

No. 232

AN ACT

SB 1307

Relating to establishment of The Pennsylvania Insurance Guaranty Association to provide a means by the assessment of certain insurers subsequent to the insolvency of certain insurers for the payment of covered claims under certain property and casualty insurance policies; providing for the avoidance of excessive delay in the payment of such claims, and the avoidance of financial loss to claimants or policyholders as a result of the insolvency of an insurer; assisting in the detection and prevention of insurer insolvencies; providing for the formulation and administration by The Pennsylvania Insurance Guaranty Association of a plan of operation; and conferring powers and imposing duties upon the Insurance Commissioner, The Pennsylvania Insurance Guaranty Association and upon certain insurers.

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

## ARTICLE I

### Title, Purposes and Definitions

Section 101. Short Title.—This act shall be known and may be cited as “The Pennsylvania Insurance Guaranty Association Act.”

Section 102. Purposes.—The purposes of this act are:

(1) To provide a means for the payment of covered claims under certain property and casualty insurance policies, to avoid excessive delay in the payment of such claims, and to avoid financial loss to claimants or policyholders as a result of the insolvency of an insurer;

(2) To assist in the detection and prevention of insurer insolvencies; and

(3) To provide for the formulation and administration by The Pennsylvania Insurance Guaranty Association of a plan of operation necessary to effectuate the provisions of this act.

Section 103. Definitions.—As used in this act, unless the context otherwise requires:

(1) “Commissioner” means the Insurance Commissioner of the Commonwealth of Pennsylvania.

(2) “Insurer” or “member insurer” means any insurance company, association or exchange which is authorized to write and is engaged in writing within this Commonwealth, on a direct basis, property and casualty insurance policies.

(3) “Property and casualty insurance policy” means any contract, including any endorsement, rider, binder (written or oral), cover note, certificate or other instrument of insurance attached or relating thereto, without regard to the nature of the form of the same, which provides any of the coverages enumerated in section 202, act of May 17, 1921 (P.L.682),

known as "The Insurance Company Law of 1921," as amended except:

- (i) Life insurance and annuities;
- (ii) Title insurance;
- (iii) Credit insurance on accounts receivable;
- (iv) Mortgage guaranty insurance;
- (v) Surety insurance;
- (vi) Ocean marine insurance; and
- (vii) Workmen's compensation insurance.

(4) "Net direct written premiums" means direct gross premiums written in this Commonwealth on property and casualty insurance policies, including policies issued to self-insurers, whether or not designated as reinsurance contracts, less return premiums thereon and dividends paid or credited to policyholders of such policies, but does not include premiums on contracts between insurers or reinsurers.

(5) (a) "Covered claim" means an unpaid claim, including a claim for unearned premiums, which arises under a property and casualty insurance policy of an insolvent insurer and is:

- (i) The claim of a person who at the time of the insured event resulting in loss or liability was a resident of this Commonwealth, or
- (ii) A claim arising from an insured event resulting in loss or liability to property which was permanently situated in this Commonwealth.

(b) A covered claim shall not include any amount due any insurer, reinsurer, insurance pool, or underwriting association, as a subrogation recovery or otherwise.

(c) A covered claim shall not include any amount in excess of the applicable limits of the policy under which it arises.

(6) "Insolvent insurer" means an insurer determined to be insolvent or in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public by a court of competent jurisdiction of the insurer's domiciliary state subsequent to the date upon which the plan of operation becomes effective pursuant to subsection (c) of section 201 of this act.

(7) "Account" means either of the two accounts provided for under subsection (a) of section 301 of this act.

(8) "Person" means an individual, a corporation, a partnership, an association, or any other holder of or claimant under a property and casualty insurance policy.

## ARTICLE II

### The Pennsylvania Insurance Guaranty Association

Section 201. The Pennsylvania Insurance Guaranty Association.—(a) Membership. Every insurer shall participate in The Pennsylvania Insurance Guaranty Association, as hereinafter described, as a condition of its authority to write property and casualty insurance policies within this Commonwealth.

(b) Powers and Duties:

(1) The association shall:

(i) Be obligated to make payment to the extent of the covered claims of an insolvent insurer existing prior to the determination of said insurer's insolvency, and covered claims arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after such determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty days of such determination; but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100), and is less than three hundred thousand dollars (\$300,000). In no event shall the association be obligated on a covered claim in an amount in excess of the obligation of the insolvent insurer under the policy under which the claim arises.

(ii) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if that insurer had not become insolvent.

(iii) Assess member insurers in accordance with the provisions of Article III of this act the amounts necessary to pay the obligations of the association under subclause (i) of this clause the expenses of handling covered claims, the cost of examinations under section 203 and clause (3) of subsection (a) of section 401 of this act, and other expenses authorized by this act.

