

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 498 Session of  
2003

INTRODUCED BY BLAUM, DeLUCA, LEDERER, READSHAW, WOJNAROSKI,  
HENNESSEY, STABACK, BELARDI, MELIO, SANTONI, BEBKO-JONES,  
PRESTON, BELFANTI, KIRKLAND, TANGRETTI, DALEY, MANDERINO,  
THOMAS, McGEEHAN, PISTELLA, YOUNGBLOOD, PALLONE, FREEMAN,  
WALKO, LEACH, ALLEN, WASHINGTON, JAMES, GERGELY AND HORSEY,  
FEBRUARY 26, 2003

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 26, 2003

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," establishing the Office of  
21 Consumer Advocate for Insurance as an independent office  
22 within the Office of Attorney General and prescribing its  
23 powers and duties.

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

26 Section 1. The act of April 9, 1929 (P.L.177, No.175), known

1 as The Administrative Code of 1929, is amended by adding an  
2 article to read:

3 ARTICLE IX-C

4 OFFICE OF CONSUMER ADVOCATE FOR INSURANCE

5 Section 901-C. Definitions.--As used in this article:

6 "Consumer" means any person who is a named insured, insured  
7 or beneficiary of a policy of insurance or any other person who  
8 may be affected in any way by the Insurance Department's  
9 exercise of or the failure to exercise its authority.

10 "Department" means the Insurance Department of the  
11 Commonwealth and includes the Insurance Commissioner.

12 "Fund" means the Consumer Advocate for Insurance Fund  
13 established pursuant to section 906-C.

14 "Insurer" means any "company," "association" or "exchange" as  
15 such terms are defined in section 101 of the act of May 17, 1921  
16 (P.L.789, No.285), known as "The Insurance Department Act of  
17 1921" or any entity subject to 40 Pa.C.S. Ch. 61 (relating to  
18 hospital plan corporations) or 63 (relating to professional  
19 health services plan corporations) or Article XXIV of "The  
20 Insurance Department Act of 1921" or the act of December 29,  
21 1972 (P.L.1701, No.364), known as the "Health Maintenance  
22 Organization Act."

23 Section 902-C. Office of Consumer Advocate for Insurance.--

24 (a) There is hereby established as an independent office within  
25 the Office of Attorney General an Office of Consumer Advocate  
26 for Insurance appointed by the Attorney General to represent the  
27 interest of consumers before the department.

28 (b) The Office of Consumer Advocate for Insurance shall be  
29 headed by the Consumer Advocate for Insurance appointed by the  
30 Attorney General who by reason of training, experience and

1 attainment is qualified to represent the interest of consumers.

2 Compensation shall be set by the Executive Board.

3 (c) No individual who serves as a Consumer Advocate for  
4 Insurance shall, while serving in the position, engage in any  
5 business, vocation or other employment, or have other interests,  
6 inconsistent with the official responsibilities, nor shall the  
7 individual seek or accept employment nor render beneficial  
8 services for compensation with any insurer subject to the  
9 authority of the office during the tenure of the appointment and  
10 for a period of two years immediately after the appointment is  
11 served or terminated.

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

17 Section 903-C. Assistant Consumer Advocates for Insurance;  
18 Employees.--The Consumer Advocate for Insurance shall appoint  
19 attorneys as assistant consumer advocates for insurance and  
20 additional clerical, technical and professional staff as may be  
21 appropriate, and may contract for additional services as shall  
22 be necessary for the performance of the duties imposed by this  
23 article. The compensation of assistant consumer advocates for  
24 insurance and clerical, technical and professional staff shall  
25 be set by the Executive Board. No assistant consumer advocate  
26 for insurance or other staff employe shall, while serving in the  
27 position, engage in any business, vocation or other employment,  
28 or have other interests, inconsistent with official  
29 responsibilities.

30 Section 904-C. Powers and Duties of the Consumer Advocate

1 for Insurance.--(a) In addition to any other authority  
2 conferred by this article, the Consumer Advocate for Insurance  
3 is authorized to and shall, in carrying out the responsibilities  
4 under this article, represent the interest of consumers as a  
5 party, or otherwise participate for the purpose of representing  
6 an interest of consumers, before the department in any matter  
7 properly before the department, and before any court or agency,  
8 initiating proceedings if, in the judgment of the Consumer  
9 Advocate for Insurance, the representation may be necessary, in  
10 connection with any matter involving regulation by the  
11 department or the corresponding regulatory agency of the Federal  
12 Government, whether on appeal or otherwise initiated.

13 (b) The Consumer Advocate for Insurance may exercise  
14 discretion in determining the interests of consumers which will  
15 be advocated in any particular proceeding and in determining  
16 whether to participate in or initiate any particular proceeding  
17 and, in so determining, shall consider the public interest, the  
18 resources available and the substantiality of the effect of the  
19 proceeding on the interest of consumers. The Consumer Advocate  
20 for Insurance may refrain from intervening when, in the judgment  
21 of the Consumer Advocate for Insurance, intervention is not  
22 necessary to represent adequately the interest of consumers.

