

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 206

Session of  
1977

INTRODUCED BY MESSRS. A. K. HUTCHINSON, KOWALYSHYN, BORSKI,  
GIAMMARCO, MRS. HARPER, MESSRS. SCHMITT, VROON AND LIVENGOD,

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 9, 1977

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as  
2 amended, "An act relating to insurance; establishing an  
3 insurance department; and amending, revising, and  
4 consolidating the law relating to the licensing,  
5 qualification, regulation, examination, suspension, and  
6 dissolution of insurance companies, Lloyds associations,  
7 reciprocal and inter-insurance exchanges, and certain  
8 societies and orders, the examination and regulation of fire  
9 insurance rating bureaus, and the licensing and regulation of  
10 insurance agents and brokers; the service of legal process  
11 upon foreign insurance companies, associations or exchanges;  
12 providing penalties, and repealing existing laws," providing  
13 for maintenance of records and further providing for  
14 penalties.

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

17 Section 1. The act of May 17, 1921 (P.L.789, No.285), known  
18 as "The Insurance Department Act of one thousand nine hundred  
19 and twenty-one," is amended by adding a section to read:

20 Section 638.1. Maintenance of Records.--Every resident and  
21 nonresident insurance agent, solicitor, and broker must maintain  
22 at his principal place of business full written records of his  
23 insurance transactions open at all times, without notice, to the  
24 inspection of the Insurance Commissioner, his deputies, his

1 examiners or his investigators. Such records shall indicate as  
2 to each insurance transaction the name of the insured and the  
3 insurer; the exact amount of the insurance placed; the subject  
4 of the insurance; a description of the coverage; the gross  
5 premium; the number, effective date, time and term of the  
6 policy, cover note, binder or other instrument of insurance and  
7 such other information the Insurance Commissioner deems  
8 necessary and shall include a copy of any written employment or  
9 service contract or agreement entered into by an insurance  
10 agent, solicitor, or broker and any insurance company,  
11 association or exchange. Further, such records must be kept for  
12 not less than three years after the expiration or cancellation  
13 of the insurance and any aforesaid employment or service  
14 contract or agreement must be kept for not less than six years  
15 after its expiration or cancellation, whichever is later.

16 Section 2. Section 639 of the act, amended December 30, 1974  
17 (P.L.1047, No.343), is amended to read:

18 Section 639. Revocation, Et Cetera, of License; Penalty.--  
19 Upon satisfactory evidence of the violation of any of the  
20 provisions of sections six hundred four, six hundred six, six  
21 hundred seven, six hundred twenty-three, six hundred thirty-one,  
22 six hundred thirty-two, six hundred thirty-three, six hundred  
23 thirty-three point one, six hundred thirty-four, six hundred  
24 thirty-five, six hundred thirty-six, six hundred thirty-seven,  
25 [and] six hundred thirty-eight and six hundred thirty-eight  
26 point one of this act, by any agent or solicitor of any  
27 insurance company, association, or exchange, or by any insurance  
28 broker [or excess insurance broker], or upon satisfactory  
29 evidence of such conduct as would disqualify such agent or  
30 broker [or excess broker] from initial issuance of a license

1 under sections six hundred three and six hundred twenty-two [and  
2 six hundred twenty-four], the Insurance Commissioner may in his  
3 discretion, pursue any one or more of the following courses of  
4 action regardless of whether such agent, solicitor or broker was  
5 licensed or not licensed by the Insurance Commissioner:

6 (1) Suspend or revoke or refuse to renew the license of such  
7 offending party or parties;

8 (2) Impose a civil penalty of not more than one thousand  
9 dollars for each and every act in violation of any of said  
10 sections by said party or parties.

11 Before the Insurance Commissioner shall take any action as  
12 above set forth, he shall give written notice to the person,  
13 company, association, or exchange, accused of violating the law,  
14 stating [specifically] the nature of such alleged violation and  
15 fixing a time and place, at least ten (10) days thereafter, when  
16 a hearing of the matter shall be held. After such hearing or  
17 upon failure of the accused to appear at such hearing, the  
18 Insurance Commissioner shall impose such of the above penalties  
19 as he deems advisable.

