

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1195 Session of
2020

INTRODUCED BY SCAVELLO AND STREET, JUNE 9, 2020

REFERRED TO BANKING AND INSURANCE, JUNE 9, 2020

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," in Life and Health Insurance
12 Guaranty Association, further providing for purpose, for
13 definitions, for coverage and limitations, for creation of
14 association, for board of directors, for powers and duties of
15 association, for assessments, for plan of operation, for
16 powers and duties of the commissioner, for prevention of
17 insolvencies, for credits for assessments paid, for
18 miscellaneous provisions, for examination of the association
19 and annual report, for immunity, for stay of proceedings and
20 reopening default judgments, for prohibited advertisement or
21 Insurance Guaranty Association Act in insurance sales and for
22 prospective application.

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

25 Section 1. Sections 1701, 1702, 1703, 1704(a), 1705(a), 1706
26 and 1707 of the act of May 17, 1921 (P.L.682, No.284), known as
27 The Insurance Company Law of 1921, are amended to read:

28 Section 1701. Purpose.--The purpose of this article is to

1 protect, subject to certain limitations, the persons specified
2 in section 1703(a) against failure in the performance of
3 contractual obligations, under life [and], health [insurance
4 policies] and annuity policies, plans or contracts specified in
5 section 1703(b), because of the impairment or insolvency of the
6 member insurer that issued the policies, plans or contracts. To
7 provide this protection, an association of member insurers is
8 created to pay benefits and to continue coverages as limited
9 herein, and [members] member insurers of the association are
10 subject to assessment to provide funds to carry out the purpose
11 of this article.

12 Section 1702. Definitions.--As used in this article the
13 following words and phrases shall have the meanings given to
14 them in this section:

15 "Account." [Any] Either of the two accounts created under
16 section 1704.

17 "Association." The Pennsylvania Life and Health Insurance
18 Guaranty Association created under section 1704.

19 "Authorized assessment" or "authorized." The term when used
20 in the context of assessments means a resolution by the board of
21 directors has been passed whereby an assessment will be called
22 immediately or in the future from member insurers for a
23 specified amount. An assessment is authorized when the
24 resolution is passed.

25 "Benefit plan." A specific employee, union or association of
26 natural persons benefit plan.

27 "Called assessment" or "called." The term when used in the
28 context of assessments means that a notice has been issued by
29 the association to member insurers requiring that an authorized
30 assessment be paid within the time frame specified in the

1 notice. An authorized assessment becomes a called assessment
2 when notice is mailed by the association to member insurers.

3 "Commissioner." The Insurance Commissioner of the
4 Commonwealth.

5 "Contractual obligation." Any obligation under a policy or
6 contract or certificate under a group policy or contract or
7 portion thereof for which coverage is provided under section
8 1703.

9 "Covered [policy.] policy" or "covered contract." Any
10 policy or contract within the scope of this article under
11 section 1703.

12 "Department." The Insurance Department of the Commonwealth.

13 "Employee Retirement Income Security Act of 1974" or "ERISA."
14 The Employee Retirement Income Security Act of 1974 (Public Law
15 93-406, 29 U.S.C. § 1001 et seq.).

16 "Extra contractual claims." The term shall include claims
17 relating to bad faith in the payment of claims, punitive or
18 exemplary damages or attorney costs and fees.

19 "Health benefit plan." Any hospital or medical expense
20 policy or certificate, RANLI PPO policy or subscriber contract,
21 hospital plan corporation, professional health services plan
22 corporation or health maintenance organization subscriber
23 contract or any other similar health contract. The term does not
24 include:

25 (1) Accident only insurance.

26 (2) Credit insurance.

27 (3) Dental only insurance.

28 (4) Vision only insurance.

29 (5) Medicare supplement insurance.

30 (6) Benefits for long-term care, home health care,

1 community-based care or any combination thereof.

2 (7) Disability income insurance.

3 (8) Coverage for on-site medical clinics.

4 (9) Specified disease, hospital confinement indemnity or
5 limited benefit health insurance if the types of coverage do not
6 provide coordination of benefits and are provided under separate
7 policies or certificates.

8 "Health maintenance organization." An organized system which
9 combines the delivery and financing of health care and which
10 provides basic health services to voluntarily enrolled
11 subscribers for a fixed prepaid fee as defined in the act of
12 December 29, 1972 (P.L.1701, No.364), known as the Health
13 Maintenance Organization Act.

14 "Hospital plan corporation." A not-for-profit corporation
15 engaged in the business of maintaining and operating a nonprofit
16 hospital plan as defined in 40 Pa.C.S. Ch. 61 (relating to
17 hospital plan corporations).

18 "Impaired insurer." A member insurer which, after the
19 effective date of this article, is not an insolvent insurer and:

20 (1) is deemed by the Insurance Commissioner to be
21 potentially unable to fulfill its contractual obligations; or

22 (2) is placed under an order of rehabilitation or
23 conservation by a court of competent jurisdiction.

24 "Insolvent insurer." A member insurer which, after the
25 effective date of this article, is placed under an order of
26 liquidation by a court of competent jurisdiction with a finding
27 of insolvency.

28 "Internal Revenue Code of 1986." The Internal Revenue Code
29 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

30 "Member insurer." Any insurer, RANLI PPO, hospital plan

1 corporation, professional health services plan corporation or
2 health maintenance organization licensed or which holds a
3 certificate of authority to transact in this Commonwealth any
4 kind of insurance, RANLI PPO business, hospital plan corporation
5 business, professional health services plan corporation business
6 or health maintenance organization business for which coverage
7 is provided under section 1703 and includes any insurer, RANLI
8 PPO, hospital plan corporation, professional health services
9 plan corporation or health maintenance organization whose
10 license or certificate of authority in this Commonwealth may
11 have been suspended, revoked, not renewed or voluntarily
12 withdrawn. The term does not include any of the following:

13 [(1)] A nonprofit hospital or medical service organization.

14 [(2)] A health maintenance organization.

15 [(3)] (1) A fraternal benefit society.

16 [(4)] (2) A mandatory State pooling plan.

17 [(5)] (3) A mutual assessment company or any entity that
18 operates on an assessment basis.

19 [(6)] (4) An insurance exchange.

20 (5) An organization that is a qualified charity issuing only
21 qualified charitable gift annuities exempt from regulation under
22 the act of October 16, 1996 (P.L.712, No.127), known as the
23 Charitable Gift Annuity Exemption Act.

24 [(7)] (6) Any entity similar to any of the above.

25 "Moody's Corporate Bond Yield Average." The Monthly Average
26 Corporates as published by Moody's Investors Service, Inc., or
27 any successor thereto.

28 "Owner." The owner of a policy or contract. The terms
29 "policyholder," "contract holder" "policy owner" and "contract
30 owner" mean the person who is identified as the legal owner

1 under the terms of the policy or contract or who is otherwise
2 vested with legal title to the policy or contract through a
3 valid assignment completed in accordance with the terms of the
4 policy or contract and properly recorded as the owner on the
5 books of the member insurer. The terms "owner," "contract
6 owner," "policy owner," "policyholder" and "contract holder" do
7 not include persons with a mere beneficial interest in a policy
8 or contract.

9 "Person." Any individual, corporation, limited liability
10 company, partnership, association, governmental body or entity
11 or voluntary organization.

12 "Plan sponsor." The term includes:

13 (1) the employer in the case of a benefit plan established
14 or maintained by a single employer;

15 (2) the employee organization in the case of a benefit plan
16 established or maintained by an employee organization; or

17 (3) in a case of a benefit plan established or maintained by
18 two (2) or more employers or jointly by one or more employers
19 and one or more employee organizations, the association,
20 committee, joint board of trustees or other similar group of
21 representatives of the parties that establish or maintain the
22 benefit plan.

23 "Premiums." The amounts received on covered policies or
24 contracts less premiums, considerations and deposits returned
25 thereon and less dividends and experience credits thereon. The
26 term does not include any amounts received for any policies or
27 contracts or for the portions of any policies or contracts for
28 which coverage is not provided under section 1703(b) except that
29 assessable premium shall not be reduced on account of sections
30 1703(b) (2) (iii) relating to interest limitations and 1703(c) (1)

1 (ii) relating to limitations with respect to any one individual,
2 any one participant and any one policy or contract holder. The
3 term does not include any premiums in excess of five million
4 (\$5,000,000) dollars on any unallocated annuity contract not
5 issued under a governmental retirement plan established under
6 section 401, 403(b) or 457 of the Internal Revenue Code of 1986
7 (Public Law 99-514, 26 U.S.C. § 1 et seq.). The term does not
8 include, with respect to multiple nongroup policies of life
9 insurance owned by one owner, whether the policy or contract
10 owner is an individual, firm, corporation or other person, and
11 whether the persons insured are officers, managers, employees or
12 other persons, premiums in excess of five million (\$5,000,000)
13 dollars with respect to these policies or contracts, regardless
14 of the number of policies or contracts held by the owner.

15 "Principal place of business." The following apply:

16 (1) The principal place of business of a plan sponsor or a
17 person other than a natural person means the single state in
18 which the natural persons who establish policy for the
19 direction, control and coordination of the operations of the
20 entity as a whole primarily exercise that function, determined
21 by the association in its reasonable judgment by considering all
22 the following factors:

23 (i) The state in which the primary executive and
24 administrative headquarters of the entity is located.

25 (ii) The state in which the principal office of the chief
26 executive officer of the entity is located.

27 (iii) The state in which the board of directors or similar
28 governing person or persons of the entity conducts the majority
29 of its meetings.

30 (iv) The state in which the executive or management

1 committee of the board of directors, or similar governing person
2 or persons, of the entity conducts the majority of its meetings.

3 (v) The state from which the management of the overall
4 operations of the entity is directed.

5 (vi) In the case of a benefit plan sponsored by affiliated
6 companies comprising a consolidated corporation, the state in
7 which the holding company or controlling affiliate has its
8 principal place of business as determined using the factors
9 under subparagraphs (i), (ii), (iii), (iv), (v) and (vi).

10 (2) If, in the case of a plan sponsor, more than fifty
11 percent (50%) of the participants in the benefit plan are
12 employed in a single state, that state shall be deemed to be the
13 principal place of business of the plan sponsor.

14 (3) The principal place of business of a plan sponsor of a
15 benefit plan described in paragraph (3) under the definition of
16 plan sponsor in this section shall be deemed to be the principal
17 place of business of the association, committee, joint board of
18 trustees or other similar group of representatives of the
19 parties who establish or maintain the benefit plan that, in lieu
20 of a specific or clear designation of a principal place of
21 business, shall be deemed to be the principal place of business
22 of the employer or employee organization that has the largest
23 investment in the benefit plan in question.

24 "Professional health services plan corporation." A person
25 engaged in the business of maintaining and operating a nonprofit
26 health service plan as defined in 40 Pa.C.S. Ch. 63 (relating to
27 professional health services plan corporations).

28 "RANLI PPO." An entity not licensed as an insurance company
29 but assuming risk as defined in section 630.

