

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1195 Session of 2020

INTRODUCED BY SCAVELLO AND STREET, JUNE 9, 2020

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 30, 2020

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," in general provisions relating to
12 insurance companies, associations and exchanges, further
13 providing for Reinsurance Credits and providing for credit
14 for reinsurance and reciprocal jurisdictions; in Life and
15 Health Insurance Guaranty Association, further providing for
16 purpose, for definitions, for coverage and limitations, for
17 creation of association, for board of directors, for powers
18 and duties of association, for assessments, for plan of
19 operation, for powers and duties of the commissioner, for
20 prevention of insolvencies, for credits for assessments paid,
21 for miscellaneous provisions, for examination of the
22 association and annual report, for immunity, for stay of
23 proceedings and reopening default judgments, for prohibited
24 advertisement or Insurance Guaranty Association Act in
25 insurance sales and for prospective application.

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

28 Section 1. Section 319.1(a), (b) and (f) of the act of May
29 17, 1921 (P.L.682, No.284), known as The Insurance Company Law

1 of 1921, are amended and the section is amended by adding
2 subsections to read:

3 Section 319.1. Reinsurance Credits.--[(a) Unless an
4 unlicensed reinsurer is qualified or certified to accept
5 reinsurance from insurers licensed in this Commonwealth, no
6 credit shall be allowed as an admitted asset or as a reduction
7 of liability relative to risks ceded by such licensed insurers.
8 Qualified or certified reinsurers are those meeting the
9 conditions for reinsurers specified by the commissioner, in his
10 discretion, and included on a list of qualified or certified
11 reinsurers published and periodically reviewed by said
12 commissioner.]

13 (a.1) A domestic ceding insurer may take a credit for
14 reinsurance as either an asset or reduction from liability on
15 account of the reinsurance ceded if it meets the requirements
16 specified in this section.

17 (a.2) The following types of reinsurance arrangements are
18 permissible:

19 (1) Reinsurance ceded to an assuming insurer that is
20 licensed to transact insurance or reinsurance in this
21 Commonwealth in accordance with section 319(b).

22 (2) Reinsurance ceded to an insurer meeting the conditions
23 specified by the commissioner, in the commissioner's discretion,
24 and included on a list of qualified or certified reinsurers
25 published and periodically reviewed by the commissioner
26 including when the reinsurance is ceded to the following:

27 (i) An assuming foreign or alien insurer or group of
28 incorporated alien insurers under common administration that has
29 been deemed to be a qualified reinsurer by the commissioner in
30 accordance with the requirements of 31 Pa. Code Ch. 161

1 (relating to requirements for qualified and certified
2 reinsurers).

3 (ii) An assuming insurer that has been certified by the
4 commissioner as a reinsurer in this Commonwealth in accordance
5 with the requirements of 31 Pa. Code Ch. 161, except that as of
6 the effective date of this subsection, the following shall
7 apply:

8 (A) Certified reinsurers not domiciled in the United States
9 must submit the most recent audited financial statements,
10 regulatory filings and actuarial opinions, as filed with the
11 certified reinsurer's supervisor, with a translation into
12 English, but shall not need to submit audited financial
13 statements on a United States generally accepted accounting
14 principles or international financial reporting standards
15 basis.

16 (B) Upon the initial application for certification pursuant
17 to 31 Pa. Code Ch. 161, the commissioner shall consider audited
18 financial statements for the last two years filed with the
19 certified reinsurer's supervisor.

20 (3) Reinsurance ceded to an assuming insurer meeting the
21 requirements of section 319.3.

22 (4) Reinsurance ceded to an assuming insurer that is
23 domiciled in, or for a United States branch of an alien assuming
24 insurer is entered through, a state that employs standards
25 regarding credit for reinsurance substantially similar to those
26 applicable under the law of this Commonwealth and the assuming
27 insurer or United States branch of an alien assuming insurer
28 meets both of the following:

29 (i) Maintains a surplus as regards policyholders in an
30 amount not less than \$20,000,000, except with regard to

1 reinsurance ceded and assumed pursuant to pooling arrangements
2 among insurers in the same holding company system.

3 (ii) Submits to the authority of the commissioner to examine
4 its books and records.

5 (b) A reduction from liability for the reinsurance ceded by
6 a domestic insurer to an assuming insurer [which is not a
7 qualified or certified reinsurer in accordance with this
8 section] not falling within one of the categories specified
9 under subsection (a.2) shall be allowed in an amount not
10 exceeding the liabilities carried by the ceding insurer and such
11 reduction shall be in the amount of funds held by or on behalf
12 of the ceding insurer, including funds held in trust for the
13 ceding insurer, under a reinsurance contract with such assuming
14 insurer as security for the payment of obligations thereunder,
15 if such security is held in the United States subject to
16 withdrawal solely by and under the exclusive control of the
17 ceding insurer or, in the case of a trust, held in a qualified
18 United States financial institution, as defined in subsection
19 (g) (2). This security may be in the form of:

20 (1) Cash.

21 (2) Securities listed by a securities valuation office of a
22 national association of insurance commissioners or any successor
23 thereto, including those exempted from filing under the Purposes
24 and Procedures Manual of the Securities Valuation Office of the
25 National Association of Insurance Commissioners, and
26 [qualifying] DETERMINED BY THE COMMISSIONER TO QUALIFY as <--
27 admitted assets.

28 (3) (i) Clean, irrevocable, unconditional and evergreen
29 letters of credit issued or confirmed by a qualified United
30 States financial institution, as defined in subsection (g) (1),

1 effective no later than the thirty-first day of December in
2 respect of the year for which filing is being made and in the
3 possession of the ceding insurer on or before the filing date of
4 its annual statement.

5 (ii) Letters of credit meeting applicable standards of
6 issuer acceptability as of the dates of their issuance or
7 confirmation shall, notwithstanding the issuing or confirming
8 institution's subsequent failure to meet applicable standards of
9 issuer acceptability, continue to be acceptable as security
10 until their expiration, extension, renewal, modification or
11 amendment, whichever first occurs.

12 (4) Funds or letters of credit provided by a noninsurer
13 parent corporation of the ceding insurer, in lieu of the funds
14 to be withheld by the ceding insurer under a reinsurance
15 contract with such assuming insurer as security for payment of
16 obligations thereunder, if the following requirements are met:

17 (i) The funds or letters of credit are held subject to
18 withdrawal by and under the control of the ceding insurer.

19 (ii) The type, amount and form of the funds or letters of
20 credit receive the prior approval of the Insurance Commissioner.

21 (5) Any other form of security acceptable to the Insurance
22 Commissioner.

23 * * *

24 (f) The following shall apply:

25 (1) Notwithstanding the provisions of this section, the
26 Insurance Department may promulgate one or more regulations to
27 limit, prohibit or authorize the credit which a domestic insurer
28 may take as an admitted asset or as a reduction in liability
29 with respect to reinsurance ceded on any financial statements
30 filed with the Insurance Department.

1 (2) In addition to and notwithstanding the commissioner's
2 regulatory authority under paragraph (1), the commissioner may
3 promulgate regulations as provided under this paragraph.

4 (i) A regulation promulgated under this paragraph shall
5 only apply to reinsurance relating to the following:

6 (A) Life insurance policies with guaranteed nonlevel gross
7 premiums or guaranteed nonlevel benefits.

8 (B) Universal life insurance policies with provisions
9 resulting in the ability of a policyholder to keep a policy in
10 force over a secondary guarantee period.

11 (C) Variable annuities with guaranteed death or living
12 benefits.

13 (D) Long-term care insurance policies.

14 (E) Other life and health insurance and annuity products
15 related to credit for reinsurance.

16 (ii) A regulation promulgated under this paragraph may apply
17 to treaties entered into after the effective date of this
18 paragraph containing:

19 (A) policies issued after December 31, 2014;

20 (B) policies issued prior to January 1, 2015, if risk
21 pertaining to the policies is ceded in connection with the
22 treaty, in whole or in part, after December 31, 2014 ; or

23 (C) policies that meet the requirements of both clauses (A)
24 and (B).

25 (iii) A regulation promulgated under this paragraph may not
26 apply to cessions to an assuming insurer if the assuming insurer
27 meets one of the following:

28 (A) Meets the requirements under section 319.3.

29 (B) Is certified in this Commonwealth.

30 (C) The commissioner has determined that the assuming

1 insurer maintains at least \$250,000,000 (two hundred and fifty
2 million dollars) in capital and surplus and is either of the
3 following:

4 (I) licensed in at least 26 states; or

5 (II) licensed in at least ten states and licensed or
6 accredited in a total of at least 35 states.

7 * * *

8 Section 1.1. The act is amended by adding a section to read:

9 Section 319.3. Credit For Reinsurance And Reciprocal

10 Jurisdictions.--(a) The commissioner shall allow credit for
11 reinsurance ceded by a domestic insurer to an assuming insurer
12 that is licensed to write reinsurance by, and has its head
13 office or is domiciled in, a reciprocal jurisdiction that meets
14 the requirements of this section.

15 (b) (Reserved).

16 (c) Credit shall be allowed if reinsurance is ceded from an
17 insurer domiciled in this Commonwealth to an assuming insurer
18 meeting each of the following conditions:

19 (1) The assuming insurer must be licensed to transact
20 reinsurance by and have its head office or be domiciled in a
21 reciprocal jurisdiction.

22 (2) The assuming insurer must have and maintain on an
23 ongoing basis minimum capital and surplus, or its equivalent,
24 calculated on at least an annual basis as of the preceding
25 December 31 or at the annual date otherwise statutorily reported
26 to the reciprocal jurisdiction, and confirmed as provided under
27 paragraph (7) according to the methodology of its domiciliary
28 jurisdiction in the following amounts, which may be modified by
29 the commissioner by regulation:

30 (i) at least \$250,000,000; or

1 (ii) if the assuming insurer is an association, including
2 incorporated and individual unincorporated underwriters:

3 (A) minimum capital and surplus equivalents, net of
4 liabilities, or own funds of the equivalent of at least
5 \$250,000,000; and

6 (B) a central fund containing a balance of the equivalent of
7 at least \$250,000,000.

8 (3) The assuming insurer must have and maintain, on an
9 ongoing basis, a minimum solvency or capital ratio, as follows:

10 (i) if the assuming insurer has its head office or is
11 domiciled in a reciprocal jurisdiction as provided under
12 paragraph (1) of the definition of "reciprocal jurisdiction,"
13 the ratio specified in the applicable covered agreement;

14 (ii) if the assuming insurer is domiciled in a reciprocal
15 jurisdiction under paragraph (2) of the definition of
16 "reciprocal jurisdiction", a risk-based capital ratio of 300% of
17 the authorized control level calculated in accordance with the
18 formula developed by the National Association of Insurance
19 Commissioners; or

20 (iii) if the assuming insurer is domiciled in a reciprocal
21 jurisdiction under paragraph (3) of the definition of
22 "reciprocal jurisdiction", after consultation with the
23 reciprocal jurisdiction and considering any recommendations
24 published through the National Association of Insurance
25 Commissioners committee process, the solvency or capital ratio
26 as the commissioner determines to be an effective measure of
27 solvency.

28 (4) The assuming insurer must agree to and provide adequate
29 assurance, by executing a form as prescribed by the
30 commissioner, of its agreement to the following:

1 (i) The assuming insurer must agree to provide prompt
2 written notice and explanation to the commissioner if it falls
3 below the minimum requirements under paragraphs (2) and (3) , or
4 if any regulatory action is taken against it for serious
5 noncompliance with law.

6 (ii) The assuming insurer must consent in writing to the
7 jurisdiction of the courts of this Commonwealth and to the
8 appointment of the commissioner as agent for service of process.

9 (A) The commissioner may require that the consent be
10 provided and included in each reinsurance agreement under the
11 commissioner's jurisdiction.

12 (B) Nothing under this paragraph shall limit or alter the
13 capacity of a party to a reinsurance agreement to agree to
14 alternative dispute resolution mechanisms, except to the extent
15 the agreements are unenforceable under applicable insolvency or
16 delinquency laws.

17 (iii) The assuming insurer must consent in writing to pay
18 each final judgment, wherever enforcement is sought, obtained by
19 a ceding insurer, that have been declared ~~unenforceable~~ <--
20 ENFORCEABLE in the territory where the judgment was obtained. <--

21 (iv) Each reinsurance agreement must include a provision
22 requiring the assuming insurer to provide security in an amount
23 equal to one hundred percent (100%) of the assuming insurer's
24 liabilities attributable to reinsurance ceded pursuant to the
25 agreement if the assuming insurer resists enforcement of a final
26 judgment that is enforceable under the law of the jurisdiction
27 in which it was obtained or a properly enforceable arbitration
28 award, whether obtained by the ceding insurer or by its legal
29 successor on behalf of this estate, if applicable.

30 (v) The assuming insurer must:

1 (A) Confirm that it is not presently participating in a
2 solvent scheme of arrangement, which involves this
3 Commonwealth's ceding insurers.

4 (B) Agree to notify the ceding insurer and the commissioner
5 if it enters into a solvent scheme of arrangement.

6 (C) Agree to provide security to the ceding insurer in an
7 amount equal to 100% of the assuming insurer's liabilities to
8 the ceding insurer if the assuming insurer enters into a solvent
9 scheme of arrangement.

10 (D) Agree to provide security in a form consistent with all
11 of the following:

12 (I) The provisions of section 319.1(a.2)(2) applicable to
13 certified reinsurers.

14 (II) Section 319.1(b).

15 (III) 31 Pa.Code Ch. 163 (relating to requirements for funds
16 held as security for the payment of obligations of unlicensed,
17 unqualified reinsurers).

18 (E) For purposes of this subparagraph, the term "solvent
19 scheme of arrangement" means a foreign or alien statutory or
20 regulatory compromise procedure subject to requisite majority
21 creditor approval and judicial sanction in the assuming
22 insurer's home jurisdiction either to finally commute
23 liabilities of duly noticed class members or creditors of a
24 solvent debtor on a final basis, and which may be subject to
25 jurisdictional recognition and enforcement of the arrangement by
26 a governing authority outside the ceding insurer's home
27 jurisdiction.

28 (vi) An assuming insurer shall agree in writing to meet the
29 applicable information filing requirements of paragraph (5) of
30 this subsection.

