

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 582

Session of
1977

INTRODUCED BY LYNCH, SCANLON, McKINNEY, COPPERSMITH AND
ROMANELLI, MARCH 28, 1977

SENATOR HANKINS, INSURANCE, RE-REPORTED AS AMENDED,
OCTOBER 25, 1977

AN ACT

1 Establishing the Pennsylvania Life and Health Insurance Guaranty
2 Association; providing for the payment of covered claims
3 under certain life, health and accident insurance, and
4 annuity policies, the avoidance of excessive delay and the
5 avoidance of financial loss to claimants or policyholders in
6 the payment thereof as a result of the insolvency of
7 insurers; assisting in the detection and prevention of
8 insurer impairments and insolvencies; providing for the
9 formulation and administration of a plan of operation; and
10 conferring powers and imposing duties upon the Insurance
11 Commissioner, the Pennsylvania Life and Health Insurance
12 Guaranty Association and certain insurers.

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

23 Section 1. Short title.

24 This act shall be known and may be cited as the "Pennsylvania
25 Life and Health Insurance Guaranty Association Act."

26 Section 2. Purpose.

27 The purpose of this act is to protect policyowners, insureds,
28 beneficiaries, annuitants, payees, and assignees of life
29 insurance policies, health and accident insurance policies,
30 annuity contracts, endorsements, riders and contracts

1 supplemental thereto, including but not limited to settlement
2 options, subject to certain limitations, against failure in the
3 performance of contractual obligations due to the impairment or
4 insolvency of the insurer issuing such policies or contracts. To
5 provide this protection an association of insurers is created to
6 enable the guaranty of payment of benefits and of continuation
7 of coverages, the members of the association are subject to
8 assessment to provide funds to carry out the purpose of this
9 act, and the association is authorized to assist the
10 commissioner in the detection and prevention of insurer
11 impairments or insolvencies.

12 Section 3. Scope.

13 (a) This act shall apply to direct written individual and
14 group life insurance policies, health and accident insurance
15 policies, annuity contracts, endorsements, riders and contracts
16 supplemental thereto, including but not limited to settlement
17 options, issued by member insurers chartered or licensed to
18 transact such insurance in this Commonwealth.

19 (b) This act shall not apply to:

20 (1) The part of a variable life insurance or variable
21 annuity contract not guaranteed by an insurer.

22 (2) The part of any policy or contract under which the
23 risk is borne by the policyholder.

24 (3) A policy or contract or part thereof assumed by the
25 impaired or insolvent insurer under a contract of
26 reinsurance, other than reinsurance for which assumption
27 certificates have been issued.

28 (4) A certificate, contract, or subscriber agreement
29 issued by a hospital plan corporation or a nonprofit hospital
30 plan as defined in 40 Pa.C.S. § 6301 (relating to application

of chapter).

(5) A certificate, contract, or subscriber agreement issued by a professional health service corporation, a nonprofit dental service plan, a nonprofit optometric service plan, or a nonprofit professional health service plan, as defined in 40 Pa.C.S. § 6302 (relating to definitions).

(6) A certificate or contract issued by a fraternal benefit society pursuant to its underwriting powers as set forth in 40 Pa.C.S. § 6526 (relating to power to write insurance).

(7) A certificate, contract or subscriber agreement issued by an organization subject to the provisions of the act of December 29, 1972 (P.L.1701, No.364), known as the "Voluntary Nonprofit Health Service Act of 1972."

Section 4. Definitions.

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

"Account." Any of the three accounts created by section 5.

"Association." The Pennsylvania Life and Health Insurance Guaranty Association.

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

"Contractual obligation." Any obligation under covered policies or contracts.

"Covered policy." Any policy or contract within the scope of this act.

"Impaired insurer." A member insurer deemed by the commissioner to be potentially unable to fulfill its contractual obligations but not an insolvent insurer.

1 "Insolvent insurer." A member insurer which becomes
2 insolvent and is placed under a final order of liquidation,
3 rehabilitation or conservation by a court of competent
4 jurisdiction of the insurer's domiciliary state.

5 "Member insurer." Any person licensed to transact in this
6 Commonwealth any kind of insurance to which this act applies.

7 "Person." Any individual, corporation, partnership,
8 association or voluntary organization.

9 "Premiums." Direct written gross insurance premiums and
10 annuity considerations received on covered policies, less return
11 premiums and considerations thereon and dividends paid or
12 credited to policyholders on such business, and experience rated
13 refunds or credits paid or credited to policyholders on such
14 business. Premiums do not include premiums and considerations on
15 contracts between insurers and reinsurers.

