

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 701 Session of
1993

INTRODUCED BY SCANLON, MUSTO, WILLIAMS, AFFLERBACH, SCHWARTZ,
O'PAKE, REIBMAN AND DAWIDA, MARCH 23, 1993

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 6, 1993

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," further
13 providing for group policies, FOR COMPUTATION OF RESERVE
14 LIABILITY AND CERTAIN OTHER RESERVES, FOR CERTAIN MANAGERS
15 AND AGENTS AND FOR THE SUSPENSION OF BUSINESS. <—

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

18 Section 1. Section 208(e) of the act of May 17, 1921
19 (P.L.789, No.285), known as The Insurance Department Act of one
20 thousand nine hundred and twenty-one, amended or added July 31,
21 1968 (P.L.763, No.239), July 9, 1976 (P.L.912, No.166) and July
22 9, 1992 (P.L.434, No.91), is amended to read:

23 Section 208. Certificates of Authority To Do Business.--* *

1 *

2 (e) The provisions of this section shall not apply to the
3 following:

4 (1) Transactions regulated by the act of January 24, 1966
5 (1965 P.L.1509, No.531), entitled "An act relating to,
6 regulating, taxing, supervising and controlling the placing of
7 insurance on risks located in the Commonwealth of Pennsylvania
8 with insurers not licensed to transact insurance business in
9 Pennsylvania, permitting licensed insurers to afford coverage
10 which may be placed with unlicensed insurers, providing fees and
11 penalties, and repealing certain existing laws."

12 (2) Any life insurance or annuity company organized and
13 operated, without profit to any shareholder or individual,
14 exclusively for the purpose of aiding nonprofit educational or
15 scientific institutions by issuing insurance and annuity
16 contracts only to or for the benefit of such institutions and
17 individuals engaged in the service of such institutions. Any
18 insurance company as described in this clause is required to
19 join the Life and Health Insurance Guaranty Association pursuant
20 to the act of November 26, 1978 (P.L.1188, No.280), known as the
21 "Life and Health Insurance Guaranty Association Act," and to
22 join any successor association pursuant to any similar statute
23 which replaces the "Life and Health Insurance Guaranty
24 Association Act." The assessments for any company so required to
25 join shall be the same as for member insurers, but these
26 assessments shall not apply to annuity considerations. The "Life
27 and Health Insurance Guaranty Association Act" shall not apply
28 to annuity contracts issued by any insurance company as
29 described in this clause.

30 (3) Contracts of reinsurance.

1 (4) Transactions in this Commonwealth which (i) involve a
2 policy lawfully solicited, written and delivered outside of this
3 Commonwealth covering only subjects of insurance not resident,
4 located, or expressly to be performed in this Commonwealth at
5 the time of issuance of such policy, and (ii) are subsequent to
6 the issuance of such policy.

7 (5) (i) Transactions in this Commonwealth, except group
8 credit life or group credit accident and health insurance
9 transactions, involving group [or blanket] accident and health
10 or life insurance policies or group annuity contracts where the
11 group policy [or contract is issued and delivered pursuant to
12 the group or blanket insurance or group annuity laws of a
13 jurisdiction in which the insurer is authorized to do an
14 insurance business and in which the policyholder is domiciled or
15 has its principal place of business or otherwise has a bona fide
16 situs.] is issued to:

17 (A) An out-of-State trustee of a fund in another state, an
18 organization in another state or a trust or trustee of a trust
19 established or participated in by one or more organizations in
20 another state, in which (state) the insurance supervisory
21 official or agency of that state has determined that: the
22 issuance of the group policy or certificate is not contrary to
23 the best interests of the general public; the issuance of the
24 group policy or certificate would result in economies of
25 acquisition or administration; the benefits are reasonable in
26 relation to the premium charged; and, for group accident and
27 health insurance, the coverage is in compliance with any
28 mandated benefit act specifically providing for coverage on
29 residents of this Commonwealth regardless of whether the group
30 policy is used within or outside this Commonwealth.

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

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

5 (D) An association or a trust or trustee of a trust
6 established or participated in by one or more associations to
7 insure association members, spouses or dependents of members:
8 Provided, however, That the association must be organized or
9 domiciled in a state other than this Commonwealth, have a
10 constitution and bylaws, be organized by other than an insurer,
11 be maintained in good faith for purposes other than that of
12 obtaining insurance, have been in active existence for at least
13 two years, operate from offices other than the insurer's and be
14 controlled by principals other than the insurer's.

15 (E) A union-negotiated out-of-State trust.

16 (F) Other groups as may be determined by the Insurance
17 Commissioner at his discretion.

18 (ii) As used in this clause (5):

19 An "organization" means any of the following:

20 (A) Any bank, retailer or other issuer which:

21 (I) issues a credit card, charge card or payment card for
22 the purchase of goods or services; and

23 (II) is issued a policy insuring holders of the card.

24 (B) Any bank, savings and loan association, credit union,
25 mutual fund, money market fund, stock broker or other similar
26 financial institution which:

27 (I) is regulated by Federal or state law; and

28 (II) is issued a policy insuring its depositors, account
29 holders or members.

30 An "out-of-State single employer" means any person acting

1 directly as an employer and has its principal office located in
2 a state other than this Commonwealth.

3 An "out-of-State trustee" of a fund means a trustee of a fund
4 established by an insurer for two or more employers or
5 established by two or more persons acting directly as employers
6 and the trustee has its principal office located in a state
7 other than this Commonwealth.

8 A "union-negotiated out-of-State trust" means a trust
9 established under a collective bargaining agreement and which is
10 located in a state other than this Commonwealth.

11 [(5.1) Transactions in this Commonwealth, except group
12 credit life or group credit accident and health insurance
13 transactions, involving a group or blanket insurance policy or
14 group annuity contract not exempt under the provisions of clause
15 (5) of this subsection, shall nonetheless be exempt from the
16 provisions of this section if:

17 (i) they involve a group which conforms to one of the
18 definitions of eligibility for group coverage contained in the
19 laws of this Commonwealth; and,

20 (ii) the group policy or contract is lawfully issued without
21 this Commonwealth in a jurisdiction in which the insurer is
22 authorized to do an insurance business.]

