

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 85

Session of
1981

INTRODUCED BY DeVERTER, KOWALYSHYN, MADIGAN, VROON AND
L. E. SMITH, JANUARY 19, 1981

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 19, 1981

AN ACT

1 Amending the act of July 31, 1968 (P.L.738, No.233), entitled
2 "An act relating to establishment of an Industry Placement
3 Facility to make available basic property insurance against
4 fire and other perils for residential and business properties
5 located in certain areas of the Commonwealth of Pennsylvania
6 through the cooperative efforts of the Commonwealth and the
7 private property insurance industry; providing for a sharing
8 by the Commonwealth of insured losses resulting from riots
9 and other civil disorders through the formation of the
10 Pennsylvania Civil Disorder Authority; levying an assessment
11 on all policies of basic property insurance written in the
12 Commonwealth; and conferring powers and imposing duties upon
13 the Insurance Commissioner and upon certain property
14 insurers," further providing for the availability of
15 insurance, the types of insurance and the methods of
16 providing said insurance.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The title and clauses (1) and (2) of section 102,
20 act of July 31, 1968 (P.L.738, No.233), known as "The
21 Pennsylvania Fair Plan Act," are amended to read:

AN ACT

23 Relating to establishment of an Industry Placement Facility to
24 make available basic property insurance and homeowners

1 insurance against fire and other perils for residential and
2 business properties located in [certain areas of] the
3 Commonwealth of Pennsylvania through the cooperative efforts
4 of the Commonwealth and the private property insurance
5 industry; providing for a sharing by the Commonwealth of
6 insured losses resulting from riots and other civil disorders
7 through the formation of the Pennsylvania Civil Disorder
8 Authority; levying an assessment on all policies of basic
9 property insurance written in the Commonwealth; and
10 conferring powers and imposing duties upon the Insurance
11 Commissioner and upon certain property insurers.

12 Section 102. Purposes.--The purposes of this act are:

13 (1) To encourage stability in the property insurance market
14 for property located in [urban areas of] this Commonwealth;

15 (2) To encourage maximum use, in obtaining basic property
16 and homeowners insurance, as defined in this act, of the normal
17 insurance market provided by the private property insurance
18 industry;

19 * * *

20 Section 2. Clauses (2), (4), (5) and (7) of section 103 of
21 the act are amended and clauses are added to read:

22 Section 103. Definitions.--As used in this act, unless the
23 context otherwise requires:

24 * * *

25 (2) "Basic property insurance" means insurance against
26 direct loss to real or tangible personal property at a fixed
27 location caused by perils defined and limited in the standard
28 fire policy prescribed in section 506 of the act of May 17, 1921
29 (P.L.682, No.284), known as "The Insurance Company Law of 1921,"
30 and in the extended coverage endorsement approved by the

1 commissioner pursuant to section 354 of the act, and such
2 vandalism, malicious mischief, burglary, theft, or such other
3 classes of insurance as may be determined by the Industry
4 Placement Facility with the approval of the commissioner. Such
5 insurance shall include homeowners insurance coverage, but shall
6 not include insurance on motor vehicle, farm or such
7 [manufacturing] other risks as may be excluded by the
8 commissioner;

9 (2.1) "Homeowners insurance" means policies of insurance
10 filed by the facility and approved by the commissioner which
11 shall be an actual cash value policy providing a combination of
12 coverages for fire, extended coverage, vandalism and malicious
13 mischief, burglary, theft and personal liability as applicable
14 to habitational properties: Provided, however, That other types
15 of homeowners or tenants policies may be issued by the facility
16 subject to concurrence by the board of directors and approval by
17 the commissioner.

