

INSURANCE COMPANY LAW OF 1921, THE - OMNIBUS AMENDMENTS

Act of Feb. 17, 1994, P.L. 92, No. 9

Cl. 40

Session of 1994

No. 1994-9

SB 705

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," further providing for group policies, for purposes for which companies may be incorporated, for capital stock and for certain reports; providing for admitted assets and for the disposition of unassigned funds; and further providing for additional investment authority, for title insurance companies, for broker controlled property and casualty insurers, for insurance holding companies and for risk retention and surplus lines.

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

Section 1. Section 202(h) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 202. Purposes for Which Companies May Be Incorporated; Underwriting Powers.--* * *

(h) (1) No domestic stock [fire, stock marine, stock fire and marine, or stock casualty] **or mutual** insurance company, **other than life or title**, shall issue a policy containing an aggregate limit on any one risk in an amount exceeding ten per centum (10%) of its capital and surplus, unless it shall be protected in excess of that amount by reinsurance or collateral. This collateral may be in the form of:

(i) Cash.

(ii) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

(iii) (A) Clean, irrevocable, unconditional letters of credit and credit agreements issued or confirmed by a qualified United States financial institution no later than the thirty-first day of December in respect of the year for which filing is being made and in the possession of the insurance company on or before the filing date of its annual statement.

(B) Letters of credit agreements meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as collateral until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(iv) Any other form of collateral acceptable to the Insurance Commissioner.

(2) The term "qualified United States financial institution" when used in this subsection means an institution which meets the following qualifications:

(i) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof.

(ii) Is regulated, supervised and examined by United States Federal or state authorities having regulatory authority over banks and trust companies.

(iii) Has been determined by either the Insurance Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Insurance Commissioner.

Section 2. Section 205 of the act, amended August 24, 1963 (P.L.1157, No.493) and August 27, 1963 (P.L.1390, No.537) and repealed in part December 19, 1990 (P.L.834, No.198), is amended to read:

Section 205. Capital Stock; Payment of Subscriptions; Forfeiture **of Partial Payment on Subscriptions.**--[All payments on accounts of capital stock on any stock insurance company shall be made in lawful money (exclusive of stock issued in connection with an authorized merger or consolidation for the purchase or acquisition of authorized investments or as a stock dividend, and no note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as a payment of any part of the capital stock.) **All payments on accounts of capital stock on any stock insurance company shall be made in lawful money or, subject to the limitations in the laws relating to insurance company investments, in securities publicly traded on a nationally recognized exchange (exclusive of stock issued in connection with an authorized merger or consolidation or as a stock dividend). Debt securities or preferred stock, in addition to being publicly traded on a nationally recognized exchange, must be rated as category 1 or 2 by the Securities Valuation Office of the National Association of Insurance Commissioners. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as a payment of any part of the capital stock.**

Section 3. Section 320(a) and (d) of the act, amended December 18, 1992 (P.L.1519, No.178), are 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 [annual] 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.

* * *

(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.

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Section 4. The act is amended by adding sections to read:

Section 320.1. Admitted Assets.--(a) Assets which shall be considered to be admitted for purposes of statements of financial condition filed pursuant to section 320 are assets which are owned by the insurer and which consist of:

(1) Cash in the possession of the insurer or in transit under its control, including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties and loans acquired or held and valued in accordance with the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921," and in connection therewith the following items:

(i) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis, including accrued interest.

(ii) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(iii) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(iv) Interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets if such interest is, in the judgment of the Insurance Commissioner, a collectible asset.

(v) Interest due or accrued on a mortgage loan in an amount not exceeding, in any event, the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal, but in no event shall interest accrued for a period in excess of twelve months be allowed as an asset.

(vi) Rent due or accrued on real property if the rent is not in arrears for more than three months and rent more than three months in arrears if the payment of the rent is adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(vii) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, policy loans and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity consideration in the case of a life insurer.

