

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2081

Session of
1989

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MORRIS, STISH, NAHILL, MELIO, DONATUCCI, ADOLPH, McHALE AND
BELARDI, NOVEMBER 15, 1989

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 20, 1990

AN ACT

1 Creating the Citizens Insurance Advisory Council; providing for
2 the powers and duties of the council; PROVIDING FOR COUNCIL <—
3 FUNDING; and granting powers to and imposing duties upon the
4 Department of Insurance.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Insurance
9 Consumer Protection Act.

10 Section 2. Definitions.

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

14 "Council." The Citizens Insurance Advisory Council
15 established under section 3.

16 "Department." The Insurance Department of the Commonwealth.

1 Section 3. Citizens Insurance Advisory Council.

2 (a) Establishment.--There is hereby created the Citizens
3 Insurance Advisory Council to represent the interest of
4 consumers before the Insurance Department.

5 (b) Composition.--The council shall consist of the following
6 members:

7 (1) The Insurance Commissioner or his designee.

8 (2) Four members who shall be appointed by the Governor,
9 no more than two of whom shall be of the same political
10 party.

11 (3) Four members who shall be appointed by the President
12 pro tempore of the Senate, no more than two of whom shall be
13 of the same political party.

14 (4) Four members who shall be appointed by the Speaker
15 of the House of Representatives, no more than two of whom
16 shall be of the same political party.

17 (c) Correlation of appointments.--The appointing officers
18 shall correlate their appointments in such a manner as to insure
19 that all geographic regions of this Commonwealth are
20 represented.

21 (d) Limitation on employment.--The appointed members of the
22 council shall be citizens of this Commonwealth who, during their
23 respective terms, shall hold no State office to which salary is
24 attached except that of membership of the council. No more than
25 three of the appointed members shall be employed in or in any
26 manner affiliated with the business of insurance.

27 (e) Terms of office.--The term of office of each appointed
28 member shall be three years, measured from the third Tuesday of
29 January of the year in which he takes office, or until his
30 successor has been appointed, except that, in the initial

1 appointments of the members of the council, the respective
2 appointing authorities shall appoint two members for terms of
3 two years each and two members for terms of three years each.

4 (f) Chairman.--The council shall annually elect one of its
5 appointed members as chairman and shall elect a secretary who
6 need not be a member of the council.

7 (g) Meetings.--Meetings of the council shall be held at
8 least monthly or at the call of the chairman.

9 (h) Compensation.--Each member of the council other than the
10 Insurance Commissioner shall receive \$100 per diem when actually
11 attending to the work of the council. Members shall also receive
12 the amount of reasonable traveling, hotel and other expenses
13 incurred in the performance of their duties in accordance with
14 Commonwealth regulations.

15 (i) Employees.--The council shall have the power to employ
16 and fix the compensation of such experts, stenographers and
17 assistants as may be deemed necessary to carry out the work of
18 the council, but due diligence shall be exercised by the council
19 to enlist such voluntary assistance, generally recognized as
20 qualified to aid the council, as may be available from citizens,
21 research organizations and other agencies in this Commonwealth
22 or elsewhere.

23 Section 4. Powers and duties of the council.

24 (a) General powers and duties.--The council shall have the
25 following powers and duties:

26 (1) Consider and make recommendations as to changes in
27 applicable statutes, departmental regulations and
28 administrative practice, for the purpose of enabling the
29 Insurance Department to more adequately serve insurance
30 consumers.

1 (2) Study and review the work of the Insurance
2 Department. For this purpose, the council shall have access
3 to all books, papers, documents and records pertaining to or
4 belonging to the department.

5 (3) Confer with and advise the Insurance Commissioner
6 and his staff on methods by which the department may improve
7 service to the insurance consumer.

8 (4) Report annually to the Governor and to the General
9 Assembly and make such interim reports as are deemed
10 advisable.

11 (5) Assist the Insurance Commissioner in the development
12 and distribution of consumer educational materials and
13 information on insurance.

14 (6) Perform such other duties as may be assigned to it
15 by the commissioner or by the General Assembly.

16 (7) Represent the interest of consumers as a party, or
17 otherwise participate for the purpose of representing an
18 interest of consumers, before the Insurance Department in any
19 matter properly before the Insurance Department, and before
20 any court or agency. The council may also authorize the
21 initiation of proceedings if in its judgment such proceedings
22 may be necessary in connection with any matter involving
23 regulation by the Insurance Department, including, but not
24 limited to, changes in insurance premiums.

