

INSURANCE COMPANY LAW OF 1921 - OMNIBUS AMENDMENTS

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SB 237

AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," in general provisions relating to insurance companies, further providing for annual and other reports; penalties; providing for suitability of annuity transactions and for the regulation of health insurance practices concerning parity and nondiscrimination; further providing for definitions, for acting for or aiding nonadmitted insurers, for requirements for eligible surplus lines insurers, for other nonadmitted insurers, for surplus lines licensee's duty to notify insured, for declarations, for surplus lines advisory organizations, for evidence of insurance, for effect of payment to surplus lines licensee, for licensing of surplus lines licensee, for surplus lines licensee's acceptance of business from brokers, for records of surplus lines licensee, for monthly reports, for surplus lines tax, for tax on independently procured insurance, for suspension, revocation or nonrenewal of surplus lines licensee's license and for penalties; providing for compliance; and, in children's health care, further providing for expiration of certain provisions.

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

Section 1. Section 320 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, amended December 18, 1992 (P.L.1519, No.178) and February 17, 1994 (P.L.92, No.9), is amended to read:

Section 320. Annual and Other Reports; Penalties.--(a) (1) Every stock and mutual insurance company, association, and exchange, doing business in this Commonwealth, shall annually, on or before the first day of March, file in the office of the Insurance Commissioner and with the National Association of Insurance Commissioners a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year, and its business of that year and shall, within thirty days after requested by the Insurance Commissioner, file with the Insurance Commissioner and with the National Association of Insurance Commissioners such additional statement or statements concerning its affairs and financial condition as the Insurance Commissioner may, in his discretion, require. The Insurance Commissioner shall require each insurance company association and exchange to report its financial condition on

the statement convention blanks, in such form as adopted by the National Association of Insurance Commissioners and shall, upon written request, furnish such blanks for their convenience; and may make such changes, from time to time, in the form of the same as shall seem best adapted to elicit from them a true exhibit of their financial condition.

(2) Unless otherwise provided by law, regulation or order of the Insurance Commissioner, each insurance company, association and exchange shall adhere to the annual or quarterly statement instructions and the accounting practices and procedures manuals prescribed by the National Association of Insurance Commissioners. The Insurance Commissioner may require each insurance company, association and exchange to file in the office of the Insurance Commissioner and with the National Association of Insurance Commissioners financial statements on diskettes or other electronic information storage devices acceptable to the Insurance Commissioner.

(b) Insurance companies of foreign governments, doing business in this Commonwealth, shall be required to return only the business done in the United States, and the assets held by and for them within the United States for the protection of policyholders therein.

(c) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates and employes and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the Insurance Commissioner under the authority of this act and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or dissemination of the data and information collected from the filings required hereunder.

(d) [All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the Insurance Department by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and may not be disclosed by the Insurance Department. Work products developed by Insurance Department staff in conducting financial analyses of financial statements filed pursuant to this section are confidential and shall not be disclosed by the Insurance Department.] **(1) The following documents, materials or information shall be confidential by law and privileged and shall not be subject to subpoena, discovery, the act of February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know Law," or admissible in evidence in any private civil action:**

(i) All documents, materials or other information prepared or provided by an insurance company, association or exchange solely in support of the statement of actuarial opinion filed under this section, including actuarial reports, work papers or actuarial opinion summaries and any other material solely prepared by the insurance company, association or exchange for the purpose of providing it to the Insurance Department in connection with actuarial reports, work papers or actuarial opinion summaries.

(ii) All financial analysis ratios, analyst team reports and other financial analytical results concerning insurance companies, associations and exchanges that are provided to the Insurance Department by the National Association of Insurance Commissioners.

(iii) All additional work products, documents, materials or information produced by, obtained by or provided to the Insurance Department in the course of conducting financial analyses of financial statements filed under this section.

(2) The protections established under paragraph (1)(i) and (iii) shall also apply to the materials, drafts or copies thereof when in possession of the insurance company, association or exchange if the materials or drafts were prepared solely for the purpose of submitting the materials to the Insurance Department. Any documents, materials or information that are provided to the Insurance Department under paragraph (1)(i) or (iii) and that would otherwise be available from original sources shall not be construed as immune from discovery from the original source and use in any private civil action merely because they were provided to the Insurance Department.

(3) Neither the Insurance Commissioner nor any individual or person who receives documents, materials or information while acting under the authority of the Insurance Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information covered under this section.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Insurance Commissioner or as a result of the Insurance Commissioner sharing information in conformance with sections 201-A and 202-A of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."

(5) The Insurance Commissioner may use the documents, materials or other information obtained or created under this section in furtherance of any regulatory or legal action brought as part of the Insurance Commissioner's official duties.

(e) (1) Any company, association, or exchange, which neglects to make and file its annual statement, or other statements that may be required, in the form or within the time herein provided shall forfeit a sum not to exceed two hundred dollars (\$200) for each day during which such neglect continues, and, upon notice by the commissioner, its authority to do new business shall cease while such default continues.