(5) Premiums in the course of collection other than for life insurance not more than three months past due, less commissions payable thereon. This limitation shall not apply to premiums payable directly or indirectly by the Federal Government or by any of its instrumentalities.

(6) Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which the premiums apply.

(7) Notes and like-written obligations not past due taken for premiums other than life insurance premiums on policies permitted to be issued on such basis to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and for which reserve credit is permitted under sections 319 and 319.1 and related regulations.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds or from a suspended banking institution to the extent deemed by the Insurance Commissioner available for the payment of losses and claims and at values to be determined by him.

(b) The following assets shall not be considered admitted assets for purposes of statements of financial condition filed pursuant to section 320:

(1) Goodwill, trade names and other like intangible assets, except to the extent goodwill is permitted pursuant to securities valuation procedures adopted by the National Association of Insurance Commissioners.

(2) Loans or advances, other than policy loans, to officers, directors and controlling stockholders, whether secured or not, and advances to employees, agents and other persons on personal security only.

(3) Stock of the insurer owned by it or any material equity therein or loans secured thereby or any material proportionate interest in such stock acquired or held through the ownership by the insurer of an interest in another firm, corporation or business unit.

(4) Furniture fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies (other than data processing and accounting systems authorized under 31 Pa. Code § 11.4 (relating to reporting of computer or data processing equipment)) except in the case of title insurers materials and plants in which the insurer is expressly authorized to invest in section 732(21) and except in the case of any insurer, like property which is acquired through foreclosure of chattel mortgages acquired pursuant to sections 406, 519, 604.1 and 732 or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by the insurer for home office, branch office and similar purposes.

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer

exceeds the aggregate value thereof as determined under the valuation standard in the laws relating to investments.

Section 337.8. Disposition of Unassigned Funds.--(a) Any domestic insurance company, association or exchange may pay dividends and other distributions to its shareholders only out of unassigned funds (surplus) or upon approval of the Insurance Commissioner as set forth in subsection (b).

(b) A domestic insurance company, association or exchange may, conditioned upon receipt of the Insurance Commissioner's approval, declare a dividend or other distribution from other than unassigned surplus, provided, however, that the declaration shall confer no rights upon the security holders of the insurer, and the insurer may not pay the dividend until the Insurance Commissioner has:

(1) Approved the payment of the dividend or other distribution.

(2) Not disapproved the payment of the dividend or other distribution within thirty days after receipt of written notice from the insurer of the declaration thereof. The written notice shall include a schedule setting forth all dividends or other distributions made within the previous twelve months.

(c) Notwithstanding subsection (b), no dividend or other distribution may be declared or paid by a domestic insurance company, association or exchange which would reduce its total capital and surplus to an amount which is less than the amount required by the Insurance Department for the kind or kinds of business which it is authorized to transact.

(d) All information reported to the Insurance Commissioner pursuant to this section shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Insurance Commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Insurance Commissioner, after giving the insurer and any affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

(e) As used in this section, "unassigned funds (surplus)" means undistributed, accumulated surplus, including net income and unrealized gains, since the organization of the insurer.

Section 354.1. Out-of-State Coverage.--(a) No insurer shall issue in this Commonwealth group property and casualty insurance coverage provided under a group policy issued in another state or deliver or issue for delivery in this Commonwealth a certificate of group property and casualty insurance evidencing coverage under a group policy issued in another state unless such coverage is in compliance with the requirements of this act or any other applicable act.

(b) (1) For group property and casualty insurance coverage provided in this Commonwealth under a policy issued in another state, all group policies, certificates, amendments, endorsements and enrollment forms shall be filed with the Insurance Commissioner for approval. The insurer shall also file with the Insurance Commissioner evidence of approval in the state where the group policy is issued.

(2) Forms so filed for approval shall be subject to the provisions of section 354.

Section 354.2. Notice of Compensation.--(a) In the case of a policy issued to an association on a group basis, if compensation of any kind will or may be paid to a policyholder

or a sponsoring or endorsing entity, the insurer shall cause to be distributed to prospective insureds, in a written notice, that compensation will or may be paid.