18 * * *

19 [(4) "Urban area" means any municipality of the Commonwealth
20 having a blighted, deteriorated or deteriorating area (i) which
21 the Secretary of the Department of Housing and Urban Development
22 of the United States has approved as eligible for an urban
23 renewal project; or (ii) which has been designated as an urban
24 area by the Industry Placement Facility with the approval of the
25 commissioner;]

26 (5) "Premiums written" means gross direct premiums charged
27 on all policies of homeowners insurance and on all other
28 policies of basic property insurance and the basic property
29 insurance components of all multiple peril policies, except
30 farmowners multiple peril policies, covering property in this

1 Commonwealth less all premiums and dividends returned to
2 policyholders and the unused or unabsorbed portions of premium
3 deposits;

4 * * *

5 [(7) "Municipality" means any city, borough, incorporated
6 town or township established in the Commonwealth of
7 Pennsylvania;]

8 * * *

9 (10) "Homeowners insurance coverage" means a single multiple
10 peril insurance contract for the owner of a private dwelling
11 structure occupied by not exceeding four families, including the
12 owner which provides coverage against loss of or damage to the
13 building and personal property of the owner from specifically
14 named perils, including coverage for the owner against liability
15 imposed by law arising out of the ownership, maintenance and use
16 of the insured premises as may be approved by the commissioner.

17 (11) "Farm" means an active agricultural or dairy enterprise
18 earning five thousand dollars (\$5,000) or more in gross income
19 in any calendar year.

20 Section 3. Sections 201, 202 and 203 of the act are amended
21 to read:

22 Section 201. Industry Placement Facility.--(a) Membership.
23 Each insurer which is licensed and authorized to write and is
24 engaged in writing within this Commonwealth, on a direct basis,
25 basic property insurance or any component thereof contained in a
26 multiple peril policy, including homeowners and commercial
27 multiple peril policies, shall participate in the Industry
28 Placement Facility, [as hereinafter described,] hereinafter
29 referred to as "facility" as a condition of its authority to
30 write such kinds of insurance within this Commonwealth. Other

1 insurers may become members provided they are eligible
2 unlicensed insurers under the act of January 24, 1966 (1965
3 P.L.1509, No.531).

4 (b) Purposes. The purposes of the facility shall be twofold,
5 as more fully set forth in this article:

6 (1) To formulate and administer, subject to the approval of
7 the commissioner, a plan assuring fair access to insurance
8 requirements (Fair Plan) in order that no eligible property in
9 [urban areas] this Commonwealth shall be denied basic property
10 insurance [through the normal insurance market provided by the
11 private property insurance industry,] and if an eligible
12 habitational property, such homeowners insurance as may be
13 offered by the facility, except after a physical inspection of
14 such property and a fair evaluation of its individual
15 underwriting characteristics; and

16 (2) To [formulate and] administer the plan so that members
17 of the facility shall share equitably the responsibility for
18 insuring such property subject to the approval of the
19 commissioner[, a reinsurance arrangement whereby the members of
20 the facility shall share equitably the responsibility for
21 insuring property in urban areas which is insurable but for
22 which basic property insurance cannot be obtained through the
23 normal insurance market].

24 (c) Organization. Within forty-five days following the
25 effective date of this act, the [Industry Placement Facility]
26 facility shall submit to the commissioner for his review a
27 proposed plan of operation of the facility, consistent with the
28 provisions of this act and the purposes of the facility, which
29 shall provide for the [Fair Plan, the reinsurance arrangement,
30 and the] economical and efficient administration of the

1 facility, including, but not limited to, management of the
2 facility, preliminary assessment of all members for initial
3 expenses necessary to commence operations, establishment of
4 necessary facilities within this Commonwealth, assessment of
5 members to defray losses and expenses, commission arrangements,
6 reasonable underwriting and eligibility standards and limits of
7 liability[, acceptance and cession of reinsurance, and
8 procedures for determining amounts of insurance to be provided].