1 (5) An assuming insurer or its legal successor shall
2 provide, if requested by the commissioner, on behalf of itself
3 and any legal predecessors, the following documentation to the
4 commissioner:

5 (i) for the two years preceding entry into the reinsurance
6 agreement and on an annual basis thereafter, the assuming
7 insurer's annual audited financial statements, in accordance
8 with the law of the jurisdiction of its head office or
9 domiciliary jurisdiction, as applicable, including the external
10 audit report;

11 (ii) for the two years preceding entry into the reinsurance
12 agreement, the solvency and financial condition report or
13 actuarial opinion, if filed with the assuming insurer's
14 supervisor;

15 (iii) prior to entry into the reinsurance agreement and not
16 more often than semi-annually thereafter, an updated list of
17 each disputed and overdue reinsurance claims outstanding for at
18 least 90 days, regarding reinsurance assumed from ceding
19 insurers domiciled in the United States; and

20 (iv) prior to entry into the reinsurance agreement and not
21 more often than semi-annually thereafter, information regarding
22 the assuming insurer's assumed reinsurance by ceding insurer,
23 ceded reinsurance by the assuming insurer and reinsurance
24 recoverable on paid and unpaid losses by the assuming insurer to
25 allow for the evaluation of the criteria under paragraph (6).

26 (6) The assuming insurer must maintain a practice of prompt
27 payment of claims under reinsurance agreements. The lack of
28 prompt payment shall be evidenced by any of the following
29 criteria:

30 (i) More than 15% of the reinsurance recoverables from the

1 assuming insurer are overdue and in dispute as reported to the
2 commissioner.

3 (ii) More than 15% of the assuming insurer's reinsurance
4 recoverables on paid losses are at least 90 days overdue, are
5 not in dispute and exceed \$100,000 for each ceding insurer or as
6 otherwise specified in a covered agreement.

7 (iii) The aggregate amount of reinsurance recoverable on
8 paid losses which are not in dispute, but are overdue by at
9 least 90 days, exceeds \$50,000,000 or as otherwise specified in
10 a covered agreement.

11 (7) The assuming insurer's supervisor shall confirm, in
12 writing, to the commissioner on an annual basis, as of the
13 preceding December 31 or at the annual date otherwise
14 statutorily reported to the reciprocal jurisdiction that the
15 assuming insurer complies with the requirements under paragraphs
16 (2) and (3).

17 (8) Nothing under this subsection shall preclude an assuming
18 insurer from providing the commissioner with information on a
19 voluntary basis.

20 (c.1) The department shall publish the prescribed form under
21 subsection (c)(4) on the department's Internet website and
22 shall submit the form to the Legislative Reference Bureau for
23 publication in the Pennsylvania Bulletin.

24 (d) The commissioner shall timely create and publish a list
25 of reciprocal jurisdictions on the department's Internet website
26 and shall submit the list to the Legislative Reference Bureau
27 for publication in the Pennsylvania Bulletin. The following
28 shall apply:

29 (1) A list of reciprocal jurisdictions is published through
30 the National Association of Insurance Commissioners committee

1 process. The commissioner shall include on the list any
2 reciprocal jurisdiction the meets the requirements of subsection
3 (k) (1) and (2).

4 (2) The commissioner shall consider any other reciprocal
5 jurisdiction that is included on the list of reciprocal
6 jurisdictions published through the National Association of
7 Insurance Commissioners committee process.

8 (3) The commissioner may approve a jurisdiction that does
9 not meet the requirements of subsection (k) (1) or (2) as
10 provided by law, regulation or in accordance with criteria
11 published through the National Association of Insurance
12 Commissioners committee process.

13 (4) The commissioner may remove a jurisdiction from the list
14 of reciprocal jurisdictions upon a determination that the
15 jurisdiction no longer meets the requirements of this section or
16 other law or regulation, or in accordance with a process
17 published through the National Association of Insurance
18 Commissioners committee process, except that the commissioner
19 may not remove a reciprocal jurisdiction that meets the
20 requirements of subsection (k) (1) or (2). Upon removal of a
21 reciprocal jurisdiction from the list, credit for reinsurance
22 ceded to an assuming insurer which has its home office or is
23 domiciled in a jurisdiction shall be allowed only if allowed
24 under section 319.1.

25 (e) The commissioner shall timely create and publish a list
26 of assuming insurers that have satisfied the conditions under
27 this section and to which cessions shall be granted credit. The
28 following shall apply:

29 (1) The commissioner shall create the list in accordance
30 with the following requirements:

1 (i) The commissioner may add an assuming insurer to the list
2 if an National Association of Insurance Commissioners-accredited
3 jurisdiction has added the assuming insurer to a list of the
4 assuming insurers.

5 (ii) The commissioner may add an assuming insurer to the
6 list if, upon initial eligibility, the assuming insurer submits
7 the information to the commissioner as required under subsection
8 (c)(4) and complies with any additional requirements the
9 commissioner may impose by regulation, except to the extent that
10 the the additional requirements conflict with an applicable
11 covered agreement.

12 (iii) If a National Association of Insurance Commissioners-
13 accredited jurisdiction has determined that the conditions under
14 subsection (c) have been met, the commissioner may defer to the
15 jurisdiction's determination and add the assuming insurer to the
16 list of assuming insurers to which cessions shall be granted
17 credit in accordance with this subsection. The commissioner may
18 accept financial documentation filed with another National
19 Association of Insurance Commissioners-accredited jurisdiction
20 or with the National Association of Insurance Commissioners in
21 satisfaction of the requirements of subsection (c).

22 (iv) If requesting that the commissioner defer to another
23 National Association of Insurance Commissioners-accredited
24 jurisdiction's determination, the assuming insurer shall execute
25 the form under subsection (c)(4) and provide additional
26 information required by the commissioner. A state that has
27 received such a request must notify other state insurance
28 regulators through the National Association of Insurance
29 Commissioners committee process and provide the relevant
30 information with respect to the determination of eligibility.

1 (2) If the commissioner determines that an assuming insurer
2 no longer meets one or more of the requirements under this
3 section, the commissioner may revoke or suspend the eligibility
4 of the assuming insurer for recognition under this section.

5 (i) While an assuming insurer's eligibility is suspended, a
6 reinsurance agreement issued, amended or renewed after the
7 effective date of the suspension may not qualify for credit
8 except to the extent that the assuming insurer's obligations
9 under the contract are secured in accordance with section
10 319.1(b).

11 (ii) If an assuming insurer's eligibility is revoked, a
12 credit for reinsurance may not be granted after the effective
13 date of the revocation with respect to any reinsurance
14 agreements entered into by the assuming insurer, including
15 reinsurance agreements entered into prior to the date of
16 revocation, except to the extent that the assuming insurer's
17 obligations under the contract are secured in a form acceptable
18 to the commissioner in accordance with section 319.1(b).

19 (f) Before denying statement credit or imposing a
20 requirement to post security under section 319.1(b)(2) or
21 adopting an similar requirement that will have substantially the
22 same regulatory impact on security, the commissioner shall:

23 (1) Communicate with the ceding insurer, the assuming
24 insurer and the assuming insurer's supervisor that the assuming
25 insurer no longer satisfies one of the conditions listed in
26 subsection (c).

27 (2) Provide the assuming insurer with 30 days from the
28 initial communication to submit a plan to remedy the defect and
29 90 days from the initial communication to remedy the defect
30 except in exceptional circumstances in which a shorter period is

1 necessary for policyholder and consumer protection.

2 (3) After the expiration of the period under paragraph (2),
3 if the commissioner determines that no or insufficient action
4 was taken by the assuming insurer, the commissioner may take any
5 of the actions provided under this subsection.

6 (4) Provide a written explanation to the assuming insurer of
7 any of the requirements under this subsection.

8 (g) If subject to a legal process of rehabilitation,
9 liquidation or conservation, as applicable, the ceding insurer
10 or its representative may seek and, if determined appropriate by
11 the court in which the proceedings are pending, may obtain an
12 order requiring that the assuming insurer post security for all
13 outstanding ceded liabilities.

14 (h) Nothing under this subsection shall limit or alter the
15 capacity of a party to a reinsurance agreement to agree on
16 requirements for security or other terms in the reinsurance
17 agreement, except as expressly prohibited under section 319 or
18 other law or regulation.

19 (i) Credit may be taken under this section only for
20 reinsurance agreements entered into, amended or renewed on or
21 after the effective date of this section and only with respect
22 to losses incurred and reserves reported on or after the later
23 of the date on which the assuming insurer has met all
24 eligibility requirements under subsection (a), and the effective
25 date of the new reinsurance agreement, amendment or renewal. The
26 following shall apply:

27 (1) This subsection shall not alter or impair a ceding
28 insurer's right to take credit for reinsurance, to the extent
29 that credit is not available under this subsection, as long as
30 the reinsurance qualifies for credit under any other provision

1 of section 319.1.

2 (2) Nothing under this subsection shall authorize an
3 assuming insurer to withdraw or reduce the security provided
4 under any reinsurance agreement except as permitted by the terms
5 of the agreement.

6 (3) Nothing under this subsection shall limit or alter the
7 capacity of a party to any reinsurance agreement to renegotiate
8 the agreement.

9 (j) The commissioner may promulgate regulations to carry out
10 the provisions of this section.

11 (k) For the purposes of this section, a "reciprocal
12 jurisdiction" means a jurisdiction, as designated by the
13 commissioner under subsection (d) that meets one of the
14 following requirements:

15 (1) A non-United States jurisdiction that is subject to an
16 in-force covered agreement with the United States, each within
17 its legal authority or, for a covered agreement between the
18 United States and European Union, is a member state of the
19 European Union. For purposes of this paragraph, a "covered
20 agreement" is an agreement entered into under 31 U.S.C. §§ 313
21 (relating to Federal Insurance Office) and 314 (relating to
22 covered agreements) that is currently in effect or in a period
23 of provisional application and addresses the elimination, under
24 specified conditions, of collateral requirements as a condition
25 for entering into any reinsurance agreement with a ceding
26 insurer domiciled in this Commonwealth or for allowing the
27 ceding insurer to recognize credit for reinsurance.

28 (2) A United States jurisdiction that ~~meets the requirements~~ <--
29 ~~for accreditation under~~ THE COMMISSIONER VERIFIES HAS BEEN <--
30 ACCREDITED PURSUANT TO the National Association of Insurance

1 Commissioners financial standards and accreditation program.

2 (3) A qualified jurisdiction, as determined by the
3 commissioner under section 319.1(a.2) (2) which is not otherwise
4 described under paragraph (1) or (2) and which the commissioner
5 determines meets all of the following additional requirements:

6 (i) Provides that an insurer that has its head office or is
7 domiciled in the qualified jurisdiction shall receive credit for
8 reinsurance ceded to a United States-domiciled assuming insurer
9 in the same manner as credit for reinsurance is received for
10 reinsurance assumed by insurers domiciled in such qualified
11 jurisdictions.

12 (ii) Does not require a United States-domiciled assuming
13 insurer to establish or maintain a local presence as a condition
14 for entering into a reinsurance agreement with any ceding
15 insurer subject to regulation by the non-United States
16 jurisdiction or as a condition to allow the ceding insurer to
17 recognize credit for such reinsurance.

18 (iii) Recognizes the United States state regulatory approach
19 to group supervision and group capital by providing written
20 confirmation by a competent regulatory authority, in the
21 qualified jurisdiction, that insurers and insurance groups that
22 are domiciled or maintain their headquarters in this
23 Commonwealth or another jurisdiction accredited by the National
24 Association of Insurance Commissioners shall be subject only to
25 worldwide prudential insurance group supervision including
26 worldwide group governance, solvency and capital and reporting,
27 as applicable, by the commissioner or the commissioner of the
28 domiciliary state and will not be subject to group supervision
29 at the level of worldwide parent undertaking of the insurance or
30 reinsurance group by the qualified jurisdiction.

1 (iv) Provides written confirmation by a competent regulatory
2 authority in the qualified jurisdiction that information
3 regarding insurers and their parent, subsidiary or affiliated
4 entities, if applicable, shall be provided to the commissioner
5 in accordance with a memorandum of understanding or similar
6 document between the commissioner and such qualified
7 jurisdiction, including, but not limited to, the international
8 association of insurance supervisors multilateral memorandum of
9 understanding or multilateral memoranda of understanding
10 coordinated by the National Association of Insurance
11 Commissioners.

12 (L) FOR PURPOSES OF THIS SECTION, A "QUALIFIED JURISDICTION" <--
13 MEANS A JURISDICTION THAT MEETS THE REQUIREMENTS OF SUBSECTION
14 (K).

15 Section 1.2. Sections 1701, 1702, 1703, 1704(a), 1705(a),
16 1706 and 1707 of the act are amended to read:

17 Section 1701. Purpose.--The purpose of this article is to
18 protect, subject to certain limitations, the persons specified
19 in section 1703(a) against failure in the performance of
20 contractual obligations, under life [and], health [insurance
21 policies] and annuity policies, plans or contracts specified in
22 section 1703(b), because of the impairment or insolvency of the
23 member insurer that issued the policies, plans or contracts. To
24 provide this protection, an association of member insurers is
25 created to pay benefits and to continue coverages as limited
26 herein, and [members] member insurers of the association are
27 subject to assessment to provide funds to carry out the purpose
28 of this article.

29 Section 1702. Definitions.--As used in this article the
30 following words and phrases shall have the meanings given to

1 them in this section:

2 "Account." [Any] Either of the two accounts created under
3 section 1704.

4 "Association." The Pennsylvania Life and Health Insurance
5 Guaranty Association created under section 1704.

6 "Authorized assessment" or "authorized." The term when used
7 in the context of assessments means a resolution by the board of
8 directors has been passed whereby an assessment will be called
9 immediately or in the future from member insurers for a
10 specified amount. An assessment is authorized when the
11 resolution is passed.

12 "Benefit plan." A specific employee, union or association of
13 natural persons benefit plan.

14 "Called assessment" or "called." The term when used in the
15 context of assessments means that a notice has been issued by
16 the association to member insurers requiring that an authorized
17 assessment be paid within the time frame specified in the
18 notice. An authorized assessment becomes a called assessment
19 when notice is mailed by the association to member insurers.

