
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1037 Session of
1977

INTRODUCED BY KOWALYSHYN, ZEARFOSS, SCHMITT, A. K. HUTCHINSON,
SCHWEDER, LIVENGOOD, HARPER, GIAMMARCO, McLANE, F. TAYLOR,
BORSKI, ZITTERMAN, WARGO, MILLIRON, GARZIA, MACKOWSKI,
RUGGIERO, DOYLE, PRENDERGAST, VROON, REED, JONES AND WIGGINS,
APRIL 27, 1977

REFERRED TO COMMITTEE ON INSURANCE, APRIL 27, 1977

AN ACT

1 Relating to maintenance by certain property and casualty
2 companies of accounts to protect insurance company
3 obligations to the public; defining the amount and manner in
4 which such accounts shall be established and maintained,
5 defining the authority of the Insurance Commissioner in
6 regard to such accounts, providing for action to be taken by
7 the commissioner if such accounts are not in compliance with
8 the provisions of the act.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known as and may be cited as the

13 "Policyholder Security Account Act."

14 Section 2. Purpose.

15 The purpose of this act is to assist in the prevention and
16 detection of insurance company insolvencies and to provide for
17 the maintenance of accounts to protect insurance companies'
18 obligations to the public.

19 Section 3. Scope.

1 This act shall apply the kinds of insurance set forth in
2 section 202(b), (c), (d), (e), (f) and (g) of the act of May 17,
3 1921 (P.L.682, No.284), known as "The Insurance Company Law of
4 1921," except title, surety, credit mortgage guaranty or ocean
5 marine insurance.

6 Section 4. Definitions.

7 The following words and phrases when used in this act shall
8 have, unless the context clearly indicates otherwise, the
9 meanings given to them in this section:

10 "Affiliate of," or person "affiliated with," a specified
11 person. A person who directly, or indirectly through one or
12 more intermediaries, controls, or is controlled by, or is under
13 common control with, the specified person.

14 "Commissioner." The Commissioner of Insurance of the
15 Commonwealth of Pennsylvania.

16 "Control" (including the terms "controlling," "controlled by"
17 and "under common control with"). The possession, direct or
18 indirect, of the power to direct or cause the direction of the
19 management and objectives of a person, whether through the
20 ownership of voting securities, by contract, or otherwise,
21 unless the power is the result of an official position with a
22 corporate office held by the person. Control shall be presumed
23 to exist if any person, directly or indirectly, owns, controls,
24 holds with the power to vote, or holds proxies representing 10%
25 or more of the voting securities of any other person. This
26 presumption may be rebutted by a showing that control does not
27 exist in fact. The commissioner may, after furnishing all
28 persons in interest notice and an opportunity to be heard,
29 determine that control exists in fact, notwithstanding the
30 absence of a presumption to that effect.

1 "Custodian." Any one or more national or State banks located
2 anywhere in the United States having trust powers and which
3 agree with the insurer establishing the policyholder security
4 account to:

5 (1) Furnish to the commissioner, on or before April 30
6 of each year, on behalf of the depositor, a certified
7 schedule of cash and marketable securities in the
8 policyholder security account, as of April 15 of that year,
9 and at such other times as the commissioner shall request.

10 (2) Furnish monthly to the commissioner a certified
11 schedule of all transactions affecting such account during
12 the preceding month, or more or less frequently as the
13 commissioner may require.

14 (3) Cooperate with the commissioner in the performance
15 of the audit or valuation conducted pursuant to section 8(d).

16 (4) Give notice to the commissioner, when required,
17 pursuant to section 10(b) and (c).

18 The transaction schedules required under this definition shall
19 be kept confidential. No bank is eligible to become a custodian
20 for an insurer which is affiliated or under common control with
21 such bank.

22 "Insurance company." Any corporation, association or
23 exchange which is authorized to write the kinds of insurance to
24 which this act applies.

25 "Marketable securities." Any of the following:

26 (1) For fire, marine, or fire and marine or casualty
27 insurance companies, those investments authorized under the
28 following provisions of The Insurance Company Law of 1921:

29 (i) Subsections (b), (c), (d), (f), (g), (g.1), (i),
30 (j), (k), (l), (m), (o) and (p) of sections 517 and 602.

