

and Indian War and later pioneer days in this region of northwestern Pennsylvania and to utilize the same to promote interest in history of the region on the part of school children and the general public and for the benefit of the many thousands of tourists visiting this region annually.

Section 2. The sum of fifty-two thousand dollars (\$52,000), or as much thereof as may be necessary, is hereby appropriated to the Pennsylvania Historical and Museum Commission to be used for said purposes on condition of matching funds being made available from other sources in sufficient amount to insure the success of the project and provided that plans for the replica meet with the approval of the Pennsylvania Historical and Museum Commission.

APPROVED—The 24th day of January, A. D. 1966.

WILLIAM W. SCRANTON

No. 531

AN ACT

HB 993

Relating to, regulating, taxing, supervising and controlling the placing of insurance on risks located in the Commonwealth of Pennsylvania with insurers not licensed to transact insurance business in Pennsylvania, permitting licensed insurers to afford coverage which may be placed with unlicensed insurers, providing fees and penalties, and repealing certain existing laws.

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

Section 1. Purpose.—The purpose of this act is to promote the public welfare and to protect the public interest by regulating, taxing, supervising and controlling the placing of insurance on risks located in the Commonwealth of Pennsylvania with insurers not licensed to transact insurance business in Pennsylvania; to protect Pennsylvania citizens purchasing insurance from unlicensed insurers; to define and regulate the persons through whom such insurance may be placed; to protect licensed insurers from unregulated and unfair competition from unlicensed insurers; to establish reasonable standards to be met by unlicensed insurers; and other matters incidental to these subjects.

Section 2. Definitions.—As used in this act:

(1) "Commissioner" means the Insurance Commissioner of the Commonwealth of Pennsylvania.

(2) "Producing broker" means an individual, partnership, or corporation, duly licensed as an insurance broker (either resident or nonresi-

dent) by the commissioner, who is acting as a representative of the insured or prospective insured in a transaction involving placement of insurance coverage with an unlicensed insurer, and who may receive a commission therefor.

(3) "Surplus lines agent" means an individual, partnership, or corporation, duly licensed as such by the commissioner to effect placement of insurance coverage with an unlicensed insurer, and who may receive a commission therefor.

(4) "Surplus lines activity" means any business activity incident to the placement of insurance with an unlicensed insurer, excepting, however, the performance of routine accounting or clerical tasks.

(5) "Licensed insurer" means a company, association, or exchange which has been licensed and authorized by the commissioner to transact any insurance business in Pennsylvania, and "unlicensed insurer" shall mean a company, association, or exchange not so licensed and authorized.

(6) "Eligible surplus lines insurer" means an unlicensed company, association, or exchange which has been so designated by the commissioner under the terms and conditions of this act.

(7) "Person" means any individual, partnership or corporation.

(8) "Insured" means any person, whether resident in Pennsylvania or not, who procures insurance on a subject of insurance resident, located or to be performed in Pennsylvania.

Section 3. Acting for or Aiding Unlicensed Insurers Prohibited; Exceptions.—(a) No person in this Commonwealth shall directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not licensed to transact insurance in this Commonwealth in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such insurer in the transaction of insurance.

(b) Subsection (a) of this section does not apply to:

(1) Matters authorized to be done by the commissioner under act of May 20, 1949 (P. L. 1491), known as the "Unauthorized Insurers Process Act;"

(2) Surplus lines insurance provided it is effected and written pursuant to this act;

(3) Transactions subsequent to issuance of a policy not covering

domestic risks at time of issuance, and lawfully solicited, written or delivered outside this Commonwealth.

Section 4. Surplus Lines Insurance; Authorized.—(a) No insurance shall be placed with an unlicensed insurer by a surplus lines agent unless such insurance meets each of the following requirements:

(1) The full amount of insurance required is not procurable, after the producing broker has made a diligent effort to do so, from licensed insurers which are authorized to transact the class of insurance involved and actually do accept, in the usual course of business, insurance on risks of the same class as the particular risk proposed for insurance.

(2) The surplus lines agent handling the transaction is not aware of any licensed insurer satisfactory to the insured from which the desired coverage may be procured.

(3) The premium rate at which insurance is placed in an unlicensed insurer is not lower than the lowest published rate which has been approved by the commissioner for use by any licensed insurer.

(4) The policy or contract form used by the insurer does not differ materially from policies or contracts customarily used by licensed insurers for the class of insurance involved: Provided, however, That coverage may be placed in an unlicensed insurer using a unique form of policy designed for the particular subject of insurance if a copy of such form is first filed with the commissioner by the surplus lines agent desiring to use it. Said form shall be deemed approved by the commissioner unless within ten days after receipt of same, the commissioner shall find that the use of such form will be contrary to law or public policy.