(b) Such notice shall be distributed:

(1) Whether compensation is direct or indirect; and

(2) Whether such compensation is paid to or retained by the policyholder or sponsoring or endorsing entity or paid to or retained by a third party at the direction of the policyholder or a sponsoring or endorsing entity or any entity affiliated therewith by way of ownership, contract or employment.

(c) The notice required by this section shall be placed on or accompany any application or enrollment form provided to prospective insureds.

(d) For purposes of this section, a "sponsoring or endorsing entity" means an organization which has arranged for the offering of a program of insurance in a manner which communicates that eligibility for participation in the program is dependent upon affiliation with such organization or that it encourages participation in the program.

Section 354.3. Existing Policy and Existing Certificate.--The provisions of sections 354.1 and 354.2 shall not invalidate or otherwise affect any group policy legally issued prior to the effective date of this section or certificate in effect prior to the effective date of this section. All such group policies or certificates may remain in full force and effect until renewed, notwithstanding the fact that they do not comply with the provisions of this act.

Section 354.4. Newly Issued Group Policy.--Any group policy issued on or after the effective date this section is enacted shall comply with the provisions of this act.

Section 354.5. Newly Issued Certificate.--Any certificate issued on or after the effective date of this section under a group policy issued prior to the effective date of this section or certificate issued under a group policy issued on or after the effective date of this section shall comply with the provisions of this act.

Section 5. Sections 421 and 518A of the act are repealed.

Section 6. Section 519.1(c)(1) of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 519.1. Additional Investment Authority for Subsidiaries.--* * *

(c) (1) At no time shall a domestic stock fire, stock marine or stock fire and marine insurance company make an investment in any subsidiary which will bring the aggregate value of its investments, as determined for annual statement purposes but not in excess of cost, in all subsidiaries under this subsection to an amount in excess of [twenty-five per centum (25%)] **ten per centum (10%)** of its total admitted assets as of the immediately preceding thirty-first day of December. In determining the amount of investments of any domestic stock fire, stock marine or stock fire and marine insurance company in subsidiaries for purposes of this subsection, there shall be included investments made directly by such insurance company and, if such investment is made by another subsidiary, then to the extent that funds for such investments are provided by the insurance company for such purpose.

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Section 7. Section 605 of the act is repealed.

Section 8. Section 621.2(a) of the act, amended or added December 9, 1955 (P.L.807, No.233) and January 18, 1968 (1967 P.L.969, No.433), is amended and the section is amended by adding subsections to read:

Section 621.2. Group Accident and Sickness Insurance.--(a)

Group accident and sickness insurance is hereby declared to be that form of accident and sickness insurance covering groups of persons defined in this section with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups or persons and issued upon the following basis:

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder insuring at least ten employees of such employer for the benefit of persons other than the employer. The term "employees," as used herein, shall be deemed to include the officers, managers and employees of the employer, the individual proprietor or partner, if the employer is an individual proprietor or partnership, the officers, managers and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract or otherwise. The term "employees," as used herein, may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) Under a policy issued to an association, including a labor union, which shall have a constitution and by-laws and which has been organized **by other than an insurer** and is maintained in good faith for purposes other than that of obtaining insurance insuring at least twenty-five members, employees or employees of members of the association for the benefit of persons other than the association or its officers or trustees[.], **which has been in active existence for at least two years, operates from offices other than the insurer's and is controlled by principals other than the insurer's.** The term "employees," as used herein, may include retired employees.

(3) Under a policy issued to the trustees of a fund established by **an insurer for** two or more employers [in the same industry] or by **two or more employers or by an insurer for** one or more labor unions or by **one or more labor unions or by an insurer for** one or more employers and one or more labor unions or by [an association as defined in clause (2) of this section,] **one or more employers and one or more labor unions or by an insurer for one or more associations meeting the qualifications as defined in clause (2) or by one or more associations meeting the qualifications as defined in clause (2),** which trustees shall be deemed the policyholder to insure employees of the employers or members of the unions or [such associations] **members, employees thereof and employees of the associations** for the benefit of persons other than the employers or the unions or [such associations.] **the associations.** The term "employees," as used herein, may include the officers, managers and employees of the employer and the individual proprietor or partners, if the employer is an individual proprietor or partnership. The term "employees," as used herein, may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) Under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this Commonwealth to insure any class or classes

of individuals that could be insured under such group life policy.