20 "Commissioner." The Insurance Commissioner of the
21 Commonwealth.

22 "Contractual obligation." Any obligation under a policy or
23 contract or certificate under a group policy or contract or
24 portion thereof for which coverage is provided under section
25 1703.

26 "Covered [policy.] policy" or "covered contract." Any
27 policy or contract within the scope of this article under
28 section 1703.

29 "Department." The Insurance Department of the Commonwealth.

30 "Employee Retirement Income Security Act of 1974" or "ERISA."

1 The Employee Retirement Income Security Act of 1974 (Public Law
2 93-406, 29 U.S.C. § 1001 et seq.).

3 "Extra contractual claims." The term shall include claims
4 relating to bad faith in the payment of claims, punitive or
5 exemplary damages or attorney costs and fees.

6 "Health benefit plan." Any hospital or medical expense
7 policy or certificate, RANLI PPO policy or subscriber contract,
8 hospital plan corporation, professional health services plan
9 corporation or health maintenance organization subscriber
10 contract or any other similar health contract. The term does not
11 include:

12 (1) Accident only insurance.

13 (2) Credit insurance.

14 (3) Dental only insurance.

15 (4) Vision only insurance.

16 (5) Medicare supplement insurance.

17 (6) Benefits for long-term care, home health care,
18 community-based care or any combination thereof.

19 (7) Disability income insurance.

20 (8) Coverage for on-site medical clinics.

21 (9) Specified disease, hospital confinement indemnity or
22 limited benefit health insurance if the types of coverage do not
23 provide coordination of benefits and are provided under separate
24 policies or certificates.

25 "Health maintenance organization." An organized system which
26 combines the delivery and financing of health care and which
27 provides basic health services to voluntarily enrolled
28 subscribers for a fixed prepaid fee as defined in the act of
29 December 29, 1972 (P.L.1701, No.364), known as the Health
30 Maintenance Organization Act.

1 "Hospital plan corporation." A not-for-profit corporation
2 engaged in the business of maintaining and operating a nonprofit
3 hospital plan as defined in 40 Pa.C.S. Ch. 61 (relating to
4 hospital plan corporations).

5 "Impaired insurer." A member insurer which, after the
6 effective date of this article, is not an insolvent insurer and:

7 (1) is deemed by the Insurance Commissioner to be
8 potentially unable to fulfill its contractual obligations; or

9 (2) is placed under an order of rehabilitation or
10 conservation by a court of competent jurisdiction.

11 "Insolvent insurer." A member insurer which, after the
12 effective date of this article, is placed under an order of
13 liquidation by a court of competent jurisdiction with a finding
14 of insolvency.

15 "Internal Revenue Code of 1986." The Internal Revenue Code
16 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

17 "Member insurer." Any insurer, RANLI PPO, hospital plan
18 corporation, professional health services plan corporation or
19 health maintenance organization licensed or which holds a
20 certificate of authority to transact in this Commonwealth any
21 kind of insurance, RANLI PPO business, hospital plan corporation
22 business, professional health services plan corporation business
23 or health maintenance organization business for which coverage
24 is provided under section 1703 and includes any insurer, RANLI
25 PPO, hospital plan corporation, professional health services
26 plan corporation or health maintenance organization whose
27 license or certificate of authority in this Commonwealth may
28 have been suspended, revoked, not renewed or voluntarily
29 withdrawn. The term does not include any of the following:

30 [(1) A nonprofit hospital or medical service organization.

1 (2) A health maintenance organization.

2 (3)] (1) A fraternal benefit society.

3 [(4)] (2) A mandatory State pooling plan.

4 [(5)] (3) A mutual assessment company or any entity that
5 operates on an assessment basis.

6 [(6)] (4) An insurance exchange.

7 (5) An organization that is a qualified charity issuing only
8 qualified charitable gift annuities exempt from regulation under
9 the act of October 16, 1996 (P.L.712, No.127), known as the
10 Charitable Gift Annuity Exemption Act.

11 [(7)] (6) Any entity similar to any of the above.

12 "Moody's Corporate Bond Yield Average." The Monthly Average
13 Corporates as published by Moody's Investors Service, Inc., or
14 any successor thereto.

15 "Owner." The owner of a policy or contract. The terms
16 "policyholder," "contract holder" "policy owner" and "contract
17 owner" mean the person who is identified as the legal owner
18 under the terms of the policy or contract or who is otherwise
19 vested with legal title to the policy or contract through a
20 valid assignment completed in accordance with the terms of the
21 policy or contract and properly recorded as the owner on the
22 books of the member insurer. The terms "owner," "contract
23 owner," "policy owner," "policyholder" and "contract holder" do
24 not include persons with a mere beneficial interest in a policy
25 or contract.

26 "Person." Any individual, corporation, limited liability
27 company, partnership, association, governmental body or entity
28 or voluntary organization.

29 "Plan sponsor." The term includes:

30 (1) the employer in the case of a benefit plan established

1 or maintained by a single employer;

2 (2) the employee organization in the case of a benefit plan
3 established or maintained by an employee organization; or

4 (3) in a case of a benefit plan established or maintained by
5 two (2) or more employers or jointly by one or more employers
6 and one or more employee organizations, the association,
7 committee, joint board of trustees or other similar group of
8 representatives of the parties that establish or maintain the
9 benefit plan.

10 "Premium or income tax." The tax imposed under Article IV or
11 IX of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
12 Reform Code of 1971.

13 "Premiums." The amounts received on covered policies or
14 contracts less premiums, considerations and deposits returned
15 thereon and less dividends and experience credits thereon. The
16 term does not include any amounts received for any policies or
17 contracts or for the portions of any policies or contracts for
18 which coverage is not provided under section 1703(b) except that
19 assessable premium shall not be reduced on account of sections
20 1703(b) (2) (iii) relating to interest limitations and 1703(c) (1)
21 (ii) relating to limitations with respect to any one individual,
22 any one participant and any one policy or contract holder. The
23 term does not include any premiums in excess of five million
24 (\$5,000,000) dollars on any unallocated annuity contract not
25 issued under a governmental retirement plan established under
26 section 401, 403(b) or 457 of the Internal Revenue Code of 1986
27 (Public Law 99-514, 26 U.S.C. § 1 et seq.). The term does not
28 include, with respect to multiple nongroup policies of life
29 insurance owned by one owner, whether the policy or contract
30 owner is an individual, firm, corporation or other person, and

1 whether the persons insured are officers, managers, employees or
2 other persons, premiums in excess of five million (\$5,000,000)
3 dollars with respect to these policies or contracts, regardless
4 of the number of policies or contracts held by the owner.

5 "Principal place of business." The following apply:

6 (1) The principal place of business of a plan sponsor or a
7 person other than a natural person means the single state in
8 which the natural persons who establish policy for the
9 direction, control and coordination of the operations of the
10 entity as a whole primarily exercise that function, determined
11 by the association in its reasonable judgment by considering all
12 the following factors:

13 (i) The state in which the primary executive and
14 administrative headquarters of the entity is located.

15 (ii) The state in which the principal office of the chief
16 executive officer of the entity is located.

17 (iii) The state in which the board of directors or similar
18 governing person or persons of the entity conducts the majority
19 of its meetings.

20 (iv) The state in which the executive or management
21 committee of the board of directors, or similar governing person
22 or persons, of the entity conducts the majority of its meetings.

23 (v) The state from which the management of the overall
24 operations of the entity is directed.

25 (vi) In the case of a benefit plan sponsored by affiliated
26 companies comprising a consolidated corporation, the state in
27 which the holding company or controlling affiliate has its
28 principal place of business as determined using the factors
29 under subparagraphs (i), (ii), (iii), (iv), (v) and (vi).

30 (2) If, in the case of a plan sponsor, more than fifty

1 percent (50%) of the participants in the benefit plan are
2 employed in a single state, that state shall be deemed to be the
3 principal place of business of the plan sponsor.

4 (3) The principal place of business of a plan sponsor of a
5 benefit plan described in paragraph (3) under the definition of
6 plan sponsor in this section shall be deemed to be the principal
7 place of business of the association, committee, joint board of
8 trustees or other similar group of representatives of the
9 parties who establish or maintain the benefit plan that, in lieu
10 of a specific or clear designation of a principal place of
11 business, shall be deemed to be the principal place of business
12 of the employer or employee organization that has the largest
13 investment in the benefit plan in question.

14 "Professional health services plan corporation." A person
15 engaged in the business of maintaining and operating a nonprofit
16 health service plan as defined in 40 Pa.C.S. Ch. 63 (relating to
17 professional health services plan corporations).

18 "RANLI PPO." An entity not licensed as an insurance company
19 but assuming risk as defined in section 630.

20 "Receivership court." The court in the insolvent insurer's
21 or impaired insurer's state having jurisdiction over the
22 conservation, rehabilitation or liquidation of the member
23 insurer.

24 "Resident." Any person who resides in this Commonwealth at
25 the time a member insurer is determined to be an impaired or
26 insolvent insurer and to whom a contractual obligation is owed.
27 A person may be a resident of only one state, which, in the case
28 of a person other than a natural person, shall be its principal
29 place of business. Citizens of the United States who are
30 residents of foreign countries or residents of United States

1 possessions, territories or protectorates that do not have an
2 association similar to the association created by this article
3 shall be deemed residents of the state of domicile of the member
4 insurer that issued the policies or contracts.

5 "Structured settlement annuity." An annuity purchased in
6 order to fund periodic payments for a plaintiff or other
7 claimant in payment for or with respect to personal injury
8 suffered by the plaintiff or other claimant.

9 "State." A state, the District of Columbia, Puerto Rico,
10 and a United States possession, territory or protectorate.

11 "Supplemental contract." Any agreement entered into for the
12 distribution of policy or contract proceeds.

13 "Unallocated annuity contract." Any annuity contract or
14 group annuity certificate which is not issued to and owned by an
15 individual, except to the extent of any annuity benefits
16 guaranteed to an individual by an insurer under such contract or
17 certificate.

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

21 (1) To persons who, regardless of where they reside, except
22 for nonresident certificate holders or enrollees under group
23 policies or contracts, are the beneficiaries, assignees or
24 payees, including health care providers rendering services
25 covered under health insurance policies or certificates of the
26 persons covered under paragraph (2).

27 (2) To persons who are owners of or certificate holders or
28 enrollees under these policies or contracts [or, in the case
29 of], other than unallocated annuity contracts [, to the persons
30 who are the contract holders] and structured settlement

1 annuities, and who:

2 (i) are residents; or

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

5 (A) the [insurers which] member insurer that issued such
6 policies or contracts [are] is domiciled in this Commonwealth;

7 (B) [such insurers never held a license or certificate of
8 authority in the states in which such persons reside;] the
9 states in which the persons reside have associations similar to
10 the association created by this article; and

11 [(C) these states have associations similar to the
12 association created by this article; and

13 (D) these] (C) the persons are not eligible for coverage by
14 [those associations.] associations in any other state due to the
15 fact that such insurers, RANLI PPOs, hospital plan corporations,
16 professional health services plan corporations, or health
17 maintenance organizations were not licensed or did not hold a
18 certificate of authority in the states in which the persons
19 reside at the time specified in the state's guaranty association
20 law.

21 (3) For unallocated annuity contracts specified in
22 subsection (b), paragraphs (1) and (2) shall not apply, and this
23 article shall, except as provided in paragraphs (5) and (6),
24 provide coverage to:

25 (i) Persons who are the owners of the unallocated annuity
26 contracts if the contracts are issued to or in connection with a
27 specific benefit plan whose plan sponsor has its principal place
28 of business in this Commonwealth.

29 (ii) Persons who are owners of unallocated annuity contracts
30 issued to or in connection with government lotteries if the

1 owners are residents.

2 (4) For structured settlement annuities specified in
3 subsection (b), paragraphs (1) and (2) shall not apply, and this
4 article shall, except as provided in paragraphs (5) and (6),
5 provide coverage to a person who is a payee under a structured
6 settlement annuity or beneficiary of a payee if the payee is
7 deceased, if the payee:

8 (i) is a resident, regardless of where the contract owner
9 resides; or

10 (ii) is not a resident, but only under both of the following
11 conditions:

12 (A) (I) the contract owner of the structured settlement
13 annuity is a resident; or

14 (II) the contract owner of the structured settlement annuity
15 is not a resident; but

16 (a) the member insurer that issued the structured settlement
17 annuity is domiciled in this Commonwealth; and

18 (b) the state in which the contract owner resides has an
19 association similar to the association created by this article;
20 and

21 (B) neither the payee or beneficiary nor the contract owner
22 is eligible for coverage by the association of the state in
23 which the payee or contract owner resides.

24 (5) This article shall not provide coverage to:

25 (i) a person who is a payee or beneficiary of a contract
26 owner resident of this Commonwealth, if the payee or beneficiary
27 is afforded any coverage by the association of another state;

28 (ii) a person covered under paragraph (3), if any coverage
29 is provided by the association of another state to the person;
30 or

1 (iii) a person who acquires rights to receive payments
2 through a structured settlement factoring transaction as defined
3 in 26 U.S.C. 5891(c)(3)(A) (relating to the taxation of
4 structured settlement factoring transactions), regardless of
5 whether the transaction occurred before or after the section
6 became effective.

7 (6) This article is intended to provide coverage to a person
8 who is a resident of this Commonwealth and, in special
9 circumstances, to a nonresident. In order to avoid duplicate
10 coverage, if a person who would otherwise receive coverage under
11 this article is provided coverage under the laws of any other
12 state, the person shall not be provided coverage under this
13 article. In determining the application of the provisions of
14 this paragraph in situations where a person could be covered by
15 the association of more than one state, whether as an owner,
16 payee, enrollee, beneficiary or assignee, this article shall be
17 construed in conjunction with other state laws to result in
18 coverage by only one association.

19 (b) (1) This article shall provide coverage to the persons
20 specified in subsection (a) for policies or contracts of direct,
21 nongroup life insurance, health[, annuity] insurance, which for
22 the purposes of this article includes, RANLI PPO, hospital plan
23 corporation, professional health services plan corporation and
24 health maintenance organization subscriber policies, contracts,
25 and certificates, or annuities and supplemental [policies or]
26 contracts to any of these, for certificates under direct group
27 policies and contracts and for unallocated annuity contracts
28 issued by member insurers, except as limited by this article.
29 Annuity contracts and certificates under group annuity contracts
30 include, but are not limited to, guaranteed investment

1 contracts, deposit administration contracts, unallocated funding
2 agreements, allocated funding agreements, structured settlement
3 [agreements, lottery contracts] annuities, annuities issued to
4 or in connection with government lotteries and any immediate or
5 deferred annuity contracts.