(b) The minimum requirements for the diligent effort to procure insurance from licensed insurers which must be made by the producing broker in accordance with clause (1) of subsection (a) of this section, is that at least three licensed insurers, all of which actually issue insurance on the class in question in their normal course of business, have declined to insure the particular risk, or have declined to increase the amount of insurance on the risk. Such declination must be made by a full-time employe of the insurer in question, or a full-time employe of a firm acting in the capacity of underwriting manager for the insurer. A declination by the producing broker in his capacity as an agent of an insurer, or by any other "local agent" (as the term is generally used in the insurance business), shall not be deemed a declination for the purpose of this section.

(c) Any insurance which has been placed continuously with an unlicensed insurer or insurers for a period of not less than three consecu-

tive years immediately preceding the current placement may be placed in such unlicensed insurer or insurers. In such instance neither the producing broker or the surplus lines agent shall be required to execute the declaration required by subsection (a) of section 6.

Section 5. Exclusions.—The provisions of this act shall not apply to the following:

(1) Life insurance and annuities;

(2) Reinsurance;

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

(4) Insurance on subjects located, resident, or to be performed wholly outside of the Commonwealth of Pennsylvania;

(5) Title Insurance.

Section 6. Declarations, Duty to File, Maintenance of Records.—

(a) In the case of each placement of insurance in an unlicensed insurer under the provisions of subsections (a) and (b) of section 4:

(1) Both the producing broker and surplus lines agent must execute written declarations in a form prescribed by the commissioner, the producing broker as to his having made a diligent effort to procure the desired coverage from licensed insurers, and the surplus lines agent as to his lack of knowledge as to how the coverage can be procured from licensed insurers. In a particular transaction where the producing broker and surplus lines agent are one and the same entity, he shall execute both declarations.

(2) Within twenty-one days after insurance which has been placed in an unlicensed insurer becomes effective, the surplus lines agent shall file with the commissioner his own written declaration and the written declaration of the producing broker, as set forth above, and shall at that time advise the commissioner of the identity of the unlicensed insurer or insurers from which he has procured the insurance and such other information in such form as the commissioner shall prescribe. The surplus lines agent shall maintain in his office written records showing the exact amount of insurance placed, the name of the insured, the subject of the insurance, a description of the coverage, the gross premium, the name of the insurer or insurers, and the number, effective date and term of the policy, cover note or other instrument of insurance. Such records shall be made available at any time during normal

business hours to the commissioner or his representative. These records shall be kept in the office of the surplus lines agent for not less than three years after the expiration or cancellation of the insurance.

(3) In the event that during the term of an insurance policy or contract, there shall be any change in the insurer, or in the distribution of the risk among two or more insurers, the surplus lines agent shall notify the insured and the commissioner to that effect within ten days of his knowledge of such change.

(b) In the case of each placement of insurance in an unlicensed insurer under the provisions of subsection (c) of section 4:

(1) Within twenty-one days after insurance which has been placed with an unlicensed insurer becomes effective, the surplus lines agent shall file with the commissioner his written declaration setting forth the identity of the unlicensed insurer or insurers with which the insurance has been placed for the three years immediately preceding the current placement, the identity of the unlicensed insurer or insurers with which the current placement is made and the fact that the current placement is the renewal or replacement of prior existing coverage on the same subject of insurance.

(2) The provisions of clause (2) of subsection (a) of section 6 relating to maintenance of records, and the provisions of clause (3) of subsection (a) of section 6 apply equally hereto.

(c) Declarations wherever required by this section are to be made subject to the penalties provided for perjury, and are to be construed in the same way as affidavits under oath or affirmation.

Section 7. Eligible Surplus Lines Insurers.—(a) No surplus lines agent shall place any insurance with any unlicensed insurer which is not then an eligible surplus lines insurer. No unlicensed insurer shall be or become an eligible surplus lines insurer unless declared eligible by the commissioner in accordance with the following conditions:

(1) A licensed surplus lines agent must request the commissioner, in writing, to declare the particular unlicensed insurer eligible.

(2) The insurer must be currently a licensed insurer in the state or country of its domicile as to the kind or kinds of insurance which it proposes to provide. In addition it must have been (i) such an insurer for not less than one full year preceding, or (ii) must be a subsidiary of an already eligible surplus lines insurer which has been so eligible for a period of not less than one full year preceding, or (iii) must be a subsidiary of an insurer licensed in Pennsylvania, which has been so licensed for a period of not less than one full year preceding.