(2) For wilfully making a false annual or other statement required by law, an insurance company, association or exchange, and the persons making oath to or subscribing the same, shall severally be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). A person who wilfully makes oath to such false statement shall be guilty of perjury.

(3) The Insurance Commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due.

Section 2. The act is amended by adding articles to read:

ARTICLE IV-B

SUITABILITY OF ANNUITY TRANSACTIONS

Section 401-B. 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:

" Annuity. " A fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

" Commissioner. " The Insurance Commissioner of the Commonwealth.

" General agent. " An insurance producer that provides supervision on behalf of an insurer to an insurer's sales force in a particular geographic region or territory.

" Independent agency. " A producer entity that does not exclusively represent one insurance company.

" Insurance producer. " A person who sells, solicits or negotiates contracts of insurance as defined in section 601-A of the act of May 17, 1921 (P.L.789, No.285) , known as The Insurance Department Act of 1921.

" Insurer. " A life insurance company licensed or required to be licensed under section 202 or a fraternal benefit society as defined in section 2403.

" Recommendation. " Advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Section 402-B. Applicability and scope of article.

(a) General rule.--This article shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

(b) Exclusions.--Unless otherwise specifically included, this article shall not apply to recommendations involving the following:

(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this article.

(2) Annuity contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 829).

(ii) A plan described by sections 401(a) or (k), 403(b), 408(k) or (p) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k), 403(b), 408(k) or (p)), when the plan, for purposes of the Employee Retirement Income Security Act of 1974, is established or maintained by an employer.

(iii) A governmental or church plan defined in section 414 of the Internal Revenue Code of 1986 or a deferred compensation plan of a State or local government or tax exempt organization under section 457 of the Internal Revenue Code of 1986.

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

(vi) Formal prepaid funeral contracts.

Section 403-B. Duties of insurers and insurance producers.

(a) General duties.--In making a recommendation to a consumer for the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Consumer information.--Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain information concerning all of the following:

- (1) The consumer's financial status.
- (2) The consumer's tax status.
- (3) The consumer's investment objectives.
- (4) Other information used or considered to be reasonable by the insurance producer, or the insurer where no insurance producer is involved, in making recommendations to the consumer.

(c) Obligation limits.--

(1) Neither an insurance producer nor an insurer where no insurance producer is involved shall have any obligation to a consumer under subsection (a) related to any recommendation that is reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation when a consumer:

- (i) Refuses to provide relevant information requested by the insurer or insurance producer.
- (ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer.
- (iii) Fails to provide complete or accurate information.

(d) Supervision of recommendations.--

(1) An insurer shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this article is established and maintained by complying with paragraphs (3) and (4) or shall establish and maintain such a system that includes at least the following:

- (i) Maintaining written procedures.
- (ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this article.

(2) A general agent or independent agency shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this article or shall establish and maintain a system that is reasonably designed to achieve compliance with this article. The system must include at least the following:

- (i) Maintaining written procedures.
- (ii) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this article.

(3) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by paragraph (1) with respect to insurance producers under contract with or employed by the third party.

(4) An insurer shall make reasonable inquiry to assure that the third party contracting under paragraph (3) is performing the functions required under paragraph (1) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing both of the following:

(i) The insurer annually obtains, electronically or otherwise, a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions.

(ii) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under paragraph (3) for a review to determine whether the third parties are performing the required functions. The insurer shall perform procedures to conduct the review that are reasonable under the circumstances.

(5) An insurer that contracts with a third party under paragraph (3) and that complies with the requirements to supervise under paragraph (4) shall have fulfilled its responsibilities under paragraph (1).

(6) An insurer, general agent or independent agency is not required to do either of the following:

(i) Review or provide for review of all insurance producer-solicited transactions.

(ii) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(7) A general agent or independent agency contracting with an insurer pursuant to paragraph (3) shall promptly, when requested by the insurer pursuant to paragraph (4), give a certification as described in paragraph (4) or give a clear statement that it is unable to meet the certification criteria.

(8) No person may provide a certification under paragraph (4)(i) unless both the following conditions are met:

(i) The person is a senior manager with responsibility for the delegated functions.

(ii) The person has a reasonable basis for making the certification.

(e) Compliance with other rules.--Compliance with the Financial Industry Regulatory Authority Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of annuities registered under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or rules and regulations adopted under the Securities Act of 1933. Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this article.

(f) Internal audit and compliance procedures.--Nothing in this article shall exempt an insurer from the internal audit and compliance procedure requirements under section 405-A. Section 404-B. Mitigation of responsibility.

(a) Corrective actions.--The commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or by its insurance producer's violation of this article.

(2) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this article.

(3) A general agent or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this article.

(b) Reduction of penalty.--Any applicable penalty permitted under section 406-B may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

Section 405-B. Recordkeeping.

An insurer, general agent, independent agency and insurance producer shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted but shall not be required to maintain documentation on behalf of an insurance producer.

Section 406-B. Enforcement.

(a) Penalties and remedies.--Upon a determination by hearing that this article has been violated, the commissioner may pursue one or more of the following courses of action:

(1) Issue an order requiring the person in violation to cease and desist from engaging in the violation.

