No. 1992-178

AN ACT

HB 1670

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 the purposes of incorporation, for capital stock, surplus, investments and other financial requirements, for reinsurance and for certain annual reports; providing for business transacted with broker-controlled property and casualty insurers and for insurance holding companies; implementing the Risk Retention Amendments of 1986; providing for regulation by the Insurance Department of risk retention groups and purchasing groups doing business in this Commonwealth; further providing for the taxation of risk retention groups and purchasing groups; providing for the regulation of the placing of insurance on risks located in this Commonwealth with insurers not licensed to transact insurance business in this Commonwealth; providing for a life and health insurance guaranty association; providing for certain fees and for civil and criminal penalties; and making repeals.

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

Section 1. Section 202 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is amended by adding a subsection to read:

Section 202. Purposes for Which Companies May Be Incorporated; Underwriting Powers.—* * *

(h) (1) No domestic stock fire, stock marine, stock fire and marine, or stock casualty insurance company shall issue a policy containing an aggregate limit on any one risk in an amount exceeding ten per centum (10%) of its capital and surplus, unless it shall be protected in excess of that amount by reinsurance or collateral. This collateral may be in the form of:

(i) Cash.

(ii) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

(iii) (A) Clean, irrevocable, unconditional letters of credit and credit agreements issued or confirmed by a qualified United States financial institution no later than the thirty-first day of December in respect of the year for which filing is being made and in the possession of the insurance company on or before the filing date of its annual statement.

(B) Letters of credit agreements meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as col-

lateral until their expiration, extension, renewal, modification or amendment, whichever first occurs.

(iv) Any other form of collateral acceptable to the Insurance Commissioner.

(2) The term "qualified Untied States financial institution" when used in this subsection means an institution which meets the following qualifications:

(i) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof.

(ii) Is regulated, supervised and examined by United States Federal or state authorities having regulatory authority over banks and trust companies.

(iii) Has been determined by either the Insurance Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Insurance Commissioner.

Section 2. Section 206(d) and (e) of the act, amended or added July 2, 1953 (P.L.331, No.74), November 27, 1968 (P.L.1118, No.349), July 9, 1976 (P.L.948, No.184) and June 19, 1981 (P.L.94, No.33), are amended to read:

Section 206. Minimum Capital Stock and Financial Requirements To Do Business.—* * *

(d) Companies organized under this act to insure lives on the mutual plan must have applications for insurance, to the amount of one million dollars ($1,000,000), by not less than four hundred persons. Companies organized under this act to insure lives on the mutual plan must also have a guarantee capital, before commencing business, of not less than **[five hundred thousand dollars ($500,000)]** ***two million dollars ($2,000,000)***, and shall maintain unimpaired a policyholders' surplus of **[two hundred fifty thousand dollars ($250,000)]** ***one million dollars ($1,000,000)*** ~~out of guarantee~~ capital, surplus, or any combination thereof.

(e) Mutual companies, other than mutual life companies and other than title insurance companies, **[hereafter organized under this act, and existing mutual companies which determine to add]** ***which seek a certificate of authority to transact*** a line or lines of insurance business shall comply with the following conditions:

(1) Each such company shall hold bona fide applications for at least twenty (20) policies, to be issued promptly and simultaneously to at least twenty (20) policyholders or members upon not less than two hundred (200) separate risks, each within the maximum single risk described herein, upon the granting of the certificate of authority to do business.

(2) The "maximum single risk" shall not exceed three times the average risk or one percentum (1%) of the total insurance applied for, whichever is the greater.

(3) It shall have collected at least an annual cash premium upon each of such applications, which premium shall be held in cash **[or securities in which such insurance companies are authorized to invest.]** ***in an interest-bearing account established in the name of the insurance company at financial institutions located in this Commonwealth.*** In the case of companies organized for any of the purposes mentioned in paragraphs (1) or (2) or (3) of subdivision (b) of section two hundred two of this act, the **[said cash premiums, together with any]** sum or sums of money **[which may be]** advanced under section eight hundred nine of this act, shall amount to not less than twenty-five thousand dollars ($25,000) for the purpose mentioned in each numbered paragraph of subdivision (b). If organized for all of the purposes mentioned in paragraphs (1), (2) and (3) of subdivision (b) of section two hundred two of this act, the **[said cash premiums, together with any]** sum or sums of money **[which may be]** advanced under section eight hundred nine of this act**[,]** shall amount to not less than fifty thousand dollars ($50,000). In the case of companies organized for any one of the purposes mentioned in subdivision (c) of said section two hundred two, except paragraphs (1), (4), (11) and (14), the **[said cash premiums collected, together with any]** sum or sums of money advanced under the said section eight hundred nine**[,]** shall amount to not less than ten thousand dollars ($10,000) for the purpose mentioned in each numbered paragraph of said subdivision (c). In the case of companies authorized to issue non-assessable policies of insurance for the purposes mentioned in clause (11) or clause (14), subdivision (c) of section two hundred and two (202) of the act, the **[said cash premiums collected, together with any]** sum or sums of money advanced under the said section eight hundred nine**[,]** shall amount to not less than seven hundred fifty thousand dollars ($750,000). For the purpose mentioned in either numbered paragraph (1) or (4) of said subdivision (c), such amount shall be not less than twenty-five thousand dollars ($25,000): Provided, That in no event shall a company be organized for any of the purposes mentioned in said subdivision (c) unless the **[amount collected as premiums, together with the]** sum or sums of money advanced under said section eight hundred nine**[,]** shall amount to not less than fifty thousand dollars ($50,000); nor shall a company be organized for all of the purposes mentioned in said subdivision (c) except paragraph (11) or (14) unless the **[cash premiums so collected and the]** sum or sums of money so advanced shall amount to not less than three hundred fifty thousand dollars ($350,000).