9 The plan of operation shall be subject to approval by the
10 commissioner and shall take effect ten days after having been
11 approved by him. If the commissioner disapproves the proposed
12 plan of operation, the facility shall within fifteen days submit
13 for review an appropriately revised plan of operation and, if
14 the facility fails to do so, or if the revised plan so filed is
15 unacceptable, the commissioner shall promulgate a plan of
16 operation.

17 (d) Amendment of Plan of Operation of Facility. The facility
18 shall, on its own initiative, subject to prior approval by the
19 commissioner, or at the direction of the commissioner, amend the
20 plan of operation.

21 (e) Administration. (1) The facility shall be governed by a
22 board of [seven] twelve directors, [elected annually by the
23 members of the facility. Each member of the facility shall be
24 allotted votes bearing the same ratio to the total number of
25 votes to be cast as its degree of participation in the facility
26 bears to the total participation. Pending the determination of
27 the degree of participation of the members in the facility, each
28 member of the facility shall be allotted votes bearing the same
29 ratio to the total number of votes to be cast as each member's
30 written premium on basic property insurance during calendar year

1 1967 bears to the statewide total written premium for basic
2 property insurance during such year. The first board shall be
3 elected at a meeting of the members or their authorized
4 representatives.] selected as follows: (i) eight members of the
5 board shall be members of the facility elected annually by the
6 members of the facility whose votes shall be weighed in
7 accordance with the member's premium written for the second
8 preceding calendar year, (ii) four public members shall be
9 appointed annually by the Governor. Such public members shall be
10 individuals who are not employed by, or otherwise affiliated
11 with, insurers, insurance agents, brokers, producers, or other
12 entities of the insurance industry, except they may be
13 policyholders.

14 (2) Any vacancy on the board shall be filled by a vote of
15 the other directors, except that public member vacancies shall
16 be filled by the Governor.

17 (3) If at any time the members fail to elect the required
18 number of directors or a nonpublic member vacancy remains
19 unfilled for more than [fifteen] thirty days, the commissioner
20 may appoint the directors necessary to [constitute a full board]
21 fill such vacancies.

22 (f) Participation. All members of the facility shall
23 participate in its expenses and in its [profits and losses]
24 operating results (or in such categories thereof as may be
25 separately established by the facility) in the proportion that
26 the premiums written [(as herein defined, but excluding that
27 portion, if any, of premiums which is attributable to the
28 reinsurance arrangement maintained by the facility)] by each
29 such member during the second preceding calendar year bear to
30 the [aggregate] premiums written in this Commonwealth by all

1 members of the facility. Such participation by each member in
2 the facility shall be determined annually by the facility on the
3 basis of [such] premiums written during the second preceding
4 calendar year as disclosed in the annual statements and other
5 reports filed by the member with the commissioner.

6 (g) Recoupment. The plan of operation shall provide a
7 method whereby members may recoup operating losses incurred by
8 the facility after the effective date of this amendment. In
9 order to recoup such operating losses, the plan of operation
10 shall provide for the calculation of the amount which may be
11 added or applied to all direct written premiums for basic
12 property and homeowners insurance covering property located in
13 this Commonwealth.

14 Section 202. Fair Plan. The Fair Plan shall [contain
15 provision] provide that: (1) Any person having an insurable
16 interest in eligible real or tangible personal property at a
17 fixed location [in an urban area], his representative, an
18 insurance agent or broker, or an insurer, may request the
19 facility for an inspection of the property by representatives of
20 the Inspection Bureau, such inspection to be without cost to the
21 applicant for insurance. [The request for such inspection need
22 not be made in writing.] No such risk shall [be written at
23 surcharged rates or] be denied insurance coverage for basic
24 property or homeowners insurance by [an insurer] the facility
25 unless such [an] inspection has first been made.

26 (2) The [plan of operation of the Inspection Bureau, the]
27 manner and scope of the inspection, and the form of the
28 inspection report, which shall include, but need not be limited
29 to, pertinent structural and occupancy features as well as the
30 general condition of the building [and surrounding structures]

1 and/or its contents, shall be prescribed by the [Industry
2 Placement Facility] facility subject to the approval of the
3 commissioner.