(3) Before an insurer may be declared eligible, the surplus lines agent

requesting such declaration shall furnish the commissioner with duly authenticated copies of the insurer's current annual financial statement, one in the language and currency of the country of its domicile, and the other in the English language and United States currency, at the current exchange rate, and such additional information relative to the insurer as the commissioner may require.

(4) The insurer must have surplus as to policyholders of not less than the amount required of a like foreign insurer licensed in Pennsylvania, and, if an alien insurer, must have and maintain in a bank or trust company which is a member of the United States Federal Reserve System a trust fund established under terms reasonably adequate for the protection of all of its policyholders in the United States in an amount of not less than four hundred thousand dollars (\$400,000). In the case of a group of individual unincorporated insurers, such trust fund shall be not less than fifty million dollars (\$50,000,000). The commissioner may require larger trust funds than those set forth above if in his judgment the volume of business being transacted or proposed to be transacted warrants such larger amounts. To the extent of the minimum amounts as provided for above, such trust funds shall consist of United States currency, public obligations of the United States or a political subdivision thereof, or other investments of the same general character and quality as are required for like funds of the same class of insurers licensed in Pennsylvania.

(5) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.

(6) No insurer shall be eligible, the management of which is considered by the commissioner to be incompetent or untrustworthy, or lacking in sufficient insurer managerial experience, or which the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relationships with any entity whose business operations may be or have been detrimental to the interests of policyholders, stockholders, investors, creditors, or the public.

(b) The commissioner shall from time to time publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the commissioner.

(c) An eligible surplus lines insurer shall furnish at least annually to the commissioner the information required by clause (3) of subsection (a) above. If at any time the commissioner has reason to believe that any unlicensed insurer then on the list of eligible surplus lines insurers

is impaired financially, or no longer meets the requirements for eligibility as set forth above, he shall declare such insurer no longer an eligible surplus lines insurer. If the commissioner determines, after a hearing thereon of which reasonable notice was given to all licensed surplus lines agents, that an insurer currently eligible as a surplus lines insurer has wilfully violated the laws of Pennsylvania, or has failed to make reasonably prompt settlement of just claims for losses and/or return premiums he may declare such insurer no longer an eligible surplus lines insurer. The commissioner shall promptly mail notice of all such declarations to each surplus lines agent at his address last of record with the commissioner.

(d) Nothing in this section shall be deemed to impose on the commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unlicensed insurer; and the status of being an eligible surplus lines insurer, if granted by the commissioner, shall be construed to mean only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary.

Section 8. Licensing of Surplus Lines Agents.—(a) Any individual who is a resident Pennsylvania licensed insurance broker who is found by the commissioner to have had sufficient experience in the insurance business to be competent for the purpose, may be licensed as a surplus lines agent, upon taking and passing successfully a written examination on his knowledge of this act and his general knowledge of surplus lines activity, the content of such examination to be prescribed by the commissioner.

(b) Any partnership or corporation which is a resident Pennsylvania licensed insurance broker may become licensed as a surplus lines agent provided that all members of the partnership or all officers of the corporation, as the case may be, who are actively engaged in the surplus lines activity of the partnership or corporation possess the requisite experience and pass successfully the written examination as above set forth. The commissioner shall issue a "Certificate of Eligibility" to all such partners or officers who shall so qualify to handle surplus lines activity. Partners or officers not holding such Certificate of Eligibility are expressly prohibited from engaging in any phase of the partnership's or corporation's surplus lines activity.

(c) Any individual, partnership or corporation which is the holder of a currently valid excess insurance broker's license on the effective date of this act shall be considered qualified for a surplus lines agent's license without the necessity of passing an examination. Partners of

partnerships and officers of corporations who are certified to the commissioner as having been actively engaged in the surplus lines activity of the partnership or corporation on the effective date of the act, shall be considered qualified for a Certificate of Eligibility without the necessity of passing an examination.

(d) Initial and renewal applications for the said licenses and certificates shall be made to the commissioner on forms prescribed and furnished by him.

(e) Such licenses and certificates shall be issued for a term of twelve months and shall be renewable upon written request therefor filed with the commissioner and accompanied by payment of the license fee, prior to expiration.

(f) The following fees shall be paid in advance:

(1) Surplus lines agent's annual license fee, one hundred dollars (\$100).

(2) Annual Certificate of Eligibility, ten dollars (\$10).

(3) Examination fee, ten dollars (\$10).