16 "Resident." Any person who resides in this Commonwealth at
17 the time a member insurer is determined to be an impaired or
18 insolvent insurer and to whom contractual obligations are owed.

19 Section 5. Creation of the association.

20 (a) There is created a nonprofit, unincorporated association
21 to be known as the Pennsylvania Life and Health Insurance
22 Guaranty Association. All member insurers shall be and remain
23 members of the association as a condition of their authority to
24 transact insurance in this Commonwealth. The association shall
25 perform its functions under a plan of operation as provided
26 herein and shall exercise its powers through a board of
27 directors. For purposes of administration and assessment, the
28 association shall maintain three accounts:

29 (1) The life insurance account.

30 (2) The health and accident insurance account.

1 (3) The annuity account.

2 (b) Supplementary contracts shall be covered under the
3 account in which the basic policy is covered for purposes of
4 assessment.

5 (c) The association shall come under the immediate
6 supervision of the commissioner and shall be subject to the
7 applicable provisions of the insurance laws of this
8 Commonwealth.

9 Section 6. Board of directors.

10 (a) The board of directors of the association shall consist
11 of not less than five nor more than nine member insurers serving
12 terms as established in the plan of operation. The members of
13 the board shall be selected by member insurers subject to the
14 approval of the commissioner. Vacancies on the board shall be
15 filled for the remaining period of the term by a majority vote
16 of the remaining board members, subject to the approval of the
17 commissioner. To select the initial board of directors and
18 initially organize the association the commissioner shall give
19 notice to all member insurers of the time and place of the
20 organizational meeting. In determining voting rights at the
21 organizational meeting, each member insurer shall be entitled to
22 one vote in person or by proxy. If the board of directors is not
23 selected within 60 days after notice of the organizational
24 meeting, the commissioner may appoint the initial members.

25 (b) In approving selections or in appointing members to the
26 board, the commissioner shall consider, among other things,
27 whether all member insurers are fairly represented.

28 (c) Members of the board may be reimbursed from the assets
29 of the association for reasonable expenses incurred by them as
30 members of the board of directors. They shall not otherwise be

1 compensated by the association for their services.

2 Section 7. Powers and duties of the association.

3 (a) Whenever a domestic insurer is an impaired insurer, the
4 association may, subject to any conditions imposed by the
5 association and approved in writing by the impaired insurer and
6 the commissioner, other than those conditions which impair the
7 contractual obligations of the impaired insurer:

8 (1) guarantee or reinsure, or cause to be guaranteed,
9 assumed, or reinsured, any or all of the covered policies of
10 the impaired insurer;

11 (2) provide such moneys, pledges, notes, guarantees, or
12 other means as are proper to effectuate paragraph (1) and
13 assure payment of the contractual obligations of the impaired
14 insurer pending action thereunder; or

15 (3) lend money to the impaired insurer.

16 (b) Whenever a domestic insurer is an insolvent insurer, the
17 association shall, subject to the written approval of the
18 commissioner:

19 (1) guarantee, assume, or reinsure, or cause to be
20 guaranteed, assumed, or reinsured the covered policies of the
21 insolvent insurer;

22 (2) assure payment of the contractual obligations of the
23 insolvent insurer; or

24 (3) provide such moneys, pledges, notes, guarantees, or
25 other means as are reasonably necessary to discharge such
26 duties.

27 (c) Whenever a foreign or alien insurer is an insolvent
28 insurer, the association shall, subject to the written approval
29 of the commissioner:

30 (1) guarantee, assume, or reinsure, or cause to be

1 guaranteed, assumed, or reinsured the covered policies of
2 residents;

3 (2) assure payment of the contractual obligations of the
4 insolvent insurer to residents; or

5 (3) provide such moneys, pledges, notes, guarantees, or
6 other means as are reasonably necessary to discharge such
7 duties.

8 This subsection shall not apply where the commissioner has
9 determined that a foreign or alien member insurer's domiciliary
10 jurisdiction or state of entry provides, by statute or
11 regulation, protection for residents of this Commonwealth
12 substantially similar to that provided by this act.

13 (d) In carrying out subsections (b) and (c), permanent
14 policy liens, or contract liens may be imposed in connection
15 with any guarantee, assumption or reinsurance agreement if the
16 court:

17 (1) Finds that the amounts which can be assessed under
18 this act are less than the amounts needed to assure full and
19 prompt performance of the insolvent insurer's contractual
20 obligations, or that the economic or financial conditions as
21 they affect member insurers are sufficiently adverse to
22 render the imposition of policy or contract liens, to be in
23 the public interest.

24 (2) Approves the specific policy liens or contract liens
25 to be used.