(4) In the case of companies hereafter organized **[under this act]** for the purposes mentioned in subdivisions (b) and (c) of section two hundred two of this act, each such company shall meet the requirements of paragraphs (1) and (2) of subdivision (e) of this section, and the required sum of **[the cash premiums collected and]** money advanced under said section eight hundred nine shall not be less than the aggregate of the sums required under paragraph (3) of subdivision (e) of this section for the purposes for which the company is to be incorporated.

(5) For the purpose of transacting employer's liability and workmen's compensation insurance, the application shall cover not less than five

thousand (5,000) employes, each such employe being considered a separate risk for determining the maximum single risk.

(6) Each company writing non-assessable policies shall maintain unimpaired so much of its surplus as is equal to the minimum capital required for stock companies authorized to transact the same class or classes of insurance; each company writing assessable policies shall maintain unimpaired fifty per centum (50%) of its required surplus.

* * *

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

Section 206.2. Additional Capital and Surplus.—(a) In addition to the minimum capital and surplus required for an insurance company to qualify for authority to transact one or more of the classes of insurance set out in section 202 of this act, the Insurance Commissioner shall have the authority to require additional capital and surplus based upon the nature, type and volume of insurance a company is transacting or proposes to transact.

(b) Whenever the Insurance Commissioner believes, from evidence satisfactory to him, that an insurance company has failed to meet the capital and surplus required by this section, the Insurance Commissioner may, in his discretion:

(1) disapprove an insurance company's request for a certificate of authority, or amendment thereto; or

(2) otherwise restrict, as provided by law, a company's authority to transact business within this Commonwealth.

Before the Insurance Commissioner shall take any action as above set forth, he shall give written notice to the company stating specifically the nature of the proposed action and within thirty (30) days from the date of mailing of such notice to the company, such company may make written application to the Insurance Commissioner for a hearing thereon, and such hearing shall be held within thirty (30) days after receipt of such application.

Section 4. Section 319.1 of the act, added December 3, 1975 (P.L.474, No.139), is amended to read:

Section 319.1. Reinsurance Credits.—***(a)*** Unless an unlicensed reinsurer is qualified to accept reinsurance from insurers licensed in this Commonwealth, no credit shall be allowed as an admitted asset or as a reduction of liability relative to risks ceded by such licensed insurers. Qualified reinsurers are those meeting the conditions for reinsurers specified by the commissioner, in his discretion, and included on a list of qualified reinsurers published and periodically reviewed by said commissioner.

(b) A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer which is not a qualified reinsurer in accordance with this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, in the case of a trust, held in a

qualified United States financial institution, as defined in subsection (g)(2). This security may be in the form of:

(1) Cash.

(2) Securities listed by a securities valuation office of a national association of insurance commissioners or any successor thereto and qualifying as admitted assets.

(3) (i) Clean, irrevocable, unconditional and evergreen letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection (g)(1), no later than the thirty-first day of December in respect of the year for which filing is being made and in the possession of the ceding company on or before the filing date of its annual statement.

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

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

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

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

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

[**(a) Reserve Credit for Liability Assumed.—**] *(c)* No credit shall be allowed as an admitted asset or as a deduction from liability, to any ceding company for reinsurance unless the reinsurance is payable to such company or its statutory liquidator by the assuming company on the basis of the liability of the ceding company under contract or contracts reinsured without diminution because of insolvency of the ceding company.

[**(b) Payment by the Assuming Company.—**] *(d)* No such credit shall be allowed for reinsurance unless the reinsurance agreement provides that payment by the company shall be made directly to the ceding company or to its liquidator, receiver, or statutory successor.