30 "Receivership court." The court in the insolvent insurer's

1 or impaired insurer's state having jurisdiction over the
2 conservation, rehabilitation or liquidation of the member
3 insurer.

4 "Resident." Any person who resides in this Commonwealth at
5 the time a member insurer is determined to be an impaired or
6 insolvent insurer and to whom a contractual obligation is owed.
7 A person may be a resident of only one state, which, in the case
8 of a person other than a natural person, shall be its principal
9 place of business. Citizens of the United States who are
10 residents of foreign countries or residents of United States
11 possessions, territories or protectorates that do not have an
12 association similar to the association created by this article
13 shall be deemed residents of the state of domicile of the member
14 insurer that issued the policies or contracts.

15 "Structured settlement annuity." An annuity purchased in
16 order to fund periodic payments for a plaintiff or other
17 claimant in payment for or with respect to personal injury
18 suffered by the plaintiff or other claimant.

19 "State." A state, the District of Columbia, Puerto Rico,
20 and a United States possession, territory or protectorate.

21 "Supplemental contract." Any agreement entered into for the
22 distribution of policy or contract proceeds.

23 "Unallocated annuity contract." Any annuity contract or
24 group annuity certificate which is not issued to and owned by an
25 individual, except to the extent of any annuity benefits
26 guaranteed to an individual by an insurer under such contract or
27 certificate.

28 Section 1703. Coverage and Limitations.--(a) This article
29 shall provide coverage to the following persons for the policies
30 and contracts specified in subsection (b):

1 (1) To persons who, regardless of where they reside, except
2 for nonresident certificate holders or enrollees under group
3 policies or contracts, are the beneficiaries, assignees or
4 payees, including health care providers rendering services
5 covered under health insurance policies or certificates of the
6 persons covered under paragraph (2).

7 (2) To persons who are owners of or certificate holders or
8 enrollees under these policies or contracts [or, in the case
9 of], other than unallocated annuity contracts[, to the persons
10 who are the contract holders] and structured settlement
11 annuities, and who:

12 (i) are residents; or

13 (ii) are not residents, but only under all of the following
14 conditions:

15 (A) the [insurers which] member insurer that issued such
16 policies or contracts [are] is domiciled in this Commonwealth;

17 (B) [such insurers never held a license or certificate of
18 authority in the states in which such persons reside;] the
19 states in which the persons reside have associations similar to
20 the association created by this article; and

21 [(C) these states have associations similar to the
22 association created by this article; and

23 [(D) these] (C) the persons are not eligible for coverage by
24 [those associations.] associations in any other state due to the
25 fact that such insurers, RANLI PPOs, hospital plan corporations,
26 professional health services plan corporations, or health
27 maintenance organizations were not licensed or did not hold a
28 certificate of authority in the states in which the persons
29 reside at the time specified in the state's guaranty association
30 law.

1 (3) For unallocated annuity contracts specified in
2 subsection (b), paragraphs (1) and (2) shall not apply, and this
3 article shall, except as provided in paragraphs (5) and (6),
4 provide coverage to:

5 (i) Persons who are the owners of the unallocated annuity
6 contracts if the contracts are issued to or in connection with a
7 specific benefit plan whose plan sponsor has its principal place
8 of business in this Commonwealth.

9 (ii) Persons who are owners of unallocated annuity contracts
10 issued to or in connection with government lotteries if the
11 owners are residents.

12 (4) For structured settlement annuities specified in
13 subsection (b), paragraphs (1) and (2) shall not apply, and this
14 article shall, except as provided in paragraphs (5) and (6),
15 provide coverage to a person who is a payee under a structured
16 settlement annuity or beneficiary of a payee if the payee is
17 deceased, if the payee:

18 (i) is a resident, regardless of where the contract owner
19 resides; or

20 (ii) is not a resident, but only under both of the following
21 conditions:

22 (A) (I) the contract owner of the structured settlement
23 annuity is a resident; or

24 (II) the contract owner of the structured settlement annuity
25 is not a resident; but

26 (1) the member insurer that issued the structured settlement
27 annuity is domiciled in this Commonwealth; and

28 (2) the state in which the contract owner resides has an
29 association similar to the association created by this article;
30 and

1 (B) neither the payee or beneficiary nor the contract owner
2 is eligible for coverage by the association of the state in
3 which the payee or contract owner resides.

4 (5) This article shall not provide coverage to:

5 (i) a person who is a payee or beneficiary of a contract
6 owner resident of this Commonwealth, if the payee or beneficiary
7 is afforded any coverage by the association of another state;

8 (ii) a person covered under paragraph (3), if any coverage
9 is provided by the association of another state to the person;

10 or

11 (iii) a person who acquires rights to receive payments
12 through a structured settlement factoring transaction as defined
13 in 26 U.S.C. 5891(c)(3)(A) (relating to the taxation of
14 structured settlement factoring transactions), regardless of
15 whether the transaction occurred before or after the section
16 became effective.

17 (6) This article is intended to provide coverage to a person
18 who is a resident of this Commonwealth and, in special
19 circumstances, to a nonresident. In order to avoid duplicate
20 coverage, if a person who would otherwise receive coverage under
21 this article is provided coverage under the laws of any other
22 state, the person shall not be provided coverage under this
23 article. In determining the application of the provisions of
24 this paragraph in situations where a person could be covered by
25 the association of more than one state, whether as an owner,
26 payee, enrollee, beneficiary or assignee, this article shall be
27 construed in conjunction with other state laws to result in
28 coverage by only one association.

29 (b) (1) This article shall provide coverage to the persons
30 specified in subsection (a) for policies or contracts of direct,

1 nongroup life insurance, health[, annuity] insurance, which for
2 the purposes of this article includes, RANLI PPO, hospital plan
3 corporation, professional health services plan corporation and
4 health maintenance organization subscriber policies, contracts,
5 and certificates, or annuities and supplemental [policies or]
6 contracts to any of these, for certificates under direct group
7 policies and contracts and for unallocated annuity contracts
8 issued by member insurers, except as limited by this article.
9 Annuity contracts and certificates under group annuity contracts
10 include, but are not limited to, guaranteed investment
11 contracts, deposit administration contracts, unallocated funding
12 agreements, allocated funding agreements, structured settlement
13 [agreements, lottery contracts] annuities, annuities issued to
14 or in connection with government lotteries and any immediate or
15 deferred annuity contracts.

16 (2) [This] Except as otherwise provided in paragraph (3),
17 this article shall not provide coverage for any of the
18 following:

19 (i) Any portion of a policy or contract not guaranteed by
20 the member insurer or under which the risk is borne by the
21 policy or contract holder.

22 (ii) Any policy or contract of reinsurance, unless
23 assumption certificates have been issued.

24 (iii) Any portion of a policy or contract to the extent that
25 the rate of interest on which it is based[:], or the interest
26 rate, crediting rate or similar factor determined by use of an
27 index or other external reference stated in the policy or
28 contract employed in calculating returns or changes in value:

29 (A) averaged over the period of four (4) years prior to the
30 date on which the [association] member insurer becomes

1 [obligated with respect to such policy or contract] an impaired
2 or insolvent insurer under this article, whichever is earlier,
3 exceeds a rate of interest determined by subtracting two (2)
4 percentage points from Moody's Corporate Bond Yield Average
5 averaged for the same four-year period or for such lesser period
6 if the policy or contract was issued less than four (4) years
7 before the [association became obligated] member insurer becomes
8 an impaired or insolvent insurer under this article, whichever
9 is earlier; and

10 (B) on and after the date on which the [association] member
11 insurer becomes [obligated with respect to such policy or
12 contract] an impaired or insolvent insurer under this article,
13 whichever is earlier, exceeds the rate of interest determined by
14 subtracting three (3) percentage points from Moody's Corporate
15 Bond Yield Average as most recently available.

16 (iv) Any portion of a policy or contract issued to a plan or
17 program of an employer, association or similar entity to provide
18 life, health or annuity benefits to its [employees or] employees,
19 members or others to the extent that such plan or program is
20 self-funded or uninsured, including, but not limited to,
21 benefits payable by an employer, association or similar entity
22 under:

23 (A) a Multiple Employer Welfare Arrangement as defined in
24 section [514] 3(40) of the Employee Retirement Income Security
25 Act of 1974 (Public Law 93-406, 29 U.S.C. § 1002(40));

26 (B) a minimum premium group insurance plan;

27 (C) a stop-loss group insurance plan; or

28 (D) an administrative services only contract.

29 (v) Any portion of a policy or contract to the extent that
30 it provides dividends or experience rating credits [or provides

1 that], voting rights or for the payment of any fees or
2 allowances [to be paid] to any person, including the
3 policyholder or contract holder, in connection with the service
4 to or administration of such policy or contract.

5 (vi) Any policy or contract issued in this Commonwealth by a
6 member insurer at a time when it was not licensed or did not
7 have a certificate of authority to issue such policy or contract
8 in this Commonwealth.

9 (vii) Any unallocated annuity contract issued to an
10 [employee] employee benefit plan protected under the Federal
11 Pension Benefit Guaranty Corporation[.], regardless of whether
12 the Federal Pension Benefit Guaranty Corporation has yet become
13 liable to make any payments with respect to the benefit plan.

14 (viii) Any portion of any unallocated annuity contract which
15 is not issued to or in connection with a specific [employee]
16 employee, union or association of natural persons benefit plan
17 or a government lottery.

18 (ix) A portion of a policy or contract to the extent that
19 the assessments required by section 1707 with respect to the
20 policy or contract are preempted by Federal or State law.

21 (x) An obligation that does not arise under the express
22 written terms of the policy or contract issued by the member
23 insurer to the enrollee, certificate holder, contract owner or
24 policy owner, including, without limitation:

25 (A) claims based on marketing materials;

26 (B) claims based on side letters, riders or other documents
27 that were issued by the member insurer without meeting
28 applicable policy or contract form filing or approval
29 requirements;

30 (C) misrepresentations of or regarding policy or contract

1 benefits;

2 (D) extracontractual claims; or

3 (E) a claim for penalties or consequential or incidental
4 damages.

5 (xi) A contractual agreement that establishes the member
6 insurer's obligations to provide a book value accounting
7 guaranty for defined contribution benefit plan participants by
8 reference to a portfolio of assets that is owned by the benefit
9 plan or its trustee, which in each case is not an affiliate of
10 the member insurer.

11 (xii) A portion of a policy or contract to the extent it
12 provides for interest or other changes in value to be determined
13 by the use of an index or other external reference stated in the
14 policy or contract, but which have not been credited to the
15 policy or contract, or as to which the policy or contract
16 owner's rights are subject to forfeiture, as of the date the
17 member insurer becomes an impaired or insolvent insurer under
18 this article, whichever is earlier. If a policy's or contract's
19 interest or changes in value are credited less frequently than
20 annually, then for purposes of determining the values that have
21 been credited and are not subject to forfeiture under this
22 subparagraph, the interest or change in value determined by
23 using the procedures defined in the policy or contract will be
24 credited as if the contractual date of crediting interest or
25 changing values was the date of impairment or insolvency,
26 whichever is earlier, and will not be subject to forfeiture.