(5) Under a policy issued to cover any other substantially similar group, which in the discretion of the Insurance Commissioner may be subject to the issuance of a group accident and sickness policy or contract.

(5.1) Under a policy issued to a group, other than one described in clauses (1) through (5) and under which the Insurance Commissioner finds that the issuance is not contrary to the best interest of the public, the issuance would result in economies of acquisition or administration, and the benefits are reasonable in relation to the premiums charged.

(6) A policy delivered or issued for delivery on or after January 1, 1968 under which coverage of a dependent of an employe or other member of the insured group terminates at a specified age shall, with respect to an unmarried child covered by the policy prior to the attainment of the age of nineteen who is incapable of self-sustaining employment by reason of mental retardation or physical handicap and who became so incapable prior to attainment of age nineteen and who is chiefly dependent upon such employe or member for support and maintenance, not so terminate while the insurance of the employe or member remains in force and the dependent remains in such condition, if the insured employe or member has within thirty-one days of such dependent's attainment of the termination age submitted proof of such dependent's incapacity as described herein. The foregoing provisions of this paragraph shall not require an insurer to insure a dependent who is a mentally retarded or physically handicapped child of an employe or other member of the insured group where such dependent does not satisfy the conditions of the group policy as to any requirements for evidence of insurability or other provisions as may be stated in the group policy required for coverage thereunder to take effect. In any such case the terms of the policy shall apply with regard to the coverage or exclusion from coverage of such dependent.

* * *

(e) No insurer shall issue in this Commonwealth group accident and health insurance coverage provided under a group policy issued in another state or deliver or issue for delivery in this Commonwealth a certificate of group accident and health insurance evidencing coverage under a group policy issued in another state unless:

(1) such coverage is in compliance with the requirements of this act and any other applicable act; or

(2) for coverage under a group policy or a certificate evidencing coverage under a group policy issued to an out-of-State trustee of a fund, such coverage is issued in another state wherein the insurance supervisory official or agency of that state has determined that the issuance of the group policy or certificate is not contrary to the best interests of the general public, the issuance of the group policy or certificate would result in economies of acquisition or administration, the benefits are reasonable in relation to the premium charged and such coverage is in compliance with any mandated benefit act specifically providing for coverage on residents of this Commonwealth regardless of whether the group policy is used within or outside this Commonwealth. If coverage or a certificate is issued in this Commonwealth pursuant to this clause, an insurer shall file with the Insurance Department a copy of the group policy and certificate, a copy of the statute from the state in which the group policy or certificate

is issued authorizing the issuance of the group policy or certificate, evidence of approval in the state where the policy or certificate is issued and copies of all supportive material used by the company to secure approval of the group policy or certificate in that state, including all the documentation required in this clause. The Insurance Commissioner, at any time subsequent to receipt of such information, after finding that the standards of this clause have not been met, may order the insurer to stop marketing such coverage in this Commonwealth.

(i) This clause shall apply to any group policy or certificate evidencing coverage under a group policy issued to any organization or to any trust or trustee of a trust established or participated in by one or more organizations to insure certain persons, provided, however, that the organization must be:

(A) a bank, retailer or other issuer of a credit card, charge card or payment card that is issued to buy goods or services, and the policy must insure holders of that card; or

(B) a bank, savings and loan association, credit union, mutual fund, money market fund, stock broker or other similar financial institution regulated by state or Federal law, and the policy must insure the depositors, account holders or members of that institution.

(ii) This clause shall not apply to any group policy or certificate providing credit accident and health insurance as defined in the act of September 2, 1961 (P.L.1232, No.540), known as the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

(f) The provisions of this act shall not apply if a group policy is issued to:

(1) An out-of-State single employer.