(e) No credit shall be allowed as an admitted asset or as a reduction in liability if the gross reserves established by the ceding insurer do not include provision for the policy benefits against which the ceding insurer is being indemnified by the reinsurer.

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

(g) (1) The term "qualified United States financial institution" when used in this section means an institution which meets the following qualifications:

(i) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof.

(ii) Is regulated, supervised and examined by United States Federal or state authorities having regulatory authority over banks and trust companies.

(iii) Has been determined by either the Insurance Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners or a successor thereto to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Insurance Commissioner.

(2) The term "qualified United States financial institution" also means, for the purposes of the provisions of this act specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that meets the following qualifications:

(i) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers.

(ii) Is regulated, supervised and examined by Federal or state authorities having regulatory authority over banks and trust companies.

Section 5. Section 320 of the act, amended June 20, 1947 (P.L.683, No.295), is amended to read:

Section 320. Annual and Other Reports; Penalties.—*(a)* Every stock and mutual insurance company, association, and exchange, doing business in this Commonwealth, shall annually, on or before the first day of March, file in the office of the Insurance Commissioner *and with the National Association of Insurance Commissioners* a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year, and its business of that year and shall, within thirty days after requested by the Insurance Commissioner, **[render]** *file with the Insurance Commissioner and with the National Association of Insurance Commissioners* such additional statement or statements concerning its affairs and financial condition as the Insurance Commissioner may, in his discretion, require. The Insurance Commissioner shall **[furnish to each of the insurance companies, associations, and exchanges blanks, in such form as he may adopt, for their statement]** *require each insurance company association and exchange to report its financial condition on the annual statement convention blanks, in such form as adopted by the National Association of Insurance Commissioners and shall, upon written request, furnish such blanks for their convenience*; and **[he]** may make such changes, from time to time, in the form of the same as shall seem **[to him]** best adapted to elicit from them a true exhibit of their financial condition.

(b) Insurance companies of foreign governments, doing business in this Commonwealth, shall be required to return only the business done in the United States, and the assets held by and for them within the United States for the protection of policyholders therein.

(c) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates and employes and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the Insurance Commissioner under the authority of this act and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or dissemination of the data and information collected from the filings required hereunder.

(d) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the Insurance Department by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and may not be disclosed by the Insurance Department.

(e) (1) Any company, association, or exchange, which neglects to make and file its annual statement, or other statements that may be required, in the form or within the time herein provided shall forfeit a sum not to exceed **[one hundred dollars ($100)]** *two hundred dollars ($200)* for each day during which such neglect continues, and, upon notice by the commissioner, its authority to do new business shall cease while such default continues.

(2) For wilfully making a false annual or other statement required by law, an insurance company, association or exchange, and the persons making oath to or subscribing the same, shall severally be punished by a fine of not less than **[five hundred dollars ($500) nor more than five thousand dollars ($5,000)]** *one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000)*. A person who wilfully makes oath to such false statement shall be guilty of perjury.

(3) The Insurance Commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due.

Section 6. Section 322(d) of the act, amended October 4, 1978 (P.L.1009, No.216), is amended to read:

Section 322. Amendment of Charter.—* * *

(d) A mutual insurance company, other than life or title, shall be permitted to amend its charter to include any or all of the kinds of insurance included in section 202, subdivisions (b) and (c), if its total assets less net liability for losses, for expenses and for unearned premium reserve **[for those premiums received on nonassessable policies]** are not less than the minimum **[premiums]** *surplus* specified in section 206 (e) for the incorporation of new companies, without the necessity of obtaining or of holding any application or of issuing any policy as specified in section 206 (e) for the incorporation of new companies.

* * *

Section 7. The act is amended by adding a section to read:

Section 322.1. Contributions to Surplus.—(a) Any director, officer, person, corporation or other entity may advance to a domestic stock insurance company or mutual life insurance company, in exchange for a surplus note, any sum or sums of money necessary for the purpose of its business or to enable it to comply with any of the requirements of law. If, as a result of such advance, the director, officer, person, corporation or other entity is presumed to secure control, as that term is defined in Article XII of this act, the advance can only be made after the director, officer, person, corporation or other entity provides a filing to the Insurance Commissioner in accordance with the provisions of Article XII of this act.

(b) The surplus note and interest thereon shall not be a liability or claim against the company or any of its assets, except as specified in this section. Payments of principal and/or interest can only be made from the unassigned surplus of the insurer and must be subordinated to payment of all other liabilities of the insurer. If unassigned surplus is insufficient and the insurer is unable to make payments of principal and/or interest in a given year, the interest earned for that year will be forfeited and cannot be paid in subsequent years unless the insurer establishes unpaid interest as a liability in each annual and quarterly statement filed with the Insurance Commissioner.

