

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1450 Session of
1985

INTRODUCED BY DeVERTER, FARGO, AFFLERBACH, BUNT, SAURMAN,
SIRIANNI, DORR, PHILLIPS, FOX, GANNON AND GEIST, JUNE 19,
1985

REFERRED TO COMMITTEE ON INSURANCE, JUNE 19, 1985

AN ACT

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

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Policyholder
13 Security Account Act.

14 Section 2. Purpose.

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

19 Section 3. Scope.

20 This act shall apply to the kinds of insurance set forth in

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

5 Section 4. Definitions.

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

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

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

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

30 "Custodian." A national or state bank located anywhere in

1 the United States which has trust powers and which agrees
2 confidentially with the insurer establishing the policyholder
3 security account to:

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

9 (2) Furnish to the commissioner, monthly and upon demand
10 of the commissioner, a certified schedule of all transactions
11 affecting the account during the preceding month.

12 (3) Cooperate with the commissioner in the performance
13 of the audit or valuation conducted under section 8(d).

14 (4) Give notice to the commissioner, when required,
15 under section 10(b) and (c).

16 No bank is eligible to become a custodian for an insurer which
17 is affiliated or under common control with such bank.

18 "Insurance company." Any corporation, association or
19 exchange which is authorized to write the kinds of insurance to
20 which this act applies.

21 "Marketable securities."

22 (1) For fire, marine, or fire and marine or casualty
23 insurance companies, those investments authorized under the
24 following provisions of the act of May 17, 1921 (P.L.682,
25 No.284), known as The Insurance Company Law of 1921:

26 (i) Sections 517(b), (c), (d), (f), (g), (g.1), (i),
27 (j), (k), (l), (m), (o) and (p) and 602(b), (c), (d),
28 (f), (g), (g.1), (i), (j), (k), (l), (m), (o) and (p).

29 (ii) Provisions on bonds or notes under sections 518
30 and 603.

(iii) Sections 517(h) and 602(h) and provisions on stock in such corporations as permitted under sections 518 and 603, other than stock issued by corporations described in section 518(b) or 603(b), applicable on both of the following conditions:

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

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

(2) The term includes common stock, preferred stock and debt obligations of corporation or trust which is controlled by any of the following:

(i) The insurer.

(ii) The insurer's affiliates.

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

(iv) The officers and directors of the insurer, the insurer, affiliates or persons under common control with the insurer.

(3) The amount invested in the stock and obligations of a corporation may not, for the purposes of this act, exceed 5% of the deposit required by section 5 or 6, except that as to obligations guaranteed by the United States Government. When the obligation is guaranteed by the United States Government, the amount invested in the obligations of a corporation may not exceed 25% of the deposit required by section 5 or 6.

(4) Notwithstanding the provisions of paragraph (1), (2) or (3), a security qualifies as a marketable security if the

insurer has applied for and obtained from the commissioner a certificate of exemption with respect to the specific security or securities described on the certificate.

"Person." An individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or a similar entity, or any combination of the foregoing acting in concert.

"Policyholder security account." An account maintained under section 5 or 6.

"Written premium." Direct written premium plus reinsurance assumed minus reinsurance ceded if the ceded reinsurance complies with section 7.

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

(a) Account required.--Each domestic insurance company, in order to be or remain authorized to transact one or more of the kinds of insurance to which this act applies, shall maintain with a custodian a policyholder security account, consisting of cash or marketable securities as required in this act. The amount in the policyholder security account may not, at any time, be less than the greater of, respecting those lines of insurance to which this act applies:

(1) the sum of:

- (i) reserves for losses due and unpaid;
- (ii) reserves for losses incurred but unreported;
- (iii) reserves for loss adjustment expenses; and
- (iv) reserves for unearned premiums; or

(2) seventy-five percent of the written premium for the immediately preceding calendar year less policyholder dividends and premium refunds.

1 (b) Scope.--This section applies only to reserves, premiums
2 and liabilities arising out of policies or obligations issued,
3 assumed or incurred in the United States.

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

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

9 (a) Account required.--

10 (1) Each foreign or alien insurance company, in order to
11 be or remain authorized to transact the kinds of insurance to
12 which this act applies, shall maintain with a custodian a
13 policyholder security account which consists of cash or
14 investments authorized by the laws of the state of its
15 domicile or entry and which meets the definition of
16 marketable securities. The amount in the policyholder
17 security account may not, at any time, be less than the
18 greater of, respecting lines of insurance to which this act
19 applies:

20 (i) the sum of:

- 21 (A) reserves for losses due and unpaid;
- 22 (B) reserves for losses incurred but unreported;
- 23 (C) reserves for loss adjustment expenses; and
- 24 (D) reserves for unearned premiums; or

25 (ii) seventy-five percent of the written premium for
26 the immediately preceding calendar year for business
27 written in this Commonwealth, less policyholder dividends
28 and premium refunds.

29 (2) At the option of a foreign or alien insurance
30 company, the amount of the policyholder security account may

1 be based on:

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

3 (ii) business written in this Commonwealth and all

4 states with requirements substantially similar to this

5 act.