6 (2) [This] Except as otherwise provided in paragraph (3),
7 this article shall not provide coverage for any of the
8 following:

9 (i) Any portion of a policy or contract not guaranteed by
10 the member insurer or under which the risk is borne by the
11 policy or contract holder.

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

14 (iii) Any portion of a policy or contract to the extent that
15 the rate of interest on which it is based[:], or the interest
16 rate, crediting rate or similar factor determined by use of an
17 index or other external reference stated in the policy or
18 contract employed in calculating returns or changes in value:

19 (A) averaged over the period of four (4) years prior to the
20 date on which the [association] member insurer becomes
21 [obligated with respect to such policy or contract] an impaired
22 or insolvent insurer under this article, whichever is earlier,
23 exceeds a rate of interest determined by subtracting two (2)
24 percentage points from Moody's Corporate Bond Yield Average
25 averaged for the same four-year period or for such lesser period
26 if the policy or contract was issued less than four (4) years
27 before the [association became obligated] member insurer becomes
28 an impaired or insolvent insurer under this article, whichever
29 is earlier; and

30 (B) on and after the date on which the [association] member

1 insurer becomes [obligated with respect to such policy or
2 contract] an impaired or insolvent insurer under this article,
3 whichever is earlier, exceeds the rate of interest determined by
4 subtracting three (3) percentage points from Moody's Corporate
5 Bond Yield Average as most recently available.

6 (iv) Any portion of a policy or contract issued to a plan or
7 program of an employer, association or similar entity to provide
8 life, health or annuity benefits to its [employees or] employees,
9 members or others to the extent that such plan or program is
10 self-funded or uninsured, including, but not limited to,
11 benefits payable by an employer, association or similar entity
12 under:

13 (A) a Multiple Employer Welfare Arrangement as defined in
14 section [514] 3(40) of the Employee Retirement Income Security
15 Act of 1974 (Public Law 93-406, 29 U.S.C. § 1002(40));

16 (B) a minimum premium group insurance plan;

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

18 (D) an administrative services only contract.

19 (v) Any portion of a policy or contract to the extent that
20 it provides dividends or experience rating credits [or provides
21 that], voting rights or for the payment of any fees or
22 allowances [to be paid] to any person, including the
23 policyholder or contract holder, in connection with the service
24 to or administration of such policy or contract.

25 (vi) Any policy or contract issued in this Commonwealth by a
26 member insurer at a time when it was not licensed or did not
27 have a certificate of authority to issue such policy or contract
28 in this Commonwealth.

29 (vii) Any unallocated annuity contract issued to an
30 [employee] employee benefit plan protected under the Federal

1 Pension Benefit Guaranty Corporation[.], regardless of whether
2 the Federal Pension Benefit Guaranty Corporation has yet become
3 liable to make any payments with respect to the benefit plan.

4 (viii) Any portion of any unallocated annuity contract which
5 is not issued to or in connection with a specific [employee]
6 employee, union or association of natural persons benefit plan
7 or a government lottery.

8 (ix) A portion of a policy or contract to the extent that
9 the assessments required by section 1707 with respect to the
10 policy or contract are preempted by Federal or State law.

11 (x) An obligation that does not arise under the express
12 written terms of the policy or contract issued by the member
13 insurer to the enrollee, certificate holder, contract owner or
14 policy owner, including, without limitation:

15 (A) claims based on marketing materials;

16 (B) claims based on side letters, riders or other documents
17 that were issued by the member insurer without meeting
18 applicable policy or contract form filing or approval
19 requirements;

20 (C) misrepresentations of or regarding policy or contract
21 benefits;

22 (D) extracontractual claims; or

23 (E) a claim for penalties or consequential or incidental
24 damages.

25 (xi) A contractual agreement that establishes the member
26 insurer's obligations to provide a book value accounting
27 guaranty for defined contribution benefit plan participants by
28 reference to a portfolio of assets that is owned by the benefit
29 plan or its trustee, which in each case is not an affiliate of
30 the member insurer.

1 (xii) A portion of a policy or contract to the extent it
2 provides for interest or other changes in value to be determined
3 by the use of an index or other external reference stated in the
4 policy or contract, but which have not been credited to the
5 policy or contract, or as to which the policy or contract
6 owner's rights are subject to forfeiture, as of the date the
7 member insurer becomes an impaired or insolvent insurer under
8 this article, whichever is earlier. If a policy's or contract's
9 interest or changes in value are credited less frequently than
10 annually, then for purposes of determining the values that have
11 been credited and are not subject to forfeiture under this
12 subparagraph, the interest or change in value determined by
13 using the procedures defined in the policy or contract will be
14 credited as if the contractual date of crediting interest or
15 changing values was the date of impairment or insolvency,
16 whichever is earlier, and will not be subject to forfeiture.

17 (xiii) A policy or contract providing any hospital, medical,
18 prescription drug or other health care benefits under Part C or
19 Part D of Title XVIII of the Social Security Act (Public Law 74-
20 271, 42 U.S.C. § 1395 et seq.), Title XIX of the Social Security
21 Act (Public Law 74-271, 42 U.S.C. § 1396 et seq.), Article
22 XXIII-A or any regulations issued pursuant thereto.

23 (xiv) Structured settlement annuity benefits to which a
24 payee or beneficiary has transferred the payee's or
25 beneficiary's rights in a structured settlement factoring
26 transaction as defined in 26 U.S.C. § 5891(c)(3)(A) (relating to
27 the taxation of structured settlement factoring transactions),
28 regardless of whether the transaction occurred before or after
29 the section became effective.

30 (3) The exclusion from coverage referenced in paragraph (2)

1 (iii) shall not apply to any portion of a policy or contract,
2 including a rider, that provides long-term care or any other
3 health insurance benefits.

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

6 (i) the contractual obligations for which the member insurer
7 is liable or would have been liable if it were not an impaired
8 or insolvent insurer; or

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

11 (I) Three hundred thousand (\$300,000) dollars [in] for life
12 insurance death benefits, but not more than one hundred thousand
13 (\$100,000) dollars in net cash surrender and net cash withdrawal
14 values for life insurance.

15 [(II) Three hundred thousand (\$300,000) dollars in health
16 insurance benefits, including any net cash surrender and net
17 cash withdrawal values.]

18 [(III) Three hundred thousand (\$300,000) dollars in annuity
19 benefits, including one hundred thousand (\$100,000) dollars in
20 net cash surrender and net cash withdrawal values.]

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

24 (II) For health insurance benefits:

25 (1) One hundred thousand (\$100,000) dollars for coverages or
26 benefits not defined as disability income insurance as defined
27 by 31 Pa. Code § 88.167 (relating to disability income
28 protection coverage), health benefit plans as defined by section
29 1702 of this article or long-term care insurance as defined in
30 section 1103, including any net cash surrender and net cash

1 withdrawal values.

2 (2) Three hundred thousand (\$300,000) dollars for disability
3 income insurance, as defined by 31 Pa. Code § 88.167, and long-
4 term care insurance benefits as defined under section 1103,
5 including any cash surrender and net cash withdrawal values.

6 (3) Five hundred thousand (\$500,000) dollars for health
7 benefit plans.

8 (III) Two hundred fifty thousand (\$250,000) dollars in the
9 present value of annuity benefits, including net cash surrender
10 and net cash withdrawal values.

11 (B) With respect to each individual participating in a
12 governmental retirement plan established under section 401,
13 403(b) or 457 of the Internal Revenue Code of 1986 covered by an
14 unallocated annuity contract or the beneficiaries of each such
15 individual if deceased, in the aggregate, [three hundred
16 thousand (\$300,000)] two hundred fifty thousand (\$250,000)
17 dollars in [annuity benefits, including one hundred thousand
18 (\$100,000) dollars in] present value annuity benefits, including
19 net cash surrender and net cash withdrawal values.

20 (C) With respect to each payee of a structured settlement
21 annuity, or beneficiary or beneficiaries of the payee if
22 deceased, two hundred fifty thousand (\$250,000) dollars in
23 present value annuity benefits, in the aggregate, including net
24 cash surrender and net cash withdrawal values, if any.

25 [(C)] (D) With respect to [any] either one contract [holder
26 covered by any] owner provided coverage under subsection (a) (3)
27 (ii) or one plan sponsor whose plans own directly or in trust
28 one or more unallocated annuity [contract] contracts not
29 included in clause (B), five million (\$5,000,000) dollars in
30 benefits, irrespective of the number of such contracts held by

1 that contract [holder.] owner or plan sponsor. In the case where
2 one or more unallocated annuity contracts are covered contracts
3 under this article and are owned by a trust or other entity for
4 the benefit of two (2) or more plan sponsors, coverage shall be
5 afforded by the association if the largest interest in the trust
6 or entity owning the contract or contracts is held by a plan
7 sponsor whose principal place of business is in this
8 Commonwealth and in no event shall the association be obligated
9 to cover more than five million (\$5,000,000) dollars in benefits
10 with respect to all these unallocated contracts.

11 [(2)] (E) The association shall not, however, be liable to
12 expend more than three hundred thousand (\$300,000) dollars in
13 the aggregate with respect to any one individual under
14 subparagraph (ii) (A) [and (B)], (B) or (C) of paragraph (1) [.],
15 except with respect to benefits for health benefit plans under
16 subclause (II) (3) of clause (A), in which case the aggregate
17 liability of the association shall not exceed five hundred
18 thousand (\$500,000) dollars with respect to any one individual,
19 or with respect to one owner of multiple nongroup policies of
20 life insurance, whether the policy or contract owner is an
21 individual, firm, corporation or other person, and whether the
22 persons insured are officers, managers, employees or other
23 persons, more than five million (\$5,000,000) dollars in
24 benefits, regardless of the number of policies and contracts
25 held by the owner.

26 (F) The limitations specified in this section are
27 limitations on the benefits for which the association is
28 obligated before taking into account either the association's
29 subrogation and assignment rights or the extent to which those
30 benefits could be provided out of the assets of the impaired or

1 insolvent insurer attributable to covered policies. The costs of
2 the association's obligations under this article may be met by
3 the use of assets attributable to covered policies or reimbursed
4 to the association pursuant to the association's subrogation and
5 assignment rights.

6 (G) For purposes of this article, benefits provided by a
7 long-term care rider to a life insurance policy or annuity
8 contract shall be considered the same type of benefits as the
9 base life insurance policy or annuity contract to which the
10 rider relates.

11 (d) In performing its obligations to provide coverage under
12 section 1706, the association shall not be required to
13 guarantee, assume, reinsure, reissue or perform, or cause to be
14 guaranteed, assumed, reinsured, reissued or performed, the
15 contractual obligations of the insolvent or impaired insurer
16 under a covered policy, that do not materially affect the
17 economic values or economic benefits of the covered policy.

18 Section 1704. Creation of Association.--(a) There is hereby
19 created a nonprofit, unincorporated association to be known as
20 the Pennsylvania Life and Health Insurance Guaranty Association.
21 All member insurers shall be and remain members of the
22 association as a condition of their license or authority to
23 transact insurance, RANLI PPO business, hospital plan
24 corporation business, professional health services plan
25 corporation business or health maintenance organization business
26 in this Commonwealth. The association shall perform its
27 functions under the plan of operation established and approved
28 under section 1708 and shall exercise its powers through a board
29 of directors established under section 1705. For purposes of
30 administration and assessment the association shall maintain two

1 accounts:

2 (1) The life insurance and annuity account which includes
3 the following subaccounts:

4 (i) Life insurance account.

5 (ii) Annuity account[.], which shall include annuity
6 contracts owned by a governmental retirement plan or its trustee
7 established under section 401, 403(b) or 457 of the Internal
8 Revenue Code of 1986, but shall otherwise exclude unallocated
9 annuities.

10 (iii) Unallocated annuity account which shall [include]
11 exclude contracts [qualified under section] owned by a
12 governmental retirement benefit plan or its trustee under
13 section 401, 403(b) or 457 of the Internal Revenue Code of 1986.

14 (2) The health [insurance] account.

15 * * *

16 Section 1705. Board of Directors.--(a) The board of
17 directors of the association shall consist of not less than
18 [five (5)] seven (7) nor more than [nine (9)] eleven (11) member
19 insurers serving terms as established in the plan of operation.
20 The members of the board shall be selected by member insurers
21 subject to the approval of the commissioner. Vacancies on the
22 board shall be filled for the remaining period of the term by a
23 majority vote of the remaining board members, subject to the
24 approval of the commissioner. To select the initial board of
25 directors and initially organize the association, the
26 commissioner shall give notice to all member insurers of the
27 time and place of the organizational meeting. In determining
28 voting rights at the organizational meeting, each member insurer
29 shall be entitled to one (1) vote in person or by proxy. If the
30 board of directors is not selected within sixty (60) days after

1 notice of the organizational meeting, the commissioner may
2 appoint the initial members.

3 * * *

4 Section 1706. Powers and Duties of Association.--(a) If a
5 member insurer is an impaired [domestic] insurer, the
6 association may, in its discretion and subject to any conditions
7 imposed by the association that do not impair the contractual
8 obligations of the impaired insurer that are approved by the
9 commissioner [and that are, except in cases of court-ordered
10 conservation or rehabilitation, also approved by the impaired
11 insurer]:

12 (1) guarantee, assume, reissue or reinsure or cause to be
13 guaranteed, assumed, reissued or reinsured any or all of the
14 policies or contracts of the impaired insurer; or

15 (2) provide such moneys, pledges, notes, guarantees or other
16 means as are proper to effectuate paragraph (1) and assure
17 payment of the contractual obligations of the impaired insurer
18 pending action under paragraph (1). [or

19 (3) loan money to the impaired insurer.