27 (xiii) A policy or contract providing any hospital, medical,
28 prescription drug or other health care benefits under Part C or
29 Part D of Title XVIII of the Social Security Act (Public Law 74-
30 271, 42 U.S.C. § 1395 et seq.), Title XIX of the Social Security

1 Act (Public Law 74-271, 42 U.S.C. § 1396 et seq.), Article
2 XXIII-A or any regulations issued pursuant thereto.

3 (xiv) Structured settlement annuity benefits to which a
4 payee or beneficiary has transferred the payee's or
5 beneficiary's rights in a structured settlement factoring
6 transaction as defined in 26 U.S.C. § 5891(c)(3)(A) (relating to
7 the taxation of structured settlement factoring transactions),
8 regardless of whether the transaction occurred before or after
9 the section became effective.

10 (3) The exclusion from coverage referenced in paragraph (2)
11 (iii) shall not apply to any portion of a policy or contract,
12 including a rider, that provides long-term care or any other
13 health insurance benefits.

14 (c) (1) The benefits for which the association may become
15 liable shall in no event exceed the lesser of:

16 (i) the contractual obligations for which the member insurer
17 is liable or would have been liable if it were not an impaired
18 or insolvent insurer; or

19 (ii) (A) With respect to any one life, regardless of the
20 number of policies or contracts, the following shall apply:

21 (I) Three hundred thousand (\$300,000) dollars [in] for life
22 insurance death benefits, but not more than one hundred thousand
23 (\$100,000) dollars in net cash surrender and net cash withdrawal
24 values for life insurance.

25 [(II) Three hundred thousand (\$300,000) dollars in health
26 insurance benefits, including any net cash surrender and net
27 cash withdrawal values.]

28 [(III) Three hundred thousand (\$300,000) dollars in annuity
29 benefits, including one hundred thousand (\$100,000) dollars in
30 net cash surrender and net cash withdrawal values.]

1 (IV) Three hundred thousand (\$300,000) dollars in long-term
2 care insurance benefits, as defined under section 1103,
3 including any cash surrender and net cash withdrawal values.]

4 (II) For health insurance benefits:

5 (1) One hundred thousand (\$100,000) dollars for coverages or
6 benefits not defined as disability income insurance as defined
7 by 31 Pa. Code § 88.167 (relating to disability income
8 protection coverage), health benefit plans as defined by section
9 1702 of this article or long-term care insurance as defined in
10 section 1103, including any net cash surrender and net cash
11 withdrawal values.

12 (2) Three hundred thousand (\$300,000) dollars for disability
13 income insurance, as defined by 31 Pa. Code § 88.167, and long-
14 term care insurance benefits as defined under section 1103,
15 including any cash surrender and net cash withdrawal values.

16 (3) Five hundred thousand (\$500,000) dollars for health
17 benefit plans.

18 (III) Two hundred fifty thousand (\$250,000) dollars in the
19 present value of annuity benefits, including net cash surrender
20 and net cash withdrawal values.

21 (B) With respect to each individual participating in a
22 governmental retirement plan established under section 401,
23 403(b) or 457 of the Internal Revenue Code of 1986 covered by an
24 unallocated annuity contract or the beneficiaries of each such
25 individual if deceased, in the aggregate, [three hundred
26 thousand (\$300,000)] two hundred fifty thousand (\$250,000)
27 dollars in [annuity benefits, including one hundred thousand
28 (\$100,000) dollars in] present value annuity benefits, including
29 net cash surrender and net cash withdrawal values.

30 (C) With respect to each payee of a structured settlement

1 annuity, or beneficiary or beneficiaries of the payee if
2 deceased, two hundred fifty thousand (\$250,000) dollars in
3 present value annuity benefits, in the aggregate, including net
4 cash surrender and net cash withdrawal values, if any.

5 [(C)] (D) With respect to [any] either one contract [holder
6 covered by any] owner provided coverage under subsection (a) (3)
7 (ii) or one plan sponsor whose plans own directly or in trust
8 one or more unallocated annuity [contract] contracts not
9 included in clause (B), five million (\$5,000,000) dollars in
10 benefits, irrespective of the number of such contracts held by
11 that contract [holder.] owner or plan sponsor. In the case where
12 one or more unallocated annuity contracts are covered contracts
13 under this article and are owned by a trust or other entity for
14 the benefit of two (2) or more plan sponsors, coverage shall be
15 afforded by the association if the largest interest in the trust
16 or entity owning the contract or contracts is held by a plan
17 sponsor whose principal place of business is in this
18 Commonwealth and in no event shall the association be obligated
19 to cover more than five million (\$5,000,000) dollars in benefits
20 with respect to all these unallocated contracts.

21 [(2)] (E) The association shall not, however, be liable to
22 expend more than three hundred thousand (\$300,000) dollars in
23 the aggregate with respect to any one individual under
24 subparagraph (ii) (A) [and (B)], (B) or (C) of paragraph (1) [.] ,
25 except with respect to benefits for health benefit plans under
26 subclause (II) (3) of clause (A), in which case the aggregate
27 liability of the association shall not exceed five hundred
28 thousand (\$500,000) dollars with respect to any one individual,
29 or with respect to one owner of multiple nongroup policies of
30 life insurance, whether the policy or contract owner is an

1 individual, firm, corporation or other person, and whether the
2 persons insured are officers, managers, employees or other
3 persons, more than five million (\$5,000,000) dollars in
4 benefits, regardless of the number of policies and contracts
5 held by the owner.

6 (F) The limitations specified in this section are
7 limitations on the benefits for which the association is
8 obligated before taking into account either the association's
9 subrogation and assignment rights or the extent to which those
10 benefits could be provided out of the assets of the impaired or
11 insolvent insurer attributable to covered policies. The costs of
12 the association's obligations under this article may be met by
13 the use of assets attributable to covered policies or reimbursed
14 to the association pursuant to the association's subrogation and
15 assignment rights.

16 (G) For purposes of this article, benefits provided by a
17 long-term care rider to a life insurance policy or annuity
18 contract shall be considered the same type of benefits as the
19 base life insurance policy or annuity contract to which the
20 rider relates.

21 (d) In performing its obligations to provide coverage under
22 section 1706, the association shall not be required to
23 guarantee, assume, reinsure, reissue or perform, or cause to be
24 guaranteed, assumed, reinsured, reissued or performed, the
25 contractual obligations of the insolvent or impaired insurer
26 under a covered policy, that do not materially affect the
27 economic values or economic benefits of the covered policy.

28 Section 1704. Creation of Association.--(a) There is hereby
29 created a nonprofit, unincorporated association to be known as
30 the Pennsylvania Life and Health Insurance Guaranty Association.

1 All member insurers shall be and remain members of the
2 association as a condition of their license or authority to
3 transact insurance, RANLI PPO business, hospital plan
4 corporation business, professional health services plan
5 corporation business or health maintenance organization business
6 in this Commonwealth. The association shall perform its
7 functions under the plan of operation established and approved
8 under section 1708 and shall exercise its powers through a board
9 of directors established under section 1705. For purposes of
10 administration and assessment the association shall maintain two
11 accounts:

12 (1) The life insurance and annuity account which includes
13 the following subaccounts:

14 (i) Life insurance account.

15 (ii) Annuity account[.], which shall include annuity
16 contracts owned by a governmental retirement plan or its trustee
17 established under section 401, 403(b) or 457 of the Internal
18 Revenue Code of 1986, but shall otherwise exclude unallocated
19 annuities.

20 (iii) Unallocated annuity account which shall [include]
21 exclude contracts [qualified under section] owned by a
22 governmental retirement benefit plan or its trustee under
23 section 401, 403(b) or 457 of the Internal Revenue Code of 1986.

24 (2) The health [insurance] account.

25 * * *

26 Section 1705. Board of Directors.--(a) The board of
27 directors of the association shall consist of not less than
28 [five (5)] seven (7) nor more than [nine (9)] eleven (11) member
29 insurers serving terms as established in the plan of operation.
30 The members of the board shall be selected by member insurers

1 subject to the approval of the commissioner. Vacancies on the
2 board shall be filled for the remaining period of the term by a
3 majority vote of the remaining board members, subject to the
4 approval of the commissioner. To select the initial board of
5 directors and initially organize the association, the
6 commissioner shall give notice to all member insurers of the
7 time and place of the organizational meeting. In determining
8 voting rights at the organizational meeting, each member insurer
9 shall be entitled to one (1) vote in person or by proxy. If the
10 board of directors is not selected within sixty (60) days after
11 notice of the organizational meeting, the commissioner may
12 appoint the initial members.

13 * * *

14 Section 1706. Powers and Duties of Association.--(a) If a
15 member insurer is an impaired [domestic] insurer, the
16 association may, in its discretion and subject to any conditions
17 imposed by the association that do not impair the contractual
18 obligations of the impaired insurer that are approved by the
19 commissioner [and that are, except in cases of court-ordered
20 conservation or rehabilitation, also approved by the impaired
21 insurer]:

22 (1) guarantee, assume, reissue or reinsure or cause to be
23 guaranteed, assumed, reissued or reinsured any or all of the
24 policies or contracts of the impaired insurer; or

25 (2) provide such moneys, pledges, notes, guarantees or other
26 means as are proper to effectuate paragraph (1) and assure
27 payment of the contractual obligations of the impaired insurer
28 pending action under paragraph (1). [; or

29 (3) loan money to the impaired insurer.

30 (b) (1) If a member insurer is an impaired insurer, whether

1 domestic, foreign or alien, and the insurer is not paying claims
2 timely, then subject to the preconditions specified in paragraph
3 (2), the association shall, in its discretion, either:

4 (i) take any of the actions specified in subsection (a),
5 subject to the conditions therein; or

6 (ii) provide substitute benefits in lieu of the contractual
7 obligations of the impaired insurer solely for health claims,
8 periodic annuity benefit payments, death benefits, supplemental
9 benefits and cash withdrawals for policy or contract owners who
10 petition therefor under claims of emergency or hardship in
11 accordance with standards proposed by the association and
12 approved by the commissioner.

13 (2) The association shall be subject to the requirements of
14 paragraph (1) only if:

15 (i) the laws of its state of domicile provide that until all
16 payments of or on account of the impaired insurer's contractual
17 obligations by all guaranty associations, along with all
18 expenses thereof and interest on all such payments and expenses,
19 shall have been repaid to the guaranty associations or a plan of
20 repayment by the impaired insurer shall have been approved by
21 the guaranty associations:

22 (A) the delinquency proceeding shall not be dismissed;

23 (B) neither the impaired insurer nor its assets shall be
24 returned to the control of its shareholders or private
25 management;

26 (C) it shall not be permitted to solicit or accept new
27 business or have any suspended or revoked license restored;

28 (ii) in the case where the impaired insurer is a domestic
29 insurer, it has been placed under an order of rehabilitation by
30 a court of competent jurisdiction in this Commonwealth; or

1 (iii) in the case where the impaired insurer is a foreign or
2 alien insurer, it has been prohibited from soliciting or
3 accepting new business in this Commonwealth, its certificate of
4 authority has been suspended or revoked in this Commonwealth,
5 and a petition for rehabilitation or liquidation has been filed
6 in a court of competent jurisdiction in its state of domicile by
7 the commissioner of the state.]