(iv) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims, and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(v) Give such notice as the commissioner may direct under clause (1) of subsection (b) of section 401 of this act.

(vi) Handle claims through its employes or through one or more of its member insurers which agrees to do so or through other persons designated with the prior approval of the commissioner as servicing facilities.

(vii) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay such other expenses of the association as are authorized by this act.

(viii) Notify the commissioner of any information indicating any member insurer may be insolvent or in such condition that its further transaction of business will be hazardous to its policyholders, to its creditors, or to the public.

(ix) Within ninety days of the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

(2) The association may:

(i) Employ or retain such persons as are necessary to perform the duties of the association.

(ii) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation approved by the commissioner pursuant to section 202 of this act.

(iii) Sue or be sued.

(iv) Negotiate and become, with the prior approval of the commissioner, a party to such contracts as are necessary to carry out the purposes of this act.

(v) Request that the commissioner order an examination of any member insurer which it in good faith believes may be in such condition that its further transaction of business will be hazardous to its policyholders, to its creditors, or to the public.

(vi) Make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(vii) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(viii) Perform such other acts as are necessary or proper to effectuate the purposes of this act.

(c) Organization. Within ninety days following the effective date of this act, the association shall submit to the commissioner for his review a proposed plan of operation which shall provide for the fair, reasonable, and equitable administration of the association, consistent with the purposes and provisions of this act.

The plan of operation shall be subject to and take effect upon approval by the commissioner. If the commissioner disapproves the proposed plan of operation, the association shall, within such period of time as shall be specified by the commissioner, submit for review an appropriately revised plan of operation; if the association fails to do so, or if the revised plan so filed is unacceptable, the commissioner shall promulgate a plan of operation.

(d) Board of Directors. (1) The association shall be governed by a board of seven directors, serving terms as established in the plan of operation. The members of the board shall be selected by the member insurers subject to the approval of the commissioner.

(2) Any vacancy on the board shall be filled for the remaining period of the term in the same manner as the initial selections.

(3) If the member insurers fail to select the required number of directors within thirty days after the effective date of this act, or if a vacancy remains unfilled for more than fifteen days, the commissioner may appoint the directors necessary to constitute a full board.

(4) In approving selections for the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(5) Members of the board may be reimbursed from the assets of the association for reasonable expenses incurred by them as such members.

Section 202. Plan of Operation.—(a) The plan of operation shall establish the procedures for the performance of all the powers and duties of the association provided under subsection (b) of section 201 of this act, including but not limited to the establishment of:

- (1) Procedures for handling assets of the association;
- (2) Procedures by which claims may be filed with the association and the specification of acceptable forms of proof of covered claims;
- (3) Procedures for records to be kept of all financial transactions of the association.

(b) The plan of operation may provide that any or all powers and duties of the association, except those provided under subclause (iii) of clause (1) of subsection (b) and subclause (ii) of clause (2) of subsection (b) of section 201 of this act may be delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed on the same basis as would a servicing facility and shall be compensated for the performance of any other functions delegated to it by the association. Any delegation under this subsection shall take effect only upon the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

(c) The plan of operation may be amended by the association, subject to prior approval by the commissioner, or at the direction of the commissioner, the association shall amend the plan of operation.

Section 203. Examination of the Association.—The operations of the association shall at all times be subject to the supervision and regulation of the commissioner. The commissioner, or any person designated by him, shall have the power of visitation of and examination into such operations at any time in the discretion of the commissioner. In connection therewith, the commissioner shall have the powers granted him by section 216, act of May 17, 1921 (P.L.789), known as “The Insurance Department Act of one thousand nine hundred and twenty-one,” and the expenses of such examination shall be borne and paid as therein provided.

Section 204. Annual and Other Statements.—The association shall file

with the commissioner, not later than March 30 of each year, a statement which shall contain information with respect to its condition, operations and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed by the commissioner and shall be in such form as is approved by him. The commissioner may at any time require the association to furnish him with additional information with respect to its condition, operations and affairs or any matter connected therewith which he considers to be material and which will assist him in evaluating its operation.

Section 205. Limitation on Taxability of the Association.—The association shall be exempt from the payment of all fees and all taxes levied or assessed by this Commonwealth or any of its political subdivisions except taxes upon the real or personal property of the association.

### ARTICLE III

#### Assessments

Section 301. Assessments.—(a) For purposes of assessment, the association shall be divided into two accounts: (i) an automobile or motor vehicle insurance account; and (ii) an account for all other insurance to which this act applies. Subsequent to an insurer having been determined to be insolvent or in such condition that its further transaction of business will be hazardous to its policyholders, to its creditors, or to the public, the association shall allocate between the two accounts and assess member insurers separately for each account such amounts as are necessary for the purpose of paying the obligations of the association under subclause (i) of clause (1) of subsection (b) of section 201 of this act and the expenses of handling covered claims of the insolvent insurer. The association shall also assess member insurers for the expenses of examinations under section 203 and clause (3) of subsection (a) of section 401 of this act and for any other expenses authorized by the act.

