

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1735 Session of
1981

INTRODUCED BY COHEN, MICHLOVIC, McVERRY, MANDERINO,
J. L. WRIGHT, BROWN, GREENFIELD, MORRIS, WAMBACH, BORSKI,
WACHOB, WOZNIAK, KUKOVICH, HOEFFEL, PISTELLA, ITKIN, SWAIM,
LLOYD AND MAIALE, JULY 1, 1981

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JULY 1, 1981

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," providing for the Office of
21 Insurance Advocate, imposing powers and duties and making an
22 appropriation.

23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 Section 1. The act of April 9, 1929 (P.L.177, No.175), known
26 as "The Administrative Code of 1929," is amended by adding an
27 article to read:

1 ARTICLE IX-B

2 OFFICE OF INSURANCE ADVOCATE

3 Section 901-B. Definitions.--As used in this article:

4 "Commissioner" means the Insurance Commissioner appointed
5 pursuant to section 202 of the act of May 17, 1921 (P.L.789,
6 No.285), known as "The Insurance Department Act of one thousand
7 nine hundred and twenty-one."

8 "Department" means the Insurance Department established by
9 "The Insurance Department Act of one thousand nine hundred and
10 twenty-one."

11 "Insurance policy" means any policy, contract or certificate
12 issued, disposed or sold in this Commonwealth covering life,
13 health, accident, personal liability, fire, marine, title and
14 all forms of casualty insurance or contracts pertaining to pure
15 endowments or annuities.

16 "Policyholder" means a person to whom an insurance policy has
17 been sold or issued.

18 Section 902-B. Office of Insurance Advocate.--(a) There is
19 hereby established within the Office of Attorney General an
20 Office of Insurance Advocate to represent the interests of
21 policyholders before the Insurance Department.

22 (b) The Office of Insurance Advocate shall be headed by an
23 Insurance Advocate who shall be appointed by the Attorney
24 General, by and with the advice and consent of a majority of the
25 members elected to the Senate. The Insurance Advocate shall be a
26 person who by reason of training, experience and attainment is
27 qualified to represent the interests of policyholders.
28 Compensation shall be set by the Attorney General.

29 (c) No individual who serves as an Insurance Advocate shall,
30 while serving in such position, engage in any business,

1 vocation, other employment or have other interests inconsistent
2 with his or her official responsibilities nor shall he or she
3 seek or accept employment nor render beneficial services for
4 compensation with any company or association that writes
5 insurance policies within the Commonwealth during the tenure of
6 his or her employment and for a period of two years after the
7 appointment is served or terminated.

8 (d) Any individual who is appointed to the position of
9 Insurance Advocate shall not seek election nor accept
10 appointment to any political office during the tenure as
11 Insurance Advocate and for a period of two years after the
12 appointment is served or terminated.

13 Section 903-B. Assistant Insurance Advocates; Employees.--The
14 Insurance Advocate with the approval of the Attorney General
15 shall appoint attorneys as assistant insurance advocates and
16 such additional clerical, technical and professional staff as
17 may be appropriate, and may contract for such additional
18 services as shall be necessary for the performance of his or her
19 function. The compensation of assistant insurance advocates and
20 such clerical, technical and professional staff shall be set by
21 the Attorney General. No assistant insurance advocate or other
22 staff employe shall, while serving in such position, engage in
23 any business, vocation, other employment, or have other
24 interests, inconsistent with his official responsibilities.

25 Section 904-B. Powers and Duties of the Insurance
26 Advocate.--(a) In addition to any other authority conferred
27 upon him or her by this act, the Insurance Advocate is
28 authorized, and it shall be his or her duty, in carrying out his
29 or her responsibilities under this act, to represent the
30 interest of policyholders as a party, or otherwise participate

1 for the purpose of representing an interest of policyholders,
2 before the department in any matter properly before the
3 department, and before any court or agency, initiating
4 proceedings if in his or her judgment such may be necessary, in
5 connection with any matter involving regulation by the
6 department or the corresponding regulatory agency of the United
7 States whether on appeal or otherwise initiated.

8 (b) The Insurance Advocate may exercise discretion in
9 determining the interests of policyholders which will be
10 advocated in any particular proceeding and in determining
11 whether or not to participate in or initiate any particular
12 proceeding and, in so determining, shall consider the public
13 interest, the resources available and the substantiality of the
14 effect of the proceeding on the interest of policyholders. The
15 Insurance Advocate may refrain from intervening when in the
16 judgment of the Insurance Advocate such is not necessary to
17 represent adequately the interest of policyholders.

18 (c) In addition to any other authority conferred upon him or
19 her by this act, the Insurance Advocate is authorized to
20 represent an interest of policyholders which is presented to him
21 or her for his or her consideration upon petition in writing by
22 a substantial number of policyholders. The Insurance Advocate
23 shall notify the principal sponsors of any such petition within
24 a reasonable time after receipt of any such petition of the
25 action taken or intended to be taken by him or her with respect
26 to the interest of policyholders presented in such petition. If
27 the Insurance Advocate declines or is unable to represent such
28 interest, he or she shall notify such sponsors and shall state
29 his or her reasons therefor.