8 [(c)] (b) If a member insurer is an insolvent insurer, the
9 association shall, in its discretion, either:

10 (1) (i) guarantee, assume, reissue or reinsure or cause to
11 be guaranteed, assumed, reissued or reinsured the policies or
12 contracts of the insolvent insurer; or

13 [(2)] (ii) assure payment of the contractual obligations of
14 the insolvent insurer and provide such moneys, pledges,
15 guarantees or other means as are reasonably necessary to
16 discharge such duties; or

17 [(3) with respect only to life and health insurance
18 policies, provide] (2) Provide benefits and coverages in
19 accordance with [subsection (d)].

20 (d) (1) When proceeding under subsection (b)(1)(ii) or (c)
21 (3), the association shall, with respect to only life and health
22 insurance policies, do all of the following:] the following
23 provisions:

24 (i) [Assure] With respect to policies and contracts, assure
25 payment of benefits [for premiums identical to the premiums and
26 benefits (except for terms of conversion and renewability)] that
27 would have been payable under the policies or contracts of the
28 insolvent insurer, for claims incurred as follows:

29 (A) With respect to group policies and contracts, not later
30 than the earlier of the next renewal date under such policies or

1 contracts or forty-five (45) days, but in no event less than
2 thirty (30) days, after the date on which the association
3 becomes obligated with respect to such policies or contracts.

4 (B) With respect to [individual] nongroup policies and
5 contracts and annuities, not later than the earlier of the next
6 renewal date (if any) under such policies or contracts or one
7 year, but in no event less than thirty (30) days, from the date
8 on which the association becomes obligated with respect to such
9 policies or contracts.

10 (ii) Make diligent efforts to provide all known insureds,
11 enrollees, annuitants or group policyholders or contract holders
12 with respect to group policies or contracts thirty (30) days
13 notice of the termination of the benefits provided.

14 (iii) With respect to [individual] nongroup policies and
15 contracts, make available to each known insured, enrollee,
16 annuitant or owner if other than the insured, enrollee or
17 annuitant and with respect to an individual formerly an insured,
18 enrollee or annuitant under a group policy or contract who is
19 not eligible for replacement group coverage, make available
20 substitute coverage on an individual basis in accordance with
21 the provisions of [paragraph (2)] subparagraph (iv), if the
22 insureds, enrollees or annuitants had a right under law or the
23 terminated policy, contract or annuity to convert coverage to
24 individual coverage or to continue an individual policy,
25 contract or annuity in force until a specified age or for a
26 specified time, during which the insurer, RANLI PPO, hospital
27 plan corporation, professional health services plan corporation
28 or health maintenance organization had no right unilaterally to
29 make changes in any provision of the policy, contract or annuity
30 or had a right only to make changes in premium by class.

1 [(2) (i)] (iv) (A) (I) In providing the substitute
2 coverage required under [paragraph (1)(iii)] subparagraph (iii),
3 the association may offer either to reissue the terminated
4 coverage or to issue an alternative policy[.] or contract at
5 actuarially justified rates subject to prior approval of the
6 commissioner.

7 [(ii)] (II) Alternative or reissued policies or contracts
8 shall be offered without requiring evidence of insurability and
9 shall not provide for any waiting period or exclusion that would
10 not have applied under the terminated policy or contract.

11 [(iii)] (III) The association may reinsure any alternative
12 or reissued policy or contract.

13 [(3) (i)] (B) (I) Alternative policies or contracts
14 adopted by the association shall be subject to the approval of
15 the commissioner. The association may adopt alternative policies
16 or contracts of various types for future issuance without regard
17 to any particular impairment or insolvency.

18 [(ii)] (II) Alternative policies or contracts shall contain
19 at least the minimum statutory provisions required in this
20 Commonwealth and provide benefits that shall not be unreasonable
21 in relation to the premium charged. The association shall set
22 the premium in accordance with a table of rates which it shall
23 adopt. The premium shall reflect the amount of insurance to be
24 provided and the age and class of risk of each insured, but
25 shall not reflect any changes in the health of the insured after
26 the original policy or contract was last underwritten.

27 [(iii)] (III) Any alternative policy or contract issued by
28 the association shall provide coverage of a type similar to that
29 of the policy or contract issued by the impaired or insolvent
30 insurer, as determined by the association.

1 [(4)] (v) If the association elects to reissue terminated
2 coverage at a premium rate different from that charged under the
3 terminated policy or contract, the premium shall be actuarially
4 justified and set by the association in accordance with the
5 amount of insurance or coverage provided and the age and class
6 of risk, subject to approval of the commissioner [or by a court
7 of competent jurisdiction].

8 [(5)] (vi) The association's obligations with respect to
9 coverage under any policy or contract of the impaired or
10 insolvent insurer or under any reissued or alternative policy or
11 contract shall cease on the date such coverage or policy or
12 contract is replaced by another similar policy or contract by
13 the policyholder, contract holder, the insured, the enrollee or
14 the association.

15 [(e)] (c) When proceeding under subsection [(b) (1) (ii) or
16 (c)] (b) (2) with respect to any policy or contract carrying
17 guaranteed minimum interest rates, the association shall assure
18 the payment or crediting of a rate of interest consistent with
19 section 1703(b) (2) (iii).

20 [(f)] (d) Nonpayment of premiums within thirty-one (31) days
21 after the date required under the terms of any guaranteed,
22 assumed, alternative or reissued policy or contract or
23 substitute coverage shall terminate the association's
24 obligations under such policy, contract or coverage under this
25 article with respect to such policy, contract or coverage,
26 except with respect to any claims incurred or any net cash
27 surrender value which may be due in accordance with the
28 provisions of this article.

29 [(g)] (e) Premiums due for coverage after entry of an order
30 of liquidation of an insolvent insurer shall belong to and be

1 payable at the direction of the association, and the association
2 shall be liable for unearned premiums due to policy or contract
3 owners arising after the entry of such order.

4 [(h)] (f) The protection provided by this article shall not
5 apply where any guaranty protection is provided to residents of
6 this Commonwealth by the laws of the domiciliary state or
7 jurisdiction of the impaired or insolvent insurer other than
8 this Commonwealth.

9 [(i)] (g) In carrying out its duties under [subsections (b)
10 and (c)] subsection (b) and subject to approval by the court,
11 the association may do the following:

12 (1) Impose permanent policy or contract liens in connection
13 with any guarantee, assumption or reinsurance agreement if the
14 association finds that the amounts which can be assessed under
15 this article are less than the amounts needed to assure full and
16 prompt performance of the association's duties under this [act]
17 article or that the economic or financial conditions as they
18 affect member insurers are sufficiently adverse to render the
19 imposition of such permanent policy or contract liens to be in
20 the public interest.

21 (2) Impose temporary moratoriums or liens on payments of
22 cash values and policy loans, or any other right to withdraw
23 funds held in conjunction with policies or contracts, in
24 addition to any contractual provisions for deferral of cash or
25 policy loan value. In addition, in the event of a temporary
26 moratorium or moratorium charge imposed by the receivership
27 court on payment of cash values or policy loans, or on any other
28 right to withdraw funds held in conjunction with policies or
29 contracts, out of the assets of the impaired or insolvent
30 insurer, the association may defer the payment of cash values,

1 policy loans or other rights by the association for the period
2 of the moratorium or moratorium charge imposed by the
3 receivership court, except for claims covered by the association
4 to be paid in accordance with a hardship procedure established
5 by the liquidator or rehabilitator and approved by the
6 receivership court.

7 (h) A deposit in this Commonwealth, held pursuant to law or
8 required by the commissioner for the benefit of creditors,
9 including policy or contract owners, not turned over to the
10 domiciliary liquidator upon the entry of a final order of
11 liquidation or order approving a rehabilitation plan of a member
12 insurer domiciled in this Commonwealth or in a reciprocal State,
13 pursuant to Article IV of the act of May 17, 1921 (P.L.789,
14 No.285), known as The Insurance Department Act of 1921, shall be
15 promptly paid to the association. The association shall be
16 entitled to retain a portion of any amount so paid to it equal
17 to the percentage determined by dividing the aggregate amount of
18 policy or contract owners' claims related to that insolvency for
19 which the association has provided statutory benefits by the
20 aggregate amount of all policy or contract owners' claims in
21 this Commonwealth related to that insolvency and shall remit to
22 the domiciliary receiver the amount so paid to the association
23 less the amount retained pursuant to this subsection. Any amount
24 so paid to the association and retained by it shall be treated
25 as a distribution of estate assets pursuant to applicable
26 Commonwealth receivership law dealing with early access
27 disbursements.

28 [(j)] (i) If the association fails to act within a
29 reasonable period of time as provided in [subsections (b)(1)
30 (ii), (c) and (d)] subsection (b), the commissioner shall have

1 the powers and duties of the association under this article with
2 respect to impaired or insolvent insurers.

3 [(k)] (j) The association may render assistance and advice
4 to the commissioner, upon [his] the request of the commissioner,
5 concerning rehabilitation, payment of claims, continuance of
6 coverage or the performance of other contractual obligations of
7 any impaired or insolvent insurer.

8 [(l)] (k) The association shall have standing to appear or
9 intervene before any court or agency in this Commonwealth with
10 jurisdiction over an impaired or insolvent insurer concerning
11 which the association is or may become obligated under this
12 article. Such standing shall extend to all matters germane to
13 the powers and duties of the association, including, but not
14 limited to, proposals for reinsuring, reissuing, modifying or
15 guaranteeing the policies or contracts of the impaired or
16 insolvent insurer and the determination of the policies or
17 contracts and contractual obligations. The association shall
18 also have the right to appear or intervene before a court or
19 agency in another state with jurisdiction over an impaired or
20 insolvent insurer for which the association is or may become
21 obligated or with jurisdiction over [a third party] any person
22 or property against whom the association may have rights through
23 subrogation [of the insurer's policyholders] or otherwise.

24 [(m)] (l) (1) Any person receiving benefits under this
25 article shall be deemed to have assigned the rights under and
26 any causes of action relating to the covered policy or contract
27 to the association to the extent of the benefits received
28 because of this article, whether the benefits are payments of or
29 on account of contractual obligations, continuation of coverage
30 or provision of substitute or alternative policies, contracts or

1 coverages. The association may require an assignment to it of
2 such rights and cause of action by any payee, policy or contract
3 owner, beneficiary, insured, enrollee or annuitant as a
4 condition precedent to the receipt of any rights or benefits
5 conferred by this article upon such person.

6 (2) The subrogation rights of the association under this
7 subsection shall have the same priority against the assets of
8 the impaired or insolvent insurer as that possessed by the
9 person entitled to receive benefits under this article.