25 (b) Exercise of discretion in representing consumers.--The
26 council may exercise discretion in determining the interests of
27 consumers that will be advocated in any particular proceeding
28 and in determining whether or not to participate in or initiate
29 any particular proceeding and, in so determining, shall consider
30 the public interest, the resources available and the

1 substantiality of the effect of the proceeding on the interest
2 of consumers. The council may refrain from intervening when in
3 its judgment intervention is not necessary to represent
4 adequately the interest of consumers.

5 (c) Representation upon petition.--In addition to any other
6 authority conferred upon it by this act, the council is
7 authorized to represent an interest of consumers which is
8 presented to it for consideration upon petition, in writing, by
9 a substantial number of persons regarding insurance issues
10 subject to regulation by the Insurance Department. The council
11 shall notify the principal sponsors of a petition within a
12 reasonable time after receipt of any action taken or intended to
13 be taken by it with respect to the interest of consumers
14 presented in the petition. If the council declines or is unable
15 to represent such interest, it shall notify the sponsors and
16 shall state its reasons therefor.

17 (d) Initiation of action.--Any action brought by the council
18 before a court or an agency of the Commonwealth shall be brought
19 in the name of the council. The council may name a consumer or
20 group of consumers in whose name the action may be brought or
21 may join with a consumer or group of consumers in bringing the
22 action.

23 (e) Statement of consumer interest.--At such time as the
24 council determines, in accordance with applicable time
25 limitations, to initiate, intervene or otherwise participate in
26 any agency or court proceeding, it shall issue publicly a
27 written statement, a copy of which shall be filed in the
28 proceeding in addition to any required entry of appearance,
29 stating concisely the specific interest of consumers to be
30 protected.

1 Section 5. Executive director.

2 (a) Employment.--The council shall employ a full-time
3 executive director and any clerical or support staff deemed to
4 be necessary. Salaries shall be determined by the ~~council and~~ <—
5 ~~shall be paid from the general budget appropriation to the~~
6 ~~Insurance Department~~ EXECUTIVE BOARD. <—

7 (b) Duties.--The executive director shall monitor the
8 activities of the Insurance Department and communicate such
9 information to the council.

10 SECTION 6. FUNDING FOR COUNCIL. <—

11 (A) ESTABLISHMENT OF ACCOUNT.--THE INSURANCE COMMISSIONER
12 SHALL ESTABLISH AN ACCOUNT FOR EACH INSURER DOING BUSINESS IN
13 THIS COMMONWEALTH.

14 (B) ASSESSMENT OF INSURERS.--THE DEPARTMENT OF REVENUE SHALL
15 ANNUALLY ASSESS EVERY INSURER DOING BUSINESS WITHIN THIS
16 COMMONWEALTH AN AMOUNT EQUAL TO 0.003% OF THE INSURER'S GROSS
17 PREMIUMS RECEIVED IN THE PREVIOUS CALENDAR YEAR. THE ASSESSMENT
18 SHALL BE PAID WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS
19 SECTION AND BY MAY 30 OF EACH YEAR THEREAFTER.

20 (C) NOTICE OF ASSESSMENT.--THE DEPARTMENT OF REVENUE SHALL
21 PROVIDE WRITTEN NOTICE OF EACH ASSESSMENT WITHIN 60 DAYS OF THE
22 EFFECTIVE DATE OF THIS SECTION AND NOT LESS THAN 30 DAYS PRIOR
23 TO MAY 30 OF EACH YEAR THEREAFTER.

24 (D) CREDIT TO ACCOUNT.--THE INSURANCE COMMISSIONER SHALL
25 CREDIT EACH ACCOUNT UPON PAYMENT OF THE ASSESSMENT.

26 SECTION 7. DISTRIBUTION OF FUNDS.

27 (A) ALLOCATION OF COSTS.--THE EXECUTIVE DIRECTOR OF THE
28 COUNCIL SHALL:

29 (1) ALLOCATE ALL HEARING AND INVESTIGATION COSTS
30 INCURRED IN CARRYING OUT THE RESPONSIBILITIES AND DUTIES OF

1 THE COUNCIL TO THE LINE OF INSURANCE COST RESPONSIBLE FOR
2 CREATION OF THE EXPENSE.

3 (2) ALLOCATE ALL COSTS AND EXPENSES WHICH CANNOT BE
4 RELATED TO A PARTICULAR LINE TO ALL LINES PROPORTIONATELY.