(2) Suspend or revoke or refuse to issue or renew the certificate or license of the person in violation.

(3) Impose a civil penalty of not more than \$5,000 for each violation.

(4) Impose any other penalty or remedy deemed appropriate by the commissioner, including restitution.

(b) Other remedies.--The enforcement remedies imposed under this section are in addition to any other remedies or penalties that may be imposed by any other applicable statute, including the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act. Violations of this article are deemed and defined by the commissioner to be an unfair method of competition and an unfair or deceptive act or practice pursuant to the Unfair Insurance Practices Act.

Section 407-B. Private cause of action.

Nothing in this article shall be construed to create or imply a private cause of action for a violation of this article.

ARTICLE VI-B

HEALTH INSURANCE COVERAGE PARITY
AND NONDISCRIMINATION

Section 601-B. Short title of article.

This article shall be known and may be cited as the Health Insurance Coverage Parity and Nondiscrimination Act.

Section 602-B. Purpose.

It is necessary to maintain the Commonwealth's sovereignty over the regulation of health insurance in this Commonwealth by implementing the requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343, 122 Stat. 3881), the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233, 122 Stat. 881) and Michelle's Law (Public Law 110-381, 122 Stat. 4081), collectively contained in the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.). The provisions of this article are intended to meet these requirements while retaining the Commonwealth's authority to regulate health insurance in this Commonwealth, consistent with sections 2722 and 2761 of the Public Health Service Act.

Section 603-B. Definitions.

(a) General rule.--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:

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Federal acts." The Federal laws known as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343, 122 Stat. 3881), the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233, 122 Stat. 881) and Michelle's Law (Public Law 110-381, 122 Stat. 4081), collectively contained in the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).

"Fraternal benefit society." An entity holding a current certificate of authority under Article XXIV.

"Health maintenance organization." An entity holding a current certificate of authority under the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

"Hospital plan corporation." An entity holding a current certificate of authority organized and operated under 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

"Insurer." A foreign or domestic insurance company, association or exchange, health maintenance organization, hospital plan corporation, professional health services plan corporation, fraternal benefit society or risk-assuming preferred provider organization. The term shall not include a group health plan as defined in section 2791 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 300gg-91).

"Preferred provider organization." An entity holding a current certificate of authority under section 630.

"Professional health services plan corporation." An entity holding a current certificate of authority under 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations). This term shall not include dental service corporations or optometric service corporations, as those terms are defined under 40 Pa.C.S. § 6302(a) (relating to definitions).

(b) Federal law.--The words, terms and definitions found in the Federal acts, including those in section 2791 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. 300gg-91), are adopted for purposes of implementing this article, except as noted in this subsection. The term "health insurance issuer" under section 2791(b)(2) of the Public Health Service Act shall have the meaning provided under "insurer" in subsection (a).
Section 604-B. Adoption of Federal acts.

Insurers shall comply with the Federal acts as contained in sections 2701, 2702, 2705, 2707, 2721, 2753 and 2754 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. §§ 300gg, 300gg-1, 300gg-5, 300gg-7, 300gg-21, 300gg-53 and 300gg-54).
Section 605-B. Penalties.

(a) General rule.--Upon satisfactory evidence of a violation of this article by any insurer or other person, the commissioner may, in the commissioner's discretion, pursue any one of the following courses of action:

(1) Suspend, revoke or refuse to renew the license of the offending person.

(2) Enter a cease and desist order.

(3) Impose a civil penalty of not more than \$5,000 for each action in violation of this article.

(4) Impose a civil penalty of not more than \$10,000 for each action in willful violation of this article.

(b) Limitation.--Penalties imposed against a person under this article and under section 5 of the act of June 25, 1997 (P.L.295, No.29), known as the Pennsylvania Health Care Insurance Portability Act, shall not exceed \$500,000 in the aggregate during a single calendar year.

Section 606-B. Regulations.

The department may promulgate such regulations as may be necessary or appropriate to carry out this article.

Section 3. Section 1602 of the act, amended or added December 18, 1992 (P.L.1519, No.178) and July 10, 2002 (P.L.749, No.110), is amended to read:

Section 1602. Definitions.--As used in this article the following words and phrases shall have the meanings given to them in this section:

"Admitted insurer." An insurer licensed to do an insurance business in this Commonwealth.

" Business entity. " A corporation, a partnership, a limited liability company, a limited liability partnership, a business trust or any other entity doing business other than as a natural person.

"Capital." The term, as used in the financial requirements of section 1605, means funds paid for stock or other evidence of ownership.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Eligible surplus lines insurer." A nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under section 1604.

"Export." To place surplus lines insurance with either a nonadmitted insurer or an eligible surplus lines insurer in accordance with this article.

"Independently procured insurance." Any insurance which a resident of this Commonwealth directly negotiates with and purchases, continues or renews from a nonadmitted insurer without securing the services of an insurance [agent, broker] **producer** or surplus lines licensee[, whether the agent or broker holds a resident or nonresident license issued by the department].

" Insurance producer. " A person that is licensed to sell, solicit or negotiate contracts of insurance with admitted insurers.