Section 9. Surplus Lines Agents Bond.—Prior to issuance of a license, the applicant shall furnish the commissioner and shall keep in force for as long as any such license remains in effect a bond in favor of the Commonwealth of Pennsylvania in the amount of not less than twenty-five thousand dollars (\$25,000) aggregate liability, such bond to be issued by a licensed and authorized corporate surety or sureties approved by the commissioner. The bond shall be conditioned that the surplus lines agent will comply with all the requirements of section 11 of this act. The commissioner may, in his discretion, require a bond in a larger amount if the volume of business transacted or to be transacted by a particular surplus lines agent warrants such larger amount. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the amount thereof. No such bond shall be terminated except upon not less than thirty days' prior written notice thereof given to the licensee, the commissioner and the Department of Revenue.

Section 10. Suspension, Revocation or Refusal of Licenses and Penalties.—(a) The commissioner may suspend, revoke, or refuse to renew the license of a surplus lines agent or impose a fine of not more than one thousand dollars (\$1000) for each violation of this act after notice and hearing upon any one or more of the following grounds:

(1) Removal of the licensee's office from Pennsylvania.

(2) Removal of the accounts and records of his surplus lines activity from this Commonwealth.

(3) Closure of the licensee's office for a period in excess of thirty consecutive days, unless granted permission by the commissioner to close said office for a longer period, upon showing circumstances warranting such longer closure.

(4) Failure to make and file reports when due as required by section 11 of this act.

(5) Failure to remit taxes as required by section 11 of this act.

(6) Failure to maintain the bond as herein required.

(7) Failure to remit premiums due insurers or return premiums due insureds in the normal course of business and within reasonable time limits.

(8) Suspension, revocation or refusal to renew any other license or certificate issued by the commissioner to said licensee.

(9) Violation of any provision of this act.

(b) When any licensed insurance agent, broker or licensed insurer shall violate any of the provisions of this act, the Insurance Commissioner may suspend, revoke or refuse to renew the license of such agent or broker or impose a fine of not more than one thousand dollars (\$1000) upon such agent, broker or licensed insurer for each violation of this act, after notice and hearing.

(c) Before the commissioner shall take any action as set forth in subsections (a) and (b) above, he shall give written notice to the person accused of violating this act, stating specifically the nature of such alleged violation and fixing a time and place at least ten days thereafter when a hearing of the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner shall suspend, revoke or refuse to renew the license of the licensee or impose a fine as he deems advisable.

(d) When the Insurance Commissioner shall take action in any or all of the ways above cited, the party aggrieved may appeal from said action to the Court of Common Pleas of Dauphin County.

Section 11. Surplus Lines Tax.—(a) There is hereby levied a tax of three percent on all premiums charged for insurance which is placed¹ with an unlicensed insurer in accordance with this act, such taxes to be based on the gross premiums charged less any return premiums. This tax shall be in addition to the full amount of the gross premium charged by the insurer for the insurance: Provided, however, That the tax on any unearned portion of the premium shall be returned to the insured.

(b) Neither the surplus lines agent, nor the producing broker, shall pay directly or indirectly such tax or any portion thereof, either as an

¹ "in" in original.

inducement to the insured to purchase the insurance or for any other reason.

(c) The surplus lines agent shall collect from the insured or the producing broker the amount of the tax at the time of delivery of the initial policy, cover note or other instrument of insurance or at such time thereafter as is reasonably consistent with normal credit terms customary in the business. Each surplus lines agent shall, on or before January 31 of each year, file with the Department of Revenue a report of all transactions involving the placement of insurance with unlicensed insurers during the previous calendar year. Such report shall set forth the name of the insured, identification of the insurer or insurers, the type of insurance, gross premiums charged less any return premiums allowed and the tax due as provided herein. The remittance for the taxes due shall accompany this report. Such report shall be made on forms prescribed and furnished by the Department of Revenue. A copy of such report shall be filed with the commissioner by the surplus lines agent.

(d) In the event that a given transaction is handled by a licensed surplus lines agent for another licensed surplus lines agent, the surplus lines agent dealing directly with the insurer is responsible to the Commonwealth of Pennsylvania that the transaction is reported and tax paid.

(e) The tax as provided by subsection (a) of this section is imposed upon an insured as herein defined who procures insurance on a subject of insurance, resident, located or to be performed in Pennsylvania from an unlicensed insurer or continues or renews such insurance, other than insurance procured through a surplus lines agent in accordance with this act, shall within thirty days after the date when such insurance was procured, continued, or renewed, report such transaction on forms prescribed by the Department of Revenue. This report should set forth the information required of surplus lines agents as required in subsection (c). The tax of three percent shall be paid on the date the report is due as herein provided. A copy of such report shall be filed with the commissioner by the insured.