4 (3) Promptly after the request for inspection is received by
5 the facility, [if no policy has been issued,] the inspection
6 shall be made, a written inspection report prepared, and such
7 report filed with the [insurer or insurers, if any, designated
8 by the applicant] facility; a copy thereof shall be made
9 available to the applicant or to his representative upon
10 request. [If no insurer has been designated by the applicant,
11 the facility shall proceed as in clause (7) below.]

12 (4) After the inspection report is received by [an insurer]
13 the facility, it shall promptly determine if the risk meets
14 reasonable underwriting and eligibility standards at the
15 applicable premium rate, including approved [surcharges] charges
16 for physical characteristics[, and shall promptly return to the
17 Industry Placement Facility the inspection report and provide an
18 action report setting forth:

19 (i) the amount of coverage it agrees to write, and if the
20 insurer agrees to write the coverage with an approved surcharge,
21 the improvements necessary before it will provide coverage at an
22 unsurcharged premium rate;

23 (ii) the amount of coverage it agrees to write if certain
24 improvements to the property specified in the action report are
25 made; or

26 (iii) the specific reasons for which it declines to write
27 coverage. The inspection report and the action report shall be
28 kept on file with the facility].

29 Provided there is no unpaid premium due from the applicant
30 for prior insurance on the property and, if the risk meets such

1 standards, the facility shall promptly offer to insure the risk
2 and provide to the applicant, or his representative, the rates,
3 premiums and description of physical characteristics, if any,
4 causing additional charge.

5 If the risk fails to meet such standards, the facility shall
6 promptly advise in writing, the applicant or his representative,
7 of such failure and the reasons therefor.

8 Each inspection report and the action report shall be kept on
9 file with the facility for a reasonable period of time.

10 If the [insurer] facility declines the risk or agrees to
11 write it on condition that the property be improved as
12 specified, the [insurer] facility shall[, at the time of
13 returning the inspection and action reports to the facility,
14 send a copy of both reports to the applicant for insurance. The
15 insurer shall] advise the applicant at [the] that time [of
16 sending the reports to him] of [his] the right to appeal such
17 determination to the commissioner and the facility shall advise
18 the applicant or his representative of the means [by which] to
19 initiate such an appeal.

20 [The Inspection Bureau shall submit to the commissioner
21 periodic reports setting forth information by individual
22 insurers including the number of risks inspected under the plan,
23 the number of risks accepted, the number or risks conditionally
24 accepted and reinspections made, the number of risks declined,
25 and such other information as the commissioner may request.]

26 (5) All policies written [pursuant to the Fair Plan] by the
27 facility shall be promptly written after inspection or
28 reinspection and payment of premium and shall be separately
29 coded so that appropriate records may be compiled for purposes
30 of ratemaking, performing loss prevention and other studies of

1 the operation of the Fair Plan.

2 [(6) If any single insurer will underwrite only a portion of
3 the full insurable value of the property, the Industry Placement
4 Facility shall assist the owner and his agent or broker in
5 obtaining the remaining coverage from other members of the
6 facility, except to the extent that deductibles, percentage
7 participation clauses, and other accepted underwriting devices
8 are needed to meet special problems of insurability.

9 (7) If no insurer to which an inspection report has been
10 forwarded pursuant to clause (3) above agrees promptly to
11 provide basic property insurance for the property in question,
12 or if no insurer has been designated by the applicant, the
13 facility shall take appropriate action to ascertain whether any
14 member of the facility will provide basic property insurance for
15 the subject property at the applicable premium rate, including
16 approved surcharges for physical characteristics.]

17 (8) (i) No insurer shall direct any agent or broker or other
18 producer not to solicit business through the Fair Plan, and no
19 agent, broker or other producer shall be penalized in any way by
20 an insurer for submitting applications for insurance to [it
21 under] the Fair Plan.