"Kind of insurance." One of the types of insurance required to be reported in the annual statement which must be filed with the department by admitted insurers.

"Nonadmitted insurer." An insurer not authorized and not licensed to do an insurance business in this Commonwealth. The term includes insurance exchanges as authorized under the laws of various states.

" Person. " A natural person or business entity.

["Producing broker." The broker dealing directly with the party seeking insurance.]

"Purchasing group." An entity formed to purchase liability insurance under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170).

"Risk retention group." An insurer organized to do business under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170).

"Surplus." The term, as used in the financial requirements of section 1605, means funds over and above liabilities and capital of the company for the protection of its policyholders.

"Surplus lines insurance." Any insurance of risks resident, located or to be performed in this Commonwealth, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, independently procured insurance, life [and health] insurance and annuities and coverage obtained from risk retention groups

under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170).

"Surplus lines licensee." [An individual, partnership or corporation] **A person licensed as a surplus lines producer** under section 1615 to place surplus lines insurance with nonadmitted insurers eligible to accept such insurance.

"Wet marine and transportation insurance." Any of the following:

(1) Insurance upon vessels, crafts or hulls and of interests therein or with relation thereto.

(2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance.

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition.

(4) Insurance of personal property and interest therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment or reshipment. Insurance of personal property and interests therein shall not be considered wet marine and transportation insurance if:

(i) the property has been transported solely by land;

(ii) the property has reached its final destination as specified in the bill of lading or other shipping document; or

(iii) the insured no longer has an insurable interest in the property.

(5) Any insurance associated with transportation of property listed under this definition.

" Writing producer. " The insurance producer which brings about or negotiates contracts of insurance directly on behalf of the consumer seeking insurance.

Section 4. Section 1603 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1603. Acting for or Aiding Nonadmitted Insurers.--(a) No person in this Commonwealth shall directly or indirectly act as [agent] **a producer** for, or otherwise represent or aid on behalf of another, any nonadmitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such insurer in the transaction of insurance.

(b) If the nonadmitted insurer is not an eligible surplus lines insurer and fails to pay a claim or loss within the provisions of the insurance contract, a person who assisted or in any manner aided, directly or indirectly, in the procurement of the insurance contract shall be liable to the insured for the full amount payable under the provisions of the insurance contract.

(c) This section does not apply to any of the following:

(1) Surplus lines insurance if it is effected and written pursuant to this article.

(2) Insurance effected with a nonadmitted insurer pursuant to sections 1606 and 1610.

(3) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this Commonwealth.

- (4) Reinsurance.
- (5) Wet marine and transportation insurance.
- (6) Transactions subsequent to issuance of a policy not covering domestic risks at time of issuance and lawfully solicited, written or delivered outside of this Commonwealth.
- (7) Transactions involving risk retention groups chartered and licensed outside of this Commonwealth.

Section 5. Section 1605 of the act, amended July 10, 2002 (P.L.749, No.110), is amended to read:

Section 1605. Requirements for Eligible Surplus Lines Insurers.--(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer unless, at the time of placement, such nonadmitted insurer:

- (1) Is of good repute and financial integrity.
- (2) Qualifies under any of the following subparagraphs:
 - (i) Has policyholder surplus equal to or greater than two times the minimum capital and surplus required to be fully licensed in this Commonwealth. Two (2) years from the effective date of this article is granted to allow those nonadmitted insurers which are eligible surplus lines insurers on the effective date of this article to achieve this capital and surplus requirement. If an alien insurer, as defined by the act of December 10, 1974 (P.L.804, No.266), referred to as the Alien Insurer Domestication Law, it shall maintain in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than that currently required by the National Association of Insurance Commissioners' International Insurers Department or its successor for the protection of all of its policyholders in the United States, and such trust fund consists of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for admitted insurers authorized to write like kinds of insurance in this Commonwealth. Such trust fund will be in addition to the capital and surplus required in this subparagraph and shall have an expiration date which at no time shall be less than five (5) years.
 - (ii) Is any Lloyd's or other similar group of insurers which includes unincorporated individual insurers that maintains a trust fund of not less than fifty million (\$50,000,000) dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. Such trust funds shall likewise comply with the terms and conditions established in subparagraph (i) for alien insurers.
 - (iii) Is an insurance exchange created by the laws of individual states that maintains capital and surplus or the substantial equivalent thereof of not less than fifteen million (\$15,000,000) dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus or the substantial equivalent thereof of not less than one million five hundred thousand (\$1,500,000) dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subparagraph (i).
- (3) Has provided to the department a copy of its current annual financial statement certified by such insurer, such statement to be provided no more than thirty (30) days after the date required for filing an annual financial statement in its domiciliary jurisdiction and which is either:

(i) certified by the regulatory authority in the domicile of the insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile.

In the case of an insurance exchange, the statement may be an aggregate statement of all underwriting syndicates operating during the period reported.

(b) In addition to meeting the requirements in subsection (a), a nonadmitted insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the department from time to time but at least [semiannually] **annually**. Nothing in this section shall require the department to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers.