26 Before being obligated under subsections (b) and (c), the
27 association may request that there be imposed temporary
28 moratoriums or liens on payments of cash values and policy loans
29 in addition to any contractual provisions for deferral of cash
30 or policy loan values, and such temporary moratoriums and liens

1 may be imposed if they are approved by the court.

2 (e) If the association fails to act within a reasonable
3 period of time, as provided in section 5(b) and (c), the
4 commissioner shall have the powers and duties of the association
5 under this act with respect to insolvent insurers.

6 (f) The association may render assistance and advice to the
7 commissioner, upon his request, concerning rehabilitation,
8 payment of claims, continuance of coverage, or the performance
9 of other contractual obligations of any impaired or insolvent
10 insurer.

11 (g) The association shall have standing to appear before any
12 court in this Commonwealth with jurisdiction over an impaired or
13 insolvent insurer concerning which the association is or may
14 become obligated under this act. Such standing shall extend to
15 all matters germane to the powers and duties of this
16 association, including, but not limited to, proposals for
17 reinsuring or guaranteeing the covered policies of the impaired
18 or insolvent insurer and the determination of the covered
19 policies and contractual obligations.

20 (h) A person receiving benefits under this act shall be
21 deemed to have assigned the rights under the covered policy to
22 the association to the extent of the benefits received because
23 of this act whether the benefits are payments of contractual
24 obligations or continuation of coverage. The association may
25 require an assignment to it of such rights by any payee, policy
26 or contract owner, beneficiary, insured or annuitant as a
27 condition precedent to the receipt of any rights or benefits
28 conferred by this act upon such person. The association shall be
29 subrogated to these rights against the assets of any insolvent
30 insurer. The subrogation rights of the association under this

1 subsection shall have the same priority against the assets of
2 the insolvent insurer as that possessed by the person entitled
3 to receive benefits under this act.

4 (i) The association shall not be liable for any contractual
5 obligations of insolvent insurers which are \$100 or less with
6 respect to the total contractual obligations owing to any one
7 person.

8 (j) The contractual obligations of the insolvent insurer for
9 which the association becomes or may become liable shall be in
10 excess of \$100 and shall be as great as but no greater than the
11 contractual obligations of the insolvent insurer would have been
12 in the absence of an insolvency unless such obligations are
13 reduced as permitted by subsection (d), but the aggregate
14 liability of the association on any one life shall not exceed
15 \$100,000 with respect to the payment of cash values, or \$300,000
16 for all benefits. This dollar limitation shall include all
17 benefits which become payable after the date of insolvency and
18 all benefits that may be accrued and unpaid on the date of the
19 insolvency.

20 (k) The association may:

21 (1) Enter into such contracts as are necessary or proper
22 to carry out the provisions and purposes of this act.

23 (2) Sue or be sued, including taking any legal action
24 necessary or proper for recovery of unpaid assessments under
25 section 8.

26 (3) Borrow money to effect the purposes of this act.
27 Notes or other evidence of indebtedness of the association
28 not in default shall be legal investments for domestic
29 insurers and may be carried as admitted assets.

30 (4) Employ or retain such persons as are necessary to

1 handle the financial transactions of the association, and to
2 perform such other functions as become necessary or proper
3 under this act.

4 (5) Negotiate and contract with any liquidator,
5 rehabilitator, conservator or ancillary receiver to carry out
6 the powers and duties of the association.

7 (6) Take such legal action as may be necessary to avoid
8 payment of improper claims.

9 (7) Exercise, for the purposes of this act and to the
10 extent approved by the commissioner, the powers of a domestic
11 life or health and accident insurer, but in no case may the
12 association issue insurance policies or annuity contracts
13 other than those issued to perform the contractual
14 obligations of the impaired or insolvent insurer.

15 Section 8. Assessments.

16 (a) For the purpose of providing the funds necessary to
17 carry out the powers and duties of the association, the board of
18 directors shall assess the member insurers, separately for each
19 account, at such time and for such amounts as the board finds
20 necessary. Assessments shall be due not less than 30 days after
21 written notice to the member insurers and shall accrue interest
22 at 8% per annum after the due date.

23 (b) There shall be three classes of assessments:

24 (1) Class A assessments shall be made for the purpose of
25 meeting administrative costs and other general expenses not
26 related to a particular impaired or insolvent insurer and
27 examinations conducted under the authority of section 11(e).

28 (2) Class B assessments shall be made to the extent
29 necessary to carry out the powers and duties of the
30 association under section 7, with regard to an impaired or

1 insolvent domestic insurer.

2 (3) Class C assessments shall be made to the extent
3 necessary to carry out the powers and duties of the
4 association under section 7 with regard to an insolvent
5 foreign or alien insurer.