20 (b) (1) If a member insurer is an impaired insurer, whether
21 domestic, foreign or alien, and the insurer is not paying claims
22 timely, then subject to the preconditions specified in paragraph
23 (2), the association shall, in its discretion, either:

24 (i) take any of the actions specified in subsection (a),
25 subject to the conditions therein; or

26 (ii) provide substitute benefits in lieu of the contractual
27 obligations of the impaired insurer solely for health claims,
28 periodic annuity benefit payments, death benefits, supplemental
29 benefits and cash withdrawals for policy or contract owners who
30 petition therefor under claims of emergency or hardship in

1 accordance with standards proposed by the association and
2 approved by the commissioner.

3 (2) The association shall be subject to the requirements of
4 paragraph (1) only if:

5 (i) the laws of its state of domicile provide that until all
6 payments of or on account of the impaired insurer's contractual
7 obligations by all guaranty associations, along with all
8 expenses thereof and interest on all such payments and expenses,
9 shall have been repaid to the guaranty associations or a plan of
10 repayment by the impaired insurer shall have been approved by
11 the guaranty associations:

12 (A) the delinquency proceeding shall not be dismissed;

13 (B) neither the impaired insurer nor its assets shall be
14 returned to the control of its shareholders or private
15 management;

16 (C) it shall not be permitted to solicit or accept new
17 business or have any suspended or revoked license restored;

18 (ii) in the case where the impaired insurer is a domestic
19 insurer, it has been placed under an order of rehabilitation by
20 a court of competent jurisdiction in this Commonwealth; or

21 (iii) in the case where the impaired insurer is a foreign or
22 alien insurer, it has been prohibited from soliciting or
23 accepting new business in this Commonwealth, its certificate of
24 authority has been suspended or revoked in this Commonwealth,
25 and a petition for rehabilitation or liquidation has been filed
26 in a court of competent jurisdiction in its state of domicile by
27 the commissioner of the state.]

28 [(c)] (b) If a member insurer is an insolvent insurer, the
29 association shall, in its discretion, either:

30 (1) (i) guarantee, assume, reissue or reinsure or cause to

1 be guaranteed, assumed, reissued or reinsured the policies or
2 contracts of the insolvent insurer; or

3 [(2)] (ii) assure payment of the contractual obligations of
4 the insolvent insurer and provide such moneys, pledges,
5 guarantees or other means as are reasonably necessary to
6 discharge such duties; or

7 [(3) with respect only to life and health insurance
8 policies, provide] (2) Provide benefits and coverages in
9 accordance with [subsection (d)].

10 (d) (1) When proceeding under subsection (b)(1)(ii) or (c)
11 (3), the association shall, with respect to only life and health
12 insurance policies, do all of the following:] the following
13 provisions:

14 (i) [Assure] With respect to policies and contracts, assure
15 payment of benefits [for premiums identical to the premiums and
16 benefits (except for terms of conversion and renewability)] that
17 would have been payable under the policies or contracts of the
18 insolvent insurer, for claims incurred as follows:

19 (A) With respect to group policies and contracts, not later
20 than the earlier of the next renewal date under such policies or
21 contracts or forty-five (45) days, but in no event less than
22 thirty (30) days, after the date on which the association
23 becomes obligated with respect to such policies or contracts.

24 (B) With respect to [individual] nongroup policies and
25 contracts and annuities, not later than the earlier of the next
26 renewal date (if any) under such policies or contracts or one
27 year, but in no event less than thirty (30) days, from the date
28 on which the association becomes obligated with respect to such
29 policies or contracts.

30 (ii) Make diligent efforts to provide all known insureds,

1 enrollees, annuitants or group policyholders or contract holders
2 with respect to group policies or contracts thirty (30) days
3 notice of the termination of the benefits provided.

4 (iii) With respect to [individual] nongroup policies and
5 contracts, make available to each known insured, enrollee,
6 annuitant or owner if other than the insured, enrollee or
7 annuitant and with respect to an individual formerly an insured,
8 enrollee or annuitant under a group policy or contract who is
9 not eligible for replacement group coverage, make available
10 substitute coverage on an individual basis in accordance with
11 the provisions of [paragraph (2)] subparagraph (iv), if the
12 insureds, enrollees or annuitants had a right under law or the
13 terminated policy, contract or annuity to convert coverage to
14 individual coverage or to continue an individual policy,
15 contract or annuity in force until a specified age or for a
16 specified time, during which the insurer, RANLI PPO, hospital
17 plan corporation, professional health services plan corporation
18 or health maintenance organization had no right unilaterally to
19 make changes in any provision of the policy, contract or annuity
20 or had a right only to make changes in premium by class.

21 [(2) (i)] (iv) (A) (I) In providing the substitute
22 coverage required under [paragraph (1)(iii)] subparagraph (iii),
23 the association may offer either to reissue the terminated
24 coverage or to issue an alternative policy[.] or contract at
25 actuarially justified rates subject to prior approval of the
26 commissioner.

27 [(ii)] (II) Alternative or reissued policies or contracts
28 shall be offered without requiring evidence of insurability and
29 shall not provide for any waiting period or exclusion that would
30 not have applied under the terminated policy or contract.

1 [(iii)] (III) The association may reinsure any alternative
2 or reissued policy or contract.

3 [(3) (i)] (B) (I) Alternative policies or contracts
4 adopted by the association shall be subject to the approval of
5 the commissioner. The association may adopt alternative policies
6 or contracts of various types for future issuance without regard
7 to any particular impairment or insolvency.

8 [(ii)] (II) Alternative policies or contracts shall contain
9 at least the minimum statutory provisions required in this
10 Commonwealth and provide benefits that shall not be unreasonable
11 in relation to the premium charged. The association shall set
12 the premium in accordance with a table of rates which it shall
13 adopt. The premium shall reflect the amount of insurance to be
14 provided and the age and class of risk of each insured, but
15 shall not reflect any changes in the health of the insured after
16 the original policy or contract was last underwritten.

17 [(iii)] (III) Any alternative policy or contract issued by
18 the association shall provide coverage of a type similar to that
19 of the policy or contract issued by the impaired or insolvent
20 insurer, as determined by the association.

21 [(4)] (v) If the association elects to reissue terminated
22 coverage at a premium rate different from that charged under the
23 terminated policy or contract, the premium shall be actuarially
24 justified and set by the association in accordance with the
25 amount of insurance or coverage provided and the age and class
26 of risk, subject to approval of the commissioner [or by a court
27 of competent jurisdiction].

28 [(5)] (vi) The association's obligations with respect to
29 coverage under any policy or contract of the impaired or
30 insolvent insurer or under any reissued or alternative policy or

1 contract shall cease on the date such coverage or policy or
2 contract is replaced by another similar policy or contract by
3 the policyholder, contract holder, the insured, the enrollee or
4 the association.

5 [(e)] (c) When proceeding under subsection [(b)(1)(ii) or
6 (c)] (b)(2) with respect to any policy or contract carrying
7 guaranteed minimum interest rates, the association shall assure
8 the payment or crediting of a rate of interest consistent with
9 section 1703(b)(2)(iii).

10 [(f)] (d) Nonpayment of premiums within thirty-one (31) days
11 after the date required under the terms of any guaranteed,
12 assumed, alternative or reissued policy or contract or
13 substitute coverage shall terminate the association's
14 obligations under such policy, contract or coverage under this
15 article with respect to such policy, contract or coverage,
16 except with respect to any claims incurred or any net cash
17 surrender value which may be due in accordance with the
18 provisions of this article.

19 [(g)] (e) Premiums due for coverage after entry of an order
20 of liquidation of an insolvent insurer shall belong to and be
21 payable at the direction of the association, and the association
22 shall be liable for unearned premiums due to policy or contract
23 owners arising after the entry of such order.

24 [(h)] (f) The protection provided by this article shall not
25 apply where any guaranty protection is provided to residents of
26 this Commonwealth by the laws of the domiciliary state or
27 jurisdiction of the impaired or insolvent insurer other than
28 this Commonwealth.

29 [(i)] (g) In carrying out its duties under [subsections (b)
30 and (c)] subsection (b) and subject to approval by the court,

1 the association may do the following:

2 (1) Impose permanent policy or contract liens in connection
3 with any guarantee, assumption or reinsurance agreement if the
4 association finds that the amounts which can be assessed under
5 this article are less than the amounts needed to assure full and
6 prompt performance of the association's duties under this [act]
7 article or that the economic or financial conditions as they
8 affect member insurers are sufficiently adverse to render the
9 imposition of such permanent policy or contract liens to be in
10 the public interest.

11 (2) Impose temporary moratoriums or liens on payments of
12 cash values and policy loans, or any other right to withdraw
13 funds held in conjunction with policies or contracts, in
14 addition to any contractual provisions for deferral of cash or
15 policy loan value. In addition, in the event of a temporary
16 moratorium or moratorium charge imposed by the receivership
17 court on payment of cash values or policy loans, or on any other
18 right to withdraw funds held in conjunction with policies or
19 contracts, out of the assets of the impaired or insolvent
20 insurer, the association may defer the payment of cash values,
21 policy loans or other rights by the association for the period
22 of the moratorium or moratorium charge imposed by the
23 receivership court, except for claims covered by the association
24 to be paid in accordance with a hardship procedure established
25 by the liquidator or rehabilitator and approved by the
26 receivership court.

27 (h) A deposit in this Commonwealth, held pursuant to law or
28 required by the commissioner for the benefit of creditors,
29 including policy or contract owners, not turned over to the
30 domiciliary liquidator upon the entry of a final order of

1 liquidation or order approving a rehabilitation plan of a member
2 insurer domiciled in this Commonwealth or in a reciprocal State,
3 pursuant to Article IV of the act of May 17, 1921 (P.L.789,
4 No.285), known as The Insurance Department Act of 1921, shall be
5 promptly paid to the association. The association shall be
6 entitled to retain a portion of any amount so paid to it equal
7 to the percentage determined by dividing the aggregate amount of
8 policy or contract owners' claims related to that insolvency for
9 which the association has provided statutory benefits by the
10 aggregate amount of all policy or contract owners' claims in
11 this Commonwealth related to that insolvency and shall remit to
12 the domiciliary receiver the amount so paid to the association
13 less the amount retained pursuant to this subsection. Any amount
14 so paid to the association and retained by it shall be treated
15 as a distribution of estate assets pursuant to applicable
16 Commonwealth receivership law dealing with early access
17 disbursements.

18 [(j)] (i) If the association fails to act within a
19 reasonable period of time as provided in [subsections (b)(1)
20 (ii), (c) and (d)] subsection (b), the commissioner shall have
21 the powers and duties of the association under this article with
22 respect to impaired or insolvent insurers.

23 [(k)] (j) The association may render assistance and advice
24 to the commissioner, upon [his] the request of the commissioner,
25 concerning rehabilitation, payment of claims, continuance of
26 coverage or the performance of other contractual obligations of
27 any impaired or insolvent insurer.

28 [(l)] (k) The association shall have standing to appear or
29 intervene before any court or agency in this Commonwealth with
30 jurisdiction over an impaired or insolvent insurer concerning

1 which the association is or may become obligated under this
2 article. Such standing shall extend to all matters germane to
3 the powers and duties of the association, including, but not
4 limited to, proposals for reinsuring, reissuing, modifying or
5 guaranteeing the policies or contracts of the impaired or
6 insolvent insurer and the determination of the policies or
7 contracts and contractual obligations. The association shall
8 also have the right to appear or intervene before a court or
9 agency in another state with jurisdiction over an impaired or
10 insolvent insurer for which the association is or may become
11 obligated or with jurisdiction over [a third party] any person
12 or property against whom the association may have rights through
13 subrogation [of the insurer's policyholders] or otherwise.

14 [(m)] (1) Any person receiving benefits under this
15 article shall be deemed to have assigned the rights under and
16 any causes of action relating to the covered policy or contract
17 to the association to the extent of the benefits received
18 because of this article, whether the benefits are payments of or
19 on account of contractual obligations, continuation of coverage
20 or provision of substitute or alternative policies, contracts or
21 coverages. The association may require an assignment to it of
22 such rights and cause of action by any payee, policy or contract
23 owner, beneficiary, insured, enrollee or annuitant as a
24 condition precedent to the receipt of any rights or benefits
25 conferred by this article upon such person.

26 (2) The subrogation rights of the association under this
27 subsection shall have the same priority against the assets of
28 the impaired or insolvent insurer as that possessed by the
29 person entitled to receive benefits under this article.

30 (3) In addition to paragraphs (1) and (2), the association

1 shall have all common law rights of subrogation and any other
2 equitable or legal remedy which would have been available to the
3 impaired or insolvent insurer or owner or holder, beneficiary,
4 enrollee or payee of a policy or contract with respect to such
5 policy or contracts[.] (including without limitation, in the
6 case of a structured settlement annuity, any rights of the
7 owner, beneficiary or payee of the annuity, to the extent of
8 benefits received pursuant to this article, against a person
9 originally or by succession responsible for the losses arising
10 from the personal injury relating to the annuity or payment
11 therefore), excepting any such person responsible solely by
12 reason of serving as an assignee in respect of a qualified
13 assignment under section 130 of the Internal Revenue Code of
14 1986.

15 (4) If the preceding provisions of this subsection are
16 invalid or ineffective with respect to any person or claim for
17 any reason, the amount payable by the association with respect
18 to the related covered obligations shall be reduced by the
19 amount realized by any other person with respect to the person
20 or claim that is attributable to the policies or contracts (or
21 portion thereof) covered by the association.

22 (5) If the association has provided benefits with respect to
23 a covered obligation and a person recovers amounts as to which
24 the association has rights as described in paragraphs (1), (2),
25 (3) and (4) the person shall pay to the association the portion
26 of the recovery attributable to the policies or contracts (or
27 portion thereof) covered by the association.

28 [(n) The] (m) In addition to the rights and powers elsewhere
29 in this article, the association may do the following:

30 (1) Enter into such contracts as are necessary or proper to

1 carry out the provisions and purposes of this article.

2 (2) Sue or be sued, including taking any legal actions
3 necessary or proper to recover any unpaid assessments under
4 section 1707 and to settle claims or potential claims against
5 it.

6 (3) Borrow money to effect the purposes of this article; any
7 notes or other evidence of indebtedness of the association not
8 in default shall be legal investments for domestic insurers or
9 member insurers and may be carried as admitted assets.

10 (4) Employ or retain such persons as are necessary to handle
11 the financial transactions of the association and perform such
12 other functions as become necessary or proper under this
13 article.

