No. 1996-154

AN ACT

SB 31

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," further providing for investments, for certificates of authority for issuance of nonassessable policies, for life and endowment insurance and annuities, for limitation on actions, for alternative plan of conversion and for mutual companies insolvent or in hazardous financial condition.

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

Section 1. Sections 404.2(4) and 406.2(f) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, added June 11, 1986 (P.L.226, No.64), are amended to read:

Section 404.2. Investment.—Subject to the provisions of sections 405.2 and 406.1, the assets of any life insurance company organized under the laws of this Commonwealth shall be invested in the following classes of investment, provided the value of which, as determined for annual statement purposes, but in no event in excess of cost, shall not exceed the specified percentage of such company's assets as of the thirty-first day of December next preceding the date of investment:

* * *

(4) Business obligations:

(i) Bonds, notes or obligations issued, assumed, guaranteed or accepted by any corporation, joint-stock association, business trusts, business partnerships and business joint ventures, incorporated or existing under the laws of the United States or of any state, district or territory thereof.

(ii) Preferred stock of any of the foregoing.

(iii) Interest-bearing deposits or certificates of deposits in banks, bank and trust companies, savings banks, savings associations, savings and loan associations or national banking associations, incorporated or existing under the laws of the United States or any state, district or territory thereof and branches of foreign banking institutions located in the United States or any state, district or territory thereof.

(iv) Obligations which are not issued, assumed, guaranteed or accepted by any person described under subclause (i) but are secured by an assignment of a right to receive rent, purchase or other payment or revenues for the use or purchase of real or personal property sufficient to repay the investment and payable or guaranteed by any one or more persons or entities whose bonds, notes or obligations would qualify for investment under this section or a mortgage, interest in mortgage pool or mortgage participation, or lien or security interest in real or personal property or any interest therein. Investments permitted under subclause (ii) shall **[be limited to an aggregate of five per centum (5%) of such company's admitted assets]** ***not exceed twenty-five per centum (25%) of such company's admitted assets, and no investment in any single corporation or entity contemplated by this clause shall exceed five per centum (5%) of such company's admitted assets.***

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Section 406.2. Separate Accounts.—* * *

(f) Except for sections 410(b), 410(c), 410(h), 410(i), 410(j), 410(k) and 410A **[and 410D]** of The Insurance Company Law of 1921 and section 6(1) of the act of May 11, 1949 (P.L.1210, No.367), entitled "An act relating to group life insurance; describing permitted policies and restrictions thereon, the premium basis thereof and rights thereunder; limiting the amount of such insurance; prescribing standard policy provisions; and requiring notice of conversion privileges," in the case of variable life insurance contract and sections 410B(a), 410B(f), 410B(g), ***and*** 410B(3) **[and 410E]** of The Insurance Company Law of 1921 in the case of a variable annuity contract and except as otherwise provided in section 406.2, all pertinent provisions of the insurance laws shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance or variable annuity contract, delivered or issued for delivery in this Commonwealth shall contain grace, reinstatement, incontestability, nonforfeiture and right to review provisions as shall be provided in rules and regulations established by the commissioner appropriate to such contract; and any group variable life insurance contract, delivered or issued for delivery in this Commonwealth shall contain a grace provision as shall be provided in rules and regulations established by the commissioner appropriate for such contract.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures acceptable to the Insurance Commissioner that recognize the variable nature of the benefits provided and any mortality guarantees.

Section 2. Sections 410D and 410E of the act, added November 5, 1981 (P.L.325, No.116), are amended to read:

Section 410D. Notice of Policyholder's Right to Examine Life and Endowment Insurance Policies.—**[No policy of]** ***(a) (1) Except as provided in paragraphs (2) and (3),*** individual ***fixed dollar*** life insurance or endowment insurance ***policies*** shall ***not*** be delivered in the Commonwealth of Pennsylvania **[after January 1, 1982]** unless **[it]** ***they*** shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least ten (10) days of its delivery and to have the premium paid refunded if after examination of the policy, the policyholder is not satisfied with it for any reason. **[If a policyholder pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.]**

(2) Individual fixed dollar life insurance or endowment insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with the same insurer or insurer group shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least forty-five (45) days of its delivery and to have the premium refunded if after examination of the policy the policyholder is not satisfied with it for any reason.

