determined by the commissioner or the limit set by the  
24 reinsurer;

25 (B) involves a coverage dispute;

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

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

28 (E) is closed by payment of the lesser of an amount set by  
29 the department or an amount set by the reinsurer.

30 (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

1 that the RM may bind facultative retrocessions pursuant to  
2 obligatory facultative agreements if the contract with the  
3 reinsurer contains reinsurance underwriting guidelines for such  
4 retrocessions. Such guidelines shall include a list of  
5 reinsurers with which such automatic agreements are in effect,  
6 and for each such reinsurer, the coverages and amounts or  
7 percentages that may be reinsured, and commission schedules.

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

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

13 (4) Without prior approval of the reinsurer, pay or commit  
14 the reinsurer to pay a claim, net of retrocessions, that exceeds  
15 the lesser of an amount specified by the reinsurer or one per  
16 centum of the reinsurer's policyholder's surplus as of December  
17 31 of the last complete calendar year.

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

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

24 (7) Appoint a sub-RM.

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

30 (b) The reinsurer shall annually obtain a copy of statements

1 of the financial condition of each RM which such reinsurer has  
2 engaged prepared by an independent certified accountant in a  
3 form acceptable to the department.

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

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

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

16 (f) A reinsurer shall not appoint to its board of directors  
17 any officer, director, employe, controlling shareholder or  
18 subproducer of its RM. This subsection shall not apply to  
19 relationships governed by Articles XI or XII of the act of May  
20 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law  
21 of 1921."

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

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

28 Section 710. Penalties and Liability.--(a) A reinsurance  
29 intermediary, insurer or reinsurer found by the commissioner,  
30 after a hearing conducted in accordance with 2 Pa.C.S. (relating

1 to administrative law and procedure), to be in violation of any  
2 provision of this article, shall:

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

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

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

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

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

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

## 23 ARTICLE VIII

### 24 MANAGING GENERAL AGENTS

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

28 "Actuary" means an individual who has demonstrated to the  
29 satisfaction of the Insurance Department that the individual has  
30 the educational background necessary for the practice of

1 actuarial science.

2 "Commissioner" means the Insurance Commissioner of the  
3 Commonwealth.

4 "Department" means the Insurance Department of the  
5 Commonwealth.

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

13 "Managing general agent" or "MGA" means:

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

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

29 (ii) negotiates reinsurance on behalf of the insurer.

30 (2) Notwithstanding paragraph (1), the following persons



1 shall not be considered as managing general agents for the  
2 purposes of this article:

3 (i) an employe of the insurer;

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

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

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

15 "Producer" means an agent, broker or reinsurance intermediary  
16 licensed pursuant to the applicable provisions of the insurance  
17 laws of the Commonwealth.

18 "Retrocession" means the transaction whereby a reinsurer  
19 cedes all or part of the reinsurance it has assumed to another  
20 reinsurer.

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

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

28 (b) No person, firm, association or corporation shall act in  
29 the capacity of an MGA representing an insurer domiciled in this  
30 Commonwealth with respect to risks located outside this

Commonwealth unless that person is licensed as a producer 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;

1     (B) involves a coverage dispute;

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

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

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

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

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

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

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

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

27     (1) Bind reinsurance or retrocessions on behalf of the  
28 insurer except that the MGA may bind facultative reinsurance  
29 contracts pursuant to obligatory facultative agreements if the  
30 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 producer without assuring that the producer 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 subproducer 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

1 outstanding on business produced by the MGA. This is in addition  
2 to any other required loss reserve certification.

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

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

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

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

25 (g) An insurer shall not appoint to its board of directors  
26 an officer, director, employe, subproducer or controlling  
27 shareholder of its MGAs. This subsection shall not apply to  
28 relationships governed by Article XI or XII of the act of May  
29 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law  
30 of 1921."

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

6     Section 807. Penalties and Liability.--(a) If the  
7     commissioner finds after a hearing conducted in accordance with  
8     2 Pa.C.S. (relating to administrative law and procedure) that  
9     any person has violated any provision of this article, the  
10    commissioner may order:

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

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

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

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

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

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

## 26                    ARTICLE IX

### 27                    EXAMINATIONS

28    Section 901. Purpose.--The purpose of this article is to  
29    provide an effective and efficient system for examining the  
30    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.

"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 an examiners' handbook adopted by a

1 national association of insurance commissioners and in effect  
2 when the commissioner exercises discretion under this  
3 subsection.