(c) No commissions, promotion expenses or finders fees shall be paid in connection with the advance of such money to the company.

(d) Such company shall, prior to any transaction, provide the Insurance Commissioner with such evidence as he may, by regulation, prescribe concerning the receipt of any such advance or the making of any payments, whether of principal or interest, on account thereof.

Section 8. Sections 337.6 and 337.7 of the act are repealed.

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

Section 357. Redomestication.—(a) Any insurer which is organized under the laws of any other state and is admitted to do business in this Commonwealth for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this Commonwealth. Said domestic insurer will be entitled to a like certificate of authority to transact business in this Commonwealth and shall be subject to the authority and jurisdiction of this Commonwealth.

(b) Any domestic insurer may, upon the approval of the Insurance Commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon such a transfer shall cease to be a domestic insurer, and shall be admitted to this Commonwealth if qualified as a foreign insurer. The Insurance Commissioner shall approve any such proposed transfer unless he shall determine such transfer is not in the interest of all the policyholders.

(c) The certificate of authority, agents appointments and licenses, rates and other items which the Insurance Commissioner allows, in his discretion, which are in existence at the time any insurer licensed to transact the business

of insurance in this Commonwealth transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this Commonwealth. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the Insurance Commissioner. Every transferring insurer shall file new policy forms with the Insurance Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by and under such conditions as approved by the Insurance Commissioner. However, every such transferring insurer shall notify the Insurance Commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the Insurance Commissioner.

Section 10. Sections 404.1, 404.2(10) and (17) and 406(f) of the act, amended or added June 11, 1986 (P.L.226, No.64), are amended to read:

Section 404.1. Investment Regulations.—(a) Any domestic company may invest its funds as provided in this act and not otherwise. Notwithstanding the provisions of this act, the Insurance Commissioner may, after notice and hearing, order a ***domestic*** company to limit or withdraw from certain investments, or discontinue certain investment practices, to the extent that the commissioner finds that such investments or investment practices endanger the solvency of the company. ***The investments of a foreign company shall be as permitted by the investment laws of its state of domicile if such laws are substantially similar to that provided by this act.***

(b) No investment or loan (except loans on life policies) or an investment practice shall be made or engaged in by any domestic company unless the same has been authorized or ratified by the board of directors or by a committee thereof charged with the duty of supervising investments and loans. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property or enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of the board of directors. Any agreement or contract providing for the lawful disposition of property, wherein such disposition may be determined at the option of a third person at some specified future price or condition or specified time or upon demand, shall be construed to be within the control of the board of directors. Nothing contained in this section shall prevent the board of directors of any such company from depositing any of its securities with a committee appointed for the purpose of protecting the interest of security holders or with authorities of any state or country where it is necessary to do so in order to secure permission to transact its appropriate business therein; and nothing contained in this section shall prevent the board of directors of such company from depositing securities as collateral for the securing of any bond required for the business of the company.

(c) Any domestic company subject to the provisions of this act is required to have a formal investment plan which shall be updated on an annual basis as authorized by the board of directors. The investment plan shall include, at a minimum, a description of the investment strategy of the company designed to provide for liquidity and diversity of the investment portfolio. The investment plan, and such other information as the Insurance Department may require in order to determine the impact of the investment plan on the solvency of the company, shall be made available to the Insurance Department during the course of a financial condition examination conducted in accordance with the laws pertaining to the conduct of examinations.

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:

* * *

(10) Equity interests:

(i) Investments (other than investments provided for in section 406, clauses (11) and (13) of this section 404.2 and investments in subsidiaries as provided for in section 405.2(c)) in common stocks, limited partnership interests, trust certificates (except equipment trust certificates described in clause (5)) or other equity interests (other than preferred stocks) of corporations, joint-stock associations, business trusts, business partnerships and business joint ventures incorporated, organized or existing under the laws of the United States, or of any state, district or territory thereof.

(ii) Stocks or shares of any regulated investment company which is registered as an investment company under the Federal Investment Company Act of 1940 (54 Stat 789, 15 U.S.C. §§ 80a-1 to 80a-52, 107), as, from time to time, amended, and which has no preferred stock, bonds, loans or any other outstanding securities having preference or priority as to the assets or earnings over its common stock at the date of purchase.

(iii) Investments under this clause shall 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.

(iv) Limited partnership interests under this clause shall not exceed ten per centum (10%) of the company's admitted assets in the aggregate. A company may not invest more than ten per centum (10%) of its capital and surplus in any one such limited partnership.

