

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 85

Session of  
1981

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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
FEBRUARY 18, 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:

22 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 [but] shall not include insurance on motor vehicle,  
6 farm or such [manufacturing] other risks as may be excluded by  
7 the commissioner;

8 (2.1) "Homeowners insurance" means policies of insurance  
9 filed by the facility and approved by the commissioner which  
10 shall be an actual cash value policy providing a combination of  
11 coverages for fire, extended coverage, vandalism and malicious  
12 mischief, burglary, theft and personal liability as applicable  
13 to habitational properties: Provided, however, That other types  
14 of homeowners or tenants policies may be issued by the facility  
15 subject to concurrence by the board of directors and approval by  
16 the commissioner.

17 \* \* \*

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

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

1 policyholders and the unused or unabsorbed portions of premium  
2 deposits;

3 \* \* \*

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

7 \* \* \*

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

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

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

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

1   unlicensed insurers under the act of January 24, 1966 (1965  
2   P.L.1509, No.531).

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

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

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

23       (c)   Organization. Within forty-five days following the  
24 effective date of this act, the [Industry Placement Facility]  
25 facility shall submit to the commissioner for his review a  
26 proposed plan of operation of the facility, consistent with the  
27 provisions of this act and the purposes of the facility, which  
28 shall provide for the [Fair Plan, the reinsurance arrangement,  
29 and the] economical and efficient administration of the  
30 facility, including, but not limited to, management of the

1 facility, preliminary assessment of all members for initial  
2 expenses necessary to commence operations, establishment of  
3 necessary facilities within this Commonwealth, assessment of  
4 members to defray losses and expenses, commission arrangements,  
5 reasonable underwriting and eligibility standards and limits of  
6 liability[, acceptance and cession of reinsurance, and  
7 procedures for determining amounts of insurance to be provided].

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

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

20 (e) Administration. (1) The facility shall be governed by a  
21 board of [seven] twelve directors, [elected annually by the  
22 members of the facility. Each member of the facility shall be  
23 allotted votes bearing the same ratio to the total number of  
24 votes to be cast as its degree of participation in the facility  
25 bears to the total participation. Pending the determination of  
26 the degree of participation of the members in the facility, each  
27 member of the facility shall be allotted votes bearing the same  
28 ratio to the total number of votes to be cast as each member's  
29 written premium on basic property insurance during calendar year  
30 1967 bears to the statewide total written premium for basic

1 property insurance during such year. The first board shall be  
2 elected at a meeting of the members or their authorized  
3 representatives.] selected as follows: (i) eight members of the  
4 board shall be members of the facility elected annually by the  
5 members of the facility whose votes shall be weighed in  
6 accordance with the member's premium written for the second  
7 preceding calendar year, (ii) four public members shall be  
8 appointed annually by the Governor. Such public members shall be  
9 individuals who are not employed by, or otherwise affiliated  
10 with, insurers, insurance agents, brokers, producers, or other  
11 entities of the insurance industry, except they may be <—  
12 policyholders. THE FOUR PUBLIC MEMBERS SHALL BE PROPERTY OWNERS <—  
13 WHOSE INSURANCE COVERAGE IS CARRIED BY AND UNDER "THE  
14 PENNSYLVANIA FAIR PLAN ACT."

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

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

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

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

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

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

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



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

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

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

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

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

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

30 Provided there is no unpaid premium due from the applicant

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

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

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

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

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

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

1 of ratemaking, performing loss prevention and other studies of  
2 the operation of the Fair Plan.

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

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

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

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

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

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

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

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

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

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

1 the plan of operation approved by the commissioner:

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

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

8 [(3) to cede reinsurance.

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

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

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

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

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

1       Section 4.   Section 204 of the act is repealed.

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

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

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

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

1 operations and affairs or any matter connected therewith which  
2 he considers to be material and which will assist him in  
3 evaluating the scope, operation and experience of [such  
4 organization] the facility.

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

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

1 further consideration to the matter.

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

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

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

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

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

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



1     (4) This act shall not be construed to effect, limit or  
2 impair the rights of any party under section 5(a)(9) of the act  
3 of July 22, 1974 (P.L.589, No.205), known as the "Unfair  
4 Insurance Practices Act."

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