14 (5) Take such legal action as may be necessary to avoid
15 payment of improper claims.

16 (6) Exercise, for the purposes of this article and to the
17 extent approved by the commissioner, the powers of a domestic
18 life [or] insurer, health insurer, RANLI PPO, hospital plan
19 corporation, professional health services plan corporation or
20 health maintenance organization, but in no case may the
21 association issue [insurance] policies or [annuity] contracts
22 other than those issued to perform its obligations under this
23 article.

24 (7) Organize itself as a corporation or in other legal form
25 permitted by the laws of this Commonwealth.

26 (8) Request information from a person seeking coverage from
27 the association in order to aid the association in determining
28 its obligations under this article with respect to the person,
29 and the person shall promptly comply with the request.

30 (9) In accordance with the terms and conditions of the

1 policy or contract, file for actuarially justified rate or
2 premium increases for any policy or contract for which it
3 provides coverage under this article.

4 (10) Take other necessary or appropriate action to discharge
5 its duties and obligations under this article or to exercise its
6 powers under this article.

7 [(o)] (n) The association may join an organization of one or
8 more other state associations of similar purposes, to further
9 the purposes and administer the powers and duties of the
10 association.

11 (o) (1) (i) At any time within one hundred eighty (180)
12 days of the date of the order of liquidation, the association
13 may elect to succeed to the rights and obligations of the ceding
14 member insurer that relate to policies, contracts, or annuities
15 covered, in whole or in part, by the association, in each case
16 under any one or more reinsurance contracts entered into by the
17 insolvent insurer and its reinsurers and selected by the
18 association. Any such assumption shall be effective as of the
19 date of the order of liquidation. The election shall be effected
20 by the association or the National Organization of Life and
21 Health Insurance Guaranty Associations (NOLHGA) on its behalf
22 sending written notice, return receipt requested, to the
23 affected reinsurers.

24 (ii) To facilitate the earliest practicable decision about
25 whether to assume any of the contracts of reinsurance, and in
26 order to protect the financial position of the estate, the
27 receiver and each reinsurer of the ceding member insurer shall
28 make available upon request to the association or to NOLHGA on
29 its behalf as soon as possible after commencement of formal
30 delinquency proceedings (A) copies of in-force contracts of

1 reinsurance and all related files and records relevant to the
2 determination of whether such contracts should be assumed, and
3 (B) notices of any defaults under the reinsurance contracts or
4 any known event or condition which with the passage of time
5 could become a default under the reinsurance contracts.

6 (iii) The following clauses shall apply to reinsurance
7 contracts so assumed by the association:

8 (A) The association shall be responsible for all unpaid
9 premiums due under the reinsurance contracts for periods both
10 before and after the date of the order of liquidation, and shall
11 be responsible for the performance of all other obligations to
12 be performed after the date of the order of liquidation, in each
13 case which relate to policies, contracts or annuities covered,
14 in whole or in part, by the association. The association may
15 charge policies, contracts or annuities covered in part by the
16 association, through reasonable allocation methods, the costs
17 for reinsurance in excess of the obligations of the association
18 and shall provide notice and an accounting of these charges to
19 the liquidator.

20 (B) The association shall be entitled to any amounts payable
21 by the reinsurer under the reinsurance contracts with respect to
22 losses or events that occur in periods after the date of the
23 order of liquidation and that relate to policies, contracts or
24 annuities covered, in whole or in part, by the association,
25 provided that, upon receipt of any such amounts, the association
26 shall be obliged to pay to the beneficiary under the policy,
27 contract or annuity on account of which the amounts were paid a
28 portion of the amount equal to the lesser of:

29 (I) The amount received by the association; and

30 (II) The excess of the amount received by the association

1 over the amount equal to the benefits paid by the association on
2 account of the policy, contract or annuity less the retention of
3 the member insurer applicable to the loss or event.

4 (C) Within thirty (30) days following the association's
5 election date, the association and each reinsurer under
6 contracts assumed by the association shall calculate the net
7 balance due to or from the association under each reinsurance
8 contract as of the election date with respect to policies,
9 contracts or annuities covered, in whole or in part, by the
10 association, which calculation shall give full credit to all
11 items paid by either the member insurer or its receiver or the
12 reinsurer prior to the election date. The reinsurer shall pay
13 the receiver any amounts due for losses or events prior to the
14 date of the order of liquidation, subject to any set-off for
15 premiums unpaid for periods prior to the date, and the
16 association or reinsurer shall pay any remaining balance due the
17 other, in each case within five (5) days of the completion of
18 the aforementioned calculation. Any disputes over the amounts
19 due to either the association or the reinsurer shall be resolved
20 by arbitration pursuant to the terms of the affected reinsurance
21 contracts or, if the contract contains no arbitration clause, as
22 otherwise provided by law. If the receiver has received any
23 amounts due the association pursuant to subparagraph (iii)(B),
24 the receiver shall remit the same to the association as promptly
25 as practicable.

26 (D) If the association or receiver, on the association's
27 behalf, within sixty (60) days of the election date, pays the
28 unpaid premiums due for periods both before and after the
29 election date that relate to policies, contracts or annuities
30 covered, in whole or in part, by the association, the reinsurer

1 shall not be entitled to terminate the reinsurance contracts for
2 failure to pay premium insofar as the reinsurance contracts
3 relate to policies, contracts or annuities covered, in whole or
4 in part, by the association, and shall not be entitled to set
5 off any unpaid amounts due under other contracts, or unpaid
6 amounts due from parties other than the association, against
7 amounts due the association.

8 (2) During the period from the date of the order of
9 liquidation until the election date or if the election date does
10 not occur, until one hundred eighty (180) days after the date of
11 the order of liquidation:

12 (i) (A) neither the association nor the reinsurer shall
13 have any rights or obligations under reinsurance contracts that
14 the association has the right to assume under paragraph (1),
15 whether for periods prior to or after the date of the order of
16 liquidation; and

17 (B) the reinsurer, the receiver and the association shall,
18 to the extent practicable, provide each other data and records
19 reasonably requested;

20 (ii) provided that once the association has elected to
21 assume a reinsurance contract, the parties' rights and
22 obligations shall be governed by paragraph (1).

23 (3) If the association does not elect to assume a
24 reinsurance contract by the election date pursuant to paragraph
25 (1), the association shall have no rights or obligations, in
26 each case for periods both before and after the date of the
27 order of liquidation, with respect to the reinsurance contract.

28 (4) When policies, contracts or annuities, or covered
29 obligations with respect thereto, are transferred to an assuming
30 insurer, reinsurance on the policies, contracts or annuities may

1 also be transferred by the association, in the case of contracts
2 assumed under paragraph (1), subject to all the following:

3 (i) Unless the reinsurer and the assuming insurer agree
4 otherwise, the reinsurance contract transferred shall not cover
5 any new policies of insurance, contracts or annuities in
6 addition to those transferred.

7 (ii) The obligations described in paragraph (1) shall no
8 longer apply with respect to matters arising after the effective
9 date of the transfer.

10 (iii) Notice shall be given in writing, return receipt
11 requested, by the transferring party to the affected reinsurer
12 not less than thirty (30) days prior to the effective date of
13 the transfer.

14 (5) The provisions of this subsection shall supersede the
15 provisions of any state law or of any affected reinsurance
16 contract that provides for or requires any payment of
17 reinsurance proceeds, on account of losses or events that occur
18 in periods after the date of the order of liquidation, to the
19 receiver of the insolvent insurer or any other person. The
20 receiver shall remain entitled to any amounts payable by the
21 reinsurer under the reinsurance contracts with respect to losses
22 or events that occur in periods prior to the date of the order
23 of liquidation, subject to applicable setoff provisions.

24 (6) Except as otherwise provided in this section, nothing in
25 this subsection shall alter or modify the terms and conditions
26 of any reinsurance contract. Nothing in this section shall
27 abrogate or limit any rights of any reinsurer to claim that it
28 is entitled to rescind a reinsurance contract. Nothing in this
29 section shall give a policyholder, contract owner, enrollee,
30 certificate holder, or beneficiary an independent cause of

1 action against a reinsurer that is not otherwise set forth in
2 the reinsurance contract. Nothing in this section shall limit or
3 affect the association's rights as a creditor of the estate
4 against the assets of the estate. Nothing in this section shall
5 apply to reinsurance agreements covering property or casualty
6 risks.

7 (7) For the purposes of this subsection, "election date"
8 shall mean the date of the association's election to succeed to
9 the rights and obligations of a ceding member insurer that
10 relate to policies, contracts or annuities covered, in whole or
11 in part, by the association, in each case under any one or more
12 reinsurance contracts entered into by the insolvent insurer and
13 its reinsurers and selected by the association.

14 (p) The board of directors of the association shall have
15 discretion and may exercise reasonable business judgment to
16 determine the means by which the association is to provide the
17 benefits of this article in an economical and efficient manner.

18 (g) Where the association has arranged or offered to provide
19 the benefits of this article to a covered person under a plan or
20 arrangement that fulfills the association's obligations under
21 this article, the person shall not be entitled to benefits from
22 the association in addition to or other than those provided
23 under the plan or arrangement.

24 (r) Venue in a suit against the association arising under
25 the article shall be in Dauphin County, Pennsylvania. The
26 association shall not be required to give an appeal bond in an
27 appeal that relates to a cause of action arising under this
28 article.

29 (s) In carrying out its duties in connection with
30 guaranteeing, assuming, reissuing, or reinsuring policies or

1 contracts under subsection (a) or (b), the association may issue
2 substitute coverage for a policy or contract that provides an
3 interest rate, crediting rate or similar factor determined by
4 use of an index or other external reference stated in the policy
5 or contract employed in calculating returns or changes in value
6 by issuing an alternative policy or contract in accordance with
7 the following provisions:

8 (1) In lieu of the index or other external reference
9 provided for in the original policy or contract, the alternative
10 policy or contract provides for:

11 (i) a fixed interest rate;

12 (ii) payment of dividends with minimum guarantees; or

13 (iii) a different method for calculating interest or changes
14 in value.

15 (2) There is no requirement for evidence of insurability,
16 waiting period or other exclusion that would not have applied
17 under the replaced policy or contract.

18 (3) The alternative policy or contract is substantially
19 similar to the replaced policy or contract in all other material
20 terms.

21 Section 1707. Assessments.--(a) For the purpose of
22 providing the funds necessary to carry out the powers and duties
23 of the association, the board of directors shall assess the
24 member insurers, separately for each account, at such time and
25 for such amounts as the board finds necessary. Assessments shall
26 be due not less than thirty (30) days after prior written notice
27 to the member insurers and shall accrue interest at eight per
28 centum (8%) per annum on and after the due date.

29 (b) There shall be two classes of assessments, as follows:

30 (1) Class A assessments shall be made for the purpose of

1 meeting administrative and legal costs and other expenses [and
2 examinations conducted under the authority of section 1710(e)].
3 Class A assessments may be [made] authorized and called whether
4 or not related to a particular impaired or insolvent insurer.

5 (2) Class B assessments shall be [made] authorized and
6 called to the extent necessary to carry out the powers and
7 duties of the association under section 1706 with regard to an
8 impaired or an insolvent insurer.

9 (c) (1) The amount of any Class A assessment shall be
10 determined by the board and may be [made] authorized and called
11 on a pro rata or non-pro rata basis. If pro rata, the board may
12 provide that it be credited against future Class B assessments.
13 [A non-pro rata assessment shall not exceed two hundred (\$200)
14 dollars per member insurer in any one calendar year.] The amount
15 of [any] a Class B assessment, except for assessments related to
16 long-term care insurance, shall be allocated for assessment
17 purposes [among] between the accounts and among the subaccounts
18 of the life insurance and annuity account, pursuant to an
19 allocation formula which may be based on the premiums or
20 reserves of the impaired or insolvent insurer or any other
21 standard deemed by the board in its sole discretion as being
22 fair and reasonable under the circumstances.

23 (2) The amount of the Class B assessment for long-term care
24 insurance written by the impaired or insolvent insurer shall be
25 allocated according to a methodology included in the plan of
26 operation and approved by the commissioner. The methodology
27 shall provide for 50% of the assessment to be allocated to
28 accident and health member insurers and 50% to be allocated to
29 life and annuity member insurers.

30 (3) For the purposes of the methodology in paragraph (2) and

1 the formula in the plan of operation only, a "life and annuity
2 member insurer" means a member insurer for which (i) the sum of
3 its assessable life insurance premiums and annuity premiums is
4 greater than or equal to (ii) its assessable health insurance
5 premiums, which shall include its assessable RANLI PPO, hospital
6 plan corporation, professional health services plan corporation
7 and health maintenance organization premiums, but shall exclude
8 its assessable premiums written for disability income and long-
9 term care insurance. For purposes of this definition, assessable
10 premiums shall be measured within the Commonwealth. An "accident
11 and health member insurer" means any member insurer not defined
12 as a "life and annuity member insurer."

13 [(2)] (4) Class B assessments against member insurers for
14 each account and subaccount shall be in the proportion that the
15 premiums received on business in this Commonwealth by each
16 assessed member insurer for policies or contracts covered by
17 each account for the three (3) most recent calendar years for
18 which information is available preceding the year in which the
19 member insurer became [impaired or] insolvent[, as the case may
20 be,] (or, in the case of an assessment with respect to an
21 impaired insurer, the three (3) most recent calendar years for
22 which information is available preceding the year in which the
23 member insurer became impaired), bears to [such] premiums
24 received on business in this Commonwealth for [such] those
25 calendar years by all assessed member insurers.

26 [(3)] (5) Assessments for funds to meet the requirements of
27 the association with respect to an impaired or insolvent insurer
28 shall not be [made] authorized or called until necessary to
29 implement the purposes of this article. Classification of
30 assessments under subsection (b) and computation of assessments

1 under this subsection shall be made with a reasonable degree of
2 accuracy, recognizing that exact determinations may not always
3 be possible. The association shall notify each member insurer of
4 the member insurer's anticipated pro rata share of an authorized
5 assessment not yet called within one hundred eighty (180) days
6 after the assessment is authorized.