* * *

(17) (i) Investments shall be valued in accordance with the published valuation standards of the National Association of Insurance Commissioners. Securities investments as to which the National Association of Insurance Commissioners has not published valuation standards in its valuation of securities manual or its successor publication shall be valued as follows:

(A) Any investment by any insurer that is not valued by Standards published by the National Association of Insurance Commissioners shall, at the time of acquisition, be submitted to the National Association of Insurance Commissioners for evaluation.

(B) Other securities investments shall be valued in accordance with regulations promulgated by the Insurance Commissioner pursuant to subclause (iv) of this clause.

(ii) Other investments, including real property, shall be valued in accordance with regulations promulgated by the Insurance Commissioner pursuant to subclause (iv) of this clause, but in no event shall such other investments be valued at more than their purchase price. Purchase price for real property includes capitalized permanent improvements, less depreciation spread evenly over the life of the property or, at the option of the company, less depreciation computed on any basis permitted under the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.) and regulations thereunder. Such investments that have been affected by **[permanent declines]** ***an impairment, other than a temporary decline,*** in value shall be valued at not more than their market value.

(iii) Any investment, including real property, not purchased by a company but acquired in satisfaction of a debt or otherwise, shall be valued in accordance with the **[applicable procedures for that type of investment contained in this section. For purposes of applying the valuation procedures, the purchase price shall be deemed to be the market value at the time the investment is acquired or, in the case of any investment acquired in satisfaction of debt, the amount of the debt (including interest, taxes and expenses), whichever amount is less.]** ***accounting procedures and practices developed by the National Association of Insurance Commissioners as required by the law relating to the filing of annual financial statement blanks.***

(iv) The Insurance Commissioner may promulgate rules and regulations for determining and calculating values to be used in financial statements submitted to the Insurance Department for investments not subject to published National Association of Insurance Commissioners' valuation standards.

Section 406. Real Estate Which May Be Purchased, Held or Conveyed.—Subject to the provisions of section four hundred six, point one, it shall be lawful for any life insurance company, organized under the laws of this Commonwealth, directly or indirectly, alone or together with one or more persons or entities, to purchase, receive, hold and convey, real estate or any interest therein:

* * *

(f) Purchased, leased or owned for residential, business, commercial or industrial use, or for development, improvement, maintenance or construction and maintenance. **[Provided that investments]** ***The aggregate cost of investments in unimproved real estate under this subsection shall not, however, exceed the lesser of ten per centum (10%) of the company's admitted assets or forty-five per centum (45%) of its capital and surplus. Investments*** under this subsection **[(f)]**, including investments in limited partnership interests or other entities where said entities are engaged primarily in

holding real estate or interests therein under this subsection and corporations which are engaged primarily in holding real estate or interests therein as defined in this subsection and the majority of whose voting securities are owned directly or indirectly through one or more intermediaries, shall not exceed twenty-five per centum (25%) of such company's admitted assets.

Section 11. Section 419 of the act, amended July 28, 1959 (P.L.580, No.189), is amended to read:

Section 419. Certain Companies Heretofore Organized May Come within Provisions of Act.—Every company incorporated or reincorporated under the act of April twenty-eighth, one thousand nine hundred and three (Pamphlet Laws, three hundred twenty-nine), entitled "An act to provide for the incorporation and regulation of corporations for the purpose of making insurance upon the health of individuals, and against personal injury and disablement and death therein; limiting the amount for which such corporations may issue policies, and providing the manner in which certain existing corporations may become reincorporated under this act," or under the act of April twentieth, one thousand nine hundred twenty-seven (Pamphlet Laws, three hundred seventeen), entitled "An act authorizing certain existing beneficial or protective societies, heretofore incorporated, to reincorporate for the purpose of making insurance upon the health of individuals and against personal injury and disablement and death; regulating such corporations and limiting the amount for which corporations may issue policies; and imposing a tax on gross premiums of companies reincorporated under the provisions of this act," or under the act of June twenty-fourth, one thousand nine hundred thirty-nine (Pamphlet Laws, six hundred eighty-six), entitled "An act authorizing certain existing beneficial or protective societies, heretofore incorporated, to reincorporate as limited life insurance companies for the purpose of making insurance upon the health of individuals and against personal injury and disablement and death; regulating such corporations and limiting the amount for which such corporations may issue policies," or under any subsequent act, authorizing certain existing incorporated beneficial or protective societies to reincorporate, or to merge and reincorporate as limited life insurance companies, or under the act of July 15, 1957 (P.L. 929), entitled "An act authorizing the incorporation of limited life insurance companies for the purpose of issuing insurance upon the health of individuals and against personal injury and disablement and death, including endowment insurance; regulating such companies and limiting the amounts for which such companies may issue policies," **[having in the case of a stock company a capital of not less than three hundred thousand dollars ($300,000), and a surplus at least equal to fifty per centum of the capital, or having, in the case of a mutual company, insurance in force in an aggregate amount of not less than one million dollars ($1,000,000), on not less than four hundred persons and a surplus of not less than two hundred thousand dollars ($200,000),]** may, notwithstanding any limitation to the contrary, established by any act of Assembly or by the provisions of its charter, issue policies insuring the lives of persons, and every insurance appertaining thereto, may grant and dispose of annuities, and may insure against personal