(3) Individual fixed dollar life insurance or endowment insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy or contract shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least twenty (20) days of its delivery and to have the premium refunded if after examination of the policy the policyholder is not satisfied with it for any reason.

(b) (1) Except as provided in paragraphs (2) and (3), individual variable life policies shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least ten (10) days of its delivery if after examination of the policy the policyholder is not satisfied with it for any reason, and the notice shall state that in such event the insurer shall pay to the policyholder an amount equal to any of the following:

(i) the stipulated payment or premium paid;

(ii) the difference between:

(A) the premiums paid, including any policy fees or other charges and the amounts, if any, allocated to any separate accounts under the policy; and

(B) the cash value of the policy or, if the policy does not have a cash value, the reserve for the policy on the date of surrender attributable to the amounts so allocated; or

(iii) the greater of subparagraph (i) or (ii).

(2) Individual variable life insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with

the same insurer or insurer group shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least forty-five (45) days of its delivery if after examination of the policy the policyholder is not satisfied with it for any reason, and the notice shall state that in such event the insurer shall pay to the policyholder an amount equal to any of the following:

(i) the stipulated payment or premium paid;

(ii) the difference between:

(A) the premiums paid, including any policy fees or other charges and the amounts, if any, allocated to any separate accounts under the policy; and

(B) the cash value of the policy or, if the policy does not have a cash value, the reserve for the policy on the date of surrender attributable to the amounts so allocated; or

(iii) the greater of subparagraph (i) or (ii).

(3) Individual variable life insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy or contract shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least twenty (20) days of its delivery if after examination of the policy the policyholder is not satisfied with it for any reason, and the notice shall state that in such event the insurer shall pay to the policyholder an amount equal to any of the following:

(i) the stipulated payment or premium paid;

(ii) the difference between:

(A) the premiums paid, including any policy fees or other charges and the amounts, if any, allocated to any separate accounts under the policy; and

(B) the cash value of the policy or, if the policy does not have a cash value, the reserve for the policy on the date of surrender attributable to the amounts so allocated; or

(iii) the greater of subparagraph (i) or (ii).

Section 410E. Notice of Contractholder's Right to Examine Annuity or Pure Endowment Contracts.—[No] *(a) (1) Except as provided in paragraphs (2) and (3),* individual fixed dollar annuity or pure endowment **[contract shall]** *contracts shall not* be entered into in the Commonwealth of Pennsylvania **[after January 1, 1982 unless it]** *unless they* shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least ten (10) days of its delivery and to have the stipulated payment or premium paid refunded if after examination of the contract, the contractholder is not satisfied with it for any reason. **[If a contractholder pursuant to such notice, returns the contract to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no contract had been entered into.]**

(2) Individual fixed dollar annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with the same insurer or insurer group shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least forty-five (45) days of its delivery and to have the premium refunded if after examination of the contract the contractholder is not satisfied with it for any reason.

(3) Individual fixed dollar annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with an insurer or insurer group other than the one which issued the original contract or policy shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least twenty (20) days of its delivery and to have the premium refunded if after examination of the contract the contractholder is not satisfied with it for any reason. **[No individual]**

(b) (1) Except as provided in paragraphs (2) and (3), individual variable annuity **[contract shall]** *contracts shall not* be entered into in the Commonwealth of Pennsylvania **[after January 1, 1982 unless it]** *unless they* shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least ten (10) days of its delivery if after examination of the contract**[,]** the contractholder is not satisfied with it for any reason**[, and in such event,]**. *The notice shall state that in such event* the insurer **[will]** *shall* pay to the contractholder an amount equal to **[the sum of (i)]** *any of the following:*

(i) the stipulated payment or premiums paid;

(ii) the difference between*:*

(A) the premiums paid, including any contract fees or other charges and the amounts, if any, allocated to any separate accounts under the contract; and **[(ii)]**

(B) the cash value of the contract**[,]** or, if the contract does not have a cash value, the reserve for the contract**[,]** on the date of surrender attributable to the amounts so allocated**[.]***; or*

(iii) the greater of subparagraphs (i) or (ii). **[If a contractholder, pursuant to such notice, returns the contract to the insurer at its home**

or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no contract had been entered into.]