5 (B) DEBIT OF ACCOUNT.--THE EXECUTIVE DIRECTOR SHALL DEBIT
6 THE AMOUNT OF AN INSURER'S ASSESSMENT UNDER THIS SECTION TO THE
7 INSURER'S ACCOUNT AND NOTIFY THE DEPARTMENT OF REVENUE OF THE
8 BALANCE OF EACH INSURER'S ACCOUNT.

9 SECTION 8. ASSESSMENT PROCEDURE.

10 (A) CALCULATION OF ASSESSMENT.--WITHIN 60 DAYS OF THE
11 EFFECTIVE DATE OF THIS SECTION AND ON OR BEFORE APRIL 30 OF EACH
12 YEAR THEREAFTER, THE DEPARTMENT OF REVENUE SHALL ASSESS EACH
13 INSURER DOING BUSINESS WITHIN THIS COMMONWEALTH AN AMOUNT EQUAL
14 TO 0.003% OF THE GROSS PREMIUMS RECEIVED FROM BUSINESS
15 TRANSACTED DURING THE PREVIOUS CALENDAR YEAR, PLUS ANY DEBIT
16 BALANCE OR MINUS ANY CREDIT BALANCE OF THAT INSURER'S ACCOUNT
17 AND MINUS ANY INTEREST WHICH HAS ACCRUED ON THE ACCOUNT DURING
18 THE PRECEDING YEAR. EXCEPT WHERE ANY INSURER'S ASSESSED SHARE OF
19 THE PRECEDING YEAR'S COST AND EXPENSES HAS NOT REDUCED THAT
20 INSURER'S ACCOUNT BY MORE THAN 50%, THE INSURER SHALL BE
21 ASSESSED FOR ONLY THE AMOUNT NECESSARY TO RESTORE THE ACCOUNT TO
22 ITS VALUE BEFORE THE CURRENT COSTS AND EXPENSES WERE ASSESSED.
23 THE AMOUNT OF EACH ASSESSMENT SHALL BECOME DUE WITHIN 30 DAYS
24 AFTER RECEIPT BY THE INSURER OF NOTICE GIVEN BY REGISTERED MAIL
25 AND AFTER THE DUE DATE SHALL ACCRUE INTEREST, WHICH SHALL BE THE
26 AVERAGE RATE OF INTEREST SPECIFIED FOR RESIDENTIAL MORTGAGE
27 LENDING BY THE SECRETARY OF BANKING UNDER THE ACT OF JANUARY 30,
28 1974 (P.L.13, NO.6), REFERRED TO AS THE LOAN INTEREST AND
29 PROTECTION LAW.

30 (B) OBJECTIONS.--WITHIN 15 DAYS AFTER RECEIPT OF THE NOTICE,

1 THE INSURER AGAINST WHICH THE ASSESSMENT HAS BEEN MADE MAY FILE
2 WITH THE DEPARTMENT OBJECTIONS SETTING OUT IN DETAIL THE GROUNDS
3 UPON WHICH THE INSURER REGARDS THE ASSESSMENT TO BE EXCESSIVE,
4 ERRONEOUS, UNLAWFUL OR INVALID. THE DEPARTMENT, AFTER NOTICE TO
5 THE INSURER AND THE COUNCIL, SHALL HOLD A HEARING UPON THE
6 OBJECTIONS, AT WHICH HEARING REPRESENTATIVES OF BOTH THE INSURER
7 AND THE COUNCIL MAY APPEAR. AFTER THE HEARING, THE DEPARTMENT
8 SHALL RECORD ITS FINDINGS ON THE OBJECTIONS AND SHALL TRANSMIT
9 TO BOTH THE INSURER AND THE EXECUTIVE DIRECTOR OF THE COUNCIL,
10 BY REGISTERED MAIL, NOTICE OF THE AMOUNT, IF ANY, CHARGED
11 AGAINST THE INSURER IN ACCORDANCE WITH THE FINDINGS. THE AMOUNT
12 THEN DUE SHALL BE PAID BY THE INSURER WITHIN TEN DAYS AFTER
13 RECEIPT OF THE FINDINGS OF THE DEPARTMENT.

