

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 101 Session of
2005

INTRODUCED BY LEDERER, TIGUE, MCGEEHAN, BARRAR, YOUNGBLOOD,
GEORGE, THOMAS, LESCOVITZ, BELARDI, MANN, GRUCELA, SOLOBAY,
READSHAW, MCILHATTAN, WATSON, YUDICHAK, SURRA, PISTELLA,
RUBLEY, WALKO, FRANKEL, W. KELLER, MELIO, STURLA, BEBKO-
JONES, CAWLEY, CRAHALLA, SHANER, FREEMAN, MARKOSEK, CURRY,
MANDERINO AND CALTAGIRONE, JANUARY 25, 2005

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 25, 2005

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employees in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employees of certain departments, boards and
20 commissions shall be determined," establishing the Office of
21 Consumer Advocate for Insurance as an independent office
22 within the Office of Attorney General and prescribing its
23 powers and duties.

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

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

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

3 ARTICLE IX-C

4 OFFICE OF CONSUMER ADVOCATE FOR INSURANCE

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

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

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

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

14 "Insurer" means any "company," "association" or "exchange" as
15 such terms are defined in section 101 of the act of May 17, 1921
16 (P.L.789, No.285), known as "The Insurance Department Act of
17 1921."

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

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

23 (b) The Office of Consumer Advocate for Insurance shall be
24 headed by the Consumer Advocate for Insurance. The person who
25 holds this office shall be appointed by the Governor and shall
26 be an attorney who, by reason of training, experience and
27 attainment is qualified to represent the interest of consumers.
28 Compensation shall be set by the Executive Board.

29 (c) No individual who serves as a Consumer Advocate for
30 Insurance shall, while serving in the position, engage in any

business, vocation or other employment, or have other interests,
inconsistent with the official responsibilities, nor shall the
individual seek or accept employment nor render beneficial
services for compensation with any insurer subject to the
authority of the office during the tenure of the appointment and
for a period of two years immediately after the appointment is
served or terminated.

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

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

Section 904-C. Powers and Duties of the Consumer Advocate
for Insurance.--(a) In addition to any other authority
conferred by this article, the Consumer Advocate for Insurance
is authorized to and shall, in carrying out the responsibilities
under this article, represent the interest of consumers as a

1 party, or otherwise participate for the purpose of representing
2 an interest of consumers, before the department in any matter
3 properly before the department, and before any court or agency,
4 initiating proceedings if, in the judgment of the Consumer
5 Advocate for Insurance, the representation may be necessary, in
6 connection with any matter involving regulation by the
7 department or the corresponding regulatory agency of the Federal
8 Government, whether on appeal or otherwise initiated.

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

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

1 written notification and the reasons for the action shall be
2 given to the sponsors.

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

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

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

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

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

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

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

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

(c) Prior to the first day of April following the effective date of this article and prior to the first day of April of each year thereafter so long as this article shall remain in effect, each insurer who writes coverages for fire and casualty, accident and health, credit accident and health under life/annuity/accident, health and life including annuities in

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

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

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

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

26 Section 907-C. Reports.--The Consumer Advocate for Insurance
27 shall annually transmit to the Governor and to the General
28 Assembly, and shall make available to the public, an annual
29 report on the conduct of the Office of Consumer Advocate for
30 Insurance. The Consumer Advocate for Insurance shall make

1 recommendations as may, from time to time, be necessary or
2 desirable to protect the interest of consumers.

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

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

10 Section 2. This act shall take effect in 90 days.