30 (d) Any action brought by the Insurance Advocate before a

1 court or an agency of this Commonwealth shall be brought in the
2 name of the Insurance Advocate. The Insurance Advocate may name
3 a policyholder or group of policyholders in whose name the
4 action may be brought or may join with a policyholder or group
5 of policyholders in bringing the action.

6 (e) At such time as the Insurance Advocate determines, in
7 accordance with applicable time limitations, to initiate,
8 intervene, or otherwise participate in any department, agency,
9 or court proceeding, he or she shall issue publicly a written
10 statement, a copy of which he or she shall file in the
11 proceeding in addition to any required entry of his or her
12 appearance, stating concisely the specific interest of
13 policyholders to be protected.

14 Section 905-B. Assessment Upon Policyholders, Disposition,
15 Appropriation and Disbursement of Assessments.--(a) Before July
16 1 of each year, the Office of Insurance Advocate shall estimate
17 its total expenditures in the administration of this act. Such
18 estimate shall be submitted to the Governor and to the
19 Appropriation Committees of the House and Senate through their
20 respective presiding officers for their respective approvals of
21 such estimate in the amount submitted or such lesser amount as
22 each of them may determine: Provided, That if the Governor or
23 either committee, through its presiding officer, shall fail to
24 notify the Office of Insurance Advocate in writing of his or her
25 or its actions within thirty (30) days after such submission,
26 the estimate as submitted shall be deemed approved by him or her
27 or by such committee, as the case may be. The least of the
28 amounts so approved by the three (3) approving authorities shall
29 be the final estimate, and approval of such least amount shall
30 constitute compliance with section 604. The Office of Insurance

Advocate shall subtract from the final estimate the estimated balance of the appropriation to be carried over into such fiscal year from the preceding one. The remainder so determined, herein called the total assessment, shall be allocated to, and paid by, policyholders in the manner hereafter prescribed. The Office of Insurance Advocate or its designated representative shall be afforded an opportunity to appear before the Senate and the House Appropriation Committees regarding its estimate.

(b) The Office of the Insurance Advocate shall advise the commissioner of the amount of the total assessment. The commissioner shall thereafter complete the assessment procedure and collect the assessments as follows. The commissioner shall divide the total number of insurance policies and renewals of such policies that were sold, issued or disposed of in the Commonwealth during the immediately preceding calendar year by the total assessment. The figure thus obtained shall be assessed against each and every policyholder in the Commonwealth and shall be collected by every company or association which sells, issues or disposes of insurance policies or renewals of such policies during the current calendar year: Provided, however, That in no case shall the assessment exceed twenty-five cents (25¢) per policyholder. The assessments collected by such companies and associations shall be forwarded to the department which shall pay such assessments into the General Fund of the State Treasury through the Department of Revenue.

(c) All such assessments, having been advanced by policyholders for the purpose of defraying the cost of the administration and performance of the duties of the Office of Insurance Advocate relating to proceedings before the department, related judicial proceedings, and other such matters

1 within the jurisdiction of the Office of Insurance Advocate,
2 shall be held in trust solely for that purpose and shall be
3 earmarked for the use of, and are hereby appropriated to, the
4 Office of Insurance Advocate for disbursement solely for that
5 purpose.

6 (d) All requisitions upon such appropriation shall be signed
7 by the Insurance Advocate or such deputies as he or she
8 designate in writing to the State Treasurer and shall be
9 presented to the State Treasurer and dealt with by him or her
10 and the Treasury Department in the manner prescribed by the act
11 of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

12 Section 906-B. Duties of the Department.--In dealing with
13 any proposed action which may affect the interest of
14 policyholders the department shall:

15 (1) Notify the Insurance Advocate when notice of the
16 proposed action is given to the public or at a time fixed by
17 agreement between the Insurance Advocate and the department in a
18 manner to assure the Insurance Advocate reasonable notice and
19 adequate time to determine the appropriate response to the
20 proposed action.

21 (2) Upon request of the Insurance Advocate direct insurance
22 companies and associations involved in the proposed action to
23 provide to the Insurance Advocate any information, data,
24 statistics, studies and similar material that the Insurance
25 Advocate reasonably believes will assist him or her in
26 representing the interests of policyholders.

27 (3) Consistent with its other statutory responsibilities,
28 take such action with due consideration to the interests of
29 policyholders.

30 Section 907-B. Savings Provision; Construction.--(a)

1 Nothing contained herein shall in any way limit the right of any
2 policyholder to bring a proceeding before either the department
3 or a court.

4 (b) Nothing contained herein shall be construed to impair
5 the statutory authority or responsibility of the department.

6 Section 908-B. Reports.--The Insurance Advocate shall
7 annually transmit to the Governor and the Attorney General and
8 to the General Assembly and shall make available to the public
9 an annual report on the conduct of the Office of Insurance
10 Advocate. The Insurance Advocate shall make recommendations as
11 may from time to time be necessary or desirable to protect the
12 interest of policyholders.

13 Section 2. The sum of \$750,000, or as much thereof as may be
14 necessary, is appropriated from the General Fund to the Office
15 of the Insurance Advocate for the fiscal year 1981-1982 for the
16 purpose of establishing and operating an Office of Insurance
17 Advocate.

18 Section 3. This act shall take effect July 1, 1981.