(2) A trustee of a fund established by any person acting directly as an employer having its principal office located in a state other than this Commonwealth.

(3) An association or a trust or trustee of a trust established or participated in by one or more associations to insure association members or spouses or dependents of members, provided, however, that the association must be organized or domiciled in a state other than this Commonwealth, have a constitution and bylaws, be organized by other than an insurer, be maintained in good faith for purposes other than those of obtaining insurance, have been in active existence for at least two years, operate from offices other than the insurer's and be controlled by principals other than the insurer's.

(4) A union-negotiated out-of-State trust.

(5) Other groups as may be determined by the Insurance Commissioner, subject to subsection (e).

(g) (1) For group accident and health insurance coverage provided in this Commonwealth under a policy issued in another state and except as provided in clause (2) of subsection (e) and subsection (f), all group policies, certificates, amendments, endorsements and enrollment forms shall be filed with the commissioner for approval. The insurer shall also file with the commissioner evidence of approval in the state where the group policy is issued.

(2) Forms so filed for approval shall be subject to the provisions of section 354.

(h) (1) In the case of a policy issued to a group described in clause (2) or (5.1) of subsection (a) on a group basis, if compensation of any kind will or may be paid to a policyholder or sponsoring or endorsing entity, the insurer shall cause to

be distributed to prospective insureds in a written notice that compensation will or may be paid.

(2) Such notice shall be distributed:

(i) whether compensation is direct or indirect; and
(ii) whether such compensation is paid to or retained by the policyholder or sponsoring or endorsing entity or paid to or retained by a third party at the direction of the policyholder or sponsoring or endorsing entity or any entity affiliated therewith by way of ownership, contract or employment.

(3) The notice required by this section shall be placed on or accompany any application or enrollment form provided to prospective insureds.

(4) As used in this subsection, a "sponsoring or endorsing entity" means an organization which has arranged for the offering of a program of insurance in a manner which communicates that eligibility for participation in the program is dependent upon affiliation with such organization or that it encourages participation in the program.

(i) The provisions of this amendatory act shall not invalidate or otherwise affect either group policies legally issued prior to the effective date of this section or certificates in effect prior to the effective date of this section. All such group policies or certificates may remain in full force and effect until three years after the effective date of this section, notwithstanding the fact they do not comply with the provisions of this act.

(j) Any group policy issued on or after the effective date of this subsection shall comply with the provisions of this act.

(k) Certificates issued on or after the effective date of this subsection under a group policy legally issued prior to the effective date of this subsection shall comply with the provisions of this act no later than three years after the effective date of this subsection if issued to an employer or trustees of a fund established by an employer or trustees of a fund established by two or more employers none of whom has joined after the effective date of this subsection, labor union, police fraternity, firemen's fraternity, teacher's association or federation and a unit of the National Guard or Naval Militia. Any other certificates issued on or after the effective date of this subsection under a group policy issued prior to the effective date of this subsection shall comply with the provisions of this act.

(l) Any certificate issued under a group policy issued on or after the effective date of this subsection shall comply with the provisions of this act.

(m) As used in this section, the term "out-of-State single employer" means any person acting directly as an employer and has its principal office located in a state other than this Commonwealth. An "out-of-State trustee" of a fund means a trustee of a fund established by an insurer for two or more employers or established by two or more persons acting directly as employers and the trustee has its principal office located in a state other than this Commonwealth. "Out-of-State coverage" means insurance coverage issued in this Commonwealth and provided under a group policy issued in a state other than this Commonwealth. A "union-negotiated out-of-State trust" means a trust established under a collective bargaining agreement and which is located in a state other than this Commonwealth.

Section 9. Sections 751, 752 and 753 of the act are repealed.