7 (d) The association may abate or defer, in whole or in part,
8 the assessment of a member insurer if, in the opinion of the
9 board, payment of the assessment would endanger the ability of
10 the member insurer to fulfill its contractual obligations. In
11 the event an assessment against a member insurer is abated, or
12 deferred in whole or in part, the amount by which such
13 assessment is abated or deferred may be assessed against the
14 other member insurers in a manner consistent with the basis for
15 assessments set forth in this section. Once the conditions that
16 caused a deferral have been removed or rectified, the member
17 insurer shall pay all assessments that were deferred pursuant to
18 a repayment plan approved by the association.

19 (e) (1) [The] (i) Subject to the provisions of
20 subparagraph (ii), the total of all assessments [upon a]
21 authorized by the association with respect to a member insurer
22 [for the life and annuity account and] for each subaccount
23 [thereunder] of the life insurance and annuity account and for
24 the health account shall not in any one (1) calendar year exceed
25 two per centum (2%) [and for the health account shall not in any
26 one (1) calendar year exceed two per centum (2%) of such] of
27 that member insurer's average annual premiums received in this
28 Commonwealth on the policies and contracts covered by the
29 subaccount or account during the three (3) calendar years
30 preceding the year in which the member insurer became an

1 impaired or insolvent insurer. [If the maximum assessment,
2 together with the other assets of the association in any
3 account, does not provide in any one (1) year in either account
4 an amount sufficient to carry out the responsibilities of the
5 association, the necessary additional funds shall be assessed as
6 soon thereafter as permitted by this article.]

7 (ii) If two (2) or more assessments are authorized in one
8 (1) calendar year with respect to member insurers that become
9 impaired or insolvent in different calendar years, the average
10 annual premiums for purposes of the aggregate assessment
11 percentage limitation referenced in subparagraph (i) shall be
12 equal and limited to the higher of the three (3) year average
13 annual premiums for the applicable subaccount or account as
14 calculated pursuant to this section.

15 (iii) If the maximum assessment, together with the other
16 assets of the association in any account, does not provide in
17 any one (1) year in either account an amount sufficient to carry
18 out the responsibilities of the association, the necessary
19 additional funds shall be assessed as soon thereafter as
20 permitted by this article.

21 (2) The board may provide in the plan of operation a method
22 of allocating funds among claims, whether relating to one or
23 more impaired or insolvent insurers, when the maximum assessment
24 will be insufficient to cover anticipated claims.

25 (3) [If a one per centum (1%) assessment for any subaccount
26 of the life and annuity account in any one (1) year does not
27 provide an amount sufficient to carry out the responsibilities
28 of the association, then pursuant to subsection (c)(2), the
29 board shall access all subaccounts of the life and annuity
30 account for the necessary additional amount, subject to the

1 maximum stated in subsection (e) (1).] If the maximum assessment
2 for a subaccount of the life and annuity account in one (1) year
3 does not provide an amount sufficient to carry out the
4 responsibilities of the association, then pursuant to subsection
5 (c) (2), the board shall access the other subaccounts of the life
6 and annuity account for the necessary additional amount, subject
7 to the maximum stated in paragraph (1).

8 (f) The board may, by an equitable method as established in
9 the plan of operation, refund to member insurers, in proportion
10 to the contribution of each member insurer to that account, the
11 amount by which the assets of the account exceed the amount the
12 board finds is necessary to carry out during the coming year the
13 obligations of the association with regard to that account,
14 including assets accruing from assignment, subrogation, net
15 realized gains and income from investments. A reasonable amount
16 may be retained in any account to provide funds for the
17 continuing expenses of the association and for future losses.

18 (g) It shall be proper for any member insurer, in
19 determining its premium rates and policyowner dividends as to
20 any kind of insurance, RANLI PPO business, hospital plan
21 corporation business, professional health services plan
22 corporation business or health maintenance organization business
23 within the scope of this article, to consider the amount
24 reasonably necessary to meet its assessment obligations under
25 this article, provided that such member insurer has not elected
26 to take tax credits as provided in section 1711(a).

27 (h) The association shall issue to each member insurer
28 paying an assessment under this article, other than class A
29 assessment, a certificate of contribution, in a form prescribed
30 by the commissioner, for the amount of the assessment so paid.

1 All outstanding certificates shall be of equal dignity and
2 priority without reference to amounts or dates of issue. A
3 certificate of contribution may be shown by the member insurer
4 in its financial statement as an asset in such form and for such
5 amount, if any, and period of time as the commissioner may
6 approve.

7 (i) (1) A member insurer that wishes to protest all or part
8 of an assessment shall pay when due the full amount of the
9 assessment as set forth in the notice provided by the
10 association. The payment shall be available to meet association
11 obligations during the pendency of the protest or any subsequent
12 appeal. Payment shall be accompanied by a statement in writing
13 that the payment is made under protest and setting forth a brief
14 statement of the grounds for the protest.

15 (2) Within sixty (60) days following the payment of an
16 assessment under protest by a member insurer, the association
17 shall notify the member insurer in writing of its determination
18 with respect to the protest unless the association notifies the
19 member insurer that additional time is required to resolve the
20 issues raised by the protest.

21 (3) Within thirty (30) days after a final decision has been
22 made, the association shall notify the protesting member insurer
23 in writing of the final decision. Within sixty (60) days of
24 receipt of notice of the final decision, the protesting member
25 insurer may appeal that final action to the commissioner.

26 (4) In the alternative to rendering a final decision with
27 respect to a protest based on a question regarding the
28 assessment base, the association may refer protests to the
29 commissioner for a final decision, with or without a
30 recommendation from the association.

1 (5) If the protest or appeal on the assessment is upheld,
2 the amount paid in error or excess shall be returned to the
3 member insurer. Interest on a refund due a protesting member
4 insurer shall be paid at the rate actually earned by the
5 association.

6 (j) The association may request information of member
7 insurers in order to aid in the exercise of its power under this
8 section and member insurers shall promptly comply with a
9 request.

10 Section 2. Section 1708(c) introductory paragraph and (d) of
11 the act are amended and subsection (c) is amended by adding
12 paragraphs to read:

13 Section 1708. Plan of Operation.--* * *

14 (c) The plan of operation shall, in addition to requirements
15 enumerated elsewhere in this article[, contain the following]:

16 * * *

17 (8) Establish procedures whereby a director may be removed
18 for cause, including in the case where a member insurer director
19 becomes an impaired or insolvent insurer.

20 (9) Require the board of directors to establish a policy and
21 procedures for addressing conflicts of interests.

22 (d) The plan of operation may provide that any or all powers
23 and duties of the association, except those under sections
24 [1706(n)(3)] 1706(m)(3) and 1707, are delegated to a
25 corporation, association or other organization which performs or
26 will perform functions similar to those of this association or
27 its equivalent in two or more states. Such a corporation,
28 association or organization shall be reimbursed for any payments
29 made on behalf of the association and shall be paid for its
30 performance of any function of the association. A delegation

1 under this subsection shall take effect only with the approval
2 of both the board of directors and the commissioner and may be
3 made only to a corporation, association or organization which
4 extends protection not substantially less favorable and
5 effective than that provided by this article.

6 Section 3. Sections 1709, 1710, 1711, 1712, 1713, 1715,
7 1716, 1717 and 1718 of the act are amended to read:

8 Section 1709. Powers and Duties of the Commissioner.--(a)
9 In addition to the powers and duties enumerated elsewhere in
10 this article, the commissioner shall:

11 (1) Upon request of the board of directors, provide the
12 association with a statement of the premiums in this and any
13 other appropriate states for each member insurer.

14 (2) When an impairment is declared and the amount of the
15 impairment is determined, serve a demand upon the impaired
16 insurer to make good the impairment within a reasonable time;
17 notice to the impaired insurer shall constitute notice to its
18 shareholders, if any; the failure of the impaired insurer to
19 promptly comply with such demand shall not excuse the
20 association from the performance of its powers and duties under
21 this article.

22 [(3) In any liquidation or rehabilitation proceeding
23 involving a domestic insurer, be appointed as the liquidator or
24 rehabilitator.]

25 (b) The commissioner may suspend or revoke, after notice and
26 hearing, the license or certificate of authority to transact
27 [insurance] business in this Commonwealth of any member insurer
28 which fails to pay an assessment when due or fails to comply
29 with the plan of operation. As an alternative, the commissioner
30 may levy a forfeiture on any member insurer which fails to pay

1 an assessment when due. Such forfeiture shall not exceed five
2 per centum (5%) of the unpaid assessment per month, but no
3 forfeiture shall be less than one hundred (\$100) dollars per
4 month.

5 (c) Any final action of the board of directors or the
6 association may be appealed to the commissioner by any member
7 insurer if such appeal is taken within sixty (60) days of its
8 receipt of notice of the final action being appealed. [If a
9 member company is appealing an assessment, the amount assessed
10 shall be paid to the association and available to meet
11 association obligations during the pendency of an appeal. If the
12 appeal on the assessment is upheld, the amount paid in error or
13 excess shall be returned to the member company.] Any final
14 action or order of the commissioner shall be subject to judicial
15 review in a court of competent jurisdiction[.] in accordance
16 with the laws of this Commonwealth that apply to the actions or
17 orders of the commissioner.

18 (d) The liquidator, rehabilitator or conservator of any
19 impaired or insolvent insurer may notify all interested persons
20 of the effect of this article.

21 Section 1710. Prevention of Insolvencies.--(a) To aid in
22 the detection and prevention of member insurer insolvencies or
23 impairments, it shall be the duty of the commissioner:

24 (1) To notify the commissioners of all the other states,
25 territories of the United States and the District of Columbia
26 within thirty (30) days following the action taken or the date
27 the action occurs, when [he] the commissioner takes any of the
28 following actions against a member insurer:

29 (i) revocation of license or certificate of authority;

30 (ii) suspension of license or certificate of authority; or

1 (iii) makes any formal order that such [company] member
2 insurer restrict its premium writing, obtain additional
3 contributions to surplus, withdraw from the Commonwealth,
4 reinsure all or any part of its business or increase capital,
5 surplus or any other account for the security of [policyholders]
6 policy owners, contract owners, certificate holders or
7 creditors.

8 [This notice shall be mailed to all commissioners within thirty
9 (30) days following the action taken or the date on which such
10 action occurs.]

11 (2) To report to the board of directors when [he] the
12 commissioner has taken any of the actions set forth in paragraph
13 (1) or has received a report from any other commissioner
14 indicating that any such action has been taken in another state.
15 Such report to the board of directors shall contain all
16 significant details of the action taken or the report received
17 from another commissioner.

18 (3) To report to the board of directors when [he] the
19 commissioner has reasonable cause to believe from any
20 examination, whether completed or in process, of any member
21 [company] insurer that such [company] member insurer may be an
22 impaired or insolvent insurer.

23 (4) To furnish to the board of directors the National
24 Association of Insurance Commissioners' (NAIC) Insurance
25 Regulatory Information System (IRIS) ratios and listing of
26 companies not included in the ratios developed by the National
27 Association of Insurance Commissioners, and the board may use
28 the information contained therein in carrying out its duties and
29 responsibilities under this section. Such report and the
30 information contained therein shall be kept confidential by the

1 board of directors until such time as made public by the
2 commissioner or other lawful authority.

3 (b) The commissioner may seek the advice and recommendations
4 of the board of directors concerning any matter affecting [his]
5 the duties and responsibilities of the commissioner regarding
6 the financial condition of member insurers and [companies]
7 insurers, RANLI PPOs, hospital plan corporations, professional
8 health services plan corporations or health maintenance
9 organizations seeking admission to transact [insurance] business
10 in this Commonwealth.

11 (c) The board of directors may, upon majority vote, make
12 reports and recommendations to the commissioner upon any matter
13 germane to the solvency, liquidation, rehabilitation or
14 conservation of any member insurer or germane to the solvency of
15 any [company] insurers, RANLI PPOs, hospital plan corporations,
16 professional health services plan corporations or health
17 maintenance organizations seeking to do [an insurance] business
18 in this Commonwealth. Such reports and recommendations shall not
19 be considered public documents.

20 (d) [It shall be the duty of the] The board of directors
21 may, upon majority vote, [to] notify the commissioner of any
22 information indicating [any] a member insurer may be an impaired
23 or insolvent insurer.

24 [(e) (1) The board of directors may, upon majority vote,
25 request that the commissioner order an examination of any member
26 insurer which the board in good faith believes may be an
27 impaired or insolvent insurer. Within thirty (30) days of the
28 receipt of such request, the commissioner shall begin such
29 examination. The examination may be conducted as a National
30 Association of Insurance Commissioners examination or may be

1 conducted by such persons as the commissioner designates. The
2 cost of such examination shall be paid by the association, and
3 the examination report shall be treated as are other examination
4 reports. In no event shall such examination report be released
5 to the board of directors prior to its release to the public,
6 but this shall not preclude the commissioner from complying with
7 subsection (a).

8 (2) The commissioner shall notify the board of directors
9 when the examination is completed. The request for an
10 examination shall be kept on file by the commissioner, but it
11 shall not be open to public inspection prior to the release of
12 the examination report to the public.]

13 [(f)] (e) The board of directors may, upon majority vote,
14 make recommendations to the commissioner for the detection and
15 prevention of member insurer insolvencies.

16 [(g) The board of directors shall, at the conclusion of any
17 insurer insolvency in which the association was obligated to pay
18 covered claims, prepare a report to the commissioner containing
19 such information as it may have in its possession bearing on the
20 history and causes of such insolvency. The board shall cooperate
21 with the boards of directors of guaranty associations in other
22 states in preparing a report on the history and causes of
23 insolvency of a particular insurer, and may adopt by reference
24 any report prepared by such other associations.]

25 Section 1711. Credits for Assessments Paid.--(a) A member
26 insurer may offset against its premium or income tax liability
27 to this Commonwealth a proportionate part of the assessments
28 described in section 1707 to the extent of twenty per centum
29 (20%) of the amount of such assessment for each of the five (5)
30 calendar years following the year in which such assessment was

1 paid. In the event a member insurer should cease doing business,
2 all uncredited assessments may be credited against its premium
3 or income tax liability for the year it ceases doing business.