10 (3) In addition to paragraphs (1) and (2), the association
11 shall have all common law rights of subrogation and any other
12 equitable or legal remedy which would have been available to the
13 impaired or insolvent insurer or owner or holder, beneficiary,
14 enrollee or payee of a policy or contract with respect to such
15 policy or contracts[.] (including without limitation, in the
16 case of a structured settlement annuity, any rights of the
17 owner, beneficiary or payee of the annuity, to the extent of
18 benefits received pursuant to this article, against a person
19 originally or by succession responsible for the losses arising
20 from the personal injury relating to the annuity or payment
21 therefore), excepting any such person responsible solely by
22 reason of serving as an assignee in respect of a qualified
23 assignment under section 130 of the Internal Revenue Code of
24 1986.

25 (4) If the preceding provisions of this subsection are
26 invalid or ineffective with respect to any person or claim for
27 any reason, the amount payable by the association with respect
28 to the related covered obligations shall be reduced by the
29 amount realized by any other person with respect to the person
30 or claim that is attributable to the policies or contracts (or

1 portion thereof) covered by the association.

2 (5) If the association has provided benefits with respect to
3 a covered obligation and a person recovers amounts as to which
4 the association has rights as described in paragraphs (1), (2),
5 (3) and (4) the person shall pay to the association the portion
6 of the recovery attributable to the policies or contracts (or
7 portion thereof) covered by the association.

8 [(n) The] (m) In addition to the rights and powers elsewhere
9 in this article, the association may do the following:

10 (1) Enter into such contracts as are necessary or proper to
11 carry out the provisions and purposes of this article.

12 (2) Sue or be sued, including taking any legal actions
13 necessary or proper to recover any unpaid assessments under
14 section 1707 and to settle claims or potential claims against
15 it.

16 (3) Borrow money to effect the purposes of this article; any
17 notes or other evidence of indebtedness of the association not
18 in default shall be legal investments for domestic insurers or
19 member insurers and may be carried as admitted assets.

20 (4) Employ or retain such persons as are necessary to handle
21 the financial transactions of the association and perform such
22 other functions as become necessary or proper under this
23 article.

24 (5) Take such legal action as may be necessary to avoid
25 payment of improper claims.

26 (6) Exercise, for the purposes of this article and to the
27 extent approved by the commissioner, the powers of a domestic
28 life [or] insurer, health insurer, RANLI PPO, hospital plan
29 corporation, professional health services plan corporation or
30 health maintenance organization, but in no case may the

1 association issue [insurance] policies or [annuity] contracts
2 other than those issued to perform its obligations under this
3 article.

4 (7) Organize itself as a corporation or in other legal form
5 permitted by the laws of this Commonwealth.

6 (8) Request information from a person seeking coverage from
7 the association in order to aid the association in determining
8 its obligations under this article with respect to the person,
9 and the person shall promptly comply with the request.

10 (9) In accordance with the terms and conditions of the
11 policy or contract, file for actuarially justified rate or
12 premium increases for any policy or contract for which it
13 provides coverage under this article.

14 (10) Take other necessary or appropriate action to discharge
15 its duties and obligations under this article or to exercise its
16 powers under this article.

17 [(o)] (n) The association may join an organization of one or
18 more other state associations of similar purposes, to further
19 the purposes and administer the powers and duties of the
20 association.

21 (o) (1) (i) At any time within one hundred eighty (180)
22 days of the date of the order of liquidation, the association
23 may elect to succeed to the rights and obligations of the ceding
24 member insurer that relate to policies, contracts, or annuities
25 covered, in whole or in part, by the association, in each case
26 under any one or more reinsurance contracts entered into by the
27 insolvent insurer and its reinsurers and selected by the
28 association. Any such assumption shall be effective as of the
29 date of the order of liquidation. The election shall be effected
30 by the association or the National Organization of Life and

1 Health Insurance Guaranty Associations (NOLHGA) on its behalf
2 sending written notice, return receipt requested, to the
3 affected reinsurers.

4 (ii) To facilitate the earliest practicable decision about
5 whether to assume any of the contracts of reinsurance, and in
6 order to protect the financial position of the estate, the
7 receiver and each reinsurer of the ceding member insurer shall
8 make available upon request to the association or to NOLHGA on
9 its behalf as soon as possible after commencement of formal
10 delinquency proceedings (A) copies of in-force contracts of
11 reinsurance and all related files and records relevant to the
12 determination of whether such contracts should be assumed, and
13 (B) notices of any defaults under the reinsurance contracts or
14 any known event or condition which with the passage of time
15 could become a default under the reinsurance contracts.

16 (iii) The following clauses shall apply to reinsurance
17 contracts so assumed by the association:

18 (A) The association shall be responsible for all unpaid
19 premiums due under the reinsurance contracts for periods both
20 before and after the date of the order of liquidation, and shall
21 be responsible for the performance of all other obligations to
22 be performed after the date of the order of liquidation, in each
23 case which relate to policies, contracts or annuities covered,
24 in whole or in part, by the association. The association may
25 charge policies, contracts or annuities covered in part by the
26 association, through reasonable allocation methods, the costs
27 for reinsurance in excess of the obligations of the association
28 and shall provide notice and an accounting of these charges to
29 the liquidator.

30 (B) The association shall be entitled to any amounts payable

1 by the reinsurer under the reinsurance contracts with respect to
2 losses or events that occur in periods after the date of the
3 order of liquidation and that relate to policies, contracts or
4 annuities covered, in whole or in part, by the association,
5 provided that, upon receipt of any such amounts, the association
6 shall be obliged to pay to the beneficiary under the policy,
7 contract or annuity on account of which the amounts were paid a
8 portion of the amount equal to the lesser of:

9 (I) The amount received by the association; and

10 (II) The excess of the amount received by the association
11 over the amount equal to the benefits paid by the association on
12 account of the policy, contract or annuity less the retention of
13 the member insurer applicable to the loss or event.

14 (C) Within thirty (30) days following the association's
15 election date, the association and each reinsurer under
16 contracts assumed by the association shall calculate the net
17 balance due to or from the association under each reinsurance
18 contract as of the election date with respect to policies,
19 contracts or annuities covered, in whole or in part, by the
20 association, which calculation shall give full credit to all
21 items paid by either the member insurer or its receiver or the
22 reinsurer prior to the election date. The reinsurer shall pay
23 the receiver any amounts due for losses or events prior to the
24 date of the order of liquidation, subject to any set-off for
25 premiums unpaid for periods prior to the date, and the
26 association or reinsurer shall pay any remaining balance due the
27 other, in each case within five (5) days of the completion of
28 the aforementioned calculation. Any disputes over the amounts
29 due to either the association or the reinsurer shall be resolved
30 by arbitration pursuant to the terms of the affected reinsurance

1 contracts or, if the contract contains no arbitration clause, as
2 otherwise provided by law. If the receiver has received any
3 amounts due the association pursuant to subparagraph (iii)(B),
4 the receiver shall remit the same to the association as promptly
5 as practicable.

6 (D) If the association or receiver, on the association's
7 behalf, within sixty (60) days of the election date, pays the
8 unpaid premiums due for periods both before and after the
9 election date that relate to policies, contracts or annuities
10 covered, in whole or in part, by the association, the reinsurer
11 shall not be entitled to terminate the reinsurance contracts for
12 failure to pay premium insofar as the reinsurance contracts
13 relate to policies, contracts or annuities covered, in whole or
14 in part, by the association, and shall not be entitled to set
15 off any unpaid amounts due under other contracts, or unpaid
16 amounts due from parties other than the association, against
17 amounts due the association.

18 (2) During the period from the date of the order of
19 liquidation until the election date or liquidation, if the
20 election date does not occur, until one hundred eighty (180)
21 days after the date of the order of liquidation.

22 (i) (A) neither the association nor the reinsurer shall
23 have any rights or obligations under reinsurance contracts that
24 the association has the right to assume under paragraph (1),
25 whether for periods prior to or after the date of the order of
26 liquidation; and

27 (B) the reinsurer, the receiver and the association shall,
28 to the extent practicable, provide each other data and records
29 reasonably requested;

30 (ii) provided that once the association has elected to

1 assume a reinsurance contract, the parties' rights and
2 obligations shall be governed by paragraph (1).

3 (3) If the association does not elect to assume a
4 reinsurance contract by the election date pursuant to paragraph
5 (1), the association shall have no rights or obligations, in
6 each case for periods both before and after the date of the
7 order of liquidation, with respect to the reinsurance contract.

8 (4) When policies, contracts or annuities, or covered
9 obligations with respect thereto, are transferred to an assuming
10 insurer, reinsurance on the policies, contracts or annuities may
11 also be transferred by the association, in the case of contracts
12 assumed under paragraph (1), subject to all the following:

13 (i) Unless the reinsurer and the assuming insurer agree
14 otherwise, the reinsurance contract transferred shall not cover
15 any new policies of insurance, contracts or annuities in
16 addition to those transferred.

17 (ii) The obligations described in paragraph (1) shall no
18 longer apply with respect to matters arising after the effective
19 date of the transfer.

20 (iii) Notice shall be given in writing, return receipt
21 requested, by the transferring party to the affected reinsurer
22 not less than thirty (30) days prior to the effective date of
23 the transfer.

24 (5) The provisions of this subsection shall supersede the
25 provisions of any state law or of any affected reinsurance
26 contract that provides for or requires any payment of
27 reinsurance proceeds, on account of losses or events that occur
28 in periods after the date of the order of liquidation, to the
29 receiver of the insolvent insurer or any other person. The
30 receiver shall remain entitled to any amounts payable by the

1 reinsurer under the reinsurance contracts with respect to losses
2 or events that occur in periods prior to the date of the order
3 of liquidation, subject to applicable setoff provisions.

4 (6) Except as otherwise provided in this section, nothing in
5 this subsection shall alter or modify the terms and conditions
6 of any reinsurance contract. Nothing in this section shall
7 abrogate or limit any rights of any reinsurer to claim that it
8 is entitled to rescind a reinsurance contract. Nothing in this
9 section shall give a policyholder, contract owner, enrollee,
10 certificate holder, or beneficiary an independent cause of
11 action against a reinsurer that is not otherwise set forth in
12 the reinsurance contract. Nothing in this section shall limit or
13 affect the association's rights as a creditor of the estate
14 against the assets of the estate. Nothing in this section shall
15 apply to reinsurance agreements covering property or casualty
16 risks.

17 (7) For the purposes of this subsection, "election date"
18 shall mean the date of the association's election to succeed to
19 the rights and obligations of a ceding member insurer that
20 relate to policies, contracts or annuities covered, in whole or
21 in part, by the association, in each case under any one or more
22 reinsurance contracts entered into by the insolvent insurer and
23 its reinsurers and selected by the association.

24 (p) The board of directors of the association shall have
25 discretion and may exercise reasonable business judgment to
26 determine the means by which the association is to provide the
27 benefits of this article in an economical and efficient manner.

28 (q) Where the association has arranged or offered to provide
29 the benefits of this article to a covered person under a plan or
30 arrangement that fulfills the association's obligations under

1 this article, the person shall not be entitled to benefits from
2 the association in addition to or other than those provided
3 under the plan or arrangement.

4 (r) Venue in a suit against the association arising under
5 the article shall be in Dauphin County, Pennsylvania. The
6 association shall not be required to give an appeal bond in an
7 appeal that relates to a cause of action arising under this
8 article.