Section 6. Section 1606 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1606. Other Nonadmitted Insurers.--Only that portion, not to exceed twenty-five per centum (25%), of any risk eligible for export for which the full amount of coverage is not procurable from either admitted insurers or eligible surplus lines insurers may be placed with any other nonadmitted insurer which does not appear on the list of eligible surplus lines insurers published by the department pursuant to section 1605(b) but nonetheless meets the requirements set forth in section 1605(a) and any regulations of the department. The surplus lines licensee [seeking to provide] **providing** coverage through a nonadmitted insurer which is not an eligible surplus lines insurer shall make a filing specifying the amount and percentage of each risk along with a full explanation of why the risk could not be placed with admitted or eligible surplus lines insurers and naming the nonadmitted insurer with which placement [is intended] **was made**. At the time of presenting a quotation to the insured, the surplus lines licensee shall present to the insured or to the [producing broker] **writing producer** written notice that a portion of the insurance will be placed with such nonadmitted insurer.

Section 7. Sections 1608 and 1609 of the act, amended July 10, 2002 (P.L.749, No.110), are amended to read:

Section 1608. Surplus Lines Licensee's Duty to Notify Insured.--At the time of presenting a quotation to the insured, the surplus lines licensee shall present to the insured or to the [producing broker] **writing producer** written notice that the insurance or a portion thereof involves placement with nonadmitted insurers. The **surplus lines** licensee shall, either directly or through the [producing broker] **writing producer**, give notice to the insured that:

(1) the insurer with which the licensee places the insurance is not licensed by the Pennsylvania Insurance Department and is subject to its limited regulation; and

(2) in the event of the insolvency of an eligible surplus lines insurer, losses will not be paid by the Pennsylvania Property and Casualty Insurance Guaranty Association.

Section 1609. Declarations.--(a) In the case of each placement of insurance in accordance with this article:

(1) Within thirty (30) days after the surplus lines licensee has placed insurance with an eligible surplus lines insurer, the [producing broker] **writing producer** must execute and forward to the surplus lines licensee a written statement, in a form prescribed by the department, declaring that:

(i) A diligent effort to procure the desired coverage from admitted insurers was made.

(ii) The insured was expressly advised in writing prior to placement of the insurance that:

(A) the insurer with whom the insurance is to be placed is not admitted to transact business in this Commonwealth and is subject to limited regulation by the department; and

(B) in the event of the insolvency of the insurer, losses will not be paid by the Pennsylvania Property and Casualty Insurance Guaranty Association.

This written declaration shall be open to public inspection.

(2) Within forty-five (45) days after insurance has been placed in an eligible surplus lines insurer, the surplus lines licensee shall file with the department a written declaration of his lack of knowledge of how the coverage could have been procured from admitted insurers. The surplus lines licensee shall simultaneously file the written declaration of the [producing broker] **writing producer**, as set forth in paragraph (1).

(3) In a particular transaction where the [producing broker] **writing producer** and surplus lines licensee are one in the same entity, [he] **the writing producer or surplus lines licensee** shall execute both declarations.

(b) Subsection (a) shall not apply to any insurance which has been placed continuously with an eligible surplus lines insurer for a period of at least three (3) consecutive years immediately preceding the current placement. However, within forty-five (45) days after insurance has been placed with an eligible surplus lines insurer, the surplus lines licensee shall file with the department his written declaration on a form prescribed by the department.

Section 8. Sections 1611, 1612 and 1614 of the act, added December 18, 1992 (P.L.1519, No.178), are amended to read:

Section 1611. Surplus Lines Advisory Organizations.--(a)

A surplus lines advisory organization of surplus lines licensees may be formed to:

(1) Facilitate and encourage compliance by [its members] **surplus lines licensees** with the laws of this Commonwealth and the rules and regulations of the department relative to surplus lines insurance.

(2) Provide means for the examination, which shall remain confidential, of all surplus lines coverages written by [its members] **surplus lines licensees** to determine whether such coverages comply with such laws and regulations.

(3) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market.

(4) Receive and disseminate to [its members] **surplus lines licensees** information relative to surplus lines insurance.

(b) The functions of the organization shall in no way supplant or delegate current regulatory authority of the department to administer the provisions of this article.

(c) [Each such] **An** advisory organization shall file with the department for approval:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation.

(2) A copy of its bylaws, rules and regulations governing its activities.

[(3) A current list of its members.]

(4) The name and address of a resident of this Commonwealth upon whom notices or orders of the department or processes issued at its direction may be served.

(5) An agreement that the department may examine such advisory organization in accordance with the provisions of this section.

(d) The department [shall, at least once every four (4) years] **may, as necessary,** make or cause to be made an examination of each such advisory organization. The reasonable cost of any such examination shall be paid by the advisory organization upon presentation to it by the department of a detailed account of each cost. The officers, **directors,** managers, agents and employes of such advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The department shall furnish two copies of the examination report to the advisory organization examined and shall notify such organization that it may, within twenty (20) days thereof, request a hearing on the report or on any facts or recommendations therein. If the department finds such advisory organization or any member thereof to be in violation of this article, it may issue a cease and desist order requiring the discontinuance of such violation and may impose any other penalties as set forth in this article.