6 (c) (1) The amount of any class A assessment shall be
7 determined by the board and may be made on a non-pro rata
8 basis. Such assessment for costs and expenses other than for
9 examinations shall not exceed \$50 per company in any one
10 calendar year. The amount of any class B or C assessment
11 shall be allocated for assessment purposes among the accounts
12 in section 5(a) in the proportion that the premiums received
13 by the impaired or insolvent insurer on the covered policies
14 under each account for the last calendar year preceding the
15 assessment in which the impaired or insolvent insurer
16 received premiums bear to the premiums received by such
17 insurer for such calendar year on all covered policies.

18 (2) Class B assessments for each account shall be made
19 separately for each state in which the impaired or insolvent
20 domestic insurer was authorized to transact insurance at any
21 time, in the proportion that the premiums received on
22 business in such state by the impaired or insolvent insurer
23 on covered policies under each account for the last calendar
24 year preceding the assessment in which the impaired or
25 insolvent insurer received premiums bear to such premiums
26 received in all such states for such calendar year by the
27 impaired or insolvent insurer. The assessments against member
28 insurers shall be in the proportion that the premiums
29 received on business in each such state by each assessed
30 member insurer on covered policies under each account for the

1 last calendar year preceding the assessment bear to such
2 premiums received on business in each state for such calendar
3 year preceding assessment by all assessed member insurers.

4 (3) Class C assessments against member insurers for each
5 account shall be in the proportion that the premiums received
6 on business in this Commonwealth by each assessed member
7 insurer on covered policies under each account for the last
8 calendar year preceding the assessment bear to such premiums
9 received on business in this Commonwealth for such calendar
10 year preceding the assessment by all assessed member
11 insurers.

12 (4) Assessments for funds to meet the requirements of
13 the association with respect to an impaired or insolvent
14 insurer shall not be made until necessary to implement the
15 purposes of this act. Classification of assessments under
16 subsection (b) and computation of assessments under this
17 paragraph shall be made with a reasonable degree of accuracy,
18 recognizing that exact determinations may not always be
19 possible.

20 (d) The association may abate or defer, in whole or in part,
21 the assessment of a member insurer if, in the opinion of the
22 board, payment of the assessment would endanger the ability of
23 the member insurer to fulfill its contractual obligations, or
24 would cause the member insurer's financial statement to reflect
25 amounts of capital or surplus less than the minimum amounts
26 required for a certificate of authority by any jurisdiction in
27 which the member insurer is authorized to transact insurance. In
28 the event an assessment against a member insurer is abated, or
29 deferred in whole or in part, the amount by which such
30 assessment is abated or deferred may be assessed against the

1 other member insurers in a manner consistent with the basis for
2 assessments set forth in this section.

3 (e) The total of all assessments upon a member insurer for
4 each account shall not in any one calendar year exceed 2% of
5 such insurer's premiums on its policies covered by each account
6 received in this Commonwealth during the calendar year preceding
7 the assessment. If the maximum assessment, together with the
8 other assets of the association in any account, does not provide
9 in any one year in such account an amount sufficient to carry
10 out the responsibilities of the association, the necessary
11 additional funds shall be assessed as soon thereafter as
12 permitted by this act.

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

23 (g) It shall be proper for any member insurer, in
24 determining its premium rates and policyowner dividends as to
25 any kind of insurance within the scope of this act, to consider
26 the amount reasonably necessary to meet its assessment
27 obligations under this act.

28 (h) The association shall issue to each insurer paying any
29 assessment under this act a certificate of contribution, in a
30 form prescribed by the commissioner, for the amount of the

1 assessment so paid. All outstanding certificates shall be of
2 equal dignity and priority without reference to amounts or dates
3 of issue. A certificate of contribution may be shown by the
4 insurer in its financial statement as an asset, but in no event
5 may it be shown as an asset on the insurer's financial statement
6 to the extent that the insurer has offset an assessment against
7 its premium tax liability to this Commonwealth.

8 Section 9. Plan of operation.

9 (a) (1) The association shall submit to the commissioner a
10 plan of operation and any amendments thereto necessary or
11 suitable to assure the fair, reasonable, and equitable
12 administration of the association. The plan of operation and
13 any amendments thereto shall become effective upon approval
14 in writing by the commissioner.

15 (2) If the association fails to submit a suitable plan
16 of operation within 180 days of the effective date of this
17 act or if at any time thereafter the association fails to
18 submit suitable amendments to the plan, the commissioner
19 shall, after notice and hearing, adopt and promulgate such
20 reasonable rules as are necessary or advisable to effectuate
21 the provisions of this act. Such rules shall continue in
22 force until modified by the commissioner or superseded by a
23 plan submitted by the association and approved by the
24 commissioner.

