

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1121 Session of
2007

INTRODUCED BY YUDICHAK, DERMODY, K. SMITH, KENNEY, BELFANTI,
BOYD, CASORIO, COHEN, FABRIZIO, GEORGE, GIBBONS, GRUCELA,
HARKINS, HENNESSEY, JAMES, JOSEPHS, W. KELLER, KORTZ,
MANDERINO, MANN, McILHATTAN, MUNDY, M. O'BRIEN, O'NEILL,
READSHAW, SANTONI, SCAVELLO, SOLOBAY, SURRA, WALKO, WATSON,
YOUNGBLOOD, MYERS, FREEMAN AND J. WHITE, APRIL 23, 2007

REFERRED TO COMMITTEE ON INSURANCE, APRIL 23, 2007

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; and establishing the Consumer Advocate for
24 Insurance Fund.

25 The General Assembly of the Commonwealth of Pennsylvania

26 hereby enacts as follows:

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

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

ARTICLE IX-C

OFFICE OF CONSUMER ADVOCATE FOR INSURANCE

Section 901-C. Definitions.

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

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

"Department." The Insurance Department of the Commonwealth.

"Fund." The Consumer Advocate for Insurance Fund established pursuant to section 906-C.

"Insurer." Any "company," "association" or "exchange" as such terms are defined in section 101 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921 or any entity subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations) or Article XXIV of The Insurance Company Law of 1921 or the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

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

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

(b) Consumer Advocate for Insurance.--The Office of Consumer

Advocate for Insurance shall be headed by the Consumer Advocate for Insurance appointed by the Attorney General who by reason of training, experience and attainment is qualified to represent the interest of consumers. Compensation shall be set by the Executive Board.

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

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

Section 903-C. Assistant consumer advocates for insurance; employees.

The Consumer Advocate for Insurance shall appoint attorneys as assistant consumer advocates for insurance and additional clerical, technical and professional staff as may be appropriate, and may contract for additional services as shall be necessary for the performance of the duties imposed by this article. The compensation of assistant consumer advocates for insurance and clerical, technical and professional staff shall be set by the Executive Board. No assistant consumer advocate for insurance or other staff employee shall, while serving in

1 the position, engage in any business, vocation or other
2 employment, or have other interests, inconsistent with official
3 responsibilities.

4 Section 904-C. Powers and duties of Consumer Advocate for
5 Insurance.

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

19 (b) Exercise of discretion.--The Consumer Advocate for
20 Insurance may exercise discretion in determining the interests
21 of consumers which will be advocated in any particular
22 proceeding and in determining whether to participate in or
23 initiate any particular proceeding and, in so determining, shall
24 consider the public interest, the resources available and the
25 substantiality of the effect of the proceeding on the interest
26 of consumers. The Consumer Advocate for Insurance may refrain
27 from intervening when, in the judgment of the Consumer Advocate
28 for Insurance, intervention is not necessary to represent
29 adequately the interest of consumers.

30 (c) Action on petition.--In addition to any other authority

1 conferred by this article, the Consumer Advocate for Insurance
2 is authorized to represent an interest of consumers which is
3 presented for consideration, upon petition in writing, by a
4 substantial number of persons who are consumers of an insurer
5 subject to regulation by the department. The Consumer Advocate
6 for Insurance shall notify the principal sponsors of the
7 petition within a reasonable time after receipt of the petition
8 of the action taken or intended to be taken with respect to the
9 interest of consumers presented in that petition. If the
10 Consumer Advocate for Insurance declines or is unable to
11 represent the interest, written notification and the reasons for
12 the action shall be given to the sponsors.

13 (d) Name in which action is brought.--Any action brought by
14 the Consumer Advocate for Insurance before a court or an agency
15 of this Commonwealth shall be brought in the name of the
16 Consumer Advocate for Insurance. The Consumer Advocate for
17 Insurance may name a consumer or group of consumers in whose
18 name the action may be brought or may join with a consumer or
19 group of consumers in bringing the action.

20 (e) Public statement.--At a time as the Consumer Advocate
21 for Insurance determines, in accordance with applicable time
22 limitations, to initiate, intervene or otherwise participate in
23 any department, agency or court proceeding, the Consumer
24 Advocate for Insurance shall issue publicly a written statement,
25 a copy of which shall be filed in the proceeding in addition to
26 any required entry of appearance, stating concisely the specific
27 interest of consumers to be protected.

28 (f) Service.--The Consumer Advocate for Insurance shall be
29 served with copies of all filings, correspondence or other
30 documents filed by insurers with the department unless the

Consumer Advocate for Insurance informs the insurer that specific types of classes of documents need not be so served. The department shall not accept a document as timely filed if the document is also required to be served on the Consumer Advocate for Insurance and the insurer has not indicated that service has or is being made on the Consumer Advocate for Insurance. Insurers shall provide any 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 the duties of the Consumer Advocate for Insurance under this article.

Section 905-C. Duties of 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) Fund established.--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) Deposits.--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) Payment by insurers.--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, each insurer who writes
coverages for fire and casualty, accident and health, credit
accident and health under life/annuity/accident, health and life
including annuities in this Commonwealth, as a condition of its
authorization to transact business in this Commonwealth, shall
pay into the fund in trust an amount equal to the product
obtained by multiplying \$5,000,000 by a fraction, the numerator
of which is the direct premium collected for all coverages by
that insurer in this Commonwealth during the preceding calendar
year and the denominator of which is the direct premium written
on such coverages in this Commonwealth by all insurers in the
same period. Any insurer who fails to pay the required
assessment under this section shall be prohibited from writing
any insurance within this Commonwealth.

(d) Adjustment of base amount.--In succeeding years the
General Assembly may vary the base amount of \$5,000,000 based
upon the actual funding experience and requirements of the
Office of Consumer Advocate for Insurance.

(e) Construction.--Assessments made under this section shall

1 not be considered burdens and prohibitions under section 212 of
2 the act of May 17, 1921 (P.L.789, No.285), known as The
3 Insurance Department Act of 1921.

4 (f) Dissolution or termination.--In the event that the fund
5 is dissolved or the Office of Consumer Advocate for Insurance is
6 terminated by operation of law, any balance remaining in the
7 fund, after deducting administrative costs for liquidation,
8 shall be returned to insurers in proportion to their financial
9 contributions to the fund in the preceding calendar year.

10 Section 907-C. Reports.

11 The Consumer Advocate for Insurance shall annually transmit
12 to the Governor and to the General Assembly, and shall make
13 available to the public, an annual report on the conduct of the
14 Office of Consumer Advocate for Insurance. The Consumer Advocate
15 for Insurance shall make recommendations as may from time to
16 time be necessary or desirable to protect the interest of
17 consumers.

18 Section 908-C. Savings provision and construction.

19 (a) No bar to action.--Nothing contained in this article
20 shall in any way limit the right of any consumer to bring a
21 proceeding before either the department or a court.

22 (b) No impairment to department.--Nothing contained in this
23 article shall be construed to impair the statutory authority or
24 responsibility of the department to regulate insurers in the
25 public interest.

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

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

29 (2) This section shall take effect immediately.

30 (3) The remainder of this act shall take effect July 1,

1 2007, or immediately, whichever is later.