(e) The department may contract with a surplus lines advisory organization to render advice and assistance in carrying out the purposes of this article. The services performed by the advisory organization pursuant to such contract may be funded by a stamping fee assessed on each surplus lines policyholder whose policy is submitted to the advisory organization. The stamping fee shall be established by the board of governors of the advisory organization, from time to time, and shall be subject to approval by the department.

(f) The advisory organization may submit reports and make recommendations to the department regarding the financial condition of any eligible surplus lines insurer. These reports and recommendations shall not be considered to be public information or subject to any Federal or State freedom of information law. There shall be no liability on the part of nor shall any cause of action of any nature be sustained against eligible surplus lines insurers, the advisory organization or its members, agents, employes, **officers** or directors or the department or authorized representatives of the department for statements and any reports or recommendations made by them in good faith under this section.

(g) By order of the department, a surplus lines licensee may be compelled to [join an advisory organization] **attend educational seminars** as a condition of continued licensure under this article.

Section 1612. Evidence of Insurance.--(a) Upon placing surplus lines insurance, the surplus lines licensee shall deliver to the insured or the [producing broker] **writing producer** the contract of insurance. If the contract of insurance is not immediately available, a cover note, binder or other evidence of insurance shall be delivered by the surplus lines licensee to the insured or the [producing broker] **writing producer** and shall, at a minimum, show the description and location of the subject of insurance, coverages, including any material limitations other than those in standard forms, the premium and rate charged and taxes to be collected from the insured, the name and address of the insured and the eligible surplus lines insurer and other nonadmitted insurer involved under section 1606 and proportion of the risk assumed by each, and the name of the surplus lines licensee.

(b) No surplus lines licensee shall bind or provide evidence of insurance unless he has authority from the eligible surplus lines insurer or other nonadmitted insurer to bind the risk or

has received information from the insurer in the regular course of business that it has assumed the risk.

(c) If, after delivery of any such evidence of insurance, there is any change in the identity of the eligible surplus lines insurer, or the proportion of the risk assumed by any nonadmitted insurer, or any other material change in coverage as stated in the surplus lines licensee's original evidence of insurance, or any other material change as to the insurance coverage so evidenced, the surplus lines licensee shall promptly issue and deliver to the insured or to the original [producing broker] **writing producer** an appropriate substitute for or endorsement of the original document accurately showing the current status of the coverage and the insurer responsible thereunder.

(d) Every evidence of insurance negotiated, placed or procured under the provisions of this article issued by the surplus lines licensee shall bear the name of the licensee and the following legend in 10-point type: "The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania **Property and Casualty** Insurance Guaranty Association."

Section 1614. Effect of Payment to Surplus Lines Licensee.--A payment of premium to the [producing broker] **writing producer** or to a surplus lines licensee acting for a person other than himself in negotiating, continuing or reviewing any contract of insurance under this article shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the contract notwithstanding.

Section 9. Section 1615 of the act, amended July 10, 2002 (P.L.749, No.110), is amended to read:

Section 1615. Licensing of Surplus Lines Licensee.--(a) No [agent or broker] **insurance producer** licensed by the department shall transact surplus lines insurance with any nonadmitted insurer unless [such agent or broker] **the insurance producer** possesses a valid surplus lines [agent's] **producer's** license issued by the department.

(b) The department shall issue a surplus lines [agent's] **producer's** license to any resident [or nonresident] of this Commonwealth **or to a nonresident** who is a qualified holder of a current **Pennsylvania** property and casualty [broker's] **insurance producer's** license, but only when the [broker] **insurance producer** has complied with the following:

(1) Remitted the **surplus lines producer** license fee to the department.

(2) Submitted a properly completed **surplus lines producer** license application on a form supplied by the department.

(3) Passed a qualifying examination approved by the department, except that all holders of a license prior to the effective date of this article shall be deemed to have passed such an examination.

(c) [Corporations and partnerships shall be eligible to be resident or nonresident surplus lines licensees, upon the following conditions:

(1) The corporation or partnership licensee shall list all employees, including at least one active officer or partner, who have satisfied the requirements of this article to become surplus lines licensees.

(2) Only those employees holding a certificate of eligibility may transact surplus lines insurance.] **Business entities that are licensed as Pennsylvania insurance producers shall be**

eligible to be surplus lines licensees if the business entities do all of the following:

(1) Designate one or more officers or partners licensed under this article to be responsible for compliance with all reporting and recordkeeping required by this article.

(2) Provide to the department a list of all surplus lines licensees associated with and placing surplus lines business through the business entity. The business entity shall provide to the department an updated list of licensees within five (5) business days of a change in association of any licensee. The list shall be available at all times for inspection by the department.

(c.1) A nonresident person whose home state issues surplus lines licenses to residents of Pennsylvania on the same basis and who is licensed in Pennsylvania as a property and casualty producer may be licensed as a surplus lines producer if the person does all of the following:

(1) Is currently licensed as a surplus lines producer and is in good standing in its home state.