23 It shall be the responsibility of the insurer claiming exemption
24 under this subsection to demonstrate compliance with each of the
25 above conditions.

26 (6) (i) Any insurance company or underwriter issuing
27 contracts of insurance to industrial insureds, (ii) industrial
28 insureds, or (iii) contracts of insurance issued to an
29 industrial insured: Provided, That nothing herein shall relieve
30 such industrial insured from the requirement of compliance with

1 the applicable provisions of the act of January 24, 1966 (1965
2 P.L.1509, No.531), referred to above. For purposes of this
3 section, an "industrial insured" is an insured (i) who procures
4 the insurance of any risk or risks by use of the services of a
5 full-time employe acting as an insurance manager or buyer or the
6 services of a regularly and continuously retained qualified
7 insurance consultant, (ii) whose aggregate annual premiums for
8 insurance on all risks total at least twenty-five thousand
9 dollars (\$25,000), and (iii) who has at least twenty-five full-
10 time employes.

11 (7) Transactions in this Commonwealth involving a policy of
12 insurance issued prior to the effective date of this act.

13 (8) Insurance on the property and operation of railroads or
14 aircraft engaged in interstate or foreign commerce, insurance of
15 vessels, crafts or hulls, cargoes, marine builder's risks,
16 marine protection and indemnity, lessees and charterers'
17 liability, or other risks including strikes and war risks
18 commonly insured under ocean or wet marine forms of policies.

19 ~~Section 2. This act shall take effect in 90 days.~~ <—

20 SECTION 2. SECTIONS 213, 214 AND 216 OF THE ACT ARE <—
21 REPEALED.

22 SECTION 3. SECTION 301(C)(5) AND (7) AND (F) OF THE ACT,
23 AMENDED FEBRUARY 28, 1982 (P.L.108, NO.38), ARE AMENDED AND THE
24 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

25 SECTION 301. COMPUTATION OF RESERVE LIABILITY.--* * *

26 (C) THIS SUBSECTION SHALL APPLY ONLY TO POLICIES AND
27 CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF SECTION FOUR
28 HUNDRED AND TEN A (THE STANDARD NONFORFEITURE LAW FOR LIFE
29 INSURANCE) OF AN ACT, APPROVED THE SEVENTEENTH DAY OF MAY, ONE
30 THOUSAND NINE HUNDRED AND TWENTY-ONE (PAMPHLET LAWS, SIX HUNDRED

1 EIGHTY-TWO), AS AMENDED, EXCEPT AS OTHERWISE PROVIDED IN
2 SUBPARAGRAPH (B) OF PARAGRAPH (1) AND IN PARAGRAPH (2) OF THIS
3 SUBSECTION FOR GROUP ANNUITY AND PURE ENDOWMENT CONTRACTS ISSUED
4 PRIOR TO SUCH OPERATIVE DATE.

5 * * *

6 (5) (A) IN NO EVENT SHALL A COMPANY'S AGGREGATE RESERVES
7 FOR ALL LIFE INSURANCE POLICIES, EXCLUDING DISABILITY AND
8 ACCIDENTAL DEATH BENEFITS, BE LESS THAN THE AGGREGATE RESERVES
9 CALCULATED IN ACCORDANCE WITH THE METHODS SET FORTH IN
10 PARAGRAPHS (3) AND (4) OF THIS SUBSECTION (C), AND IN SECTION
11 303, AND THE MORTALITY TABLE OR TABLES AND RATE OR RATES OF
12 INTEREST USED IN CALCULATING NONFORFEITURE BENEFITS FOR SUCH
13 POLICIES.

14 (B) IN NO EVENT SHALL THE AGGREGATE RESERVES FOR ALL
15 POLICIES, CONTRACTS AND CERTIFICATES BE LESS THAN THE AGGREGATE
16 RESERVES DETERMINED BY THE QUALIFIED ACTUARY TO BE NECESSARY TO
17 RENDER THE OPINION REQUIRED BY SUBSECTION (G).

18 * * *

19 (7) ANY SUCH COMPANY WHICH AT ANY TIME SHALL HAVE ADOPTED
20 ANY STANDARD OF VALUATION PRODUCING GREATER AGGREGATE RESERVES
21 THAN THOSE CALCULATED ACCORDING TO THE MINIMUM STANDARD HEREIN
22 PROVIDED MAY, WITH THE APPROVAL OF THE INSURANCE COMMISSIONER,
23 ADOPT ANY LOWER STANDARD OF VALUATION, BUT NOT LOWER THAN THE
24 MINIMUM HEREIN PROVIDED. HOWEVER, FOR THE PURPOSE OF THIS
25 PARAGRAPH, THE HOLDING OF ADDITIONAL RESERVES PREVIOUSLY
26 DETERMINED BY A QUALIFIED ACTUARY TO BE NECESSARY TO RENDER THE
27 OPINION REQUIRED BY SUBSECTION (G) SHALL NOT BE DEEMED TO BE THE
28 ADOPTION OF A HIGHER STANDARD OF VALUATION.

29 * * *

30 [(F) THE PROVISIONS OF THIS SECTION FOR THE VALUATION OF

1 POLICIES AND FOR PREMIUM RATES SHALL NOT APPLY TO COMPANIES OR
2 ASSOCIATIONS TRANSACTING BUSINESS ON THE MUTUAL ASSESSMENT
3 PLAN.]

4 (G) (1) THIS SUBSECTION REQUIRING A SUBMISSION OF AN
5 ACTUARIAL OPINION OF RESERVES SHALL TAKE EFFECT FOR ANNUAL
6 STATEMENTS FOR THE YEAR 1993.