25 (b) All member insurers shall comply with the plan of
26 operation.

27 (c) The plan of operation shall:

28 (1) Establish procedures for handling the assets of the
29 association.

30 (2) Establish the amount and method of reimbursing

1 members of the board of directors.

2 (3) Establish regular places and times for meetings of
3 the board of directors.

4 (4) Establish procedures for records to be kept of all
5 financial transactions of the association, its agents, and
6 the board of directors.

7 (5) Establish the procedures whereby selections for the
8 board of directors will be made and submitted to the
9 commissioner.

10 (6) Establish additional procedures for assessments.

11 (7) Contain additional provisions necessary and proper
12 for the execution of the powers and duties of the
13 association.

14 (d) The plan of operation may provide that any or all powers
15 and duties of the association, except those under section
16 7(k)(3) and section 8, are delegated to a corporation,
17 association, or other organization which performs or will
18 perform functions similar to those of this association, or its
19 equivalent, in two or more states. Such a corporation,
20 association, or organization shall be reimbursed for any
21 payments made on behalf of the association and shall be paid for
22 its performance of any function of the association. A delegation
23 under this subsection shall take effect only with the approval
24 of both the board of directors and the commissioner, and may be
25 made only to a corporation, association, or organization which
26 extends protection not substantially less favorable and
27 effective than that provided by this act.

28 Section 10. Powers and duties of the commissioner.

29 (a) The commissioner shall:

30 (1) Provide the association with a statement of the

1 premiums in the appropriate states for each member insurer
2 when requested by the board of directors.

3 (2) When an impairment is declared and the amount of the
4 impairment is determined, serve a demand upon the impaired
5 insurer to make good the impairment within a reasonable time.
6 Notice to the impaired insurer shall constitute notice to its
7 shareholders, if any. The failure of the insurer to comply
8 promptly with such demand shall not excuse the association
9 from the performance of its powers and duties under this act.

10 (3) In any liquidation or rehabilitation proceeding
11 involving a domestic insurer, be appointed as the liquidator
12 or rehabilitator. If a foreign or alien member insurer is
13 subject to a liquidation proceeding in its domiciliary
14 jurisdiction or state of entry, the commissioner shall be
15 appointed conservator.

16 (b) The commissioner may suspend or revoke after notice and
17 hearing, the certificate of authority to transact insurance in
18 this Commonwealth of any member insurer which fails to pay an
19 assessment when due or fails to comply with the plan of
20 operation. As an alternative the commissioner may levy a penalty
21 on any member insurer which fails to pay an assessment when due.
22 Such penalty shall not exceed 5% of the unpaid assessment per
23 month, but no penalty shall be less than \$100 per month.

24 (c) An action of the board of directors or the association
25 may be appealed to the commissioner by any member insurer if
26 such appeal is taken within 30 days of the action being
27 appealed. A final action or order of the commissioner shall be
28 subject to judicial review in a court of competent jurisdiction.
29 Section 11. Prevention of insolvencies.

30 (a) It shall be the duty of the commissioner:

1 (1) To notify the commissioners of all of the other
2 states, territories of the United States and the District of
3 Columbia when he takes any of the following actions against a
4 member insurer based specifically in consideration of the
5 financial solvency of the insured:

6 (i) revocation of license;

7 (ii) suspension of license; or

8 (iii) makes any formal order that such company
9 restrict its premium writing, obtain additional
10 contributions to surplus, withdraw from the State,
11 reinsure all or any part of its business, or an increase
12 in capital, surplus, or any other account for the
13 security of policyholders or creditors.

14 (2) To mail such notice to all commissioners within 30
15 days of the date on which the action was taken.

16 (3) To report to the board of directors when he has
17 taken any of the actions set forth in paragraph (1) or has
18 received a report from any other commissioner indicating that
19 any such action has been taken in another state. The report
20 shall contain all significant details of the action taken or
21 the report received from another commissioner.

22 (4) To report to the board of directors when he has
23 reasonable cause to believe from any examination, whether
24 completed or in process, a member company, which may be an
25 impaired or insolvent insurer, notwithstanding the provisions
26 of section 213 of the act of May 17, 1921 (P.L.789, No.285),
27 known as "The Insurance Department Act of one thousand nine
28 hundred and twenty one."

29 (5) To furnish to the board of directors the early
30 warning tests developed by the National Association of

1 Insurance Commissioners. The board may use the information
2 contained therein in carrying out its duties and
3 responsibilities under this section. The report and the
4 information contained therein shall be kept confidential by
5 the board of directors until it is made public by the
6 commissioner or other lawful authority.