(2) Has submitted a complete application for a surplus lines license and has paid the required fees.

(3) Has submitted or transmitted to the department the application for a surplus lines license submitted in its home state or a completed uniform application that complies with section 610-A of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."

(4) Has complied with all of the provisions of Article VI-A of "The Insurance Department Act of 1921."

(d) Each surplus lines license shall [expire on the last day of February of each year and shall be renewed before March 1 of each year upon payment of the annual fee, in compliance with other provisions of this section. Any surplus lines licensee who fails to apply for renewal of a license before expiration of the current license shall pay a penalty of two times the license fee and be subject to other penalties as provided by law before his license will be renewed.] be:

(1) Issued as follows:

(i) Only in the name of the individual applicant or business entity. A licensee doing business under a fictitious name other than the name appearing on the license shall be required to notify the department in writing prior to use of the fictitious name for the department's consent to use of the name.

(ii) In paper or electronic form.

(iii) For a period not to exceed two (2) years. The following shall apply:

(A) The surplus lines license of a natural person shall expire on the last day of the birth month of the licensee. The initial license cycle may vary to coincide with the expiration cycle of the birth month.

(B) The surplus lines license of a business entity shall expire on the last day of the month in which the license was originally issued.

(2) Nontransferable.

(e) A nonrefundable two hundred dollar (\$200) fee shall accompany an application or renewal for a surplus lines license, unless modified by the department by regulation.

(f) The following shall apply:

(1) A surplus lines licensee that allows the licensee's license to lapse by failing to timely renew the license or by failing to pay the fee required by this act may, within one year of the license renewal date, request the department to reinstate the license. Persons requesting reinstatement shall

pay a fee of two times the fee required by this act and may be subject to other penalties as provided by law before the license will be renewed.

(2) Persons requesting reinstatement of a lapsed license shall submit a completed renewal form and the fee required by this act.

(3) The department shall reinstate a license under this subsection retroactively, with the reinstatement effective on the date the license lapsed, if the department receives a request for reinstatement together with a completed renewal application and payment of the lapsed license fee within sixty (60) days after the license lapsed.

(4) The department shall reinstate a license under this subsection prospectively, with reinstatement effective on the date that the license is reinstated, if the department receives a request for reinstatement of a lapsed license more than sixty (60) days after the license lapsed but within one year after the license lapsed.

(5) If a person applies for reinstatement more than one year after the lapse date, the person must reapply for the license under this act.

Section 10. Section 1616 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1616. Surplus Lines Licensees May Accept Business from [Brokers] **Insurance Producer**.--A surplus lines licensee may originate surplus lines insurance or accept such insurance from [any broker] **an insurance producer** duly licensed as to the kind or kinds of insurance involved, and the surplus lines licensee may compensate [such broker therefor] **the insurance producer**.

Section 11. Section 1619 of the act, amended July 10, 2002 (P.L.749, No.110), is amended to read:

Section 1619. Records of Surplus Lines Licensee.--(a) Each surplus lines licensee shall keep in its office a full and true record of each surplus lines insurance contract placed by or through it, including a copy of the policy, certificate, cover note or other evidence of insurance, showing such of the following items as may be applicable:

- (1) Amount of the insurance and perils insured.
- (2) Brief description of the risk insured and its location.
- (3) Gross premium charged.
- (4) Any return premium paid.
- (5) Rate of premium charged for each risk insured.
- (6) Effective date and terms of the contract.
- (7) Name and address of the insured.
- (8) Name and address of the eligible surplus lines insurer and any nonadmitted insured involved pursuant to section 1606.
- (9) Amount of tax and other sums to be collected from the insured.

(10) Identity of the [producing broker] **writing producer**, any confirming correspondence from the insurer or its representative and the application.

(11) A copy of the written notice required by section [1408] **1608**.

(b) The record of each contract shall be kept open at all reasonable times to examination by the department without notice for a period of not less than five (5) years following termination of the contract.

(c) **If the surplus lines licensee is a natural person who is associated with a business entity which is a valid surplus lines licensee, the business entity with which the licensee is**

associated shall retain the records which are required by this section to be kept by each surplus lines licensee.

Section 12. Sections 1620, 1621 and 1622 of the act, added December 18, 1992 (P.L.1519, No.178), are amended to read:

Section 1620. Monthly Reports.--Within thirty (30) days following the end of each month, each surplus lines licensee shall file with the department, on forms prescribed by the department, a verified report [in duplicate] of all surplus lines insurance transacted during the preceding month.

Section 1621. Surplus Lines Tax.--(a) There is hereby levied a tax of three per centum (3%) on all premiums charged for insurance which is placed with either an eligible surplus lines insurer, other than a risk retention group, or other nonadmitted insurer in accordance with this article, such taxes to be based on the gross premiums charged less any return premiums. This tax shall be in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any unearned portion of the premium shall be returned to the insured.

(b) Neither the surplus lines licensee nor the [producing broker] **writing producer** shall pay directly or indirectly such tax or any portion thereof, either as an inducement to the insured to purchase the insurance or for any other reason.