1 (ii) Bonds or notes as provided in sections 518 and
2 603.

3 (iii) Subsection (h) of sections 517 and 602 and
4 stock in such corporations as permitted under sections
5 518 and 603, other than stock issued by corporations
6 described in subsection (b) on both of the following
7 conditions:

8 (A) The issuing corporation shall have tangible
9 net worth of \$500,000 or more.

10 (B) The amount, in the aggregate, of such
11 securities qualifying under this section may not be
12 more than an amount equal to an insurer's capital and
13 surplus.

14 (2) The common stock, preferred stock, and debt
15 obligations of any corporation or trust which is controlled
16 by any one or more of the following shall not qualify as
17 marketable securities:

18 (i) The insurer.

19 (ii) The insurer's affiliates.

20 (iii) A person under common control with the
21 insurer.

22 (iv) The officers and directors of those companies
23 described in subclauses (i), (ii) and (iii).

24 (3) The amount invested in the stock and obligations of
25 any one corporation shall not, for the purposes of this act,
26 exceed 5% of the deposit required by section 5 or 6, except
27 that as to obligations guaranteed by the United States
28 Government. When the obligation is guaranteed by the United
29 States Government, the amount invested in the obligations of
30 any one corporation shall not exceed 25% of the deposit

1 required by sections 5 or 6.

2 (4) Notwithstanding the provisions of paragraph (1), (2)
3 or (3), any security shall qualify as a marketable security
4 if the insurer has applied for and obtained from the
5 commissioner a certificate of exemption with respect to the
6 specific security or securities therein described. To obtain
7 such certificate of exemption the insurer shall file a
8 written verified application, verified in such form as the
9 commissioner shall require, which shall contain all of the
10 following:

11 (i) A specific description of the particular
12 security for which the certificate is sought, including
13 the name of the registered holder.

14 (ii) Copies of all agreements or other documents
15 affecting the title thereto or any legal or equitable
16 interest therein, contingent or otherwise.

17 (iii) A description of any consideration, contingent
18 or otherwise, then unpaid.

19 (iv) Names, titles, capacities and business
20 relationships of all persons or entities having an
21 interest, contingent or otherwise, in such security other
22 than the insurer.

23 (v) A description of the legal and business
24 relationships between the insurer and the issuer of such
25 securities, their affiliates, subsidiaries, parents and
26 controlling persons, including any officers and
27 directors.

28 (vi) Such other information, opinions, or documents
29 as the commissioner may request.

30 "Person." An individual, corporation, partnership,

1 association, joint stock company, business trust, unincorporated
2 organization, any similar entity, or any combination of the
3 foregoing acting in concert.

4 "Policyholder security account." An account maintained
5 pursuant to the provisions of section 5 or 6.

6 "Written premium." Direct written premium plus reinsurance
7 assumed minus reinsurance ceded if such ceded reinsurance
8 complies with the requirements of section 7.

9 Section 5. Determination of policyholder security account
10 amount for domestic companies.

11 (a) Account required.--Each domestic insurance company, in
12 order to be or remain authorized to transact one or more of the
13 kinds of insurance to which this act applies, shall maintain
14 with a custodian a policyholder security account, consisting of
15 cash or marketable securities as required herein. The amount in
16 the policyholder security account shall not, at any time, be
17 less than the greater of paragraph (1) or (2).

18 (1) As respects those lines of insurance to which this
19 act applies, the sum of the following:

- 20 (i) Reserves for losses due and unpaid.
- 21 (ii) Reserves for losses incurred but unreported.
- 22 (iii) Reserves for loss adjustment expenses.
- 23 (iv) Reserves for unearned premiums.

24 (2) Seventy-five percent of the written premium for the
25 immediately preceding calendar year for those lines of
26 insurance to which this act applies, less policyholder
27 dividends and premium refunds.

28 (b) Scope.--The requirements of this section shall apply
29 only to reserves, premiums and liabilities arising out of
30 policies or obligations issued, assumed or incurred in the

1 United States.

2 (c) Limitations on credit.--No credit may be taken under
3 subsection (a)(1) or (a)(2) for reinsurance, except in
4 accordance with section 7.