(2) Individual variable annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with the same insurer or insurer group shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least forty-five (45) days of its delivery if after examination of the contract the contractholder is not satisfied with it for any reason, and in such event the notice shall state that in such event the insurer shall pay to the contractholder an amount equal to any of the following:

(i) the stipulated payment or premium paid;

(ii) the difference between:

(A) the premiums paid, including any contract fees or other charges and the amounts, if any, allocated to any separate accounts under the contract; and

(B) the cash value of the contract or, if the contract does not have a cash value, the reserve for the contract on the date of surrender attributable to the amounts so allocated; or

(iii) the greater of subparagraph (i) or (ii).

(3) Individual variable annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with an insurer or insurer group other than the one which issued the original contract or policy shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contractholder shall be permitted to return the contract within at least twenty (20) days of its delivery if after examination of the contract the contractholder is not satisfied with it for any reason, and in such event the notice shall state that in such event the insurer shall pay to the contractholder an amount equal to any of the following:

(i) the stipulated payment or premium paid;

(ii) the difference between:

(A) the premiums paid, including any contract fees or other charges and the amounts, if any, allocated to any separate accounts under the contract; and

(B) the cash value of the contract or, if the contract does not have a cash value, the reserve for the contract on the date of surrender attributable to the amounts so allocated; or

(iii) the greater of subparagraph (i) or (ii).

Section 3. The act is amended by adding an article to read:

ARTICLE IV-A.
LIFE AND ENDOWMENT INSURANCE AND ANNUITIES.

Section 401-A. Definitions.—As used in this article, the following words and phrases shall have the meanings given to them in this section:

"Actuarial standards board." The board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Agent." A licensed representative of an insurer as defined in section 601 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."

"Basic illustration." A ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

"Broker." A licensed representative of an insurance applicant or insured as defined in section 621 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Contract premium." The gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

"Currently payable scale." A scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or which has a future effective date not later than ninety-five (95) days from the date the illustration is shown.

"Department." The Insurance Department of the Commonwealth.

"Disciplined current scale." A scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

(1) Are consistent with all provisions of this act.

(2) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred.

(3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date.

(4) Do not permit assumed expenses to be less than minimum assumed expenses.

"Existing life insurance or annuity." A life insurance or annuity policy in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period where a commission and a premium have already been paid.

"Fraternal benefit society." Any entity licensed to engage in the business of insurance under the act of December 14, 1992 (P.L.835, No.134), known as the "Fraternal Benefit Societies Code."

"Generic name." A short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

"Guaranteed elements." The premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

"Illustrated scale." A scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(1) the disciplined current scale; or

(2) the currently payable scale.

"Illustration." Anything that purports to describe a life insurance policy or annuity in a ledger-type format reflecting guaranteed/nonguaranteed future contract premiums, premium outlays, surrender values and benefits and is used in the sales presentation.

"In-force illustration." An illustration furnished at any time after the policy that it depicts has been in force for one (1) year or more.

"Insurer." Life insurer or fraternal benefit society.

"Lapse-supported illustration." An illustration of a policy form failing the test of self-supporting as defined in this act, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five (5) years and 100 per centum (100%) policy persistency thereafter.

"Life insurance illustration." A presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is a basic illustration, a supplemental illustration or an in-force illustration.

"Life insurer" or "insurer." An entity licensed to engage in the business of insurance under this act.

"Minimum assumed expenses." The minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

(1) Fully allocated expenses.

(2) Marginal expenses.

(3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the Insurance Commissioner.

Marginal expenses may be used only if greater than a ~~generally recognized~~ expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

"Nonguaranteed elements." The premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

"Nonterm group life." A group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(1) Every plan of coverage was selected by the employer or other group representative.

(2) Some portion of the premium is paid by the group or through payroll deduction.

(3) Group underwriting or simplified underwriting is used.

"Policy owner." The owner named in the policy or the certificateholder in the case of a group policy.

"Premium outlay." The amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

"Producer." An agent or broker.

"Replacement." A transaction in which new life insurance or a new annuity is to be purchased and it is known to the proposing agent, broker or proposing insurer that, by reason of the transaction, existing life insurance or annuity has been or is to be one of the following:

(1) Lapsed, forfeited, surrendered, assigned to the replacing insurer or otherwise terminated.

