

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 966 Session of 2007

INTRODUCED BY R. TAYLOR, BEAR, BLACKWELL, CARROLL, CONKLIN, DePASQUALE, FREEMAN, GINGRICH, GOODMAN, HUTCHINSON, JOSEPHS, KORTZ, KOTIK, MACKERETH, MAHONEY, MANDERINO, MUNDY, NICKOL, M. O'BRIEN, PRESTON, READSHAW, YOUNGBLOOD, BARRAR, HORNAMAN AND CALTAGIRONE, MARCH 29, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 20, 2007

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," providing for scope of article, for
12 the definition of "long-term care insurance," for the Long-
13 Term Care Partnership Program, for authority to promulgate
14 regulations, for marketing and advertising prohibited and for
15 penalties; and further providing for coverage and
16 limitations.

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

19 Section 1. Section 1102 of the act of May 17, 1921 (P.L.682,
20 No.284), known as The Insurance Company Law of 1921, added
21 December 15, 1992 (P.L.1129, No.148), is amended to read:

22 Section 1102. Scope of Article.--This article is not
23 intended to supersede the obligations of entities subject to

1 this article to comply with the substance of other applicable
2 insurance laws insofar as they do not conflict with this
3 article, except that laws and regulations designed and intended
4 to apply to Medicare supplement insurance policies shall not be
5 applied to long-term care insurance. A policy which is not
6 advertised, marketed or offered as long-term care insurance [or
7 nursing home insurance] need not meet the requirements of this
8 article.

9 Section 2. The definition of "long-term care insurance" in
10 section 1103 of the act, amended November 30, 2004 (P.L.1690,
11 No.216), is amended to read:

12 Section 1103. Definitions.--As used in this article, the
13 following words and phrases shall have the meanings given to
14 them in this section:

15 * * *

16 "Long-term care insurance." Any insurance policy or rider
17 advertised, marketed, offered or designed to provide
18 comprehensive coverage for each covered person on an expense-
19 incurred, indemnity, prepaid or other basis for functionally
20 necessary or medically necessary diagnostic, preventive,
21 therapeutic, rehabilitative, maintenance or personal care
22 services provided in a setting other than an acute care unit of
23 a hospital. The term includes a policy, rider or prepaid home
24 health or personal care service policy which provides for
25 payment of benefits based upon cognitive impairment or the loss
26 of functional capacity. The term includes group and individual
27 policies or riders issued by insurers, fraternal benefit
28 societies, nonprofit health, hospital and medical service
29 corporations, health maintenance organizations or similar
30 organizations. The term does not include any insurance policy

1 which is offered primarily to provide basic Medicare supplement
2 coverage, basic hospital expense coverage, basic medical-
3 surgical expense coverage, hospital confinement indemnity
4 coverage, major medical expense coverage, disability income
5 protection coverage, accident-only coverage, specified disease
6 or specified accident coverage or limited benefit health
7 coverage.

8 * * *

9 Section 3. The act is amended by adding a section to read:

10 Section 1110.1. Long-Term Care Partnership Program.--(a)

11 The Department of Public Welfare, with the cooperation of the
12 department and the Department of Aging, shall seek to establish
13 a Long-Term Care Partnership Program by filing a State plan
14 amendment within thirty (30) days of the effective date of this
15 section with the Centers for Medicare and Medicaid Services of
16 the United States Department of Health and Human Services
17 pursuant to Title XIX of the Social Security Act (49 Stat. 620,
18 42 U.S.C. § 301 et seq.).

19 (b) The department shall require all insurers to offer <—

20 OFFERING A QUALIFIED LONG-TERM CARE PARTNERSHIP PROGRAM POLICY <—

21 to exchange any policy or certificate issued between February 8,
22 2006, and the date the State plan amendment takes effect, with a
23 qualified Long-Term Care Partnership Program policy. The
24 following shall apply:

25 (1) All offers of exchange shall be subject to the outline
26 of coverage provisions set forth under section 1111 and all
27 applicable regulations.