5 Section 6. Determination of policyholder security account
6 amount for foreign or alien insurance companies.

7 (a) Account required.--Each foreign or alien insurance
8 company, in order to be or remain authorized to transact one or
9 more of the kinds of insurance to which this act applies, shall
10 maintain with a custodian a policyholder security account,
11 consisting of cash or investments authorized by the laws of the
12 state of its domicile or entry, and which meet the definition of
13 marketable securities. The amount in the policyholder security
14 account shall not, at any time, be less than the greater of
15 paragraph (1) or (2):

16 (1) The sum of the following for business written in
17 this Commonwealth as respects those lines of insurance to
18 which this act applies:

- 19 (i) Reserves for losses due and unpaid.
- 20 (ii) Reserves for losses incurred but unreported.
- 21 (iii) Reserves for loss adjustment expenses.
- 22 (iv) Reserves for unearned premiums.

23 (2) Seventy-five percent of the written premium for the
24 immediately preceding calendar year for business written in
25 this Commonwealth in those lines of insurance to which this
26 act applies, less policyholder dividends and premium refunds.

27 (3) At the option of a foreign or alien insurance
28 company, the amount of the policyholder security account may
29 be based on:

- 30 (i) business written in all of the United States; or

1 (ii) business written in this Commonwealth and all
2 states with requirements substantially similar to this
3 act.

4 (b) Limitation on credit.--No credit may be taken under
5 subsection (a)(1) or (a)(2) for reinsurance, except in
6 accordance with section 7.

7 (c) Reciprocity.--If the commissioner determines that any
8 such foreign or alien insurance company is subject to
9 requirements substantially similar to this act in the state of
10 its domicile or entry, he shall accept compliance with such
11 requirements of the state of domicile or entry in lieu of the
12 compliance with the provisions of this section.

13 Section 7. Limitation of credit for reinsurance.

14 The credit for reinsurance authorized by sections 5(c) and
15 6(b) shall be limited to reinsurance cessions assumed by
16 insurance companies which are any of the following:

17 (1) Domestic reinsurers.

18 (2) Foreign or alien reinsurers admitted to do business
19 in this Commonwealth and which are not affiliated or under
20 common control with the insurer.

21 (3) Foreign or alien reinsurers affiliated or under
22 control with the insurer, and which comply with sections 5 or
23 6 to the extent of the cessions.

24 (4) Foreign or alien reinsurers not admitted to do
25 business in this Commonwealth and which comply with section 5
26 or 6 to the extent of the cessions.

27 Section 8. General stipulations.

28 (a) Amount required.--The amount of the policyholder
29 security account for each company shall be based on the reserves
30 or written premiums as provided for in sections 5(a)(1) and (2)

1 and 6(a) as of December 31 of the preceding year. Each insurance
2 company shall, on or before April 15, of each year, adjust the
3 amount of its policyholder security account to an amount no less
4 than the amount required under section 5 or 6.

5 (b) Credit.--Each insurance company may, at its option, take
6 credit for deposits of securities made with this or any other
7 state and reported on the "Special deposit schedule and schedule
8 of all other deposits" as reported in its annual statement,
9 filed with the Pennsylvania Insurance Department. The amount of
10 marketable securities in its policyholder security account may
11 be reduced to the extent of the credit provided for in this
12 subsection.

13 (c) Additional credit.--Any insurance company may, at its
14 option, apply to the commissioner for authority to take credit
15 for deposits of securities maintained with a custodian by
16 underwriting associations, pools and syndicates. The
17 commissioner may, after such investigation as he deems
18 necessary, permit credit for such securities to the extent that
19 they relate to obligations in the lines of business to which the
20 policyholder security account applies.

21 (d) Valuation.--

22 (1) Every year, on or before June 1, the commissioner
23 shall value the schedule of cash or marketable securities in
24 the policyholder security account for each insurance company
25 subject to this act to determine that it is not less than the
26 amount required to be maintained in accordance with sections
27 5 and 6. Such valuation shall consist of a review of the
28 securities reported by the custodian to be in the company's
29 policyholder security account, plus any deposits for which
30 the company has claimed credit under subsection (b) or (c) as

1 compared with the reserves and the written premiums reported
2 in the Insurance Company's Annual Statement filed with the
3 Insurance Department.