23 (c) In addition to any other authority conferred by this  
24 article, the Consumer Advocate for Insurance is authorized to  
25 represent an interest of consumers which is presented for  
26 consideration, upon petition in writing, by a substantial number  
27 of persons who are consumers of an insurer subject to regulation  
28 by the department. The Consumer Advocate for Insurance shall  
29 notify the principal sponsors of the petition within a  
30 reasonable time after receipt of the petition of the action

1 taken or intended to be taken with respect to the interest of  
2 consumers presented in that petition. If the Consumer Advocate  
3 for Insurance declines or is unable to represent the interest,  
4 written notification and the reasons for the action shall be  
5 given to the sponsors.

6 (d) Any action brought by the Consumer Advocate for  
7 Insurance before a court or an agency of this Commonwealth shall  
8 be brought in the name of the Consumer Advocate for Insurance:  
9 Provided, That the Consumer Advocate for Insurance may name a  
10 consumer or group of consumers in whose name the action may be  
11 brought or may join with a consumer or group of consumers in  
12 bringing the action.

13 (e) At a time as the Consumer Advocate for Insurance  
14 determines, in accordance with applicable time limitations, to  
15 initiate, intervene or otherwise participate in any department,  
16 agency or court proceeding, the Consumer Advocate for Insurance  
17 shall issue publicly a written statement, a copy of which shall  
18 be filed in the proceeding in addition to any required entry of  
19 appearance, stating concisely the specific interest of consumers  
20 to be protected.

21 (f) The Consumer Advocate for Insurance shall be served with  
22 copies of all filings, correspondence or other documents filed  
23 by insurers with the department unless the Consumer Advocate for  
24 Insurance informs the insurer that specific types of classes of  
25 documents need not be so served. The department shall not accept  
26 a document as timely filed if the document is also required to  
27 be served on the Consumer Advocate for Insurance and the insurer  
28 has not indicated that service has or is being made on the  
29 Consumer Advocate for Insurance. Insurers shall provide any  
30 other nonprivileged information or data requested by the

Consumer Advocate for Insurance to the extent that the request is reasonably related to the performance of his duties under this article.

Section 905-C. Duties of the Department.--In dealing with any proposed action which may substantially affect the interest of consumers, including, but not limited to, a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, the department shall:

(1) Notify the Consumer Advocate for Insurance and provide, free of charge, copies of all related documents when notice of the proposed action is given to the public or at a time fixed by agreement between the Consumer Advocate for Insurance and the department in a manner to assure the Consumer Advocate for Insurance reasonable notice and adequate time to determine whether to intervene in the matter.

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

Section 906-C. Consumer Advocate for Insurance Fund.--(a) There is hereby established a separate account in the State Treasury to be known as the Consumer Advocate for Insurance Fund. This fund shall be administered by the State Treasurer.

(b) All moneys deposited into the fund shall be held in trust and shall not be considered general revenue of the Commonwealth but shall be used only to effectuate the purposes of this article. The fund shall be subject to audit by the Auditor General.

(c) Prior to the first day of April following the effective date of this article and prior to the first day of April of each year thereafter so long as this article shall remain in effect,

1 each insurer who writes coverages for fire and casualty,  
2 accident and health, credit accident and health under  
3 life/annuity/accident, health and life including annuities in  
4 this Commonwealth, as a condition of its authorization to  
5 transact business in this Commonwealth, shall pay into the fund  
6 in trust an amount equal to the product obtained by multiplying  
7 five million dollars (\$5,000,000) by a fraction, the numerator  
8 of which is the direct premium collected for all coverages by  
9 that insurer in this Commonwealth during the preceding calendar  
10 year and the denominator of which is the direct premium written  
11 on such coverages in this Commonwealth by all insurers in the  
12 same period. Any insurer who fails to pay the required  
13 assessment under this section shall be prohibited from writing  
14 any insurance within this Commonwealth.

15 (d) In succeeding years the General Assembly may vary the  
16 base amount of five million dollars (\$5,000,000) based upon the  
17 actual funding experience and requirements of the Office of  
18 Consumer Advocate for Insurance.

19 (e) Assessments made under this section shall not be  
20 considered burdens and prohibitions under section 212 of the act  
21 of May 17, 1921 (P.L.789, No.285), known as "The Insurance  
22 Department Act of 1921."

23 (f) In the event that the trust fund is dissolved or the  
24 Office of Consumer Advocate for Insurance is terminated by  
25 operation of law, any balance remaining in the fund, after  
26 deducting administrative costs for liquidation, shall be  
27 returned to insurers in proportion to their financial  
28 contributions to the fund in the preceding calendar year.

29 Section 907-C. Reports.--The Consumer Advocate for Insurance  
30 shall annually transmit to the Governor and to the General

1 Assembly, and shall make available to the public, an annual  
2 report on the conduct of the Office of Consumer Advocate for  
3 Insurance. The Consumer Advocate for Insurance shall make  
4 recommendations as may, from time to time, be necessary or  
5 desirable to protect the interest of consumers.

6 Section 908-C. Savings Provision; Construction.--(a)  
7 Nothing contained in this article shall in any way limit the  
8 right of any consumer to bring a proceeding before either the  
9 department or a court.

10 (b) Nothing contained in this article shall be construed to  
11 impair the statutory authority or responsibility of the  
12 department to regulate insurers in the public interest.

13 Section 2. This act shall take effect as follows:

14 (1) The addition of section 906-C of the act shall take  
15 effect in 90 days.

16 (2) This section shall take effect immediately.

17 (3) The remainder of this act shall take effect July 1,  
18 2004, or immediately, whichever is later.