Section 10. Section 754 of the act, amended or added August 14, 1963 (P.L.922, No.439) and December 10, 1974 (P.L.849, No.285), is amended to read:

Section 754. Other Sections Applicable.--In addition to the provisions of this article, only the following provisions of the laws governing insurance companies as presently enacted and hereinafter amended, except as they are inconsistent with the provisions of this article, shall apply to the business of title insurance and to title insurance companies, which shall be considered as within the class of insurance companies regulated by such provisions solely for the limited purpose of being subject to such provisions:

(1) Sections 1, 101 to 106, 201, 202, 205 to [214, 216] **212**, 218, 219, 221, 401, 404, 501, 502, 504 to 511, 602 to 607, 631, 632, 633, 635 to 640 and 650 to 654 inclusive **and Article IX** of the act of May 17, 1921 (P.L.789, **No.285**), known as "The Insurance Department Act of [one thousand nine hundred and twenty-one] **1921**."

(2) Sections 101 to 109, 203, 204, 205, 207, 208, 209, 210 to 215, 300 to 331, 337.1 to 355, 605, 606, 610 **and Article XIV** of this act.

(3) Sections 1 to 10 of the act of July 11, 1917 (P.L.804), entitled "An act relating to domestic and foreign insurance companies and corporations holding and dealing in insurance stock and certificates; regulating the sale of stock and evidences of indebtedness of such companies and corporations, and of subscriptions and applications therefor; and prescribing penalties."

(4) Section 1 of the act of July 12, 1935 (P.L.969), entitled "An act providing for the valuation of bonds and other evidences of debt held by domestic insurance corporations and by foreign insurance corporations authorized to do business in this State."

(5) Sections 1, 2 and 3 of the act of March 4, 1850 (P.L.126), entitled "An act to supply lost policies of insurance."

(6) Sections 1 and 2 of the act of May 5, 1921 (P.L.350), entitled "An act making it unlawful to give or offer money to secure proxies for use at meetings of insurance companies."

(7) Section 1 of the act of June 22, 1931 (P.L.622), entitled "An act to prevent fraudulent procedure in obtaining licenses or certificates from the Insurance Department, or altering licenses or certificates issued by the Insurance Department; and providing penalties."

(8) Sections 1 to 4 of the act of May 22, 1945 (P.L.828), entitled "An act to enable domestic stock and mutual insurance companies to comply with the taxing statutes, and to relieve officers, directors and trustees of domestic stock and mutual insurance companies of personal liability by reason of the payment or determination not to contest payment of any license, excise, privilege, premium, occupation, or other fee, or tax, imposed by any State or political subdivision thereof."

(9) Sections 1 to 6 of the act of May 20, 1949 (P.L.1491), known as the "Unauthorized Insurers Process Act."

(10) Sections 1 to 12 of the act of June 5, 1947 (P.L.445), known as "The Insurance Unfair Practices Act."

(11) Sections 1 to 10 of the act of February 21, 1961 (P.L.33), entitled "An act imposing a State tax on gross premiums, premium deposits, and assessments received from business transacted within this Commonwealth by certain insurance companies, associations, and exchanges; requiring the filing of annual and tentative reports and the computation and

payment of tax; providing for the rights, powers and duties of the Department of Revenue, the taxpayers and officers thereof; and providing penalties."

Section 11. The definition of "licensed property or casualty insurer" in section 1301 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1301. Definitions.--As used in this article the following words and phrases shall have the meanings given to them in this section:

* * *

"Licensed property or casualty insurer" or "insurer." Any person, firm, association or corporation duly licensed to transact a property or casualty insurance business in this Commonwealth. The following, inter alia, are not deemed to be licensed property or casualty insurers for the purposes of this article:

(1) All nonadmitted insurers.

(2) All risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613) and Article XV.

(3) All residual market pools and joint underwriting authorities or associations.

(4) All captive insurers, which shall include, but not be limited to, insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.

(5) Licensed foreign insurers domiciled in a state having in effect a law substantially similar to this article.