(2) Converted to reduce paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits, dividend cash values or other policy cash values.

(3) Amended so as to effect a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.

(4) Reissued with a reduction in cash value.

(5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five (25%) of the loan value set forth in the policy.

The term does not include group life insurance or group annuities, life insurance issued under the act of September 2, 1961 (P.L.1232, No.540), known as the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance," life insurance issued in connection with a pension, profit-sharing or other benefit plan qualifying for deductibility of premiums, transactions involving an application to the existing insurer that issued the existing life insurance or annuity in which a contractual change or a conversion privilege is being exercised.

"Self-supporting illustration." An illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender

values and any other illustrated benefit amounts available at the policy owner's election.

"Supplemental illustration." An illustration furnished in addition to a basic illustration that meets the applicable requirements of this act and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

Section 402-A. Applicability and Purpose.—Except as expressly provided, this article shall apply to all insurers licensed to do business in this Commonwealth with respect to any life insurance policy or annuity delivered or issued for delivery in this Commonwealth and to all producers licensed to sell life insurance or annuities with respect to any life insurance policy or annuity marketed or sold in this Commonwealth. The purpose of this article is to prescribe standards which shall be followed in the solicitation, sale, issuance and delivery of life insurance products and annuities.

Section 403-A. Unfair Financial Planning Practices.—(a) No producers shall hold themselves out, directly or indirectly, to the public as a financial planner, investment adviser, consultant, financial counselor or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when that person is in fact engaged only in the sale of life or annuity insurance policies. This subsection shall not limit persons who hold some form of formally recognized financial planning or consultant designation from using this designation when they are only selling insurance. However, these persons may not charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

(b) (1) Producers shall not engage in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in subsection (c) or solicitation of the sale of a product or service that:

(i) he is also an insurance salesperson; and

(ii) a commission for the sale of an insurance product will be received from an insurer apart from a fee for financial planning, if such is the case.

(2) The disclosure requirement under this subsection may be met by including it in any disclosure required by Federal or State securities law.

(c) (1) Producers shall not charge fees, other than commissions, for financial planning unless such fees are based upon a written agreement signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the party to be charged at the time the agreement is signed by that party. The written agreement must include, at a minimum:

(i) A general description of the services for which the fee is to be charged.

(ii) The amount of the fee to be charged or how it will be determined or calculated.

(iii) The fact that the client is under no obligation to purchase any insurance product through the insurance agent, broker or consultant.

(2) The producers shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the department upon request.

Section 404-A. Policy Delivery.—When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered to the policyholder by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence. A certificate of mailing is adequate proof of delivery.

Section 405-A. Establishment of Internal Audit and Compliance Procedures.—(a) Every insurer shall institute and maintain internal audit and compliance procedures which provide for the evaluation of compliance with all statutes and regulations dealing with sales methods, advertising and filing and approval requirements for life insurance and annuities. These procedures shall also provide for the following:

(1) Periodic reviews of consumer complaints in order to identify patterns of improper practices.

(2) Regular reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings.

(3) The establishment of lines of communication, control and responsibility over the dissemination of advertising and promotional materials, including illustrations and illustration explanations, with the requirement that such materials shall not be used without the approval by company employees whose compensation, other than generally applicable company bonus or incentive plans, is not directly linked to marketing or sales.

(b) Each insurer shall make available for department inspection upon request its internal audit and compliance procedures which are instituted as required by this section.

Section 406-A. Application.—No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant's written consent, except that insertions may be made by the insurer, for administrative purposes only, in *such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.*

Section 407-A. Illustrations.—(a) A producer shall only use and shall not withhold, alter, change or in any way modify the results of a life insurance or annuity illustration system provided by an insurer or approved in writing by an officer of the insurer or such other person as the insurer may designate for such purpose.

(b) Life insurance and annuity illustrations may not be made part of any life insurance or annuity policy issued.