7 (b) The commissioner may seek the advice and recommendations
8 of the board of directors concerning any matter affecting his
9 duties and responsibilities regarding the financial condition of
10 member companies and companies seeking to transact insurance
11 business in this Commonwealth.

12 (c) The board of directors may, upon majority vote, make
13 reports and recommendations to the commissioner upon any matter
14 germane to the solvency, liquidation, rehabilitation or
15 conservation of any member insurer or germane to the solvency of
16 any insurance company seeking to do business in this
17 Commonwealth. Such reports and recommendations shall not be
18 considered public documents.

19 (d) It shall be the duty of the board of directors, upon
20 majority vote, to notify the commissioner of any information it
21 has indicating a member insurer may be impaired or insolvent.

22 (e) The board of directors may, upon majority vote, request
23 the commissioner to order an examination of any member insurer
24 which the board in good faith believes may be impaired. The
25 commissioner shall begin such examination within 30 days of the
26 receipt of the request. The examination may be conducted as a
27 national association of insurance commissioners' examination or
28 by such persons as the commissioner designates. The cost of such
29 examination shall be paid by the association and the examination
30 report shall be treated the same as are other examination

1 reports. In no event shall such examination report be released
2 to the board of directors prior to its release to the public.
3 This shall not preclude the commissioner from complying with
4 subsection (a). The commissioner shall notify the board of
5 directors when the examination is completed. The request for an
6 examination shall be kept on file by the commissioner. It shall
7 not be open to public inspection prior to the release of the
8 examination report to the public.

9 (f) The board of directors may, upon majority vote, make
10 recommendations to the commissioner for the detection and
11 prevention of insurer insolvencies.

12 (g) The board of directors shall, at the conclusion of any
13 insurer insolvency in which the association was obligated to pay
14 covered claims, prepare a report to the commissioner containing
15 such information as it may have in its possession bearing on the
16 history and causes of such insolvency. The board shall cooperate
17 with the board of directors of guaranty associations in other
18 states in preparing a report on the history and causes for
19 insolvency of a particular insurer. It may adopt, by reference,
20 a report prepared by other associations.

21 ~~Section 12. Credits for assessments paid.~~

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22 ~~(a) A member insurer may offset against its premium tax~~
23 ~~liability to this Commonwealth an assessment described in~~
24 ~~section 8 to the extent of 20% of the amount of such assessment~~
25 ~~for each of the five calendar years following the year in which~~
26 ~~such assessment was paid. In the event a member insurer should~~
27 ~~cease doing business, all uncredited assessments may be offset~~
28 ~~against its premium tax liability for the year it ceases doing~~
29 ~~business.~~

30 ~~(b) Any sums acquired by refund, pursuant to section 8(f)~~

1 ~~from the association which have theretofore been written off by~~
2 ~~contributing insurers and offset against premium taxes as~~
3 ~~provided in this section and are not then needed for purposes of~~
4 ~~this act, shall be paid by the association to the commissioner~~
5 ~~and by him deposited with the State Treasurer for credit to the~~
6 ~~General Fund of this Commonwealth.~~

7 SECTION 12. TAX CREDITS FOR ASSESSMENTS PAID. <—

8 (A) A MEMBER INSURER MAY OFFSET AGAINST ITS PREMIUMS TAX
9 LIABILITY TO THIS COMMONWEALTH A PROPORTIONATE PART OF THE
10 ASSESSMENT DESCRIBED IN SECTION 8 TO THE EXTENT OF 20% OF SUCH
11 PROPORTIONATE PART OF SUCH ASSESSMENT FOR EACH OF THE FIVE
12 CALENDAR YEARS FOLLOWING THE YEAR IN WHICH SUCH ASSESSMENT WAS
13 PAID. IN THE EVENT A MEMBER INSURER SHOULD CEASE DOING BUSINESS,
14 THE UNCREDITED PROPORTIONATE PART OF SUCH ASSESSMENT MAY BE
15 OFFSET AGAINST THE MEMBER INSURER'S PREMIUM TAX LIABILITY FOR
16 THE YEAR IT CEASES DOING BUSINESS.

17 (B) THE PROPORTIONATE PART OF AN ASSESSMENT WHICH MAY BE
18 OFFSET AGAINST A MEMBER COMPANY'S PREMIUM TAX LIABILITY TO THE
19 COMMONWEALTH SHALL BE DETERMINED ACCORDING TO A FRACTION OF
20 WHICH THE DENOMINATOR IS THE TOTAL PREMIUMS RECEIVED BY THE
21 COMPANY DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE YEAR
22 IN WHICH THE ASSESSMENT IS PAID AND THE NUMERATOR IS THAT
23 PORTION OF THE PREMIUMS RECEIVED DURING SUCH YEAR ON ACCOUNT OF
24 POLICIES OF LIFE OR HEALTH INSURANCE IN WHICH THE PREMIUM RATES
25 ARE GUARANTEED DURING THE CONTINUANCE OF THE RESPECTIVE POLICIES
26 WITHOUT A RIGHT EXERCISABLE BY THE COMPANY TO INCREASE SAID
27 PREMIUM RATES.