* * *

Section 12. The act is amended by adding a section to read:

Section 1302.1. Required Contract Provisions.--Written contracts between controlling brokers and controlled insurers required pursuant to section 1302 must contain the following minimum provisions:

(1) the controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination;

(2) the controlling broker shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owing to the controlling broker;

(3) the controlling broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or initial installments thereof collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under the contract;

(4) all funds collected for the controlled insurer's account shall be held by the controlling broker in a fiduciary capacity in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System in accordance with the provisions of the insurance law as applicable. However, funds of a controlling broker not required to be licensed in this Commonwealth shall be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction;

(5) the controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(6) the contract shall not be assigned in whole or in part by the controlling broker;

(7) the controlled insurer shall provide the controlling broker with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker;

(8) the rates and terms of the controlling broker's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by brokers other than controlling brokers. For purposes of this paragraph and paragraph (7), examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits and similar quality of business;

(9) If the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (b) of section 1302;

(10) a limit must be placed on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and shall not accept business from the controlling broker if the limit is reached. The controlling broker shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) the controlling broker may negotiate but not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

Section 13. The definition of "insurer" in section 1401 of the act, added December 18, 1992 (P.L.1519, No.178), is amended to read:

Section 1401. Definitions.--As used in this article the following words and phrases shall have the meanings given to them in this section:

* * *

"Insurer." Any company, association or exchange authorized by the Insurance Commissioner to transact the business of

insurance in this Commonwealth except that the term shall not include:

(1) the Commonwealth or any agency or instrumentality thereof;

(2) agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision;

(3) fraternal benefit societies; or

(4) nonprofit medical and hospital service associations.

The term shall include health maintenance organizations as defined in the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."

* * *

Section 14. Sections 1404(e), 1405, 1514(b) and 1605(a)(2) of the act, added December 18, 1992 (P.L.1519, No.178), are amended to read:

Section 1404. Registration of Insurers.--* * *

(e) Subject to section 1405(b), each registered insurer shall report to the department all dividends and other distributions to shareholders within [fifteen (15)] **five (5)** business days following the declaration thereof[.] **and at least ten (10) days, commencing from the date of receipt by the department, prior to payment thereof. The report shall include a schedule setting forth all dividends or other distributions made within the previous twelve (12) months, including any dividends or other distributions approved by the department to be paid out of other than unassigned surplus pursuant to section 337.8.**

* * *

Section 1405. Standards and Management of an Insurer within a Holding Company System.--(a) (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to all of the following standards:

(i) The terms shall be fair and reasonable.

(ii) Charges or fees for services performed shall be reasonable.

(iii) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied and all cost-sharing or expense allocation arrangements must be formalized in writing and authorized by the board of directors of the domestic insurer.

(iv) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(v) The insurer's surplus as regards policyholders [following] **after any material transaction with an affiliate and after** any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the department in writing of its intention to enter into such transaction at least thirty (30) days prior thereto or such shorter period as the department may permit and the department has not disapproved it within such period:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, including assets to be received by the domestic insurer as contributions to its surplus, provided that, as of the thirty-first day of December next preceding, such transactions are equal to or exceed[:

(A) with respect to nonlife insurers, the lesser of five per centum (5%) of the insurer's admitted assets or thirty-five per centum (35%) of surplus as regards policyholders;

(B) with respect to life insurers, three per centum (3%) of the insurer's admitted assets.] **the lesser of five per centum (5%) of the insurer's admitted assets or twenty-five per centum (25%) of surplus as regards policyholders.**

(ii) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of or to make investments in any affiliate of the insurer making such loans or extensions of credit provided that, as of the thirty-first day of December next preceding, such transactions are equal to or exceed[:

(A) with respect to nonlife insurers, the lesser of five per centum (5%) of the insurer's admitted assets or thirty-five per centum (35%) of surplus as regards policyholders;

(B) with respect to life insurers, three per centum (3%) of the insurer's admitted assets.] **the lesser of five per centum (5%) of the insurer's admitted assets or twenty-five per centum (25%) of surplus as regards policyholders.**