injury, disablement or death resulting from traveling or general accidents, and against disablement resulting from sickness, and every insurance appertaining thereto, as specified in subdivision (a) **[clause one (1)]** ***clauses one (1) and two (2)*** of section two hundred and two (202) of this act**[.]**, ***if such company has and maintains the capital and surplus required of stock and mutual insurers under sections 206 and 206.2 of this act.***

Section 12. Section 516 of the act is amended to read:

Section 516. Capital of Foreign Companies.—Stock fire, stock marine, and stock fire and marine insurance companies, of other States and foreign governments, to be licensed to do, in this Commonwealth, any one of the classes of business mentioned in section two hundred and two (202), subdivision (b) of this act, must have a paid up and safely invested capital ***and surplus***, if a company of any other State, or a deposit in the United States, if a company of a foreign government, of not less than **[two hundred thousand dollars ($200,000); and, if to do all of the classes of business mentioned in section two hundred and two (202), subdivision (b) of this act, a paid up capital or deposit of not less than four hundred thousand dollars ($400,000)]** ***that required of domestic insurers to be authorized to transact the class or classes of business.***

Section 13. Sections 518B, 518C(a)(7), 518D(b) and (c) and 519(e) of the act, amended or added December 22, 1989 (P.L.755, No.106), are amended to read:

Section 518B. Investment Regulations.—***(a)*** Any domestic company may invest its funds in sound investments as provided in this act and not otherwise. Notwithstanding the provisions of this act, the Insurance Commissioner may, after notice and hearing, order a ***domestic*** company to limit or withdraw from certain investments, or discontinue certain investment practices, to the extent that the Insurance Commissioner finds that such investments or investment practices are unsound or may endanger the solvency of the company. ***The investments of a foreign company shall be as permitted by the investment laws of its state of domicile if such laws are substantially similar to that provided by this act.*** No investment or loan or an investment practice shall be made or engaged in by any domestic company unless the same has been authorized or ratified by the board of directors or by a committee thereof charged with the duty of supervising investments and loans. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property or enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of the board of directors. Any agreement or contract providing for the lawful disposition of property wherein such disposition may be determined at the option of a third person at some specified future price or condition or specified time or upon demand shall be construed to be within the control of the board of directors. Nothing contained in this section shall prevent the board of directors of any such company from depositing any of its securities with a committee appointed for the purpose of protecting the interest of security holders or with authorities of any state or country where it is necessary to do so in order to secure permission to trans-

act its appropriate business therein; and nothing contained in this section shall prevent the board of directors of such company from depositing securities as collateral for the securing of any bond required for the business of the company.

(b) Any domestic company subject to the provisions of this act is required to have a formal investment plan which shall be updated on an annual basis as authorized by the board of directors. The investment plan shall include, at a minimum, a description of the investment strategy of the company designed to provide for liquidity and diversity of the investment portfolio. The investment plan, and such other information as the Insurance Department may require in order to determine the impact of the investment plan on the solvency of the company, shall be made available to the Insurance Department during the course of a financial condition examination conducted in accordance with the laws pertaining to the conduct of examinations.

Section 518C. Eligible Investments.—(a) Every domestic stock fire, stock marine or stock fire and marine insurance company shall invest and keep invested all its funds in sound investments enumerated below, except such cash as may be required in the transaction of its business. Such investments shall include:

* * *

(7) Tangible personal property or fixtures or interest therein, however evidenced, as an investment for the production of income. *Investments under this clause shall not exceed fifteen per centum (15%) of the company's admitted assets.*

* * *

Section 518D. Valuation of Investments.—* * *

(b) Other investments, including real property, shall be valued in accordance with regulations promulgated by the Insurance Commissioner pursuant to subsection (d) of this section, but in no event shall such other investments be valued at more than their purchase price. Purchase price for real property includes capitalized permanent improvements, less depreciation spread evenly over the life of the property or, at the option of the company, less depreciation computed on any basis permitted under the United States Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.) and regulations thereunder. Such investments that have been affected by **[permanent declines]** *an impairment, other than a temporary decline,* in value shall be valued at not more than their market value.