20 When the Insurance Commissioner shall take action in any or  
21 all of the [three] ways above recited, the party aggrieved may  
22 appeal from said action to the Commonwealth Court. Any agent or  
23 solicitor of any insurance company, association, or exchange, or  
24 any insurance broker, or any person, copartnership, association,  
25 or corporation, violating the provisions of sections six hundred  
26 thirty-three point one, six hundred thirty-five, six hundred  
27 thirty-six, six hundred thirty-seven, [and] six hundred thirty-  
28 eight and six hundred thirty-eight point one of this act, shall  
29 be guilty of a misdemeanor, and, upon conviction thereof, shall  
30 be sentenced to pay a fine of not more than one thousand dollars

1 (\$1,000.00) for each and every violation, or, at the discretion  
2 of the court, to imprisonment in the county jail of the county  
3 in which the offense is committed for a period of not more than  
4 six months, or both.

5 Section 3. This act is amended by adding a section to read:

6 Section 652.1. Maintenance of Records.--Every manager and  
7 exclusive general agent must maintain at his principal place of  
8 business full written records of insurance transactions open at  
9 all times, without notice, to the inspection of the Insurance  
10 Commissioner, his deputies, his examiners or his investigators.

11 As used in this section "records" shall include:

12 (1) copies of all managers' contracts or exclusive general  
13 agents' agreements entered into by a licensee and any domestic  
14 insurance company and any amendments thereto;

15 (2) copies of the resolutions of the board of directors of  
16 the domestic insurance companies approving such contracts or  
17 agreements;

18 (3) copies of all papers, documents, contracts, records,  
19 memoranda, ledgers, journals, statements, checks, drafts and the  
20 like which reflect the method and amount of total or deferred  
21 compensation, income, commission, override, fees, payments, or  
22 the like directly or indirectly received by or accrued to the  
23 benefit of such manager or exclusive general agent or his  
24 relatives or to the officers or directors of a corporate  
25 licensee or members of a copartnership licensee or their  
26 relatives or to any business entity controlled by the licensee  
27 or which reflect salaries or fees paid to the licensee or to  
28 officers or directors or members of a licensee and rental  
29 payments for real or personal property leased from the licensee  
30 by the domestic insurance company or profits realized on sales

of real or personal property by the licensee to the domestic insurance company and value of any services or facilities furnished by the domestic insurance company to the licensee; and  
(4) data to indicate as to each insurance transaction the name of the insured and the insurer; the exact amount of the insurance placed; the subject of the insurance; a description of the coverage; the gross premium, the number, effective date, time and term of the policy, cover note, binder or other instrument of insurance and such other information the Insurance Commissioner deems necessary. Such records mentioned in clauses (1), (2), and (3) must be kept for not less than six years after their effective date and records mentioned in clause (4) must be kept for not less than three years after the expiration or termination of the insurance, whichever is later.

Section 4. Section 653 of the act, added December 22, 1965 (P.L.1172, No.463), and repealed in part January 6, 1970 (1969 P.L.434, No.185) and July 31, 1970 (P.L.673, No.223), is amended to read:

Section 653. Revocation and Suspension of License;  
Penalty.--The Insurance Commissioner, upon satisfactory evidence of such conduct as would disqualify a licensed manager or exclusive general agent from initial issuance of a license under section 651 hereof or upon satisfactory evidence of a failure or refusal to maintain records as required by section 652.1 may, in his discretion, [suspend] regardless of whether such manager or exclusive general agent was licensed or not licensed by the Insurance Commissioner:

Suspend or revoke or refuse to renew the license of such manager or exclusive general agent and may impose a civil penalty of not more than one thousand dollars (\$1,000) for each

1 and every act in violation of said sections by said party or  
2 parties.

3       Before the insurance commissioner shall take any action as  
4 above set forth, he shall give written notice to the manager or  
5 exclusive general agent, stating [specifically] the nature of  
6 the alleged conduct and fixing a time and place at least ten  
7 days thereafter when a hearing in the matter shall be held.  
8 After such hearing or upon failure of the licensee to appear at  
9 such hearing, the Insurance Commissioner shall impose such of  
10 the above penalties as he deems advisable under the  
11 circumstances.

12       When the Insurance Commissioner shall take action in any or  
13 all of the ways above recited, the party aggrieved may appeal  
14 from said action to the [court of common pleas of Dauphin  
15 County] Commonwealth Court.

16       Section 5. This act shall take effect immediately.