22 [(ii) Records of insurance procured under the Fair Plan
23 shall be maintained separate from other records of an agent's or
24 broker's business conducted with an insurer.]

25 (9) [Written] When written notice [will be given to any
26 policyholder at least twenty days prior to the] of cancellation
27 or nonrenewal [of any risk] is given or required to be given to
28 any policyholder concerning any property eligible under the Fair
29 Plan [(except in the case of nonpayment of premium or evidence
30 of incendiarism), and the insurer shall, in the notice of

1 cancellation or nonrenewal, explain to the policyholder the
2 procedures for obtaining an inspection under the plan.] such
3 notice shall include a statement advising the policyholder of
4 the availability of basic property and homeowners insurance
5 through the Fair Plan.

6 (10) No agent or broker shall be permitted to refuse [an] a
7 Fair Plan application [for basic property insurance within an
8 urban area] if he is licensed to write [and is actively engaged
9 in writing such] basic property and homeowners insurance.

10 (11) A cooperative and continuing public education program
11 shall be undertaken by the Pennsylvania Insurance Department,
12 the [Industry Placement Facility] facility, and the members of
13 the facility to assure that the Fair Plan is given adequate
14 publicity.

15 (12) The facility shall amend, with the approval of the
16 commissioner, its plan of operation to implement procedures
17 whereby homeowners insurance coverage becomes available through
18 the facility. However, the rate of structure of any such
19 policies of homeowners insurance shall be approved by the
20 commissioner and shall be no less than, and, for the actual cash
21 value homeowner's policies for three years following the
22 amendment of the plan to provide for homeowner's insurance
23 coverage no more than, those rates filed for equivalent policies
24 by the principal rating organization. Such plan shall be
25 submitted by the facility to the commissioner as soon as
26 practical, but in no event later than one hundred eighty days
27 from the effective date of this amendatory act.

28 Section 203. Distribution of Risks.--(a) The facility shall
29 have the power, [on behalf of its members--] in accordance with
30 the plan of operation approved by the commissioner:

(1) [to direct one or more of its members] to issue policies of basic property and homeowners insurance [to applicants;] covering eligible risks; and

(2) [to assume reinsurance from its members; and] to collect premiums, pay losses, allocate profits or losses and otherwise act in a responsible manner to fulfill the purposes of this act.

[(3) to cede reinsurance.

(b) Any member of the facility may cede to the facility basic property insurance covering property in urban areas, to the extent and on the terms and conditions set forth in the plan of operation of the facility.

(c) If the facility has been unable to obtain basic property insurance for any property through the voluntary action of its members pursuant to section 202 above, it shall promptly determine:

(1) whether the property is insurable (environmental hazard, being any hazardous condition that might give rise to loss under an insurance contract but which is beyond the control of the property owners, shall not be considered by the facility in determining insurable condition); and

(2) whether there is any unpaid premium due from the applicant for prior insurance on the property.

If the facility determines that the property is insurable and that no such unpaid premium is due, it shall promptly cause one or more of its members to issue a policy or policies of basic property insurance at the applicable premium rate, including approved surcharges for physical characteristics, in the full insurable value of the property, for a term of one year, subject to total reinsurance of such risk by the facility.]

Section 4. Section 204 of the act is repealed.

1 Section 5. Sections 205, 206, 207 and 208 of the act are
2 amended to read:

3 Section 205. Rules; Regulations.--(a) The commissioner may
4 promulgate rules and regulations to assure the successful
5 operation of the facility, [including the Fair Plan] which shall
6 include recoupment of operating losses, and as may be necessary
7 for the administration of this article.