14 (C) ACTION TO RECOVER PAYMENT OF ERRONEOUS ASSESSMENT.--NO
15 SUIT OR PROCEEDING SHALL BE MAINTAINED IN ANY COURT FOR THE
16 PURPOSE OF RESTRAINING OR IN ANY WAY DELAYING THE COLLECTION OR
17 PAYMENT OF ANY ASSESSMENT MADE, AND EVERY INSURER AGAINST WHICH
18 AN ASSESSMENT IS MADE SHALL PAY THE ASSESSMENT AS PROVIDED IN
19 SUBSECTION (A). ANY INSURER MAKING PAYMENT MAY, AT ANY TIME
20 WITHIN TWO YEARS FROM THE DATE OF PAYMENT, SUE THE COMMONWEALTH
21 IN AN ACTION AT LAW TO RECOVER THE AMOUNT PAID, OR ANY PART
22 THEREOF, UPON THE GROUND THAT THE ASSESSMENT WAS EXCESSIVE,
23 ERRONEOUS, UNLAWFUL OR INVALID, IN WHOLE OR IN PART, PROVIDED
24 THAT OBJECTIONS WERE FILED WITH THE DEPARTMENT UNDER SUBSECTION
25 (A) AND THAT PAYMENT OF THE ASSESSMENT WAS MADE UNDER PROTEST
26 EITHER AS TO ALL OR PART THEREOF. IN ANY ACTION FOR RECOVERY OF
27 ANY PAYMENTS MADE UNDER THIS SECTION, THE CLAIMANT SHALL BE
28 ENTITLED TO RAISE EVERY RELEVANT ISSUE OF LAW, BUT THE FINDINGS
29 OF FACT MADE BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL BE
30 PRIMA FACIE EVIDENCE OF THE FACTS THEREIN STATED. ANY RECORDS,

1 BOOKS, DATA, DOCUMENTS AND MEMORANDA RELATING TO THE EXPENSES OF
2 THE COUNCIL SHALL BE ADMISSIBLE IN EVIDENCE IN ANY COURT AND
3 SHALL BE PRIMA FACIE EVIDENCE OF THE TRUTH OF THEIR CONTENTS. IF
4 IT IS FINALLY DETERMINED IN ANY SUCH ACTION THAT ALL OR ANY PART
5 OF THE ASSESSMENT FOR WHICH PAYMENT WAS MADE UNDER PROTEST WAS
6 EXCESSIVE, ERRONEOUS, UNLAWFUL OR INVALID, THE COUNCIL SHALL
7 MAKE A REFUND, AS DIRECTED BY THE COURT, TO THE CLAIMANT OUT OF
8 ITS ANNUAL APPROPRIATION.

9 (D) REMEDY EXCLUSIVE.--THE PROCEDURE IN THIS SECTION
10 PROVIDING FOR THE DETERMINATION OF THE LAWFULNESS OF ASSESSMENTS
11 AND THE RECOVERY BACK OF PAYMENTS MADE PURSUANT TO THE
12 ASSESSMENTS SHALL BE EXCLUSIVE OF ALL OTHER REMEDIES AND
13 PROCEDURES.

14 (E) SUSPENSION OR REVOCATION OF LICENSE.--IF ANY PAYMENT
15 PRESCRIBED BY THIS ACT IS NOT MADE, THE DEPARTMENT MAY SUSPEND
16 OR REVOKE THE LICENSE OF THE OFFENDING INSURER. THE COUNCIL MAY
17 ALSO INSTITUTE AN APPROPRIATE ACTION AT LAW FOR THE AMOUNT
18 LAWFULLY ASSESSED PLUS INTEREST FROM THE DUE DATE, WHICH SHALL
19 BE THE AVERAGE RATE OF INTEREST SPECIFIED FOR RESIDENTIAL
20 MORTGAGE LENDING BY THE SECRETARY OF BANKING UNDER THE LOAN
21 INTEREST AND PROTECTION LAW, TOGETHER WITH ANY ADDITIONAL COSTS
22 INCURRED BY THE COUNCIL BY VIRTUE OF SUCH FAILURE TO PAY.

23 (F) PAYMENT INTO GENERAL FUND.--ALL ASSESSMENTS RECEIVED,
24 COLLECTED OR RECOVERED UNDER THIS ACT SHALL BE PAID INTO THE
25 GENERAL FUND OF THE STATE TREASURY THROUGH THE DEPARTMENT OF
26 REVENUE.