(c) The surplus lines licensee shall collect from the insured or the [producing broker] **writing producer** the amount of the tax at the time of delivery of the initial policy, cover note or other evidence of insurance or at such time thereafter as is reasonably consistent with normal credit terms customary in the business. Each surplus lines licensee shall, on or before January 31 of each year, file with the Department of Revenue a report of all transactions involving the placement of insurance with either an eligible surplus lines insurer or other nonadmitted insurers during the previous calendar year. The report shall set forth the name of the insured, identification of the insurer, the type of insurance, gross premiums charged less any return premiums allowed and the tax due as provided in this section. The remittance for the taxes due shall accompany this report. Such report shall be made on forms prescribed and furnished by the Department of Revenue. A copy of the report shall be filed with the [commissioner] **department** by the surplus lines licensee. **A surplus lines licensee that is a business entity licensee which files the annual premium tax return with the Department of Revenue shall include in its return the premium taxes generated during the year subject to reporting by all licensees associated with said business entity during the reporting period.**

(d) In the event that a placement of insurance involves subjects of insurance resident, located or to be performed in one or more states other than this Commonwealth, then the premium taxes provided for in this section shall be levied only on that portion of the premium reasonably ascribable to that portion of the risk situated in this Commonwealth.

(e) With respect to insurance placed with or issued by a risk retention group which is an eligible surplus lines insurer, there is hereby levied a tax of two per centum (2%) on all premiums charged for risks resident, located or to be performed in this Commonwealth. The risk retention group shall be responsible for the payment of the taxes levied in this article in accordance with procedures set forth in Article XV.

(f) The settlement and resettlement of taxes imposed by this article, including the granting of extensions of time to file reports and the rights of the taxpayers to present and

prosecute a petition for resettlement, a petition for review or an appeal to court or to file a petition for refund and the imposition of interest and penalties, shall be governed by the provisions of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," as approved in the case of capital stock and franchise taxes.

Section 1622. Tax on Independently Procured Insurance.--The tax provided by section 1621(a) is imposed upon an insured who independently procures insurance on a subject of insurance resident, located or to be performed in this Commonwealth from a nonadmitted insurer or continues or renews such independently procured insurance. The insured shall, within thirty (30) days after the date when such insurance was independently procured, continued or renewed, report such transaction on forms prescribed by the Department of Revenue. This report shall set forth the information required of surplus lines licensees as required in section 1621(c). The tax of three per centum (3%) shall be paid on the date the report is due as provided in this section. If the independently procured insurance covers risks resident, located or to be performed in one or more states other than this Commonwealth, the premium taxes shall be prorated in accordance with provisions in section 1621(d). A copy of such report shall be filed with the [commissioner] **department** by the insured.

Section 13. Section 1623 of the act, amended July 10, 2002 (P.L.749, No.110), is amended to read:

Section 1623. Suspension, Revocation or Nonrenewal of Surplus Lines Licensee's License.--The department may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and a hearing, as provided under the applicable provision of the laws of this Commonwealth, upon any one or more of the following grounds:

(3) Closing of the surplus lines licensee's office for a period of more than thirty (30) business days, unless permission is granted by the department.

(4) Failure to make and file required reports.

(5) Failure to transmit required tax on surplus lines premiums.

(7) Failure to remit premiums due insurers or return premiums due insureds in the normal course of business and within reasonable time limits.

(8) Violation of any provision of this article.

(9) For any other cause for which an insurance [agent's or broker's] **producer's** license could be denied, revoked or suspended or refused upon renewal.

Section 14. Section 1625 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1625. Penalties.--(a) Any surplus lines licensee who, in this Commonwealth, represents or aids a nonadmitted insurer in violation of this article commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than [one thousand (\$1,000)] **two thousand (\$2,000)** dollars.

(b) In addition to any other penalty provided for in subsection (a) or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person[, firm, association or corporation] violating any provision of this article shall be liable to a civil penalty not exceeding [one thousand (\$1,000)] **two thousand (\$2,000)** dollars for the first offense and not exceeding [two thousand (\$2,000)] **four thousand (\$4,000)** dollars for each succeeding offense.

(c) The penalties in this section are not exclusive remedies. Penalties may also be assessed under the act of July 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance Practices Act," and any other applicable statute.

Section 15. The act is amended by adding a section to read:

Section 1626. Compliance.--Nothing in this act shall relieve a surplus lines licensee involved in any transaction from compliance with this act or its predecessor acts.

Section 16. Section 2362 of the act, added November 2, 2006 (P.L.1314, No.136), is amended to read:

Section 2362. Expiration.--This article shall expire December 31, [2010] 2013.

Section 17. All acts and parts of acts are repealed insofar as they are inconsistent with the addition of Article VI-B of the act.

Section 18. This act shall take effect as follows:

(1) The amendment or addition of section 320 and Article VI-B of the act shall take effect immediately.

(2) The amendment of section 2362 of the act shall take effect in 60 days.

(3) This section shall take effect immediately.

(4) The remainder of this act shall take effect in 180 days.

APPROVED--The 22nd day of March, A.D. 2010.

EDWARD G. RENDELL