Section 408-A. Life Insurance Illustrations.—(a) (1) Each insurer marketing policies to which this act is applicable shall notify the commissioner whether a life insurance policy form is to be marketed with or without an illustration. For all life insurance policy forms being actively marketed on the effective date of this section, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. The notification shall be provided within sixty (60) days of the effective date of this section. For life insurance policy forms approved by the department but not being actively marketed on the effective date of this section, the identification shall be made on or before the time the life insurance policy form is actively marketed. For life insurance policy forms filed with the commissioner after the effective date of this section, the identification shall be made at the time of filing.

(2) Any previous identification may be changed by notice to the commissioner. This notice shall be provided on or before the effective date of the change.

(3) If the insurer identifies a life insurance policy form as one to be marketed without an illustration, any use of an illustration with any policy using that policy form prior to the first policy anniversary is prohibited.

(4) If a life insurance policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this section is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(5) Potential enrollees for policies and certificates on nonterm group life subject to this section shall show potential policy values from sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this section, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the life insurance policy or certificate to enrollees for

nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it.

(b) (1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this section, be clearly labeled "life insurance illustration" and contain the following basic information:

(i) Name of insurer.

(ii) Name and business address of producer, if any.

(iii) Name, age and sex of proposed insured, except where a composite illustration is permitted under this section.

(iv) Underwriting or rating classification upon which the illustration is based.

(v) Generic name of policy, the insurer product name, if different, and form number.

(vi) Initial death benefit.

(vii) Dividend option election or application of nonguaranteed elements, if applicable.

(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers shall not:

(i) represent the policy as anything other than a life insurance policy;

(ii) use or describe nonguaranteed elements in a manner that is untrue, deceptive or misleading or has the capacity or tendency to mislead;

(iii) state or imply that the payment or amount of nonguaranteed elements is guaranteed;

(iv) use an illustration that does not comply with the requirements of this act;

(v) use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

(vi) provide an applicant with an incomplete illustration;

(vii) represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits unless such representation is true;

(viii) use the term "vanish" or "vanishing premium" or any similar term that implies the policy may become paid up to describe ~~a plan whereby~~ nonguaranteed elements are used to pay all or a portion of future premiums;

(ix) except for policies that can never develop nonforfeiture values, use a lapse-supported illustration; or

(x) use an illustration that is not self-supporting.

(3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

(c) (1) A basic illustration shall conform with the following requirements:

(i) The illustration shall be labeled with the date on which it was prepared.

(ii) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration.

(iii) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

(iv) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the number of years the policy is assumed to have been in force.

(v) The assumed payments in which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(vi) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall ~~be shown~~ and clearly labeled guaranteed.

(vii) If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(viii) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically ~~referred to~~ on any page of an illustration that shows or describes only the nonguaranteed elements.

(ix) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(x) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

(xi) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(xii) Any illustration of nonguaranteed elements shall contain a statement indicating that:

(A) The benefits and values are not guaranteed.

(B) The assumptions on which they are based are subject to change by the insurer.

(C) Actual results may be more or less favorable.

(xiii) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the

illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlays of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(xiv) Upon the request of the applicant and at the discretion of the insurer, the illustration may show the use of dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, and the impact of such use on future policy benefits and values.

(2) A basic illustration shall include the following:

(i) A brief description of the policy being illustrated, including a statement that it is a life insurance policy.

(ii) A brief description of the premium outlay or contract premium, as applicable for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(iii) A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy.

(iv) Identification and a brief definition of column headings and key terms used in the illustration.

(v) A statement containing in substance the following:

> *"This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."*

(3) (i) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five (5), ten (10) and twenty (20) and at age seventy (70), if applicable. For multiple life policies the summary shall show policy years five (5), ten (10), twenty (20) and thirty (30).

(ii) This numeric summary shall be shown for the required policy years for the following three bases:

(A) Policy guarantees.

(B) Insurer's or fraternal benefit society's illustrated scale.

(C) Insurer's or fraternal benefit society's illustrated scale used but with the nonguaranteed elements reduced as follows:

(1) Dividends at fifty per centum (50%) of the dividends contained in the illustrated scale used.

(2) Nonguaranteed credited interest at rates that are the arithmetic average of the guaranteed rates and the rates contained in the illustrated scale used.