7 (2) EVERY LIFE INSURANCE COMPANY AND FRATERNAL BENEFIT
8 SOCIETY DOING BUSINESS IN THIS COMMONWEALTH SHALL ANNUALLY
9 SUBMIT THE OPINION OF A QUALIFIED ACTUARY AS TO WHETHER THE
10 RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE
11 POLICIES, CONTRACTS AND CERTIFICATES SPECIFIED BY THE INSURANCE
12 COMMISSIONER BY REGULATION ARE COMPUTED APPROPRIATELY, ARE BASED
13 ON ASSUMPTIONS WHICH SATISFY CONTRACTUAL PROVISIONS, ARE
14 CONSISTENT WITH PRIOR REPORTED AMOUNTS AND COMPLY WITH
15 APPLICABLE LAWS OF THIS COMMONWEALTH. THE INSURANCE COMMISSIONER
16 BY REGULATION SHALL DEFINE THE SPECIFICS OF THIS OPINION AND ADD
17 ANY OTHER ITEMS DEEMED TO BE NECESSARY TO ITS SCOPE.

18 (3) EVERY LIFE INSURANCE COMPANY AND FRATERNAL BENEFIT
19 SOCIETY, EXCEPT AS EXEMPTED BY OR PURSUANT TO REGULATION, SHALL
20 ALSO ANNUALLY INCLUDE IN THE OPINION REQUIRED BY PARAGRAPH (2)
21 OF THIS SUBSECTION, AN OPINION OF THE SAME QUALIFIED ACTUARY AS
22 TO WHETHER THE RESERVES AND RELATED ACTUARIAL ITEMS HELD IN
23 SUPPORT OF THE POLICIES, CONTRACTS AND CERTIFICATES SPECIFIED BY
24 THE INSURANCE COMMISSIONER BY REGULATION, WHEN CONSIDERED IN
25 LIGHT OF THE ASSETS HELD BY THE COMPANY OR SOCIETY WITH RESPECT
26 TO THE RESERVES AND RELATED ACTUARIAL ITEMS, INCLUDING, BUT NOT
27 LIMITED TO, THE INVESTMENT EARNINGS ON THE ASSETS AND THE
28 CONSIDERATIONS ANTICIPATED TO BE RECEIVED AND RETAINED UNDER THE
29 POLICIES, CONTRACTS AND CERTIFICATES, MAKE ADEQUATE PROVISION
30 FOR THE COMPANY OR SOCIETY'S OBLIGATIONS UNDER THE POLICIES,

1 CONTRACTS AND CERTIFICATES, INCLUDING, BUT NOT LIMITED TO, THE
2 BENEFITS UNDER AND EXPENSES ASSOCIATED WITH THE POLICIES,
3 CONTRACTS AND CERTIFICATES. THE INSURANCE COMMISSIONER MAY
4 PROVIDE BY REGULATION FOR A TRANSITION PERIOD FOR ESTABLISHING
5 ANY HIGHER RESERVES WHICH THE QUALIFIED ACTUARY MAY DEEM
6 NECESSARY IN ORDER TO RENDER THE OPINION REQUIRED BY THIS
7 PARAGRAPH.

8 (4) EACH OPINION REQUIRED BY PARAGRAPH (3) OF THIS
9 SUBSECTION SHALL BE GOVERNED BY THE FOLLOWING PROVISIONS:

10 (A) A MEMORANDUM, IN FORM AND SUBSTANCE ACCEPTABLE TO THE
11 INSURANCE COMMISSIONER AS SPECIFIED BY REGULATION, SHALL BE
12 PREPARED TO SUPPORT EACH ACTUARIAL OPINION.

13 (B) IF THE INSURANCE COMPANY OR FRATERNAL BENEFIT SOCIETY
14 FAILS TO PROVIDE A SUPPORTING MEMORANDUM AT THE REQUEST OF THE
15 INSURANCE COMMISSIONER WITHIN A PERIOD SPECIFIED BY REGULATION
16 OR THE INSURANCE COMMISSIONER DETERMINES THAT THE SUPPORTING
17 MEMORANDUM PROVIDED BY THE INSURANCE COMPANY OR FRATERNAL
18 BENEFIT SOCIETY FAILS TO MEET THE STANDARDS PRESCRIBED BY THE
19 REGULATION OR IS OTHERWISE UNACCEPTABLE TO THE INSURANCE
20 COMMISSIONER, THE INSURANCE COMMISSIONER MAY ENGAGE A QUALIFIED
21 ACTUARY AT THE EXPENSE OF THE COMPANY OR SOCIETY TO REVIEW THE
22 OPINION AND THE BASIS FOR THE OPINION AND PREPARE A MEMORANDUM
23 AS IS REQUIRED BY THE INSURANCE COMMISSIONER.

24 (5) EVERY OPINION SHALL BE GOVERNED BY THE FOLLOWING
25 PROVISIONS:

26 (A) THE OPINION SHALL BE SUBMITTED WITH THE ANNUAL STATEMENT
27 REFLECTING THE VALUATION OF SUCH RESERVE LIABILITIES FOR EACH
28 YEAR ENDING ON OR AFTER DECEMBER 31, 1993.

29 (B) THE OPINION SHALL APPLY TO ALL BUSINESS IN FORCE,
30 INCLUDING INDIVIDUAL AND GROUP HEALTH AND ACCIDENT INSURANCE, IN

1 FORM AND SUBSTANCE ACCEPTABLE TO THE INSURANCE COMMISSIONER AS
2 SPECIFIED BY REGULATION.

3 (C) THE OPINION SHALL BE BASED ON STANDARDS ADOPTED FROM
4 TIME TO TIME BY THE ACTUARIAL STANDARDS BOARD AND ON SUCH
5 ADDITIONAL STANDARDS AS THE INSURANCE COMMISSIONER MAY BY
6 REGULATION PRESCRIBE.