9 (s) In carrying out its duties in connection with
10 guaranteeing, assuming, reissuing, or reinsuring policies or
11 contracts under subsection (a) or (b), the association may issue
12 substitute coverage for a policy or contract that provides an
13 interest rate, crediting rate or similar factor determined by
14 use of an index or other external reference stated in the policy
15 or contract employed in calculating returns or changes in value
16 by issuing an alternative policy or contract in accordance with
17 the following provisions:

18 (1) In lieu of the index or other external reference
19 provided for in the original policy or contract, the alternative
20 policy or contract provides for:

21 (i) a fixed interest rate;

22 (ii) payment of dividends with minimum guarantees; or

23 (iii) a different method for calculating interest or changes
24 in value.

25 (2) There is no requirement for evidence of insurability,
26 waiting period or other exclusion that would not have applied
27 under the replaced policy or contract.

28 (3) The alternative policy or contract is substantially
29 similar to the replaced policy or contract in all other material
30 terms.

1 Section 1707. Assessments.--(a) For the purpose of
2 providing the funds necessary to carry out the powers and duties
3 of the association, the board of directors shall assess the
4 member insurers, separately for each account, at such time and
5 for such amounts as the board finds necessary. Assessments shall
6 be due not less than thirty (30) days after prior written notice
7 to the member insurers and shall accrue interest at eight per
8 centum (8%) per annum on and after the due date.

9 (b) There shall be two classes of assessments, as follows:

10 (1) Class A assessments shall be made for the purpose of
11 meeting administrative and legal costs and other expenses [and
12 examinations conducted under the authority of section 1710(e)].
13 Class A assessments may be [made] authorized and called whether
14 or not related to a particular impaired or insolvent insurer.

15 (2) Class B assessments shall be [made] authorized and
16 called to the extent necessary to carry out the powers and
17 duties of the association under section 1706 with regard to an
18 impaired or an insolvent insurer.

19 (c) (1) The amount of any Class A assessment shall be
20 determined by the board and may be [made] authorized and called
21 on a pro rata or non-pro rata basis. If pro rata, the board may
22 provide that it be credited against future Class B assessments.
23 [A non-pro rata assessment shall not exceed two hundred (\$200)
24 dollars per member insurer in any one calendar year.] The amount
25 of [any] a Class B assessment, except for assessments related to
26 long-term care insurance, shall be allocated for assessment
27 purposes [among] between the accounts and among the subaccounts
28 of the life insurance and annuity account, pursuant to an
29 allocation formula which may be based on the premiums or
30 reserves of the impaired or insolvent insurer or any other

1 standard deemed by the board in its sole discretion as being
2 fair and reasonable under the circumstances.

3 (2) The amount of the Class B assessment for long-term care
4 insurance written by the impaired or insolvent insurer shall be
5 allocated according to a methodology included in the plan of
6 operation and approved by the commissioner. The methodology
7 shall provide for 50% of the assessment to be allocated to
8 accident and health member insurers and 50% to be allocated to
9 life and annuity member insurers.

10 (3) For the purposes of the methodology in paragraph (2) and
11 the formula in the plan of operation only, a "life and annuity
12 member insurer" means a member insurer for which (i) the sum of
13 its assessable life insurance premiums and annuity premiums is
14 greater than or equal to (ii) its assessable health insurance
15 premiums, which shall include its assessable RANLI PPO, hospital
16 plan corporation, professional health services plan corporation
17 and health maintenance organization premiums, but shall exclude
18 its assessable premiums written for disability income and long-
19 term care insurance. For purposes of this definition, assessable
20 premiums shall be measured within the Commonwealth. An "accident
21 and health member insurer" means any member insurer not defined
22 as a "life and annuity member insurer."

23 [(2)] (4) Class B assessments against member insurers for
24 each account and subaccount shall be in the proportion that the
25 premiums received on business in this Commonwealth by each
26 assessed member insurer for policies or contracts covered by
27 each account for the three (3) most recent calendar years for
28 which information is available preceding the year in which the
29 member insurer became [impaired or] insolvent[, as the case may
30 be,] (or, in the case of an assessment with respect to an

1 impaired insurer, the three (3) most recent calendar years for
2 which information is available preceding the year in which the
3 member insurer became impaired), bears to [such] premiums
4 received on business in this Commonwealth for [such] those
5 calendar years by all assessed member insurers.

6 [(3)] (5) Assessments for funds to meet the requirements of
7 the association with respect to an impaired or insolvent insurer
8 shall not be [made] authorized or called until necessary to
9 implement the purposes of this article. Classification of
10 assessments under subsection (b) and computation of assessments
11 under this subsection shall be made with a reasonable degree of
12 accuracy, recognizing that exact determinations may not always
13 be possible. The association shall notify each member insurer of
14 the member insurer's anticipated pro rata share of an authorized
15 assessment not yet called within one hundred eighty (180) days
16 after the assessment is authorized.

17 (d) The association may abate or defer, in whole or in part,
18 the assessment of a member insurer if, in the opinion of the
19 board, payment of the assessment would endanger the ability of
20 the member insurer to fulfill its contractual obligations. In
21 the event an assessment against a member insurer is abated, or
22 deferred in whole or in part, the amount by which such
23 assessment is abated or deferred may be assessed against the
24 other member insurers in a manner consistent with the basis for
25 assessments set forth in this section. Once the conditions that
26 caused a deferral have been removed or rectified, the member
27 insurer shall pay all assessments that were deferred pursuant to
28 a repayment plan approved by the association.

29 (e) (1) [The] (i) Subject to the provisions of
30 subparagraph (ii), the total of all assessments [upon a]

1 authorized by the association with respect to a member insurer
2 [for the life and annuity account and] for each subaccount
3 [thereunder] of the life insurance and annuity account and for
4 the health account shall not in any one (1) calendar year exceed
5 two per centum (2%) [and for the health account shall not in any
6 one (1) calendar year exceed two per centum (2%) of such] of
7 that member insurer's average annual premiums received in this
8 Commonwealth on the policies and contracts covered by the
9 subaccount or account during the three (3) calendar years
10 preceding the year in which the member insurer became an
11 impaired or insolvent insurer. [If the maximum assessment,
12 together with the other assets of the association in any
13 account, does not provide in any one (1) year in either account
14 an amount sufficient to carry out the responsibilities of the
15 association, the necessary additional funds shall be assessed as
16 soon thereafter as permitted by this article.]

17 (ii) If two (2) or more assessments are authorized in one
18 (1) calendar year with respect to member insurers that become
19 impaired or insolvent in different calendar years, the average
20 annual premiums for purposes of the aggregate assessment
21 percentage limitation referenced in subparagraph (i) shall be
22 equal and limited to the higher of the three (3) year average
23 annual premiums for the applicable subaccount or account as
24 calculated pursuant to this section.

25 (iii) If the maximum assessment, together with the other
26 assets of the association in any account, does not provide in
27 any one (1) year in either account an amount sufficient to carry
28 out the responsibilities of the association, the necessary
29 additional funds shall be assessed as soon thereafter as
30 permitted by this article.

1 (2) The board may provide in the plan of operation a method
2 of allocating funds among claims, whether relating to one or
3 more impaired or insolvent insurers, when the maximum assessment
4 will be insufficient to cover anticipated claims.

5 (3) [If a one per centum (1%) assessment for any subaccount
6 of the life and annuity account in any one (1) year does not
7 provide an amount sufficient to carry out the responsibilities
8 of the association, then pursuant to subsection (c)(2), the
9 board shall access all subaccounts of the life and annuity
10 account for the necessary additional amount, subject to the
11 maximum stated in subsection (e)(1).] If the maximum assessment
12 for a subaccount of the life and annuity account in one (1) year
13 does not provide an amount sufficient to carry out the
14 responsibilities of the association, then pursuant to subsection
15 (c)(2), the board shall access the other subaccounts of the life
16 and annuity account for the necessary additional amount, subject
17 to the maximum stated in paragraph (1).

18 (f) The board may, by an equitable method as established in
19 the plan of operation, refund to member insurers, in proportion
20 to the contribution of each member insurer to that account, the
21 amount by which the assets of the account exceed the amount the
22 board finds is necessary to carry out during the coming year the
23 obligations of the association with regard to that account,
24 including assets accruing from assignment, subrogation, net
25 realized gains and income from investments. A reasonable amount
26 may be retained in any account to provide funds for the
27 continuing expenses of the association and for future losses.

28 (g) It shall be proper for any member insurer, in
29 determining its premium rates and policyowner dividends as to
30 any kind of insurance, RANLI PPO business, hospital plan

1 corporation business, professional health services plan
2 corporation business or health maintenance organization business
3 within the scope of this article, to consider the amount
4 reasonably necessary to meet its assessment obligations under
5 this article, provided that such member insurer has not elected
6 to take tax credits as provided in section 1711(a).

7 (h) The association shall issue to each member insurer
8 paying an assessment under this article, other than class A
9 assessment, a certificate of contribution, in a form prescribed
10 by the commissioner, for the amount of the assessment so paid.
11 All outstanding certificates shall be of equal dignity and
12 priority without reference to amounts or dates of issue. A
13 certificate of contribution may be shown by the member insurer
14 in its financial statement as an asset in such form and for such
15 amount, if any, and period of time as the commissioner may
16 approve.

17 (i) (1) A member insurer that wishes to protest all or part
18 of an assessment shall pay when due the full amount of the
19 assessment as set forth in the notice provided by the
20 association. The payment shall be available to meet association
21 obligations during the pendency of the protest or any subsequent
22 appeal. Payment shall be accompanied by a statement in writing
23 that the payment is made under protest and setting forth a brief
24 statement of the grounds for the protest.

25 (2) Within sixty (60) days following the payment of an
26 assessment under protest by a member insurer, the association
27 shall notify the member insurer in writing of its determination
28 with respect to the protest unless the association notifies the
29 member insurer that additional time is required to resolve the
30 issues raised by the protest.

1 (3) Within thirty (30) days after a final decision has been
2 made, the association shall notify the protesting member insurer
3 in writing of the final decision. Within sixty (60) days of
4 receipt of notice of the final decision, the protesting member
5 insurer may appeal that final action to the commissioner.

6 (4) In the alternative to rendering a final decision with
7 respect to a protest based on a question regarding the
8 assessment base, the association may refer protests to the
9 commissioner for a final decision, with or without a
10 recommendation from the association.

11 (5) If the protest or appeal on the assessment is upheld,
12 the amount paid in error or excess shall be returned to the
13 member insurer. Interest on a refund due a protesting member
14 insurer shall be paid at the rate actually earned by the
15 association.

16 (j) The association may request information of member
17 insurers in order to aid in the exercise of its power under this
18 section and member insurers shall promptly comply with a
19 request.

20 Section 2. Section 1708(c) introductory paragraph and (d) of
21 the act are amended and subsection (c) is amended by adding
22 paragraphs to read:

23 Section 1708. Plan of Operation.--* * *

24 (c) The plan of operation shall, in addition to requirements
25 enumerated elsewhere in this article[, contain the following]:

26 * * *

27 (8) Establish procedures whereby a director may be removed
28 for cause, including in the case where a member insurer director
29 becomes an impaired or insolvent insurer.