28 (2) Policies exchanged under this provision, if there is no
29 change in coverage material to the risk, shall not be subject to
30 any medical underwriting or approval process.

1 (3) Any portion of the policy that was issued prior to the
2 exchange date shall be priced based on the policyholder's age
3 when the policy was originally issued.

4 (4) Any portion of the policy that is added as a result of
5 the exchange may be priced based on the policyholder's age at
6 the time of the exchange.

7 (5) Any addition to a policy as a result of any exchange
8 shall be subject to the right to return set forth under section
9 1110 and all applicable regulations.

10 Section 4. Sections 1112, 1113 and 1114 of the act, added
11 December 15, 1992 (P.L.1129, No.148), are amended to read:

12 Section 1112. Authority to Promulgate Regulations.--The
13 department shall promulgate reasonable regulations to establish
14 minimum standards for marketing practices, [agent] producer
15 compensation arrangements, [agent] producer testing, penalties
16 and reporting practices for long-term care insurance.

17 Section 1113. Marketing and Advertising Prohibited.--No
18 policy may be advertised, marketed or offered as long-term care
19 [or nursing home] insurance unless it complies with the
20 provisions of this article.

21 Section 1114. Penalties.--In addition to any other penalties
22 provided by the laws of this Commonwealth, an insurer or [agent]
23 producer found to have violated requirements relating to the
24 regulations of long-term care insurance or the marketing of such
25 insurance shall be subject to a civil penalty of up to three
26 times the amount of any commissions paid for each policy
27 involved in the violation or ten thousand dollars (\$10,000),
28 whichever is greater.

29 Section 5. Section 1703 of the act, added December 18, 1992
30 (P.L.1519, No.178), is amended to read:

1 Section 1703. Coverage and Limitations.--(a) This article
2 shall provide coverage to the following persons for the policies
3 and contracts specified in subsection (b):

4 (1) To persons who, regardless of where they reside, except
5 for nonresident certificate holders under group policies or
6 contracts, are the beneficiaries, assignees or payees of the
7 persons covered under paragraph (2).

8 (2) To persons who are owners of or certificate holders
9 under these policies or contracts or, in the case of unallocated
10 annuity contracts, to the persons who are the contract holders
11 and who:

12 (i) are residents; or

13 (ii) are not residents, but only under all of the following
14 conditions:

15 (A) the insurers which issued such policies or contracts are
16 domiciled in this Commonwealth;

17 (B) such insurers never held a license or certificate of
18 authority in the states in which such persons reside;

19 (C) these states have associations similar to the
20 association created by this article; and

21 (D) these persons are not eligible for coverage by those
22 associations.

23 (b) (1) This article shall provide coverage to the persons
24 specified in subsection (a) for direct, nongroup life, health,
25 annuity and supplemental policies or contracts, for certificates
26 under direct group policies and contracts and for unallocated
27 annuity contracts issued by member insurers, except as limited
28 by this article. Annuity contracts and certificates under group
29 annuity contracts include, but are not limited to, guaranteed
30 investment contracts, deposit administration contracts,

1 unallocated funding agreements, allocated funding agreements,
2 structured settlement agreements, lottery contracts and any
3 immediate or deferred annuity contracts.

4 (2) This article shall not provide coverage for any of the
5 following:

6 (i) Any portion of a policy or contract not guaranteed by
7 the insurer or under which the risk is borne by the policy or
8 contract holder.

9 (ii) Any policy or contract of reinsurance, unless
10 assumption certificates have been issued.

11 (iii) Any portion of a policy or contract to the extent that
12 the rate of interest on which it is based:

13 (A) averaged over the period of four (4) years prior to the
14 date on which the association becomes obligated with respect to
15 such policy or contract, exceeds a rate of interest determined
16 by subtracting two (2) percentage points from Moody's Corporate
17 Bond Yield Average averaged for the same four-year period or for
18 such lesser period if the policy or contract was issued less
19 than four (4) years before the association became obligated; and

20 (B) on and after the date on which the association becomes
21 obligated with respect to such policy or contract, exceeds the
22 rate of interest determined by subtracting three (3) percentage
23 points from Moody's Corporate Bond Yield Average as most
24 recently available.