7 (D) IN THE CASE OF AN OPINION REQUIRED TO BE SUBMITTED BY A
8 FOREIGN OR ALIEN COMPANY OR SOCIETY, THE INSURANCE COMMISSIONER
9 MAY ACCEPT THE OPINION FILED BY THAT COMPANY OR SOCIETY WITH THE
10 INSURANCE SUPERVISORY OFFICIAL OF ANOTHER STATE IF THE INSURANCE
11 COMMISSIONER DETERMINES THAT THE OPINION REASONABLY MEETS THE
12 REQUIREMENTS APPLICABLE TO A COMPANY OR SOCIETY DOMICILED IN
13 THIS COMMONWEALTH.

14 (E) EXCEPT IN CASES OF FRAUD OR WILFUL MISCONDUCT, THE
15 QUALIFIED ACTUARY SHALL NOT BE LIABLE FOR DAMAGES TO ANY PERSON,
16 OTHER THAN THE INSURANCE COMPANY OR FRATERNAL BENEFIT SOCIETY
17 AND THE INSURANCE COMMISSIONER, FOR ANY ACT, ERROR, OMISSION,
18 DECISION OR CONDUCT WITH RESPECT TO THE ACTUARY'S OPINION.

19 (F) DISCIPLINARY ACTION BY THE INSURANCE COMMISSIONER
20 AGAINST THE COMPANY, SOCIETY OR THE QUALIFIED ACTUARY SHALL BE
21 DEFINED IN REGULATION BY THE INSURANCE COMMISSIONER.

22 (G) ANY MEMORANDUM IN SUPPORT OF THE OPINION, AND ANY OTHER
23 MATERIAL PROVIDED BY THE COMPANY OR SOCIETY TO THE INSURANCE
24 COMMISSIONER IN CONNECTION THEREWITH, SHALL BE KEPT CONFIDENTIAL
25 BY THE INSURANCE COMMISSIONER AND SHALL NOT BE MADE PUBLIC AND
26 SHALL NOT BE SUBJECT TO SUBPOENA, OTHER THAN FOR THE PURPOSE OF
27 DEFENDING AN ACTION SEEKING DAMAGES FROM ANY PERSON BY REASON OF
28 ANY ACTION REQUIRED BY THIS SECTION OR BY REGULATION PROMULGATED
29 HEREUNDER: PROVIDED, HOWEVER, THAT THE MEMORANDUM OR OTHER
30 MATERIAL MAY OTHERWISE BE RELEASED BY THE INSURANCE COMMISSIONER

1 EITHER WITH THE WRITTEN CONSENT OF THE COMPANY OR SOCIETY OR TO
2 THE AMERICAN ACADEMY OF ACTUARIES UPON REQUEST STATING THAT THE
3 MEMORANDUM OR OTHER MATERIAL IS REQUIRED FOR THE PURPOSE OF
4 PROFESSIONAL DISCIPLINARY PROCEEDINGS AND SETTING FORTH
5 PROCEDURES SATISFACTORY TO THE INSURANCE COMMISSIONER FOR
6 PRESERVING THE CONFIDENTIALITY OF THE MEMORANDUM OR OTHER
7 MATERIAL. ONCE ANY PORTION OF THE CONFIDENTIAL MEMORANDUM IS
8 CITED BY THE COMPANY OR SOCIETY IN ITS MARKETING OR IS CITED
9 BEFORE ANY GOVERNMENTAL AGENCY OTHER THAN A STATE INSURANCE
10 DEPARTMENT OR IS RELEASED BY THE COMPANY OR SOCIETY TO THE NEWS
11 MEDIA, ALL PORTIONS OF THE CONFIDENTIAL MEMORANDUM SHALL NO
12 LONGER BE CONFIDENTIAL.

13 (H) FOR THE PURPOSES OF THIS SUBSECTION, "QUALIFIED ACTUARY"
14 MEANS A MEMBER IN GOOD STANDING OF THE AMERICAN ACADEMY OF
15 ACTUARIES WHO MEETS THE REQUIREMENTS SET FORTH IN SUCH
16 REGULATION.

17 SECTION 4. SECTION 311 OF THE ACT, AMENDED DECEMBER 18, 1992
18 (P.L.1496, NO.177), IS AMENDED TO READ:

19 SECTION 311. COMPUTATION OF RESERVE AGAINST UNPAID LOSSES IN
20 CASUALTY INSURANCE OTHER THAN [NON-CANCELLABLE] HEALTH AND
21 ACCIDENT INSURANCE.--THE INSURANCE COMMISSIONER SHALL, IN
22 CALCULATING THE RESERVE AGAINST UNPAID LOSSES OF ANY INSURANCE
23 COMPANY, OTHER THAN LIFE INSURANCE COMPANIES, FOR LOSSES OTHER
24 THAN UNDER [NONCANCELLABLE] HEALTH AND ACCIDENT INSURANCE ISSUED
25 ON AND AFTER JANUARY FIRST, ONE THOUSAND NINE HUNDRED FIFTY, SET
26 DOWN, BY CAREFUL ESTIMATE IN EACH CASE, THE LOSS LIKELY TO BE
27 INCURRED AGAINST EVERY CLAIM PRESENTED OR THAT MAY BE PRESENTED
28 IN PURSUANCE OF NOTICE FROM THE INSURED OF THE OCCURRENCE OF AN
29 EVENT THAT MAY RESULT IN A LOSS. THE SUM OF THE ITEMS SO
30 ESTIMATED SHALL BE THE TOTAL AMOUNT OF THE RESERVE_[, EXCEPT

1 THAT, IN CREDIT INSURANCE, FIFTY PER CENTUM OF THE PREMIUMS ON
2 ALL CREDIT POLICIES EXPIRING IN THE MONTHS OF OCTOBER, NOVEMBER,
3 AND DECEMBER OF THE CURRENT YEAR, LESS THE AMOUNT OF LOSSES PAID
4 ON SUCH POLICIES, SHALL, IN ADDITION THERETO, BE CHARGED IN THE
5 LOSS RESERVE.]