(iii) [For domestic insurers which have experienced a decline in policyholder surplus in an amount of ten per centum (10%) or more for two (2) consecutive years and net loss from operations in both those years, reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per centum (5%) of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding,]

Reinsurance agreements or modifications thereto where either:

(A) **the reinsurance premium equals or exceeds five per centum (5%) of the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding; or**

(B) **the change in the insurer's liabilities or any transfer of assets required to fund the transaction equals or exceeds twenty-five per centum (25%) of the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer. Nothing in this paragraph shall affect or limit the requirements and applicability of section 3 of the act of July 31, 1968 (P.L.941, No.288), entitled "An act providing for reporting to the Insurance Commissioner by domestic insurance companies, associations, or exchanges, of certain conveyances of interests in the assets of such companies, associations, or exchanges."**

(iv) Any material transactions, specified by regulation, which the department determines may adversely affect the interests of the insurer's policyholders. Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the department determines that such separate transactions were entered into over any twelve-month period for such purpose, it may exercise its authority under section 1410.

(4) The department, in reviewing transactions pursuant to paragraph (2), shall consider whether the transactions comply with the standards set forth in paragraph (1) and whether they may adversely affect the interests of policyholders. The department may retain at the insurer's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the department's staff as may be reasonably necessary to assist the department in reviewing the transaction.

(5) The department shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten per centum (10%) of such corporations' voting securities.

(b) (1) No domestic insurer shall pay any extraordinary dividend to its stockholders until:

(i) thirty (30) days after the commissioner has received written notice from the insurer of the declaration of the dividend and has not within such period disapproved the payment; or

(ii) the commissioner shall have approved the payment within such thirty-day period.

(2) For purposes of this subsection, an extraordinary dividend is any dividend or other distribution which, together with other dividends and distributions made within the preceding twelve (12) months, exceeds the greater of:

(i) ten per centum (10%) of such insurer's surplus as regards policyholders as shown on its last annual statement on file with the commissioner; or

(ii) the [net gain from operations after dividends to policyholders and Federal income taxes and before realized gains or losses of such insurer, if such insurer is a life insurer, or the net investment income earned, excluding net realized capital gains or losses, if such insurer is not a life insurer,] **net income of such insurer** for the period covered by such statement, but shall not include pro rata distributions of any class of the insurer's own securities.

(c) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this article.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of subsection (a) (1).

(3) Not less than one-third of the directors of a domestic insurer and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such

insurer or any such entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling such insurer is an insurer or a publicly held corporation having a board of directors and committees thereof which already meet the requirements of paragraphs (3) and (4).

(d) For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's [investment portfolio.] **surplus as regards policyholders.**

(8) The surplus as regards policyholders maintained by other comparable insurers[.] **considering the factors set forth in paragraphs (1) through (7).**

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in affiliates. The department may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in its judgment such investment so warrants.

(11) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

Section 1514. Duty of Agent or Broker to Obtain License.--*

* *

(b) (1) No person, firm, association or corporation shall act or aid in any manner in negotiating or procuring liability insurance from a nonadmitted insurer on behalf of a purchasing group unless such person, firm, association or corporation is

licensed as a surplus lines agent in accordance with section 1615.

(2) Notwithstanding the provisions of section 1615, a nonresident of this Commonwealth who acts in this Commonwealth solely on behalf of a purchasing group **or a risk retention group** in obtaining liability insurance with a nonadmitted insurer is exempt from the requirements of maintaining an office in this Commonwealth in order to obtain a surplus lines agent's license for the limited purpose of effecting coverage for such purchasing group **or risk retention group**.

* * *

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:

* * *

(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' Nonadmitted Insurers Information Office 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 [unincorporated group of alien individual insurers] **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).

* * *

Section 15. This act shall take effect as follows:

(1) The addition of sections 354.1, 354.2, 354.3, 354.4 and 354.5 of the act, the amendment of section 621.2(a) of the act and the addition of section 621.2(e) through (m) of the act shall take effect in 90 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 17th day of February, A. D. 1994.

ROBERT P. CASEY