(f) In the event that a placement of insurance, either by a surplus lines agent or by the insured himself, shall involve subjects of insurance resident, located or to be performed in one or more states other than Pennsylvania, then the premium taxes herein provided for shall be levied only on that portion of the premium reasonably ascribable to that portion of the risk situated in Pennsylvania.

(g) The settlement and resettlement of taxes imposed by this act, including the granting of extensions of time to file reports and the

rights of the taxpayers to present and prosecute a petition for resettlement, a petition for review or an appeal to court or to file a petition for refund and the imposition of interest and penalties, shall be governed by the provisions of the act of April 9, 1929 (P. L. 343), known as "The Fiscal Code," as approved in the case of capital stock and franchise taxes.

Section 12. Information Required on Contract.—Every policy, cover note or other instrument of insurance delivered to the insured and placed with an unlicensed insurer in accordance with this act shall have printed, typed or stamped on it, in not less than 10-point print, the following legend: "This insurance contract is issued by an insurer neither licensed by nor under the jurisdiction of the Pennsylvania Insurance Department and is written pursuant to the Pennsylvania Surplus Lines Law. Placed by (name and office address of surplus lines agent)." This legend shall not be concealed or covered over with a policy label, sticker or any other thing which may prevent the insured from seeing it.

Section 13. Service of Suit Provisions.—Every policy, cover note or other instrument of insurance delivered to the insured and placed with an unlicensed insurer in accordance with this act shall contain a clause or provision appointing the commissioner as the true and lawful attorney of each such insurer in and for the Commonwealth of Pennsylvania, upon whom all lawful process may be served in any action, suit or proceeding instituted in the Commonwealth of Pennsylvania by or on behalf of an insured or beneficiary against such insurer, arising out of such instrument of insurance.

Section 14. Rights of Insureds Not Impaired.—Nothing in this act shall be interpreted to prevent an insured from enforcing his rights under the terms and conditions of a contract of insurance entered into in violation of this act.

Section 15. Regulations.—The commissioner is hereby authorized to make and enforce such rules and regulations as he may deem necessary for the administration of this act.

Section 16. Penalties.—Any person who in this Commonwealth violates any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine not in excess of one thousand dollars (\$1000).

Section 17. Separability of Provisions.—If any provisions of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 18. Repealer.—(a) Sections 624, 625 and 632, act of May 17, 1921 (P. L. 789), known as “The Insurance Department Act of one thousand nine hundred and twenty-one,” are hereby repealed. All other acts or parts thereof inconsistent with the provisions of this act are hereby repealed.

(b) The act of July 6, 1917 (P. L. 723), entitled “An act imposing a tax on premiums of insurance and reinsurance in foreign insurance companies and associations not registered in this Commonwealth; providing the method of collection of such tax, and imposing penalties,” is repealed except in so far as it relates to life insurance and annuities.

Section 19. Effective Date.—This act shall take effect March 1, 1966.

APPROVED—The 24th day of January, A. D. 1966.

WILLIAM W. SCRANTON

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No. 532

AN ACT

HB 1456

Amending the act of January 8, 1960 (P. L. 2119), entitled “An act to provide for the better protection of the health, general welfare and property of the people of the Commonwealth by the control, abatement, reduction and prevention of the pollution of the air by smokes, dusts, fumes, gases, odors, mists, vapors, pollens and similar matter, or any combination thereof; creating within the Department of Health an Air Pollution Commission and defining its powers; authorizing the Department of Health to enforce rules and regulations of the Commission as provided in this act; establishing Regional Air Pollution Control Associations and defining their powers; reserving powers to local political subdivisions, and defining the relationship between this act and the ordinances, resolutions and regulations of counties, cities, boroughs, towns and townships; imposing penalties for violation of this act; and providing for the power to enjoin violations of this act; and conferring upon persons aggrieved certain rights and remedies; and providing an appropriation therefor,” redefining unlawful acts and changing some requirements for public hearings; and further providing for powers reserved to the Department of Health under existing laws and for the applicability of the act to political subdivisions.

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

Section 1. Subsection (a) of section 7 and sections 8, 11 and 12, act of January 8, 1960 ¹(1959 P. L. 2119), known as the “Air Pollution Control Act,” are amended to read:

Section 7. Public Hearings.—(a) Public hearings shall be held by

¹ “1959” not in original.