6 SECTION 5. THE DEFINITION OF "INSOLVENCY" IN SECTION 503 OF
7 THE ACT, AMENDED JUNE 17, 1986 (P.L.254, NO.67), IS AMENDED TO
8 READ:

9 SECTION 503. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES
10 WHEN USED IN THIS ACT SHALL HAVE, UNLESS THE CONTEXT CLEARLY
11 INDICATES OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SECTION:

12 * * *

13 "INSOLVENCY" MEANS:

14 (1) FOR AN INSURER ISSUING ONLY ASSESSABLE FIRE INSURANCE
15 POLICIES; (I) THE INABILITY TO PAY ANY OBLIGATION WITHIN THIRTY
16 DAYS AFTER IT BECOMES PAYABLE, OR (II) IF AN ASSESSMENT BE MADE
17 WITHIN THIRTY DAYS AFTER SUCH DATE, THE INABILITY TO PAY SUCH
18 OBLIGATION THIRTY DAYS FOLLOWING THE DATE SPECIFIED IN THE FIRST
19 ASSESSMENT NOTICE ISSUED AFTER THE DATE OF LOSS PURSUANT TO
20 SECTION 808 OF THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN
21 AS "THE INSURANCE COMPANY LAW OF 1921."

22 (2) FOR ANY OTHER INSURER THE INABILITY TO PAY ITS
23 OBLIGATIONS WHEN THEY ARE DUE, OR WHOSE ADMITTED ASSETS DO NOT
24 EXCEED ITS LIABILITIES PLUS THE GREATER OF (I) ANY CAPITAL AND
25 SURPLUS REQUIRED BY LAW FOR ITS ORGANIZATION, OR (II) ITS
26 AUTHORIZED AND ISSUED CAPITAL STOCK. FOR ANY INSURER LICENSED TO
27 DO BUSINESS IN THE COMMONWEALTH AS OF THE EFFECTIVE DATE OF THIS
28 ACT WHICH DOES NOT MEET THIS STANDARD, THE TERM "INSOLVENCY"
29 SHALL MEAN FOR A PERIOD NOT TO EXCEED THREE YEARS FROM THE
30 EFFECTIVE DATE OF THIS ACT THAT IT IS UNABLE TO PAY ITS

1 OBLIGATIONS WHEN THEY ARE DUE OR THAT ITS ADMITTED ASSETS DO NOT
2 EXCEED ITS LIABILITIES PLUS ANY REQUIRED CAPITAL CONTRIBUTION
3 ORDERED BY THE COMMISSIONER UNDER PROVISIONS OF THE INSURANCE
4 LAW.

5 [(3) FOR THE PURPOSES OF THIS PARAGRAPH IN DETERMINING THE
6 FINANCIAL CONDITION OF AN INSURER SUCH ASSETS SHALL BE
7 CONSIDERED TO BE ADMITTED AS ARE OWNED BY THE INSURER AND WHICH
8 CONSIST OF: (I) CASH IN THE POSSESSION OF THE INSURER, OR IN
9 TRANSIT UNDER ITS CONTROL, AND INCLUDING THE TRUE BALANCE OF ANY
10 DEPOSIT IN A SOLVENT BANK OR TRUST COMPANY; (II) INVESTMENTS,
11 SECURITIES, PROPERTIES AND LOANS ACQUIRED OR HELD IN ACCORDANCE
12 WITH THIS ACT, AND IN CONNECTION THEREWITH THE FOLLOWING ITEMS:
13 (A) INTEREST DUE OR ACCRUED ON ANY BOND OR EVIDENCE OF
14 INDEBTEDNESS WHICH IS NOT IN DEFAULT AND WHICH IS NOT VALUED ON
15 A BASIS INCLUDING ACCRUED INTEREST, (B) DECLARED AND UNPAID
16 DIVIDENDS ON STOCK AND SHARES, UNLESS SUCH AMOUNT HAS OTHERWISE
17 BEEN ALLOWED AS AN ASSET, (C) INTEREST DUE OR ACCRUED UPON A
18 COLLATERAL LOAN IN AN AMOUNT NOT TO EXCEED ONE YEAR'S INTEREST
19 THEREON, (D) INTEREST DUE OR ACCRUED ON DEPOSITS IN SOLVENT
20 BANKS AND TRUST COMPANIES, AND INTEREST DUE OR ACCRUED ON OTHER
21 ASSETS, IF SUCH INTEREST IS IN THE JUDGMENT OF THE COMMISSIONER
22 A COLLECTIBLE ASSET, (E) INTEREST DUE OR ACCRUED ON A MORTGAGE
23 LOAN, IN AN AMOUNT NOT EXCEEDING IN ANY EVENT THE AMOUNT, IF
24 ANY, OF THE EXCESS OF THE VALUE OF THE PROPERTY LESS DELINQUENT
25 TAXES THEREON OVER THE UNPAID PRINCIPAL, BUT IN NO EVENT SHALL
26 INTEREST ACCRUED FOR A PERIOD IN EXCESS OF TWELVE MONTHS BE
27 ALLOWED AS AN ASSET, (F) RENT DUE OR ACCRUED ON REAL PROPERTY IF
28 SUCH RENT IS NOT IN ARREARS FOR MORE THAN THREE MONTHS, AND RENT
29 MORE THAN THREE MONTHS IN ARREARS IF THE PAYMENT OF SUCH RENT BE
30 ADEQUATELY SECURED BY PROPERTY HELD IN THE NAME OF THE TENANT