30 (9) Require the board of directors to establish a policy and

1 procedures for addressing conflicts of interests.

2 (d) The plan of operation may provide that any or all powers
3 and duties of the association, except those under sections
4 [1706(n)(3)] 1706(m)(3) and 1707, are delegated to a
5 corporation, association or other organization which performs or
6 will perform functions similar to those of this association or
7 its equivalent in two or more states. Such a corporation,
8 association or organization shall be reimbursed for any payments
9 made on behalf of the association and shall be paid for its
10 performance of any function of the association. A delegation
11 under this subsection shall take effect only with the approval
12 of both the board of directors and the commissioner and may be
13 made only to a corporation, association or organization which
14 extends protection not substantially less favorable and
15 effective than that provided by this article.

16 Section 3. Sections 1709, 1710, 1711, 1712, 1713, 1715,
17 1716, 1717 and 1718 of the act are amended to read:

18 Section 1709. Powers and Duties of the Commissioner.--(a)
19 In addition to the powers and duties enumerated elsewhere in
20 this article, the commissioner shall:

21 (1) Upon request of the board of directors, provide the
22 association with a statement of the premiums in this and any
23 other appropriate states for each member insurer.

24 (2) When an impairment is declared and the amount of the
25 impairment is determined, serve a demand upon the impaired
26 insurer to make good the impairment within a reasonable time;
27 notice to the impaired insurer shall constitute notice to its
28 shareholders, if any; the failure of the impaired insurer to
29 promptly comply with such demand shall not excuse the
30 association from the performance of its powers and duties under

1 this article.

2 [(3) In any liquidation or rehabilitation proceeding
3 involving a domestic insurer, be appointed as the liquidator or
4 rehabilitator.]

5 (b) The commissioner may suspend or revoke, after notice and
6 hearing, the license or certificate of authority to transact
7 [insurance] business in this Commonwealth of any member insurer
8 which fails to pay an assessment when due or fails to comply
9 with the plan of operation. As an alternative, the commissioner
10 may levy a forfeiture on any member insurer which fails to pay
11 an assessment when due. Such forfeiture shall not exceed five
12 per centum (5%) of the unpaid assessment per month, but no
13 forfeiture shall be less than one hundred (\$100) dollars per
14 month.

15 (c) Any final action of the board of directors or the
16 association may be appealed to the commissioner by any member
17 insurer if such appeal is taken within sixty (60) days of its
18 receipt of notice of the final action being appealed. [If a
19 member company is appealing an assessment, the amount assessed
20 shall be paid to the association and available to meet
21 association obligations during the pendency of an appeal. If the
22 appeal on the assessment is upheld, the amount paid in error or
23 excess shall be returned to the member company.] Any final
24 action or order of the commissioner shall be subject to judicial
25 review in a court of competent jurisdiction[.] in accordance
26 with the laws of this Commonwealth that apply to the actions or
27 orders of the commissioner.

28 (d) The liquidator, rehabilitator or conservator of any
29 impaired or insolvent insurer may notify all interested persons
30 of the effect of this article.

1 Section 1710. Prevention of Insolvencies.--(a) To aid in
2 the detection and prevention of member insurer insolvencies or
3 impairments, it shall be the duty of the commissioner:

4 (1) To notify the commissioners of all the other states,
5 territories of the United States and the District of Columbia
6 within thirty (30) days following the action taken or the date
7 the action occurs, when [he] the commissioner takes any of the
8 following actions against a member insurer:

9 (i) revocation of license or certificate of authority;

10 (ii) suspension of license or certificate of authority; or

11 (iii) makes any formal order that such [company] member
12 insurer restrict its premium writing, obtain additional
13 contributions to surplus, withdraw from the Commonwealth,
14 reinsure all or any part of its business or increase capital,
15 surplus or any other account for the security of [policyholders]
16 policy owners, contract owners, certificate holders or
17 creditors.

18 [This notice shall be mailed to all commissioners within thirty
19 (30) days following the action taken or the date on which such
20 action occurs.]

21 (2) To report to the board of directors when [he] the
22 commissioner has taken any of the actions set forth in paragraph
23 (1) or has received a report from any other commissioner
24 indicating that any such action has been taken in another state.
25 Such report to the board of directors shall contain all
26 significant details of the action taken or the report received
27 from another commissioner.

28 (3) To report to the board of directors when [he] the
29 commissioner has reasonable cause to believe from any
30 examination, whether completed or in process, of any member

1 [company] insurer that such [company] member insurer may be an
2 impaired or insolvent insurer.

3 (4) To furnish to the board of directors the National
4 Association of Insurance Commissioners' (NAIC) Insurance
5 Regulatory Information System (IRIS) ratios and listing of
6 companies not included in the ratios developed by the National
7 Association of Insurance Commissioners, and the board may use
8 the information contained therein in carrying out its duties and
9 responsibilities under this section. Such report and the
10 information contained therein shall be kept confidential by the
11 board of directors until such time as made public by the
12 commissioner or other lawful authority.

13 (b) The commissioner may seek the advice and recommendations
14 of the board of directors concerning any matter affecting [his]
15 the duties and responsibilities of the commissioner regarding
16 the financial condition of member insurers and [companies],
17 insurers, RANLI PPOs, hospital plan corporations, professional
18 health services plan corporations or health maintenance
19 organizations seeking admission to transact [insurance] business
20 in this Commonwealth.

21 (c) The board of directors may, upon majority vote, make
22 reports and recommendations to the commissioner upon any matter
23 germane to the solvency, liquidation, rehabilitation or
24 conservation of any member insurer or germane to the solvency of
25 any [company] insurers, RANLI PPOs, hospital plan corporations,
26 professional health services plan corporations or health
27 maintenance organizations seeking to do [an insurance] business
28 in this Commonwealth. Such reports and recommendations shall not
29 be considered public documents.

30 (d) [It shall be the duty of the] The board of directors

1 may, upon majority vote, [to] notify the commissioner of any
2 information indicating [any] a member insurer may be an impaired
3 or insolvent insurer.

4 [(e) (1) The board of directors may, upon majority vote,
5 request that the commissioner order an examination of any member
6 insurer which the board in good faith believes may be an
7 impaired or insolvent insurer. Within thirty (30) days of the
8 receipt of such request, the commissioner shall begin such
9 examination. The examination may be conducted as a National
10 Association of Insurance Commissioners examination or may be
11 conducted by such persons as the commissioner designates. The
12 cost of such examination shall be paid by the association, and
13 the examination report shall be treated as are other examination
14 reports. In no event shall such examination report be released
15 to the board of directors prior to its release to the public,
16 but this shall not preclude the commissioner from complying with
17 subsection (a).

18 (2) The commissioner shall notify the board of directors
19 when the examination is completed. The request for an
20 examination shall be kept on file by the commissioner, but it
21 shall not be open to public inspection prior to the release of
22 the examination report to the public.]

23 [(f)] (e) The board of directors may, upon majority vote,
24 make recommendations to the commissioner for the detection and
25 prevention of member insurer insolvencies.

26 [(g) The board of directors shall, at the conclusion of any
27 insurer insolvency in which the association was obligated to pay
28 covered claims, prepare a report to the commissioner containing
29 such information as it may have in its possession bearing on the
30 history and causes of such insolvency. The board shall cooperate

1 with the boards of directors of guaranty associations in other
2 states in preparing a report on the history and causes of
3 insolvency of a particular insurer, and may adopt by reference
4 any report prepared by such other associations.]

5 Section 1711. Credits for Assessments Paid.--(a) A member
6 insurer may offset against its premium or income tax liability
7 to this Commonwealth a proportionate part of the assessments
8 described in section 1707 to the extent of twenty per centum
9 (20%) of the amount of such assessment for each of the five (5)
10 calendar years following the year in which such assessment was
11 paid. In the event a member insurer should cease doing business,
12 all uncredited assessments may be credited against its premium
13 or income tax liability for the year it ceases doing business.

14 (b) The proportionate part of an assessment which may be
15 offset against a member [company's] insurer's premium or income
16 tax liability to the Commonwealth shall be determined according
17 to a fraction of which the denominator is the total premiums (in
18 the category assessed) received by the [company] member insurer
19 during the calendar year immediately preceding the year in which
20 the assessment is paid and the numerator is that portion of the
21 premiums received during such year on account of policies or
22 contracts of life insurance (including or limited to annuities
23 and unallocated annuities per account or subaccount, as
24 applicable per the assessment), or health and accident insurance
25 (including RANLI PPO, hospital plan corporation, professional
26 health services plan corporation and health maintenance
27 organization subscriber policies, contracts and certificates),
28 in which the premium rates are guaranteed during the continuance
29 of the respective policies or contracts without a right
30 exercisable by the [company] member insurer to increase said

1 premium rates.

2 (c) A member insurer that is exempt from taxes referenced in
3 subsection (a) may recoup its assessments by assigning available
4 offsets (as calculated under subsection (b)) to a taxable member
5 or members of its controlled group, as the term is defined under
6 section 1563(a) of the Internal Revenue Code of 1986. Such
7 assigned offsets may be utilized by the taxable member or
8 members in the manner provided under subsection (a).

9 (d) A member insurer that is exempt from taxes referenced in
10 subsection (a) and has no taxable members of a controlled group
11 as referenced in subsection (c) may recoup its assessments by a
12 surcharge on its premiums in a sum reasonably calculated to
13 recoup the assessments over a reasonable period of time, as
14 approved by the commissioner. Amounts recouped shall not be
15 considered premiums for any other purpose, including the
16 computation of gross premium tax, the medical loss ratio or
17 agent commission. If a member insurer collects excess
18 surcharges, the member insurer shall remit the excess amount to
19 the association, and the excess amount shall be applied to
20 reduce future assessments in the appropriate account.

21 (e) Any sums which are acquired by refund, pursuant to
22 section 1707(f), from the association by member insurers, and
23 which have theretofore been offset against premium or income
24 taxes as provided in this section and are not then needed for
25 the purposes of this [act] article, shall be paid by such member
26 insurers to this Commonwealth in such manner as the tax
27 authorities may require. The association shall notify the
28 commissioner that such refunds have been made.

29 [(d)] (f) No offset against premium or income tax liability
30 shall be permitted to the extent that a member insurer's rates

1 or policyholder dividends have been adjusted as permitted in
2 section 1707.

3 Section 1712. Miscellaneous Provisions.--(a) Nothing in
4 this article shall be construed to reduce the liability for
5 unpaid assessments of the insureds of an impaired or insolvent
6 insurer operating under a plan with assessment liability.