(3) All nonguaranteed charges, including, but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(iii) In addition, if coverage would cease prior to maturity or age one hundred (100) for a policy without a maturity date, on any of the three bases stated in subparagraph (ii), the years in which coverage ceases shall be identified.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary:

(i) A statement to be signed and dated by the applicant or the policy owner in the case of an illustration provided at time of delivery, reading as follows:

> *"I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The producer has told me they are nonguaranteed."*

(ii) A statement to be signed and dated by the producer, reading as follows:

> *"I certify that this illustration has been presented to the applicant or the policy owner and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."*

(5) (i) A basic illustration shall include the following for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at the later of age one hundred (100), policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(A) The premium outlay, the payment mode the applicant plans to use and the contract premium, as applicable.

(B) The corresponding guaranteed death benefit, as provided in the policy.

(C) The corresponding guaranteed value available upon surrender, as provided in the policy.

(ii) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(iii) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

(d) (1) A supplemental illustration may be provided so long as:

(i) It is appended to, accompanied by or preceded by a basic illustration that complies with this section.

(ii) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration.

(iii) It contains the statement referenced in subsection (c)(1)(xii), exactly as contained in the basic illustration.

(iv) For a policy that provides for a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration and that the basic illustration contains guaranteed elements and other important information.

(e) (1) The following applies if a basic illustration is used by a producer in the sale of a life insurance policy.

(i) If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant.

(ii) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled "Revised Illustration." The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered.

(2) The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen illustration is displayed.

(i) The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form the applicant shall acknowledge that no illustration was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer as soon as practical after the application is signed by the applicant.

(ii) Where a computer screen illustration is used, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and nonguaranteed interest rates illustrated, the number of policy years illustrated, the initial death benefit, the premium amount illustrated and the assumed number of years of premiums. On the same form, the applicant shall further acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time the application is provided to the insurer. A copy of this signed form shall be provided to the applicant at the time it is signed.

(iii) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner at the time the policy is delivered and to the insurer as soon as practical after the policy is delivered.

(3) The following applies if an illustration is used by a producer in the sale of a life insurance policy but the policy applied for is other than as illustrated.

(i) The producer shall certify in writing on a form provided by the insurer that the policy applied for is other than as illustrated. On the same form the applicant shall acknowledge that the policy applied for is other than as illustrated and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer or fraternal benefit society as soon as practical after the application is signed by the applicant.

(ii) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered.

(4) If the basic or revised illustration is mailed to the applicant or policy owner by the insurer, the applicant or policy owner shall be instructed to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that a diligent effort has been made to secure a signed copy of the numeric

summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(5) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force. A copy need not be retained if no policy is issued.

(f) (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations in conformity with the Actuarial Standard of Practice for Compliance promulgated by the Actuarial Standards Board and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this section.

(3) The illustration actuary shall:

(i) Be a member in good standing of the American Academy of Actuaries.

(ii) Be familiar with the standard of practice regarding life insurance policy illustrations.

(iii) Not have been found guilty of fraudulent or dishonest practices by a court of competent jurisdiction.

(iv) Not have been found by the commissioner, following appropriate notice and hearing, to have:

(A) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her duties as an illustration actuary;

(B) demonstrated his or her incompetence, lack of cooperation or untrustworthiness to act as an illustration actuary; or

(C) resigned or been removed as an illustration actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards.

(v) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that of subparagraph (iv).

(4) The illustration actuary shall disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five (5) years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new

and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited, this must be disclosed in the annual certification.

(5) The illustration actuary shall disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(i) fully allocated expenses;

(ii) marginal expenses; or

(iii) a generally recognized expense table based on fully allocated expense representing a significant portion of insurance companies and approved by the commissioner.

(6) The illustration actuary shall file a certification with the insurer's or fraternal benefit society's board and with the commissioner:

(i) Annually for all life insurance policy forms for which illustrations are used.

(ii) Before a new life insurance policy form is illustrated.

(7) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly in writing.

(8) If an illustration actuary is unable to certify the scale for any life insurance policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly in writing of his or her inability to certify.

(9) A responsible officer of the insurer, other than the illustration actuary, shall certify annually that:

(i) The illustration formats meet the requirements of this section and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary.

(ii) The insurer has provided its producers with information about the expense allocation method used by the insurer in its illustrations and has made the disclosure required in paragraph (5).