1 AND CONVEYED TO THE INSURER AS COLLATERAL, (G) THE UNACCRUED
2 PORTION OF TAXES PAID PRIOR TO THE DUE DATE ON REAL PROPERTY;
3 (III) PREMIUM NOTES, POLICY LOANS, AND OTHER POLICY ASSETS AND
4 LIENS ON POLICIES AND CERTIFICATES OF LIFE INSURANCE AND ANNUITY
5 CONTRACTS AND ACCRUED INTEREST THEREON, IN AN AMOUNT NOT
6 EXCEEDING THE LEGAL RESERVE AND OTHER POLICY LIABILITIES CARRIED
7 ON EACH INDIVIDUAL POLICY; (IV) THE NET AMOUNT OF UNCOLLECTED
8 AND DEFERRED PREMIUMS AND ANNUITY CONSIDERATION IN THE CASE OF A
9 LIFE INSURER; (V) PREMIUMS IN THE COURSE OF COLLECTION, OTHER
10 THAN FOR LIFE INSURANCE, NOT MORE THAN THREE MONTHS PAST DUE,
11 LESS COMMISSIONS PAYABLE THEREON. THE FOREGOING LIMITATION SHALL
12 NOT APPLY TO PREMIUMS PAYABLE DIRECTLY OR INDIRECTLY BY THE
13 UNITED STATES GOVERNMENT OR BY ANY OF ITS INSTRUMENTALITIES;
14 (VI) INSTALLMENT PREMIUMS OTHER THAN LIFE INSURANCE PREMIUMS TO
15 THE EXTENT OF THE UNEARNED PREMIUM RESERVE CARRIED ON THE POLICY
16 TO WHICH SUCH PREMIUMS APPLY; (VII) NOTES AND LIKE WRITTEN
17 OBLIGATIONS NOT PAST DUE, TAKEN FOR PREMIUMS OTHER THAN LIFE
18 INSURANCE PREMIUMS, ON POLICIES PERMITTED TO BE ISSUED ON SUCH
19 BASIS, TO THE EXTENT OF THE UNEARNED PREMIUM RESERVES CARRIED
20 THEREON; (VIII) THE FULL AMOUNT OF REINSURANCE RECOVERABLE BY A
21 CEDING INSURER FROM A SOLVENT REINSURER AND WHICH REINSURANCE IS
22 AUTHORIZED UNDER SECTION 319 OF THE ACT OF MAY 17, 1921
23 (P.L.682, NO.284), KNOWN AS "THE INSURANCE COMPANY LAW OF 1921";
24 (IX) AMOUNTS RECEIVABLE BY AN ASSUMING INSURER REPRESENTING
25 FUNDS WITHHELD BY A SOLVENT CEDING INSURER UNDER A REINSURANCE
26 TREATY; (X) DEPOSITS OR EQUITIES RECOVERABLE FROM UNDERWRITING
27 ASSOCIATIONS, SYNDICATES AND REINSURANCE FUNDS, OR FROM A
28 SUSPENDED BANKING INSTITUTION, TO THE EXTENT DEEMED BY THE
29 COMMISSIONER AVAILABLE FOR THE PAYMENT OF LOSSES AND CLAIMS AND
30 AT VALUES TO BE DETERMINED BY HIM; (XI) ELECTRONIC AND

1 MECHANICAL MACHINES CONSTITUTING A DATA PROCESSING AND
2 ACCOUNTING SYSTEM IF THE COST OF SUCH SYSTEM IS AT LEAST TEN
3 THOUSAND DOLLARS (\$10,000), WHICH COST SHALL BE AMORTIZED IN
4 FULL OVER A PERIOD NOT TO EXCEED TEN CALENDAR YEARS; (XII) ALL
5 ASSETS, WHETHER OR NOT CONSISTENT WITH THE PROVISIONS OF THIS
6 SECTION, AS MAY BE ALLOWED PURSUANT TO THE ANNUAL STATEMENT FORM
7 APPROVED BY THE COMMISSIONER FOR USE IN THIS COMMONWEALTH FOR
8 THE KINDS OF INSURANCE TO BE REPORTED UPON THEREIN; (XIII) OTHER
9 ASSETS, NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION,
10 DEEMED BY THE COMMISSIONER TO BE AVAILABLE FOR THE PAYMENT OF
11 LOSSES AND CLAIMS, AT VALUES TO BE DETERMINED BY HIM.

12 THE FOLLOWING SHALL NOT BE CONSIDERED ADMITTED ASSETS IN ANY
13 DETERMINATION OF THE FINANCIAL CONDITION OF AN INSURER: (I) GOOD
14 WILL, TRADE NAMES AND OTHER LIKE INTANGIBLE ASSETS; (II)
15 ADVANCES (OTHER THAN POLICY LOANS) TO OFFICERS, DIRECTORS, AND
16 CONTROLLING STOCKHOLDERS, WHETHER SECURED OR NOT, AND ADVANCES
17 TO EMPLOYEES, AGENTS AND OTHER PERSONS ON PERSONAL SECURITY
18 ONLY; (III) STOCK OF SUCH INSURER, OWNED BY IT, OR ANY MATERIAL
19 EQUITY THEREIN OR LOANS SECURED THEREBY, OR ANY MATERIAL
20 PROPORTIONATE INTEREST IN SUCH STOCK ACQUIRED OR HELD THROUGH
21 THE OWNERSHIP BY SUCH INSURER OF AN INTEREST IN ANOTHER FIRM,
22 CORPORATION OR BUSINESS UNIT; (IV) FURNITURE FIXTURES,
23 FURNISHINGS, SAFES, VEHICLES, LIBRARIES, STATIONERY, LITERATURE
24 AND SUPPLIES (OTHER THAN DATA PROCESSING AND ACCOUNTING SYSTEMS
25 AUTHORIZED UNDER TITLE 31, § 11.4, PENNSYLVANIA CODE), EXCEPT IN
26 THE CASE OF TITLE INSURERS SUCH MATERIALS AND PLANTS AS THE
27 INSURER IS EXPRESSLY AUTHORIZED TO INVEST IN SECTION 732(21) OF
28 THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS "THE
29 INSURANCE COMPANY LAW OF 1921," AND EXCEPT, IN THE CASE OF ANY
30 INSURER, SUCH PROPERTY WHICH IS ACQUIRED THROUGH FORECLOSURE OF