25 (iv) Any plan or program of an employer, association or
26 similar entity to provide life, health or annuity benefits to
27 its employees or members to the extent that such plan or program
28 is self-funded or uninsured, including, but not limited to,
29 benefits payable by an employer, association or similar entity
30 under:

1 (A) a Multiple Employer Welfare Arrangement as defined in
2 section 514 of the Employee Retirement Income Security Act of
3 1974;

4 (B) a minimum premium group insurance plan;

5 (C) a stop-loss group insurance plan; or

6 (D) an administrative services only contract.

7 (v) Any portion of a policy or contract to the extent that
8 it provides dividends or experience rating credits or provides
9 that any fees or allowances to be paid to any person, including
10 the policyholder or contract holder, in connection with the
11 service to or administration of such policy or contract.

12 (vi) Any policy or contract issued in this Commonwealth by a
13 member insurer at a time when it was not licensed or did not
14 have a certificate of authority to issue such policy or contract
15 in this Commonwealth.

16 (vii) Any unallocated annuity contract issued to an employe
17 benefit plan protected under the Federal Pension Benefit
18 Guaranty Corporation.

19 (viii) Any portion of any unallocated annuity contract which
20 is not issued to or in connection with a specific employe, union
21 or association of natural persons benefit plan or a government
22 lottery.

23 (c) (1) The benefits for which the association may become
24 liable shall in no event exceed the lesser of:

25 (i) the contractual obligations for which the insurer is
26 liable or would have been liable if it were not an impaired or
27 insolvent insurer; or

28 (ii) (A) With respect to any one life, regardless of the
29 number of policies or contracts, the following shall apply:

30 (I) Three hundred thousand (\$300,000) dollars in life

1 insurance death benefits, but not more than one hundred thousand
2 (\$100,000) dollars in net cash surrender and net cash withdrawal
3 values for life insurance.

4 (II) [One hundred thousand (\$100,000) dollars] Three hundred
5 thousand (\$300,000) dollars in health insurance benefits,
6 including any net cash surrender and net cash withdrawal values.

7 (III) Three hundred thousand (\$300,000) dollars in annuity
8 benefits, including one hundred thousand (\$100,000) dollars in
9 net cash surrender and net cash withdrawal values.

10 (IV) Three hundred thousand (\$300,000) dollars in long-term
11 care insurance benefits, as defined under section 1103,
12 including any cash surrender and net cash withdrawal values.

13 (B) With respect to each individual participating in a
14 governmental retirement plan established under section 401,
15 403(b) or 457 of the Internal Revenue Code of 1986 covered by an
16 unallocated annuity contract or the beneficiaries of each such
17 individual if deceased, in the aggregate, three hundred thousand
18 (\$300,000) dollars in annuity benefits, including one hundred
19 thousand (\$100,000) dollars in net cash surrender and net cash
20 withdrawal values.

21 (C) With respect to any one contract holder covered by any
22 unallocated annuity contract not included in clause (B), five
23 million (\$5,000,000) dollars in benefits, irrespective of the
24 number of such contracts held by that contract holder.

25 (2) The association shall not, however, be liable to expend
26 more than three hundred thousand (\$300,000) dollars in the
27 aggregate with respect to any one individual under subparagraph
28 (ii)(A) and (B) of paragraph (1).

29 Section 6. The amendment of section 1703(c)(1)(ii)(A)(II)
30 and (IV) shall apply to an insolvency occurring on or after the

1 effective date of this section.

2 SECTION 7. THE AMENDMENT OF SECTION 1103 OF THE ACT SHALL <—
3 APPLY TO ALL POLICIES ISSUED ON OR AFTER THE EFFECTIVE DATE OF
4 THIS ACT.

5 Section 7 8. This act shall take effect as follows: <—

6 (1) ~~Section 6~~ SECTIONS 5 AND 6 OF THIS ACT and this <—
7 section shall take effect immediately.

8 (2) The remainder of this act shall take effect in 60
9 days.