(10) The annual certification required by paragraph (6)(i) shall be provided to the commissioner each year by a date determined by the insurer but no later than one year after the effective date of this section. Subsequent annual certifications shall be provided within thirty (30) days before or after the anniversary of the first certification. The certification required by paragraph (6)(ii) shall be provided at least thirty (30) days prior to using an illustration with a new life insurance policy form.

(11) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly in writing and disclose the reason for the change.

(g) This section shall not apply to:

(1) Variable life insurance.

(2) Credit life insurance.

(3) Life insurance issued in connection with a pension, profit-sharing or other benefit plan qualifying for deductibility of premiums.

(4) Life insurance policies for which there are no illustrated death benefits exceeding ten thousand dollars ($10,000) on any individual.

(h) This section shall expire on the effective date of approved final-form regulations promulgated hereunder as published in the Pennsylvania Bulletin under the provisions of the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

Section 409-A. Replacements With the Same Insurer or Insurer Group.—When there is solicitation for the replacement of an existing life insurance policy or annuity with the same insurer or insurer group, the insurer shall, through its producers where appropriate, provide a "Notice Regarding Replacement of Life Insurance and Annuities" in the form set forth under 31 Pa. Code Ch. 81 (relating to replacement of life insurance and annuities).

Section 410-A. Enforcement.—(a) Upon a determination by hearing that this act has been violated by any person subject to its terms, the commissioner may pursue one or more of the following courses of action:

(1) Issue an order requiring the person to cease and desist from engaging in such violation or suspend or revoke or refuse to issue the certificate of qualification or license of the offending party or parties.

(2) Impose a civil penalty of not more than five thousand dollars ($5,000) for each violation.

(b) The enforcement remedies imposed under this section are in addition to any other remedies or penalties imposed by any other applicable statute.

(c) Any action or adjudication of the commissioner under this section shall be preceded by a hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and subject to review and appeal in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 411-A. Powers of Commissioner.—(a) The commissioner may promulgate the rules and regulations necessary for the administration of this act.

(b) The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this Commonwealth in order to determine whether the person has been or is engaged in any act or practice prohibited by this act.

Section 4. Section 806.1 of the act, added July 3, 1957 (P.L.456, No.254), is amended to read:

Section 806.1. Certificate of Authority for the Issuance of Nonassessable Policies.—[**On and after April 1, 1958, before**] *(a) Before* a *domestic* mutual insurance company other than a mutual life insurance company may issue a nonassessable policy, the [**president and secretary**] *company* shall furnish the Insurance Commissioner a certified copy of the resolution of the

Board of Directors [**providing for**] *authorizing* the issuance of [**a**] nonassessable [**policy**] *policies*, and shall certify that the company possesses surplus as required in section 806 and that the company is otherwise qualified under its charter and by-laws. When the Insurance Commissioner is satisfied that the company has the above surplus and other qualifications, [**he**] *the commissioner* shall issue to such company a certificate of authority for the issuance of nonassessable policies. [**Any nonassessable policy issued, while said certificate is in force, shall be and remain nonassessable under all conditions including any surplus deficiency and including liquidation of the company.**] This certificate shall continue in effect until *rescinded or* revoked as provided in this section. [**The president and secretary of the company shall file annually, on or before April 1, with the Insurance Commissioner, a certification that the resolution of the board of directors providing for the issuance of nonassessable policies has not been modified or revoked and that the company has the surplus requirements as provided in section 806. The Insurance Commissioner may, after hearing, revoke the certificate of authority to issue a nonassessable policy if he finds that the company does not have the surplus as provided in section 806, and shall revoke said certificate upon receipt of certification by the president and secretary that the company no longer qualifies to issue nonassessable policies.**]

(b) If a resolution of the board of directors authorizing the issuance of nonassessable policies is modified, the company shall furnish the Insurance Commissioner a certified copy of the modified resolution within fifteen (15) days after the end of the month in which the modified resolution was adopted. If a resolution authorizing the issuance of nonassessable policies is rescinded, the company shall file with the Insurance Commissioner an application for termination of authority to issue nonassessable policies within fifteen (15) days after the end of the month in which the resolution was rescinded. An application for termination of authority to issue nonassessable policies shall include a certified copy of the rescinding resolution and any other information the commissioner may require.