(c) Any investment, including real property, not purchased by a company but acquired in satisfaction of a debt or otherwise shall be valued in accordance with the **[applicable procedures for that type of investment contained in this section. For purposes of applying the valuation procedures, the purchase price shall be deemed to be the market value at the time the investment is acquired or in the case of any investment acquired in satisfaction of debt, the amount of the debt, including interest, taxes and expenses, whichever amount is less.]** *accounting procedures and practices developed by the National Association of Insurance Commissioners as required by the law relating to the filing of annual financial statement blanks.*

* * *

Section 519. Real Estate Which May Be Acquired, Held, and Conveyed.—A domestic stock fire, stock marine, or stock fire and marine insurance company may, directly or indirectly, alone or in combination with one or more other persons or entities (except that no domestic stock fire, stock marine, or stock fire and marine insurance company may participate in a general partnership), acquire by purchase, lease or otherwise or receive, hold, or convey real estate, or any interest therein:

* * *

(e) As an investment for the production of income or capital appreciation, or so acquired for development, improvement, maintenance or construction and maintenance for such investment purposes, ***provided that the aggregate cost of investments in unimproved real estate under this subsection shall not exceed the lesser of ten per centum (10%) of the company's admitted assets or forty-five per centum (45%) of its capital and surplus.***

Section 14. The act is amended by adding a section to read:

Section 519.1. Additional Investment Authority for Subsidiaries.—(a) As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Insurance company" or "insurer" includes any company, association or exchange authorized to conduct an insurance business in the jurisdiction of its domicile.

"NAIC" means the National Association of Insurance Commissioners.

"Owner" or "holder" of securities of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

"Person" is an individual, corporation, partnership, association, joint-stock company, business trust, unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

"Subsidiary" shall mean only a corporation in which another person owns or holds, with the power to vote directly or through one or more intermediaries, a majority of the outstanding voting securities. A person whose business consists primarily of real property and interests therein shall not be deemed a subsidiary for the purposes of determining the volume limitations set forth in clause (1) of subsection (c). A person which is controlled by another person solely as a result of the temporary assumption of control by the owner of securities upon the happening of a prescribed event of default shall not be deemed a subsidiary or affiliate for purposes of this section, if such securities are disposed of within five (5) years from the date of acquisition, unless such period is extended by the Insurance Commissioner to enable the owner to dispose of such securities in a reasonable and orderly manner.

"Voting security" means stock of any class or any ownership interest having the power to elect the directors, trustees or management of a person, other than securities having such power only by reason of the happening of a contingency.

(b) Any domestic stock fire, stock marine or stock fire and marine insurance company, either by itself or in cooperation with one or more persons, may, in addition to any authority to acquire or hold securities in corporations provided for elsewhere in this act, organize or acquire one or more subsidiaries. Such subsidiaries may conduct any kind of business or businesses, and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic stock fire, stock marine or stock fire and marine insurance company. No domestic stock fire, stock marine or stock fire and marine insurance company shall be deemed to be authorized to participate in or to form a general partnership with any other person.

(c) (1) At no time shall a domestic stock fire, stock marine or stock fire and marine insurance company make an investment in any subsidiary which will bring the aggregate value of its investments, as determined for annual statement purposes but not in excess of cost, in all subsidiaries under this subsection to an amount in excess of twenty-five per centum (25%) of its total admitted assets as of the immediately preceding thirty-first day of December. In determining the amount of investments of any domestic stock fire, stock marine or stock fire and marine insurance company in subsidiaries for purposes of this subsection, there shall be included investments made directly by such insurance company and, if such investment is made by another subsidiary, then to the extent that funds for such investments are provided by the insurance company for such purpose.

(2) The limitations set forth in clause (1) of this subsection shall not apply to investments in any subsidiary which is:

(i) An insurance company.

(ii) A holding company to the extent its business consists of the holding of the stock of or otherwise controlling its own subsidiaries.

(iii) A corporation whose business primarily consists of direct or indirect ownership, operation or management of assets authorized as investments pursuant to sections 518C and 519.

(iv) A company engaged in any combination of the activities described in subclauses (i), (ii) and (iii) of this clause. Investments made pursuant to subclause (i) shall not be restricted in amount provided that after such investment, as calculated for NAIC annual statement purposes, the insurer's surplus will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. Investments made pursuant to subclause (ii), or to the extent applicable in this subclause, shall in addition not be subject to any limitations on the amount of a domestic stock fire, stock marine or stock fire and marine insurance company's assets provided for under any other provision of this act and which might otherwise be applicable: Provided, however, That such stock fire, stock marine or stock fire and marine insurance company's investments, to the extent that such stock fire, stock marine or stock fire and marine insurance company provided the funds therefor, in each of the subsidiaries of such holding company shall be subject to the limitations, if any, applicable to such investment as if the holding company's interest in each such subsidiary were instead owned directly by the stock fire, stock marine or stock fire and marine insurance company.