27 (G) ANNUAL APPROPRIATION.--ALL ASSESSMENTS ADVANCED BY
28 INSURERS SHALL BE HELD IN TRUST SOLELY FOR THE PURPOSES
29 DESCRIBED IN THIS ACT AND SHALL BE APPROPRIATED ANNUALLY BY THE
30 GENERAL ASSEMBLY TO THE COUNCIL.

1 SECTION 9. BUDGET.

2 (A) SUBMISSION OF ESTIMATE.--BEFORE NOVEMBER 1 OF EACH YEAR,
3 THE COUNCIL SHALL ESTIMATE ITS TOTAL EXPENDITURES AND SUBMIT THE
4 ESTIMATE TO THE GOVERNOR. AT THE SAME TIME THE COUNCIL SUBMITS
5 THE ESTIMATE TO THE GOVERNOR, THE COUNCIL SHALL ALSO SUBMIT THE
6 ESTIMATE TO THE GENERAL ASSEMBLY FOR APPROVAL BY THE GENERAL
7 ASSEMBLY, WITH OR WITHOUT REVISION, THROUGH A SEPARATE BILL,
8 PRIOR TO THE BEGINNING OF THE FISCAL YEAR FOR WHICH SUCH
9 ESTIMATE WAS MADE. THE EXECUTIVE DIRECTOR OF THE COUNCIL SHALL
10 BE AFFORDED AN OPPORTUNITY TO APPEAR BEFORE THE GOVERNOR AND THE
11 APPROPRIATIONS COMMITTEES OF THE SENATE AND THE HOUSE OF
12 REPRESENTATIVES REGARDING THE ESTIMATE.

13 (B) FAILURE TO APPROVE BUDGET.--IF THE GENERAL ASSEMBLY
14 FAILS TO APPROVE THE ESTIMATE OF THE COUNCIL UNDER SUBSECTION
15 (A) BY MARCH 15, THE DEPARTMENT OF REVENUE SHALL ASSESS AND
16 COLLECT FROM INSURERS THE ASSESSMENT PROVIDED FOR IN THIS ACT ON
17 THE BASIS OF THE ESTIMATE PREVIOUSLY APPROVED FOR THE CURRENT
18 FISCAL YEAR, BUT THE FUNDS FROM THE ASSESSMENT SHALL NOT BE
19 EXPENDED PRIOR TO APPROVAL OF AN ESTIMATE BY THE GENERAL
20 ASSEMBLY UNDER SUBSECTION (A). UPON APPROVAL, THE DEPARTMENT OF
21 REVENUE SHALL MAKE AN ADJUSTMENT IN THE ASSESSMENT AND
22 COLLECTION FROM INSURERS TO REFLECT THE ESTIMATE FINALLY
23 APPROVED BY THE GENERAL ASSEMBLY.

24 Section 6 10. Duties of Insurance Department.

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25 In dealing with any proposed action which may substantially
26 affect the interest of consumers, including, but not limited to,
27 a proposed change of rates and the adoption of rules,
28 regulations, guidelines, orders, standards or final policy
29 decisions, the department shall:

30 (1) Notify the council when notice of the proposed

1 action is given to the public or at a time fixed by agreement
2 between the council and the department in a manner to assure
3 the council reasonable notice and adequate time to determine
4 whether to intervene in such matter.

5 (2) Consistent with its other statutory
6 responsibilities, take such action with due consideration to
7 the interest of consumers.

8 Section 7 11. Reports. <—

9 The council shall annually transmit to the Governor, the
10 Attorney General, the General Assembly, the Insurance Committee
11 of the House of Representatives and the Banking and Insurance
12 Committee of the Senate, and shall make available to the public,
13 an annual report on the conduct of the council. The council
14 shall make recommendations as may from time to time be necessary
15 or desirable to protect the interest of consumers.

16 Section 8 12. Savings provision; construction. <—

17 (a) Right of action preserved.--Nothing contained herein
18 shall in any way limit the right of any consumer to bring a
19 proceeding before either the Insurance Department or a court.

20 (b) Power of Insurance Department not impaired.--Nothing
21 contained herein shall be construed to impair the statutory
22 authority or responsibility of the Insurance Department to
23 regulate insurers in the public interest.

24 Section 9 13. Effective date. <—

25 ~~This act shall take effect in 90 days.~~ <—

26 THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

27 (1) SECTIONS 6 AND 8 SHALL TAKE EFFECT IMMEDIATELY.

28 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 90
29 DAYS.