28 (C) ANY SUMS ACQUIRED BY REFUND, PURSUANT TO SECTION 8(F)
29 FROM THE ASSOCIATION WHICH HAVE THERETOFORE BEEN WRITTEN OFF BY
30 CONTRIBUTING INSURERS AND OFFSET AGAINST PREMIUM TAXES AS

1 PROVIDED IN THIS SECTION AND ARE NOT THEN NEEDED FOR PURPOSES OF
2 THIS ACT, SHALL BE PAID BY THE ASSOCIATION TO THE COMMISSIONER
3 AND DEPOSITED BY HIM WITH THE STATE TREASURER FOR CREDIT TO THE
4 GENERAL FUND OF THIS COMMONWEALTH.

5 Section 13. Miscellaneous provisions.

6 (a) Nothing in this act shall be construed to reduce the
7 liability for unpaid assessments of the insureds of an impaired
8 or insolvent insurer operating under a plan with assessment
9 liability.

10 (b) Records shall be kept of all negotiations and meetings
11 in which the association or its representatives are involved to
12 discuss the activities of the association in carrying out its
13 powers and duties under section 7. Records of such negotiations
14 or meetings shall be made public only upon the termination of a
15 liquidation, rehabilitation, or conservation proceeding
16 involving the impaired or insolvent insurer, upon the
17 termination of the impairment or insolvency of the insurer, or
18 upon the order of a court of competent jurisdiction. Nothing in
19 this subsection shall limit the duty of the association to
20 render a report of its activities under section 14.

21 (c) For the purpose of carrying out its obligations under
22 this act, the association shall be deemed to be a creditor of
23 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 7(h). All assets of the impaired or insolvent insurer
27 attributable to covered policies shall be used by the
28 association to continue all covered policies and pay all
29 contractual obligations of the impaired or insolvent insurer as
30 required by this act. For purposes of this subsection, assets

1 attributable to covered policies under any account, as used in
2 this subsection shall be determined as being that proportion of
3 the total assets of the impaired or insolvent insurer which the
4 reserves that should have been established for policies under
5 such account bear to the reserves that should have been
6 established for all policies of insurance written by the
7 impaired or insolvent insurer.

8 (d) (1) Prior to the termination of any liquidation,
9 rehabilitation, or conservation proceeding, the court may
10 take into consideration the contributions of the respective
11 parties, including the association, the shareholders and
12 policyowners of the insolvent insurer, and any other party
13 with a bona fide interest, in making an equitable
14 distribution of the ownership rights of such insolvent
15 insurer. In such a determination, consideration shall be
16 given to the welfare of the policyholders of the continuing
17 or successor insurer.

18 (2) No distribution to stockholders, if any, of an
19 impaired or insolvent insurer shall be made until and unless
20 the total amount of valid claims of the association for funds
21 expended in carrying out its powers and duties under section
22 7, with respect to such insurer, have been fully recovered by
23 the association.

24 (e) (1) If an order for liquidation or rehabilitation of an
25 insurer domiciled in this State has been entered, the
26 receiver appointed under such order shall have a right to
27 recover on behalf of the insurer, from any affiliate that
28 controlled it, the amount of distributions, other than stock
29 dividends paid by the insurer on its capital stock, made at
30 any time during the five years preceding the petition for

liquidation or rehabilitation subject to the limitations of paragraphs (2), (3) and (4).

(2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, in accordance with the standards of Article III of the act of May 17, 1921 (P.L.682, No.284), known as "The Insurance Company Law of 1921."

(3) A person who was an affiliate controlling the insurer at the time the distributions were paid shall be liable to the extent of the distributions received by him. Whenever two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

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

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

Section 14. Examination of the association; annual report.

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

Section 15. Tax exemptions.

The association shall be exempt from the payment of all fees

1 and taxes levied by this Commonwealth or any of its
2 subdivisions, except taxes levied on real property.

3 Section 16. Immunity.

4 There shall be no liability on the part of and no cause of
5 action of any nature shall arise against any member insurer or
6 its agents or employees, the association or its agents or
7 employees, members of the board of directors, or the
8 commissioner or his representatives, for any action taken by
9 them in the performance of their powers and duties under this
10 act.