1 CHATTEL MORTGAGES ACQUIRED PURSUANT TO SECTIONS 406, 519, 604,
2 AND 732 OF "THE INSURANCE COMPANY LAW OF 1921," OR WHICH IS
3 REASONABLY NECESSARY FOR THE MAINTENANCE AND OPERATION OF REAL
4 ESTATE LAWFULLY ACQUIRED AND HELD BY THE INSURER OTHER THAN REAL
5 ESTATE USED BY IT FOR HOME OFFICE, BRANCH OFFICE AND SIMILAR
6 PURPOSES; (V) THE AMOUNT, IF ANY, BY WHICH THE AGGREGATE BOOK
7 VALUE OF INVESTMENTS AS CARRIED IN THE LEDGER ASSETS OF THE
8 INSURER EXCEEDS THE AGGREGATE VALUE THEREOF AS DETERMINED UNDER
9 THIS ARTICLE.] IN DETERMINING THE FINANCIAL CONDITION OF AN
10 INSURER, THE INSURANCE COMMISSIONER SHALL CONSIDER ASSETS TO BE
11 ADMITTED OR NONADMITTED AS PROVIDED IN SECTION 320.1 OF THE ACT
12 OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS "THE INSURANCE
13 COMPANY LAW OF 1921."

14 FOR PURPOSES OF THIS ARTICLE "LIABILITIES" SHALL INCLUDE BUT
15 NOT BE LIMITED TO RESERVES REQUIRED BY STATUTE OR BY INSURANCE
16 DEPARTMENT GENERAL REGULATIONS OR SPECIFIC REQUIREMENTS IMPOSED
17 BY THE COMMISSIONER UPON A SUBJECT COMPANY AT THE TIME OF
18 ADMISSION OR SUBSEQUENT THERETO, AND ANY OTHER CAPITAL AND
19 SURPLUS REQUIREMENTS.

20 * * *

21 SECTION 6. SECTION 650 OF THE ACT, ADDED DECEMBER 22, 1965
22 (P.L.1172, NO.463), IS AMENDED TO READ:

23 SECTION 650. INSURANCE COMPANIES TO CERTIFY NAMES OF
24 MANAGERS OR EXCLUSIVE GENERAL AGENTS.--(A) EVERY DOMESTIC
25 INSURANCE COMPANY OPERATING UNDER A MANAGEMENT CONTRACT OR AN
26 EXCLUSIVE GENERAL AGENCY AGREEMENT ENTERED INTO AFTER THE
27 EFFECTIVE DATE OF THIS ACT, SHALL CERTIFY TO THE INSURANCE
28 COMMISSIONER THE NAME OF THE MANAGER OR EXCLUSIVE GENERAL AGENT,
29 WITHIN TEN DAYS FROM THE EFFECTIVE DATE OF SAID CONTRACT OR
30 AGREEMENT AND WITHIN TEN DAYS AFTER THE RENEWAL OF THE LICENSE

1 OF SUCH MANAGER OR EXCLUSIVE GENERAL AGENT. [NO CERTIFICATION IS
2 REQUIRED FOR AN AGENT OR GENERAL AGENT WHOSE AUTHORITY IS
3 LIMITED PRIMARILY TO PRODUCTION OF INSURANCE BUSINESS WITH
4 LIMITED UNDERWRITING AUTHORITY. MANAGER OR EXCLUSIVE GENERAL
5 AGENT SHALL INCLUDE AN INDIVIDUAL, COPARTNERSHIP OR
6 CORPORATION.]

7 (B) NOTWITHSTANDING SUBSECTION (C), A PERSON, FIRM,
8 PARTNERSHIP, ASSOCIATION OR CORPORATION SUBJECT TO REGULATION AS
9 A MANAGING GENERAL AGENT PURSUANT TO ARTICLE VIII OF THIS ACT
10 SHALL NOT ALSO BE SUBJECT TO LICENSING AS A MANAGER OR EXCLUSIVE
11 GENERAL AGENT.

12 (C) THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS
13 SECTION SHALL HAVE, UNLESS THE CONTEXT CLEARLY INDICATES
14 OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

15 "EXCLUSIVE GENERAL AGENT" MEANS A PERSON, FIRM, PARTNERSHIP,
16 ASSOCIATION OR CORPORATION WHICH HAS BEEN GRANTED SOLE AUTHORITY
17 TO ACT DIRECTLY OR INDIRECTLY AS AN AGENT FOR AN INSURER WITH
18 RESPECT TO A SPECIFIC PORTION OF THE INSURER'S BUSINESS OR
19 WITHIN A SPECIFIC TERRITORY AND WHICH HAS THE AUTHORITY TO BIND
20 COVERAGE ON BEHALF OF THE INSURER AND, EITHER SEPARATELY OR
21 TOGETHER WITH AFFILIATES, SUBAGENTS OR BROKERS, DIRECTLY OR
22 INDIRECTLY PRODUCES AND UNDERWRITES IN ANY ONE YEAR AN AMOUNT OF
23 GROSS DIRECT WRITTEN PREMIUM EQUAL TO OR MORE THAN TWENTY-FIVE
24 PER CENTUM OF THE SURPLUS AS REGARDS POLICYHOLDERS AS REPORTED
25 IN THE LAST ANNUAL STATEMENT OF THE INSURER.

26 "MANAGER" MEANS A PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR
27 CORPORATION WHICH NEGOTIATES AND BINDS CEDING REINSURANCE
28 CONTRACTS ON BEHALF OF AN INSURER OR MANAGES ALL OR PART OF THE
29 INSURANCE BUSINESS OF AN INSURER AND DOES NOT ACT AS AN AGENT
30 FOR SUCH INSURER.