4 (2) The commissioner may, should he deem it necessary,
5 undertake such audit or valuation at any other time, and the
6 insurance company and the custodian shall cooperate in the
7 performance of such audit or valuation. Such audit or
8 valuation may consist of a review of a quarterly financial
9 statement or of a report of premiums written on a 12 month-
10 ending basis. If the audit reveals that the company's
11 policyholder security account is deficient, the commissioner
12 shall take action in accordance with the provisions of
13 section 9.

14 (3) Securities in the policyholder security account
15 shall be valued in accordance with the rules governing
16 valuation of securities for annual statement purposes.

17 Section 9. Deficiency in the policyholder security account.

18 If, at any time, the value of cash and marketable securities
19 maintained with the custodian falls below the amount required to
20 be maintained in accordance with section 5 or 6, the
21 commissioner shall require such deficiency to be eliminated by
22 the company within a period of not more than 90 days from the
23 notification thereof, as designated by him. Upon receipt of
24 notice from the commissioner of a deficiency in its policyholder
25 security account, the insurance company shall add, within the
26 time specified by the commissioner, cash or marketable
27 securities in an amount sufficient to correct such deficiency.
28 Failure to eliminate such deficiency within the time specified
29 in said notice shall be deemed to be a condition in which assets
30 are insufficient to justify such company's continuance of

1 business and a condition which renders the continuance of
2 business hazardous to such company's policyholders or creditors
3 or to the public as provided in sections 501 and 502 of The
4 Insurance Department Act of 1921, and the commissioner shall
5 make and serve such order or orders as specified in such
6 sections.

7 Section 10. Exchange and withdrawal of securities in
8 policyholder security account.

9 (a) Exchange authorized.--Any insurance company required to
10 maintain a policyholder security account, except a company to
11 which subsection (c) applies, may, at any time, substitute or
12 exchange cash or marketable securities having a value equal to
13 or greater than the value of those then in the account, and for
14 which they are to be substituted or exchanged, without specific
15 authorization from the commissioner. Any insurance company may
16 sell, exchange or redeem securities from the account without
17 prior approval of the commissioner, provided the proceeds are
18 either retained in the account in cash or reinvested in other
19 marketable securities of equal or greater value. All interest,
20 dividends and other income may be withdrawn by the insurance
21 company at its discretion. Securities in the policyholder
22 security account shall remain the sole and absolute property of
23 the insurance company and the company may exercise all rights of
24 ownership in such securities, subject to the ongoing requirement
25 that it maintain a policyholder security account at the levels
26 required by this act.

27 (b) Withdrawal of principal.--No insurance company shall
28 make any withdrawal of principal from the policyholder security
29 account which, together with previous withdrawals in the 90 days
30 immediately preceding, exceeds an amount equal to 10% of the

1 policyholder security account as last valued in accordance with
2 section 8 unless prior authorization of the commissioner shall
3 have been obtained. The agreement between the insurance company
4 and the custodian shall reflect this requirement.

5 (c) Special provisions.--In the case of any insurance
6 company which has been required to eliminate a deficiency in its
7 policyholder security account in accordance with section 9, the
8 commissioner may require 15 days prior notice from the custodian
9 of any withdrawal, substitution, or exchange of cash or
10 marketable securities. Such requirement of prior notice may
11 remain in effect, at the commissioner's sole discretion, until
12 one year has elapsed from the time the deficiency was
13 eliminated.

14 Section 11. Priority in policyholder security account.

15 No interest or priority in the cash, securities, or
16 investments maintained in a policyholder security account
17 established or maintained in compliance with the provisions of
18 this act shall be created in favor of any person or entity.

19 Section 12. Deposit schedule to meet requirements of act.

20 Notwithstanding any provision of this act, the value of the
21 policyholder security account on deposit with a custodian shall
22 be at least:

23 (1) Fifty percent of the required account on or before
24 April 15, 1978.

25 (2) Seventy-five percent of the required account on or
26 before April 15, 1979.

27 (3) One hundred percent of the required account on or
28 before April 15, 1980.

29 Section 13. Effective date.

30 This act shall take effect immediately.