11 Section 17. Stay of proceedings: reopening default judgments.

12 All proceedings in which the insolvent insurer is a party in
13 any court in this Commonwealth shall be stayed 90 days from the
14 date the insolvency is determined by the Commonwealth Court to
15 permit proper legal action by the association on any matters
16 germane to its powers or duties. As to any judgment against an
17 insolvent insurer in relation to a contractual obligation under
18 any decision, order, verdict, or finding based on default, the
19 association may apply to have such judgment set aside by the
20 same court that made such judgment and shall be permitted to
21 defend against such suit on the merits.

22 Section 18. Prohibited advertisement of this act in sale of
23 insurance.

24 (a) No person, including an insurer, agent or affiliate of
25 an insurer shall make, publish, disseminate, circulate, or place
26 before the public, or cause directly or indirectly, to be made,
27 published, disseminated, circulated or placed before the public,
28 in any newspaper, magazine or other publication, or in the form
29 of a notice, circular, pamphlet, letter or poster, or over any
30 radio station or television station, or in any other way, any

1 advertisement, announcement or statement which uses the
2 existence of the association for the purpose of sales,
3 solicitation, or inducement to purchase any form of insurance
4 covered by this act. This section shall not apply to the
5 Pennsylvania Life and Health Insurance Guaranty Association.

6 (b) Any person who violates the above prohibition may, after
7 notice and hearing and upon order of the commissioner, be
8 subject, at the discretion of the commissioner, to one or more
9 of the following:

10 (1) a monetary penalty of not more than \$1,000 for each
11 act or violation but not to exceed an aggregate penalty of
12 \$10,000; or

13 (2) suspension or revocation of his license or
14 certificate of authority.

15 Section 19. Timely filing of claims.

16 Notwithstanding any other provision of this act, contractual
17 obligation shall not include a claim filed after the final date
18 set by the court for the filing of claims against the liquidator
19 of an insolvent insurer.

20 Section 20. Nonduplication of recovery.

21 A person having a claim or benefit payment which may be
22 recovered under more than one insurance guaranty association or
23 its equivalent shall seek recovery first from the association of
24 the place of residence of the insured. A recovery under this act
25 shall be reduced by the amount of recovery from any other
26 insurance guaranty association or its equivalent.

27 Section 21. Assessments not burdens or prohibitions.

28 Assessments made by insurance guaranty associations or
29 similar entities pursuant to the laws of any other state shall
30 not be considered burdens or prohibitions under section 212 of

1 the act of May 17, 1921 (P.L.789, No.285), known as "The
2 Insurance Department Act of one thousand nine hundred and twenty
3 one."

4 Section 22. Membership in the Pennsylvania Insurance Guaranty
5 Association and exemption from assessments.

6 (a) Insurers shall participate in and remain a member
7 insurer of the association as a condition of authority to write
8 life insurance policies, health and accident insurance policies,
9 or annuity contracts in this Commonwealth.

10 (b) A member insurer of the Pennsylvania Insurance Guaranty
11 Association shall no longer be subject to assessment by the
12 Pennsylvania Insurance Guaranty Association for covered claims,
13 as defined in section 103 of the act of November 25, 1970
14 (P.L.716, No.232), known as "The Pennsylvania Insurance Guaranty
15 Association Act," arising under health and accident policies,
16 endorsements, riders, and contracts supplemental thereto written
17 in this Commonwealth by any member insurer adjudicated insolvent
18 on or after the effective date of this act by a court of
19 competent jurisdiction of the insolvent insurer's domiciliary
20 state.

21 (c) A member of the Pennsylvania Life and Health Insurance
22 Guaranty Association who is also a member of the Pennsylvania
23 Insurance Guaranty Association under the act of November 25,
24 1970 (P.L.716, No. 232), known as "The Pennsylvania Insurance
25 Guaranty Association act," solely because of health and accident
26 policies written within this Commonwealth may, by written notice
27 to the Pennsylvania Insurance Guaranty Association, withdraw as
28 a member thereof and shall not be subject to any other
29 assessments by the Pennsylvania Insurance Guaranty Association.

30 Section 23. Powers and duties of commissioner not limited.

1 The duties and powers of the commissioner as set forth in
2 this act are in addition to and not in limitation of any other
3 powers and duties of the commissioner prescribed by law.

4 Section 24. Constitutionality.

5 If any provision or clause of this act or the application
6 thereof to any person or situation is held invalid, such
7 invalidity shall not affect other provisions or applications of
8 the act which can be given effect without the invalid provision
9 or application, and to this end the provisions of this act are
10 declared to be severable.

11 Section 25. Effective date.

12 This act shall take effect immediately.