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

10 (d) In lieu of an examination under this article of any  
11 foreign or alien insurer licensed in this Commonwealth, the  
12 department may accept an examination report on such company as  
13 prepared by the insurance department for the company's state of  
14 domicile or port-of-entry state until January 1, 1994.

15 Thereafter, such reports may only be accepted if:

16 (1) the insurance department of the other state was at the  
17 time of the examination accredited under a national association  
18 of insurance commissioners accreditation program; or

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

26 Section 904. Conduct of Examinations.--(a) Upon determining  
27 that an examination should be conducted, the commissioner or his  
28 designee shall issue an examination warrant appointing one or  
29 more examiners to perform the examination and instructing them  
30 as to the scope of the examination. In conducting the

1 examination, the examiner shall observe those guidelines and  
2 procedures set forth in an examiners' handbook adopted by a  
3 national association of insurance commissioners. The department  
4 may also employ such other guidelines or procedures as it may  
5 deem appropriate.

6 (b) Every company or person from whom information is sought,  
7 its officers, directors and agents must provide to the examiners  
8 appointed under subsection (a) timely, convenient and free  
9 access at all reasonable hours at its offices to all books,  
10 records, accounts, papers, documents and any or all computer or  
11 other recordings relating to the property, assets, business and  
12 affairs of the company being examined. The officers, directors,  
13 employees and agents of the company or person must facilitate  
14 such examination and aid in such examination so far as it is in  
15 their power to do so. The refusal of any company, by its  
16 officers, directors, employees or agents, to submit to  
17 examination or to comply with any reasonable written request of  
18 the examiners shall be grounds for suspension or refusal of, or  
19 nonrenewal of any license or authority held by the company to  
20 engage in an insurance or other business subject to the  
21 department's jurisdiction. Any such proceedings for suspension,  
22 revocation or refusal of any license or authority shall be  
23 conducted pursuant to 2 Pa.C.S. (relating to administrative law  
24 and procedure).

25 (c) The commissioner or any of his examiners shall have the  
26 power to issue subpoenas, to administer oaths and to examine  
27 under oath any person as to any matter pertinent to the  
28 examination. Upon the failure or refusal of any person to obey a  
29 subpoena, the department may petition a court of competent  
30 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.

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

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

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

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

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

29    (d) (1) All orders entered pursuant to subsection (c)(1)  
30 shall be accompanied by findings and conclusions resulting from

1 the commissioner's consideration and review of the examination  
2 report, relevant examiner workpapers and any written submissions  
3 or rebuttals. Any such order shall be considered a final  
4 administrative decision and may be appealed to the commissioner  
5 pursuant to 2 Pa.C.S. (relating to administrative law and  
6 procedure), and shall be served upon the company by certified  
7 mail, together with a copy of the adopted examination report.  
8 Within thirty days of the issuance of the adopted report, the  
9 company shall file affidavits executed by each of its directors  
10 stating under oath that they have received a copy of the adopted  
11 report and related orders.

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

22 (3) The commissioner shall not appoint an examiner as an  
23 authorized representative to conduct the hearing. The hearing  
24 shall proceed expeditiously with discovery by the company  
25 limited to the examiner's workpapers which tend to substantiate  
26 any assertions set forth in any written submission or rebuttal.  
27 The commissioner or his representative may issue subpoenas for  
28 the attendance of any witnesses or the production of any  
29 documents deemed relevant to the investigation whether under the  
30 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

1 with this article.

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

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

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

25 (1) a policyholder or claimant under an insurance policy;

26 (2) a grantor of a mortgage or similar instrument on such  
27 examiner's residence to a regulated entity if done under  
28 customary terms and in the ordinary course of business;

29 (3) an investment owner in shares of regulated diversified  
30 investment companies; or



1     (4) a settlor or beneficiary of a "blind trust" into which  
2 any otherwise impermissible holdings have been placed.

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

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

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

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

30     (c) This section does not abrogate or modify in any way any

1 common law or statutory privilege or immunity heretofore enjoyed  
2 by any person identified in subsection (a).

3 (d) A person identified in subsection (a) shall be entitled  
4 to an award of attorney fees and costs if he is the prevailing  
5 party in a civil cause of action for libel, slander or any other  
6 relevant tort arising out of his activities in carrying out the  
7 provisions of this article and the party bringing the action was  
8 not substantially justified in doing so. For purposes of this  
9 section a proceeding is "substantially justified" if it had a  
10 reasonable basis in law or fact at the time that it was  
11 initiated.

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

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

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