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

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

15 Section 7. Limitation of credit for reinsurance.

16 The credit for reinsurance authorized by sections 5(c) and
17 6(b) shall be limited to reinsurance cessions assumed by
18 insurance companies which are one of the following:

19 (1) Domestic reinsurers.

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

23 (3) Foreign or alien reinsurers affiliated or under
24 control with the insurer which comply with section 5 or 6 to
25 the extent of the cessions.

26 (4) Foreign or alien reinsurers not admitted to do
27 business in this Commonwealth which comply with section 5 or
28 6 to the extent of the cessions.

29 Section 8. General stipulations.

30 (a) Amount required.--The amount of the policyholder

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

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

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

22 (d) Valuation.--

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

1 the company has claimed credit under subsection (b) or (c),
2 as compared with the reserves and the written premiums
3 reported in the insurance company's annual statement filed
4 with the Insurance Department.

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

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

17 (e) Certification of exemption.--To obtain a certificate of
18 exemption for qualification of marketable securities, the
19 insurer shall file a written application verified in a form as
20 the commissioner shall require, which shall contain the
21 following:

22 (1) A specific description of the particular security
23 for which the certificate is sought, including the name of
24 the registered holder.

25 (2) Copies of all agreements or other documents
26 affecting the title to the securities or affecting legal or
27 equitable interest in the securities.

28 (3) A description of unpaid consideration.

29 (4) Names, titles, capacities and business relationships
30 of persons or entities other than the insurer having an

1 interest in the security.

2 (5) A description of the legal and business
3 relationships between the insurer and the issuer of the
4 securities and their affiliates, subsidiaries, parents and
5 controlling persons, including officers and directors.

6 (6) Other information, opinions or documents as the
7 commissioner may request.

8 Section 9. Deficiency in the policyholder security account.

9 If the value of cash and marketable securities maintained
10 with the custodian falls below the amount required to be
11 maintained in accordance with section 5 or 6, the commissioner
12 shall require the deficiency to be eliminated by the company
13 within a period of not more than 90 days from notification. Upon
14 receipt of notice from the commissioner of a deficiency in its
15 policyholder security account, the insurance company shall add,
16 within the time specified by the commissioner, cash or
17 marketable securities in an amount sufficient to correct such
18 deficiency. Failure to eliminate such deficiency within the time
19 specified in the notice shall be deemed to be a condition in
20 which assets are insufficient to justify the company's
21 continuance of business and a condition which renders the
22 continuance of business hazardous to the company's policyholders
23 or creditors or to the public as provided in sections 501 and
24 502 of the act of May 17, 1921 (P.L.682, No.284), known as The
25 Insurance Department Law of 1921; and the commissioner shall
26 make and serve such order or orders as specified in such
27 sections.

28 Section 10. Exchange and withdrawal of securities in
29 policyholder security account.

30 (a) Exchange authorized.--An insurance company required to

1 maintain a policyholder security account, except a company to
2 which subsection (c) applies, may substitute or exchange cash or
3 marketable securities having a value equal to or greater than
4 the value of those then in the account for which they are to be
5 substituted or exchanged, without specific authorization from
6 the commissioner. An insurance company may sell, exchange or
7 redeem securities from the account without prior approval of the
8 commissioner, if the proceeds are either retained in the account
9 in cash or reinvested in other marketable securities of equal or
10 greater value. Interest, dividends and other income may be
11 withdrawn by the insurance company at its discretion. Securities
12 in the policyholder security account shall remain the sole and
13 absolute property of the insurance company. The company may
14 exercise all rights of ownership in such securities, subject to
15 the ongoing requirement that it maintain a policyholder security
16 account at the levels required by this act.

17 (b) Withdrawal of principal.--No insurance company shall
18 make any withdrawal of principal from the policyholder security
19 account which, together with previous withdrawals in the 90 days
20 immediately preceding, exceeds an amount equal to 10% of the
21 policyholder security account as last valued in accordance with
22 section 8 unless prior authorization of the commissioner has
23 been obtained. The agreement between the insurance company and
24 the custodian shall reflect this requirement.

25 (c) Special provisions.--In the case of an insurance company
26 which has been required to eliminate a deficiency in its
27 policyholder security account in accordance with section 9, the
28 commissioner may require 15 days prior notice from the custodian
29 of a withdrawal, substitution, or exchange of cash or marketable
30 securities. The requirement of prior notice may remain in

1 effect, at the commissioner's sole discretion, until one year
2 has elapsed from the time the deficiency was eliminated.

3 Section 11. Priority in policyholder security account.

4 An interest or priority in the cash, securities, or
5 investments maintained in a policyholder security account
6 established or maintained in compliance with the provisions of
7 this act may not be created in favor of a person or entity.

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

9 Notwithstanding any provision of this act, the value of the
10 policyholder security account on deposit with a custodian shall
11 be at least:

12 (1) Fifty percent of the required account on or before
13 April 15, 1986.

14 (2) Seventy-five percent of the required account on or
15 before April 15, 1987.

16 (3) One hundred percent of the required account on or
17 before April 15, 1988.

18 Section 13. Effective date.

19 This act shall take effect immediately.