SECTION 7. THE DEFINITION OF "MANAGING GENERAL AGENT" OR
"MGA" IN SECTION 801 OF THE ACT, ADDED DECEMBER 18, 1992
(P.L.1496, NO.177), IS AMENDED TO READ:

SECTION 801. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES
WHEN USED IN THIS ARTICLE SHALL HAVE, UNLESS THE CONTEXT CLEARLY
INDICATES OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SECTION:

* * *

"MANAGING GENERAL AGENT" OR "MGA" MEANS:

(1) ANY PERSON, FIRM, ASSOCIATION OR CORPORATION WHO
NEGOTIATES AND BINDS CEDING REINSURANCE CONTRACTS ON BEHALF OF
AN INSURER OR MANAGES ALL OR PART OF THE INSURANCE BUSINESS OF
AN INSURER, INCLUDING THE MANAGEMENT OF A SEPARATE DIVISION,
DEPARTMENT OR UNDERWRITING OFFICE, AND ACTS AS AN AGENT FOR SUCH
INSURER WHETHER KNOWN AS A MANAGING GENERAL AGENT[, MANAGER] OR
OTHER SIMILAR TERM WHO, WITH OR WITHOUT THE AUTHORITY EITHER
SEPARATELY OR TOGETHER WITH AFFILIATES, PRODUCES, DIRECTLY OR
INDIRECTLY, AND UNDERWRITES AN AMOUNT OF GROSS DIRECT WRITTEN
PREMIUM EQUAL TO OR MORE THAN FIVE PER CENTUM OF THE
POLICYHOLDER SURPLUS AS REPORTED IN THE LAST ANNUAL STATEMENT OF
THE INSURER IN ANY ONE QUARTER OR YEAR TOGETHER WITH ONE OR MORE
OF THE FOLLOWING:

(I) ADJUSTS OR PAYS CLAIMS IN EXCESS OF AN AMOUNT DETERMINED
BY THE INSURANCE DEPARTMENT; OR

(II) NEGOTIATES REINSURANCE ON BEHALF OF THE INSURER.

(2) NOTWITHSTANDING CLAUSE (1), THE FOLLOWING PERSONS SHALL
NOT BE CONSIDERED AS MANAGING GENERAL AGENTS FOR THE PURPOSES OF
THIS ARTICLE:

(I) AN EMPLOYEE OF THE INSURER;

(II) A UNITED STATES MANAGER OF THE UNITED STATES BRANCH OF
AN ALIEN INSURER;

1 (III) AN UNDERWRITING MANAGER WHICH, PURSUANT TO CONTRACT,
2 MANAGES ALL THE INSURANCE OPERATIONS OF THE INSURER, IS UNDER
3 COMMON CONTROL WITH THE INSURER, SUBJECT TO ARTICLE XII OF THE
4 ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS "THE INSURANCE
5 COMPANY LAW OF 1921," AND WHOSE COMPENSATION IS NOT BASED ON THE
6 VOLUME OF PREMIUMS WRITTEN;

7 (IV) THE ATTORNEY-IN-FACT AUTHORIZED BY AND ACTING FOR THE
8 SUBSCRIBERS OF A RECIPROCAL INSURER OR INTER-INSURANCE EXCHANGE
9 UNDER POWERS OF ATTORNEY;

10 (V) ANY MANAGER OR EXCLUSIVE GENERAL AGENT OPERATING UNDER
11 ANY MANAGEMENT CONTRACT OR EXCLUSIVE GENERAL AGENCY AGREEMENT
12 ENTERED INTO PRIOR TO DECEMBER 22, 1965, AND THEREFOR NOT
13 SUBJECT TO LICENSING PURSUANT TO SECTION 651: PROVIDED, HOWEVER,
14 THAT ANY SUCH MANAGEMENT CONTRACT OR EXCLUSIVE GENERAL AGENCY
15 AGREEMENT SHALL SUBJECT THE MANAGER OR EXCLUSIVE GENERAL AGENT
16 AND THE INSURER TO ARTICLE XII OF THE ACT OF MAY 17, 1921
17 (P.L.682, NO.284), KNOWN AS "THE INSURANCE COMPANY LAW OF 1921":
18 AND FURTHER PROVIDED, THAT ANY SALE, ASSIGNMENT OR TRANSFER OF
19 ANY MANAGEMENT CONTRACT OR EXCLUSIVE GENERAL AGENCY AGREEMENT,
20 WHETHER SAID CONTRACT OR AGREEMENT WAS ENTERED INTO BEFORE OR
21 AFTER DECEMBER 22, 1965, SHALL MAKE THE PURCHASER, ASSIGNEE OR
22 TRANSFEREE SUBJECT TO LICENSING UNDER THIS ARTICLE.

23 * * *

24 SECTION 8. SECTION 805(E) OF THE ACT, ADDED DECEMBER 18,
25 1992 (P.L.1496, NO.177), IS AMENDED TO READ:

26 SECTION 805. DUTIES OF INSURERS.--* * *

27 (E) WITHIN THIRTY DAYS OF ENTERING INTO OR TERMINATION OF A
28 CONTRACT WITH AN MGA, THE INSURER SHALL PROVIDE WRITTEN
29 NOTIFICATION OF SUCH APPOINTMENT OR TERMINATION TO THE
30 DEPARTMENT. NOTICES OF APPOINTMENT OF AN MGA SHALL INCLUDE A

1 STATEMENT OF DUTIES WHICH THE [APPLICANT] MGA IS EXPECTED TO
2 PERFORM ON BEHALF OF THE INSURER, THE LINES OF INSURANCE FOR
3 WHICH THE [APPLICANT] MGA IS TO BE AUTHORIZED TO ACT AND ANY
4 OTHER INFORMATION THE COMMISSIONER MAY REQUEST.

5 * * *

6 SECTION 9. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

7 (1) THE AMENDMENT OF SECTION 208 OF THE ACT SHALL TAKE
8 EFFECT IN 90 DAYS.

9 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
10 IMMEDIATELY.