8 (b) The operation of the [Inspection Bureau and the Industry
9 Placement Facility] facility shall at all times be subject to
10 the supervision and regulation of the commissioner. The
11 commissioner, or any person designated by him, shall have the
12 power of visitation of and examination into such operations at
13 any time in the discretion of the commissioner. In connection
14 therewith, the commissioner shall have the powers granted him by
15 section 216 of the act of May 17, 1921 (P.L.789, No.285), known
16 as "The Insurance Department Act of one thousand nine hundred
17 and twenty-one," and the expenses of such examination shall be
18 borne and paid as therein provided.

19 Section 206. Annual and Other Statements.--The [Inspection
20 Bureau and the Industry Placement Facility] facility shall
21 [each] file with the commissioner annually on or before the
22 first day of March a statement which shall contain information
23 with respect to its transactions, condition, operations and
24 affairs during the preceding year. Such statement shall contain
25 such matters and information as are prescribed by the
26 commissioner and shall be in such form as is approved by him.
27 The commissioner may at any time require [each such
28 organization] the facility to furnish him with additional
29 information with respect to its transactions, condition,
30 operations and affairs or any matter connected therewith which

1 he considers to be material and which will assist him in
2 evaluating the scope, operation and experience of [such
3 organization] the facility.

4 Section 207. Privileged Communications and Absence of
5 Liability for Inspection.--There shall be no liability on the
6 part of, and no cause of action of any nature shall arise
7 against [insurers, the Inspection Bureau,] the [Industry
8 Placement Facility] facility, or their [agents] representatives
9 or employees, or the commissioner or his authorized
10 representatives: (i) for an inspection on the basis that such
11 inspection or report thereon failed to disclose or remedy a risk
12 of personal injury or property damage to the applicant insured
13 or any third person; or (ii) for any statements made in good
14 faith by them in any [reports] report or [communications]
15 communication concerning the property to be insured, or at the
16 time of any [hearings] hearing conducted in connection
17 therewith, or in the findings required by the provisions of this
18 article. The inspection reports and communications of the
19 Inspection Bureau and the [Industry Placement Facility] facility
20 shall not be considered public documents.

21 Section 208. Appeals; Judicial Review.--(a) Any applicant
22 for insurance [and any affected insurer] may appeal to the
23 commissioner within thirty days after any ruling, action or
24 decision by [or on behalf of] the [Inspection Bureau or Industry
25 Placement Facility] facility. After a hearing upon not less than
26 ten days' written notice to the aggrieved person and the [bureau
27 or] facility, the commissioner shall issue an order approving
28 the action or decision appealed from, disapproving such action
29 or decision, or directing the [bureau or] facility to give
30 further consideration to the matter.

(b) All hearings held by and all orders and decisions made by the commissioner pursuant to this article shall be subject to the provisions of [the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law," including the provisions therein for judicial review.] Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 6. Section 502 of the act, amended October 7, 1975 (P.L.370, No.104), is amended to read:

Section 502. Effective Date.--(a) This act shall take effect upon the effective date of the establishment of the Federal reinsurance facility.

(b) (1) [Policies issued pursuant to the direction of and other obligations incurred by the Industry Placement Facility] The facility, the policies issued by it and the plan of operation shall continue to exist and shall not be impaired by the termination of the Federal reinsurance facility and such Industry Placement Facility [shall be continued for the purpose of servicing such policies and performing such obligations] or the inability of any facility member to obtain Federal riot reinsurance for risks located in the Commonwealth;

(2) All bonds issued and other obligations incurred by the Pennsylvania Civil Disorder Authority shall not be impaired by the termination of the Federal reinsurance facility and such authority shall be continued for the purpose of servicing such bonds and performing such obligations; [and]

(3) The collection of the basic property insurance assessment shall terminate as provided in section 405 of this act; and

(4) This act shall not be construed to effect, limit or

1 impair the rights of any party under section 5(a)(9) of the act
2 of July 22, 1974 (P.L.589, No.205), known as the "Unfair
3 Insurance Practices Act."

4 Section 7. This act shall take effect in 60 days.