(c) The Insurance Commissioner may, after hearing, revoke the certificate of authority to issue nonassessable policies if the commissioner finds that the company does not have the surplus as provided in section 806 or that the company is no longer qualified to issue nonassessable policies.

(d) No company may issue a nonassessable policy after:

(1) the date the company revokes the resolution of the board of directors providing for the issuance of nonassessable policies; or

(2) the revocation of the company's certificate of authority to issue nonassessable policies by the Insurance Commission.

(e) A nonassessable policy issued while a company has a valid certificate of authority to issue nonassessable policies shall remain nonassessable under all conditions, including, but not limited to, the revocation of the company's certificate of authority to issue nonassessable

policies, any surplus deficiency of the company, and the liquidation or rehabilitation of the company.

Section 5. Sections 807-A , 813-A and 814-A of the act, added December 21, 1995 (P.L.714, No.79), are amended to read:

Section 807-A. Alternative Plan of Conversion.—The board of directors may adopt a plan of conversion that does not rely in whole or in part upon issuing nontransferable subscription rights to members to purchase stock of the converted stock company if the commissioner finds that the plan does not prejudice the interests of the members, is fair and equitable and is not inconsistent with the purpose and intent of this act. An alternative plan may:

(1) Include the merger of a domestic mutual insurer into a domestic or foreign stock insurer.

(2) Provide for issuing stock, cash or other consideration to policyholders instead of subscription rights.

(3) Provide for partial conversion of the mutual company and formation of a mutual holding company.

(4) Set forth another plan containing any other provisions approved by the commissioner.

[No alternative plan of conversion providing for the formation of a mutual holding company shall be approved by the commissioner before regulations permitting partial conversion and formation of a mutual holding company are adopted by the commissioner. The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the plan may be approved by the commissioner.] *The department may approve a partial conversion and formation of a mutual holding company provided the mutual holding company is not insolvent or in hazardous financial condition according to information supplied in its most recent annual or quarterly statement filed with the department or as determined by a financial examination performed by the department pursuant to Article IX of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921." The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the plan may be approved by the commissioner.*

Section 813-A. Limitation on Actions.—Any action challenging the validity of or arising out of acts taken or proposed to be taken under this article shall be commenced no later than thirty (30) days after the **[effective date of the plan]** *later of the approval of the plan by the commissioner or the adoption of the plan by a vote of the eligible members.*

Section 814-A. **[Insolvent Mutual Company]** *Mutual Company Insolvent or in Hazardous Financial Condition.*—**[(a) If a mutual company is insolvent or, in the judgment of the commissioner, is in hazardous financial condition, its board of directors, by a majority vote, may request in its petition that the commissioner waive the requirements**

imposing notice to and policyholder approval of the planned conversion. The petition shall specify both of the following:

(1) The method and basis for the issuance of the converted stock company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the converted stock company to a sound financial condition.

(2) That the conversion shall be accomplished without consideration to the past, present or future policyholders, if the commissioner finds that the value of the mutual company is insufficient to warrant consideration.

(b) If the commissioner, upon review of the plan of conversion and after a financial examination, finds that the mutual company no longer meets statutory requirements with respect to capital, surplus, deposits or assets, the commissioner may waive, by a written order, the requirements of section 803-A(f).] ***If a mutual company seeking to convert is insolvent or is in hazardous financial condition according to information supplied in its most recent annual or quarterly statement filed with the department, or as determined by a financial examination performed by the department pursuant to Article IX of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921," the requirements of this article, including notice to and policyholder approval of the plan of conversion, may be waived at the discretion of the commissioner, if requested by the mutual company, if the commissioner deems appropriate. If a waiver under this section is ordered by the commissioner, the mutual company shall specify in its plan of conversion:***

(1) The method and basis for the issuance of the converted stock company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the converted stock company to a sound financial condition.

(2) That the conversion shall be accomplished without granting subscription rights or other consideration to the past, present or future policyholders.

Nothing contained in this section shall alter or limit the authority of the commissioner under any of the provisions of law, including, but not limited to, Article V of "The Insurance Department Act of 1921."

Section 6. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 7. This act shall take effect as follows:

(1) The addition of Article IV-A of the act shall take effect July 1, 1997.

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

APPROVED—The 18th day of December, A.D. 1996.

THOMAS J. RIDGE