4 (b) The proportionate part of an assessment which may be
5 offset against a member [company's] insurer's premium or income
6 tax liability to the Commonwealth shall be determined according
7 to a fraction of which the denominator is the total premiums (in
8 the category assessed) received by the [company] member insurer
9 during the calendar year immediately preceding the year in which
10 the assessment is paid and the numerator is that portion of the
11 premiums received during such year on account of policies or
12 contracts of life insurance (including or limited to annuities
13 and unallocated annuities per account or subaccount, as
14 applicable per the assessment), or health and accident insurance
15 (including RANLI PPO, hospital plan corporation, professional
16 health services plan corporation and health maintenance
17 organization subscriber policies, contracts and certificates),
18 in which the premium rates are guaranteed during the continuance
19 of the respective policies or contracts without a right
20 exercisable by the [company] member insurer to increase said
21 premium rates.

22 (c) A member insurer that is exempt from taxes referenced in
23 subsection (a) may recoup its assessments by assigning available
24 offsets (as calculated under subsection (b)) to a taxable member
25 or members of its controlled group, as the term is defined under
26 section 1563(a) of the Internal Revenue Code of 1986. Such
27 assigned offsets may be utilized by the taxable member or
28 members in the manner provided under subsection (a).

29 (d) A member insurer that is exempt from taxes referenced in
30 subsection (a) and has no taxable members of a controlled group

1 as referenced in subsection (c) may recoup its assessments by a
2 surcharge on its premiums in a sum reasonably calculated to
3 recoup the assessments over a reasonable period of time, as
4 approved by the commissioner. Amounts recouped shall not be
5 considered premiums for any other purpose, including the
6 computation of gross premium tax, the medical loss ratio or
7 agent commission. If a member insurer collects excess
8 surcharges, the member insurer shall remit the excess amount to
9 the association, and the excess amount shall be applied to
10 reduce future assessments in the appropriate account.

11 (e) Any sums which are acquired by refund, pursuant to
12 section 1707(f), from the association by member insurers, and
13 which have theretofore been offset against premium or income
14 taxes as provided in this section and are not then needed for
15 the purposes of this [act] article, shall be paid by such member
16 insurers to this Commonwealth in such manner as the tax
17 authorities may require. The association shall notify the
18 commissioner that such refunds have been made.

19 [(d)] (f) No offset against premium or income tax liability
20 shall be permitted to the extent that a member insurer's rates
21 or policyholder dividends have been adjusted as permitted in
22 section 1707.

23 Section 1712. Miscellaneous Provisions.--(a) Nothing in
24 this article shall be construed to reduce the liability for
25 unpaid assessments of the insureds of an impaired or insolvent
26 insurer operating under a plan with assessment liability.

27 (b) Records shall be kept of all [negotiations and] meetings
28 [in which the association or its representatives are involved]
29 of the board of directors to discuss the activities of the
30 association in carrying out its powers and duties under section

1 1706. [Records] The records of [such negotiations or meetings]
2 the association with respect to an impaired or insolvent insurer
3 shall [be made public only upon] not be disclosed prior to the
4 termination of a liquidation, rehabilitation or conservation
5 proceeding involving the impaired or insolvent insurer, except
6 (i) upon the termination of the impairment or insolvency of the
7 member insurer, or (ii) upon the order of a court of competent
8 jurisdiction. Nothing in this subsection shall limit the duty of
9 the association to render a report of its activities under
10 section 1713.

11 (c) For the purpose of carrying out its obligations under
12 this article, the association shall be deemed to be a creditor
13 of the impaired or insolvent insurer to the extent of assets
14 attributable to covered policies reduced by any amounts to which
15 the association is entitled as subrogee pursuant to section
16 1706. Assets of the impaired or insolvent insurer attributable
17 to covered policies shall be used to continue all covered
18 policies and pay all contractual obligations of the impaired or
19 insolvent insurer as required by this article. Assets
20 attributable to covered policies, as used in this subsection,
21 are that proportion of the assets which the reserves that should
22 have been established for such policies or contracts bear to the
23 reserves that should have been established for all policies of
24 insurance or health benefit plans written by the impaired or
25 insolvent insurer.

26 (d) As a creditor of the impaired or insolvent insurer as
27 established in subsection (c) and consistent with section 536 of
28 the act of May 17, 1921 (P.L.789, No.285), known as The
29 Insurance Department Act of 1921, the association and other
30 similar associations shall be entitled to receive a disbursement

1 of assets out of the marshaled assets, from time to time as the
2 assets become available to reimburse it, as a credit against
3 contractual obligations under this article. If the liquidator
4 has not, within one hundred twenty (120) days of a final
5 determination of insolvency of a member insurer by the
6 receivership court, made an application to the court for the
7 approval of a proposal to disburse assets out of marshaled
8 assets to guaranty associations having obligations because of
9 the insolvency, then the association shall be entitled to make
10 application to the receivership court for approval of its own
11 proposal to disburse these assets.

12 [(d)] (e) (1) Prior to the termination of any liquidation,
13 rehabilitation or conservation proceeding, the court may take
14 into consideration the contributions of the respective parties,
15 including the association, the shareholders, contract owners,
16 certificate holders, enrollees and [policyowners] policy owners
17 of the insolvent insurer, and any other party with a bona fide
18 interest, in making an equitable distribution of the ownership
19 rights of such insolvent insurer. In such a determination,
20 consideration shall be given to the welfare of the
21 [policyholders] policy owners, contract owners, certificate
22 holders and enrollees of the continuing or successor member
23 insurer.

24 (2) No distribution to stockholders, if any, of an impaired
25 or insolvent insurer shall be made until and unless the total
26 amount of valid claims of the association with interest thereon
27 for funds expended in carrying out its powers and duties under
28 section 1706 with respect to such member insurer have been fully
29 recovered by the association.

30 [(e)] (f) (1) If an order for liquidation or rehabilitation

1 of [an] a member insurer domiciled in this Commonwealth has been
2 entered, the receiver appointed under such order shall have a
3 right to recover on behalf of the member insurer, from any
4 affiliate that controlled it, the amount of distributions, other
5 than stock dividends paid by the member insurer on its capital
6 stock, made at any time during the five (5) years preceding the
7 petition for liquidation or rehabilitation subject to the
8 limitations of paragraphs (2) to (4).

9 (2) No such distribution shall be recoverable if the member
10 insurer shows that when paid the distribution was lawful and
11 reasonable and that the member insurer did not know and could
12 not reasonably have known that the distribution might adversely
13 affect the ability of the member insurer to fulfill its
14 contractual obligations.

15 (3) Any person who was an affiliate that controlled the
16 member insurer at the time the distributions were paid shall be
17 liable up to the amount of distributions he received. Any person
18 who was an affiliate that controlled the member insurer at the
19 time the distributions were declared shall be liable up to the
20 amount of distributions he would have received if they had been
21 paid immediately. If two or more persons are liable with respect
22 to the same distributions, they shall be jointly and severally
23 liable.

24 (4) The maximum amount recoverable under this subsection
25 shall be the amount needed in excess of all other available
26 assets of the insolvent insurer to pay the contractual
27 obligations of the insolvent insurer.

28 (5) If any person liable under paragraph (3) is insolvent,
29 all its affiliates that controlled it at the time distribution
30 was paid shall be jointly and severally liable for any resulting

1 deficiency in the amount recovered from the insolvent affiliate.

2 Section 1713. Examination of the Association and Annual
3 Report.--The association shall be subject to examination and
4 regulation by the commissioner. The board of directors shall
5 submit to the commissioner each year, not later than one hundred
6 twenty (120) days after the association's fiscal year, a
7 financial report in a form approved by the commissioner and a
8 report of its activities during the preceding fiscal year. Upon
9 the request of a member insurer, the association shall provide
10 the member insurer with a copy of the report.

11 Section 1715. Immunity.--There shall be no liability on the
12 part of and no cause of action of any nature shall arise against
13 any member insurer or its agents or [employees] employees, the
14 association or its agents or [employees] employees, members of
15 the board of directors or the commissioner or [his]
16 representatives of the commissioner for any action or omission
17 by them in the performance of their powers and duties under this
18 article. Such immunity shall extend to the participation in any
19 organization of one or more other state associations of similar
20 purposes and to any such organization and its agents or
21 [employees] employees.

22 Section 1716. Stay of Proceedings and Reopening Default
23 Judgments.--All proceedings in which the insolvent insurer is a
24 party in any court in this Commonwealth shall be stayed [sixty
25 (60)] one hundred eighty (180) days from the date an order of
26 liquidation, rehabilitation or conservation is final to permit
27 proper legal action by the association on any matters germane to
28 its powers or duties. As to judgment under any decision, order,
29 verdict or finding based on default, the association may apply
30 to have such judgment set aside by the same court that made such

1 judgment and shall be permitted to defend against such suit on
2 the merits.

3 Section 1717. Prohibited Advertisement [or] of Insurance
4 Guaranty Association [Act] Article in Insurance and Other
5 Coverage Sales.--(a) No person, including [an] a member
6 insurer, agent or affiliate of [an] a member insurer, shall
7 make, publish, disseminate, circulate or place before the
8 public, or cause, directly or indirectly, to be made, published,
9 disseminated, circulated or placed before the public, in any
10 newspaper, magazine or other publication, or in the form of a
11 notice, circular, pamphlet, letter or poster, or over any radio
12 station or television station, or in any other way, any
13 advertisement, announcement or statement, written or oral, which
14 uses the existence of the association for the purpose of sales,
15 solicitation or inducement to purchase any form of insurance or
16 other coverage covered by this article, provided, however, that
17 this section shall not apply to the association or any other
18 entity which does not sell or solicit insurance[.], or coverage
19 by a RANLI PPO, hospital plan corporation, professional health
20 services plan corporation or health maintenance organization.

21 (b) Within one hundred eighty (180) days of the effective
22 date of this article, the association shall prepare a summary
23 document describing the general purposes and current limitations
24 of the article and complying with subsection (c). This summary
25 document [should] shall be submitted to the commissioner for
26 approval. Sixty (60) days after receiving such approval, no
27 member insurer may deliver a policy or contract [described in
28 section 1703(b)(1)] to a [policyholder or contract holder]
29 policy owner, contract owner, certificate holder or enrollee
30 unless the summary document is delivered to the [policyholder or

1 contract holder] policy owner, contract owner, certificate
2 holder or enrollee prior to or at the time of delivery of the
3 policy or contract [except if subsection (d) applies]. The
4 summary document [should] shall also be available upon request
5 by a [policyholder] policy owner, contract owner, certificate
6 holder or enrollee. The distribution, delivery or contents or
7 interpretation of [this] the summary document shall not mean
8 that either the policy or the contract or the [holder] policy
9 owner, contract owner, certificate holder or enrollee thereof
10 would be covered in the event of the impairment or insolvency of
11 a member insurer. The [description] summary document shall be
12 revised by the association as amendments to the article may
13 require. Failure to receive [this] the summary document does not
14 give the [policyholder, contract holder,] policy owner, contract
15 owner, certificate holder, enrollee or insured any greater
16 rights than those stated in this article.

17 (c) The summary document prepared under subsection (b) shall
18 contain a clear and conspicuous disclaimer on its face. The
19 commissioner shall promulgate a regulation establishing the form
20 and content of the disclaimer. The disclaimer shall:

21 (1) State the name and address of the association and
22 department.

23 (2) Prominently warn the [policyholder or contract holder]
24 policy owner, contract owner, certificate holder or enrollee
25 that the association may not cover the policy or contract or, if
26 coverage is available, it will be subject to substantial
27 limitations and exclusions and conditioned on continued
28 residence in this Commonwealth.

29 (3) State the types of policies or contracts for which
30 guaranty funds will provide coverage.

1 [(3)] (4) State that the member insurer and its agents are
2 prohibited by law from using the existence of the association
3 for the purpose of sales, solicitation or inducement to purchase
4 any form of insurance[.] or coverage by a RANLI PPO, hospital
5 plan corporation, professional health services plan corporation
6 or health maintenance organization.

7 [(4)] (5) Emphasize that the [policyholder or contract
8 holder] policy owner, contract owner, certificate holder or
9 enrollee should not rely on coverage under the association when
10 selecting an insurer[.], RANLI PPO, hospital plan corporation,
11 professional health services plan corporation or health
12 maintenance organization.

13 (6) Explain rights available and procedures for filing a
14 complaint to allege a violation of any provisions of this
15 article.

16 [(5)] (7) Provide other information as directed by the
17 commissioner[.], including, but not limited to, sources for
18 information about the financial condition of insurers, RANLI
19 PPOs, hospital plan corporations, professional health services
20 plan corporations or health maintenance organizations provided
21 that the information is not proprietary and is subject to
22 disclosure under that state's public records law.

23 (d) [No insurer or agent may deliver a policy or contract
24 described in section 1703(b)(1) and excluded under section
25 1703(b)(2) from coverage under this article unless the insurer
26 or agent, prior to or at the time of delivery, gives the
27 policyholder or contract holder a separate written notice which
28 clearly and conspicuously discloses that the policy or contract
29 is not covered by the association. The commissioner shall by
30 regulation specify the form and content of the notice.] A member

1 insurer shall retain evidence of compliance with subsection (b)
2 for so long as the policy or contract for which the notice is
3 given remains in effect.

4 [Section 1718. Prospective Application.--This article shall
5 not apply to any insurer which was declared insolvent before the
6 effective date of this article.]

7 Section 4. The following shall apply:

8 (1) The amendment or addition of sections 1701, 1702,
9 1703, 1704(a), 1705(a), 1706, 1707, 1708(c) introductory
10 paragraph, (8) and (9) and (d), 1709, 1710, 1711, 1712, 1713,
11 1715, 1716, 1717 and 1718 of the act shall apply with respect
12 to a member insurer:

13 (i) that on or after the effective date of this
14 section is placed under an order of liquidation by a
15 court of competent jurisdiction with a finding of
16 insolvency; or

17 (ii) for which the association elects to exercise
18 its power and duties under section 1706(a) on or after
19 the effective date of this section.

20 (2) All matters relating to the insolvency or impairment
21 of any member insurer placed under an order of liquidation by
22 a court of competent jurisdiction with a finding of
23 insolvency before the effective date of this section, or for
24 which the association otherwise exercises its powers and
25 duties under section 1706(a) or (b) before the effective date
26 of this section, including past, present and future
27 assessments and credits, shall be governed by the provisions
28 of Article XVII in effect before the effective date of this
29 section.

30 Section 5. This act shall take effect immediately.