(b) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in an account bears to the aggregate net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in such account.

(c) Each member insurer shall be notified of any assessment not later than thirty days before it is due.

(d) No member insurer may be assessed in any year on an account an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

(e) If the maximum assessments of all member insurers on an account, together with the other assets of the association in the account, do not

provide in any one year an amount sufficient to meet all obligations of the association under that account, the funds available shall be pro-rated among such obligations and the unpaid portions of the same shall be paid as soon thereafter as funds become available.

(f) The association may, in whole or in part, exempt from assessment any member insurer or defer the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

Section 302. *Refunds.*—The association may refund to its member insurers in proportion to the contribution of each to an account of the association that amount, if any, by which the assets of the account at the end of any calendar year exceed its estimated liabilities for the coming year.

Section 303. *Recognition of Assessments in Rates.*—The rates and premiums charged by a member insurer for policies to which this act applies shall appropriately reflect assessments paid to the association by the member insurer less any amounts returned to the member insurer by the association.

Section 304. *Assessments not "Burdens or Prohibitions" Requiring Retaliatory Action.*—Assessments made by insurance guaranty associations or similar entities pursuant to the laws of any other state shall not be considered "Burdens or Prohibitions" under section 212, act of May 17, 1921 (P.L.789), known as "The Insurance Department Act of one thousand nine hundred and twenty-one."

#### ARTICLE IV

##### Duties and Powers of the Commissioner

Section 401. *Duties and Powers of Commissioner.*—(a) The commissioner shall:

(1) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency.

(2) Upon request of the association, provide it with a statement of the net direct written premiums of each member insurer.

(3) Begin an examination of a member insurer within <sup>1</sup> thirty days of receipt of a request by the association for such examination pursuant to subclause (v) of clause (2) of subsection (b) of section 201 of this act. The expenses of any such examination shall be paid by the association.

(b) The commissioner may:

(1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency

<sup>1</sup>"thirty" in original.

and of their rights under this act. Such notification shall be by mail at their last known address and by publication in such newspapers of general circulation as the commissioner shall specify.

(2) After notice and hearing, suspend or revoke the certificate of authority to transact insurance in this Commonwealth of any member insurer or levy a penalty payable to the Commonwealth upon any such insurer which (i) fails to pay an assessment when due and after demand having been made, or (ii) otherwise fails to comply with the plan of operation. The penalty levied hereunder for failure to pay an assessment when due shall be not less than one hundred dollars (\$100) per month nor more than five per cent of such unpaid assessment per month. The penalty for otherwise failing to comply with the plan of operation shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per month for each month that such insurer continues after notice having been given to fail to comply with the plan of operation.

(3) Revoke the approval of any servicing facility designated pursuant to subclause (vi) of clause (1) of subsection (b) of section 201 of this act if he finds that claims are not being handled satisfactorily.

Section 402. Review.—All hearings held by and all orders and decisions made by the commissioner pursuant to this article shall be subject to the provisions of the act of June 4, 1945 (P.L.1388), known as the “Administrative Agency Law,” including the provisions therein for judicial review.

Section 403. Other Duties and Powers of Commissioner not Limited.—The duties and powers of the commissioner as set forth in this act are in addition to and not in limitation of any other duties and powers of the commissioner prescribed by law.

## ARTICLE V Claims

Section 501. Notice of Claims.—Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

Section 502. Effect of Paid Claims.—(a) Any person recovering from the association under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required by the policy under which the claim arises to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have



had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims by the association shall not operate to reduce the liability of insureds to the receiver or liquidator for unpaid assessments.

(b) The receiver or liquidator of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in another state in handling claims shall be accorded the same priority as the expenses of the receiver or liquidator.

(c) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

Section 503. Non-duplication of Recovery.—(a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall first be required to exhaust his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

## ARTICLE VI Miscellaneous

Section 601. Immunity.—There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employes, the board of directors, or the commissioner or his representatives for any action taken by any of them in the performance of their respective powers and duties under this act.

Section 602. Stay of Proceedings; Reopening of Default Judgments.—(a) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this Commonwealth shall be stayed for ninety days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action.

(b) As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

Section 603. Advertising References to Association Prohibited.—No member insurer shall, directly or indirectly, make, publish or place before the public in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement of any sort containing any reference to the coverage of association.

Section 604. Constitutionality.—If any provision or clause of this act or the application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 605. Effective Date.—This act shall take effect immediately.

APPROVED—The 25th day of November, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 232.



*Joseph P. Kelly*  
Secretary of the Commonwealth.