7 (b) Records shall be kept of all [negotiations and] meetings
8 [in which the association or its representatives are involved]
9 of the board of directors to discuss the activities of the
10 association in carrying out its powers and duties under section
11 1706. [Records] The records of [such negotiations or meetings]
12 the association with respect to an impaired or insolvent insurer
13 shall [be made public only upon] not be disclosed prior to the
14 termination of a liquidation, rehabilitation or conservation
15 proceeding involving the impaired or insolvent insurer, except
16 (i) upon the termination of the impairment or insolvency of the
17 member insurer, or (ii) upon the order of a court of competent
18 jurisdiction. Nothing in this subsection shall limit the duty of
19 the association to render a report of its activities under
20 section 1713.

21 (c) For the purpose of carrying out its obligations under
22 this article, the association shall be deemed to be a creditor
23 of the impaired or insolvent insurer to the extent of assets
24 attributable to covered policies reduced by any amounts to which
25 the association is entitled as subrogee pursuant to section
26 1706. Assets of the impaired or insolvent insurer attributable
27 to covered policies shall be used to continue all covered
28 policies and pay all contractual obligations of the impaired or
29 insolvent insurer as required by this article. Assets
30 attributable to covered policies, as used in this subsection,

1 are that proportion of the assets which the reserves that should
2 have been established for such policies or contracts bear to the
3 reserves that should have been established for all policies of
4 insurance or health benefit plans written by the impaired or
5 insolvent insurer.

6 (d) As a creditor of the impaired or insolvent insurer as
7 established in subsection (c) and consistent with section 536 of
8 the act of May 17, 1921 (P.L.789, No.285), known as The
9 Insurance Department Act of 1921, the association and other
10 similar associations shall be entitled to receive a disbursement
11 of assets out of the marshaled assets, from time to time as the
12 assets become available to reimburse it, as a credit against
13 contractual obligations under this article. If the liquidator
14 has not, within one hundred twenty (120) days of a final
15 determination of insolvency of a member insurer by the
16 receivership court, made an application to the court for the
17 approval of a proposal to disburse assets out of marshaled
18 assets to guaranty associations having obligations because of
19 the insolvency, then the association shall be entitled to make
20 application to the receivership court for approval of its own
21 proposal to disburse these assets.

22 [(d)] (e) (1) Prior to the termination of any liquidation,
23 rehabilitation or conservation proceeding, the court may take
24 into consideration the contributions of the respective parties,
25 including the association, the shareholders, contract owners,
26 certificate holders, enrollees and [policyowners] policy owners
27 of the insolvent insurer, and any other party with a bona fide
28 interest, in making an equitable distribution of the ownership
29 rights of such insolvent insurer. In such a determination,
30 consideration shall be given to the welfare of the

1 ~~[policyholders]~~ policy owners, contract owners, certificate
2 holders and enrollees of the continuing or successor member
3 insurer.

4 (2) No distribution to stockholders, if any, of an impaired
5 or insolvent insurer shall be made until and unless the total
6 amount of valid claims of the association with interest thereon
7 for funds expended in carrying out its powers and duties under
8 section 1706 with respect to such member insurer have been fully
9 recovered by the association.

10 ~~[(e)]~~ (f) (1) If an order for liquidation or rehabilitation
11 of ~~[an]~~ a member insurer domiciled in this Commonwealth has been
12 entered, the receiver appointed under such order shall have a
13 right to recover on behalf of the member insurer, from any
14 affiliate that controlled it, the amount of distributions, other
15 than stock dividends paid by the member insurer on its capital
16 stock, made at any time during the five (5) years preceding the
17 petition for liquidation or rehabilitation subject to the
18 limitations of paragraphs (2) to (4).

19 (2) No such distribution shall be recoverable if the member
20 insurer shows that when paid the distribution was lawful and
21 reasonable and that the member insurer did not know and could
22 not reasonably have known that the distribution might adversely
23 affect the ability of the member insurer to fulfill its
24 contractual obligations.

25 (3) Any person who was an affiliate that controlled the
26 member insurer at the time the distributions were paid shall be
27 liable up to the amount of distributions he received. Any person
28 who was an affiliate that controlled the member insurer at the
29 time the distributions were declared shall be liable up to the
30 amount of distributions he would have received if they had been

1 paid immediately. If two or more persons are liable with respect
2 to the same distributions, they shall be jointly and severally
3 liable.

4 (4) The maximum amount recoverable under this subsection
5 shall be the amount needed in excess of all other available
6 assets of the insolvent insurer to pay the contractual
7 obligations of the insolvent insurer.

8 (5) If any person liable under paragraph (3) is insolvent,
9 all its affiliates that controlled it at the time distribution
10 was paid shall be jointly and severally liable for any resulting
11 deficiency in the amount recovered from the insolvent affiliate.

12 Section 1713. Examination of the Association and Annual
13 Report.--The association shall be subject to examination and
14 regulation by the commissioner. The board of directors shall
15 submit to the commissioner each year, not later than one hundred
16 twenty (120) days after the association's fiscal year, a
17 financial report in a form approved by the commissioner and a
18 report of its activities during the preceding fiscal year. Upon
19 the request of a member insurer, the association shall provide
20 the member insurer with a copy of the report.

21 Section 1715. Immunity.--There shall be no liability on the
22 part of and no cause of action of any nature shall arise against
23 any member insurer or its agents or [employees] employees, the
24 association or its agents or [employees] employees, members of
25 the board of directors or the commissioner or [his]
26 representatives of the commissioner for any action or omission
27 by them in the performance of their powers and duties under this
28 article. Such immunity shall extend to the participation in any
29 organization of one or more other state associations of similar
30 purposes and to any such organization and its agents or

1 [employes] employees.

2 Section 1716. Stay of Proceedings and Reopening Default
3 Judgments.--All proceedings in which the insolvent insurer is a
4 party in any court in this Commonwealth shall be stayed [sixty
5 (60)] one hundred eighty (180) days from the date an order of
6 liquidation, rehabilitation or conservation is final to permit
7 proper legal action by the association on any matters germane to
8 its powers or duties. As to judgment under any decision, order,
9 verdict or finding based on default, the association may apply
10 to have such judgment set aside by the same court that made such
11 judgment and shall be permitted to defend against such suit on
12 the merits.

13 Section 1717. Prohibited Advertisement [or] of Insurance
14 Guaranty Association [Act] Article in Insurance and Other
15 Coverage Sales.--(a) No person, including [an] a member
16 insurer, agent or affiliate of [an] a member insurer, shall
17 make, publish, disseminate, circulate or place before the
18 public, or cause, directly or indirectly, to be made, published,
19 disseminated, circulated or placed before the public, in any
20 newspaper, magazine or other publication, or in the form of a
21 notice, circular, pamphlet, letter or poster, or over any radio
22 station or television station, or in any other way, any
23 advertisement, announcement or statement, written or oral, which
24 uses the existence of the association for the purpose of sales,
25 solicitation or inducement to purchase any form of insurance or
26 other coverage covered by this article, provided, however, that
27 this section shall not apply to the association or any other
28 entity which does not sell or solicit insurance[.], or coverage
29 by a RANLI PPO, hospital plan corporation, professional health
30 services plan corporation or health maintenance organization.

1 (b) Within one hundred eighty (180) days of the effective
2 date of this article, the association shall prepare a summary
3 document describing the general purposes and current limitations
4 of the article and complying with subsection (c). This summary
5 document [should] shall be submitted to the commissioner for
6 approval. Sixty (60) days after receiving such approval, no
7 member insurer may deliver a policy or contract [described in
8 section 1703(b)(1)] to a [policyholder or contract holder]
9 policy owner, contract owner, certificate holder or enrollee
10 unless the summary document is delivered to the [policyholder or
11 contract holder] policy owner, contract owner, certificate
12 holder or enrollee prior to or at the time of delivery of the
13 policy or contract [except if subsection (d) applies]. The
14 summary document [should] shall also be available upon request
15 by a [policyholder] policy owner, contract owner, certificate
16 holder or enrollee. The distribution, delivery or contents or
17 interpretation of [this] the summary document shall not mean
18 that either the policy or the contract or the [holder] policy
19 owner, contract owner, certificate holder or enrollee thereof
20 would be covered in the event of the impairment or insolvency of
21 a member insurer. The [description] summary document shall be
22 revised by the association as amendments to the article may
23 require. Failure to receive [this] the summary document does not
24 give the [policyholder, contract holder,] policy owner, contract
25 owner, certificate holder, enrollee or insured any greater
26 rights than those stated in this article.

27 (c) The summary document prepared under subsection (b) shall
28 contain a clear and conspicuous disclaimer on its face. The
29 commissioner shall promulgate a regulation establishing the form
30 and content of the disclaimer. The disclaimer shall:

1 (1) State the name and address of the association and
2 department.

3 (2) Prominently warn the [policyholder or contract holder]
4 policy owner, contract owner, certificate holder or enrollee
5 that the association may not cover the policy or contract or, if
6 coverage is available, it will be subject to substantial
7 limitations and exclusions and conditioned on continued
8 residence in this Commonwealth.

9 (3) State the types of policies or contracts for which
10 guaranty funds will provide coverage.

11 [(3)] (4) State that the member insurer and its agents are
12 prohibited by law from using the existence of the association
13 for the purpose of sales, solicitation or inducement to purchase
14 any form of insurance[.] or coverage by a RANLI PPO, hospital
15 plan corporation, professional health services plan corporation
16 or health maintenance organization.

17 [(4)] (5) Emphasize that the [policyholder or contract
18 holder] policy owner, contract owner, certificate holder or
19 enrollee should not rely on coverage under the association when
20 selecting an insurer[.], RANLI PPO, hospital plan corporation,
21 professional health services plan corporation or health
22 maintenance organization.

23 (6) Explain rights available and procedures for filing a
24 complaint to allege a violation of any provisions of this
25 article.

26 [(5)] (7) Provide other information as directed by the
27 commissioner[.], including, but not limited to, sources for
28 information about the financial condition of insurers, RANLI
29 PPOs, hospital plan corporations, professional health services
30 plan corporations or health maintenance organizations provided

1 that the information is not proprietary and is subject to
2 disclosure under that state's public records law.

3 (d) [No insurer or agent may deliver a policy or contract
4 described in section 1703(b) (1) and excluded under section
5 1703(b) (2) from coverage under this article unless the insurer
6 or agent, prior to or at the time of delivery, gives the
7 policyholder or contract holder a separate written notice which
8 clearly and conspicuously discloses that the policy or contract
9 is not covered by the association. The commissioner shall by
10 regulation specify the form and content of the notice.] A member
11 insurer shall retain evidence of compliance with subsection (b)
12 for so long as the policy or contract for which the notice is
13 given remains in effect.

14 [Section 1718. Prospective Application.--This article shall
15 not apply to any insurer which was declared insolvent before the
16 effective date of this article.]

17 Section 4. The following shall apply:

18 (1) The provisions of this act shall only apply to a
19 member insurer that is placed, on or after the effective date
20 of this section, under an order of liquidation by a court of
21 competent jurisdiction with a finding a insolvency or that is
22 unable to fulfill its contractual obligations.

23 (2) All matters relating to insolvencies of any member
24 insurer declared to be insolvent before the effective date of
25 this section, including assessments and credits, shall be
26 covered pursuant to Article XVII provisions prior to the
27 effective date of this section.

28 Section 5. This act shall take effect immediately.