Investments made pursuant to subclause (iii) or, to the extent applicable, this subclause shall be counted in determining the limitations contained in applicable subsections of sections 518C and 519: Provided, however, That the value as calculated for annual statement purposes, but not in excess of the cost thereof, of such investment shall include only funds provided by the insurance company therefor. Investments made in other subsidiaries of such stock fire, stock marine or stock fire and marine insurance company by any subsidiary described in subclauses (i), (ii), (iii) and this subclause or by a person whose business primarily consists of direct or indirect ownership, operation or management of real property and interest therein under section 519 shall be deemed investments made by the insurance company only to the extent the funds for such investment were provided by such insurance company.

(d) No restrictions, prohibitions or limitations contained in this act otherwise applicable to investments of domestic stock fire, stock marine or stock fire and marine insurers shall be applicable to investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (c); nor shall the additional investment authority granted by said subsection (c) have the effect of restricting, prohibiting or limiting the rights of a domestic stock fire, stock marine or stock fire and marine insurer to make investments permitted under any other section of this act.

(e) Whether any investment made pursuant to subsection (c) meets, at any time thereafter, the applicable requirements thereof is to be determined when such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value, but not in excess of the cost thereof, of all previous investments in equity securities as calculated for annual statement purposes. In calculating the amount of such investments, there shall be included, as determined for NAIC annual statement purposes:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended by the domestic stock fire, stock marine or stock fire and marine insurance company in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, or a subsidiary subsequent to its acquisition or formation.

(f) If a domestic stock fire, stock marine or stock fire and marine insurer ceases to own, directly or indirectly through one or more intermediaries, a majority of the voting securities of a subsidiary held pursuant to subsection (c), it shall dispose of any investment therein made pursuant to such subsection within five (5) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless, at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this act.

Section 15. Section 601 of the act is amended to read:

Section 601. Financial Requirements of Foreign Companies.—Stock casualty insurance companies of other States and foreign governments, organized to transact any of the classes of insurance mentioned in subdivision (c), section two hundred and two (202) of this act, in order to be licensed to do business in this Commonwealth, must have a paid up and safely invested capital *and surplus*, if a company of another State, or a deposit in the United States, if a company of a foreign government, of at least the amount required in this act for **[Pennsylvania]** *domestic* companies. **[Nothing contained in this act shall prevent any foreign stock life insurance company now engaged in the business of accident and sickness or liability insurance, or both, from continuing the same, if the amount of its paid up capital shall be equal to the amount required of a domestic company to transact the business of life insurance, and at least fifty thousand dollars for each of the other classes of insurance undertaken.]**

Section 16. The act is amended by adding a section to read:

Section 755. Investment Plan.—Any title insurance company subject to the provisions of this act is required to have a formal investment plan which shall be updated on an annual basis as authorized by the board of directors. The investment plan shall include, at a minimum, a description of the investment strategy of the company designed to provide for liquidity and diversity of the investment portfolio. The investment plan, and such other information as the Insurance Department may require in order to determine the impact of the investment plan on the solvency of the company, shall be made available to the Insurance Department during the course of a financial condition examination conducted in accordance with the laws pertaining to the conduct of examinations.

Section 17. Section 1004(d) of the act, amended June 24, 1939 (P.L.683, No.318), is amended to read:

Section 1004. Declaration To Be Filed with Insurance Commissioner; Contents.—Such subscribers, so contracting among themselves, shall, through their attorney, file with the Insurance Commissioner of this Commonwealth a declaration verified by the oath of such attorney, setting forth:

* * *

(d) A copy of the form of power of attorney, or other authority of such attorney, under which such insurance is to be effected or exchanged, and which shall provide that the liability of the subscribers, exchanging contracts of indemnity, shall make provision for contingent liability, equal to not less than one additional annual premium or deposit charged: Provided, however, That where an exchange has a surplus equal to the **[minimum]** capital and surplus required of a stock insurance company transacting the same kind or kinds of business, its power of attorney need not provide for such contingent liability of subscribers, and such exchange, so long as it maintains such surplus, may issue to its subscribers policies or contracts without contingent liability.

* * *

Section 18. Article XI of the act is repealed.

Section 19. The act is amended by adding articles to read:

ARTICLE XIII.
BROKER CONTROLLED PROPERTY AND CASUALTY INSURERS.

***Section 1301. Definitions.**—As used in this article the following words and phrases shall have the meanings given to them in this section:*

"Broker." A person, copartnership or corporation, not an officer or agent of the company, association or exchange interested, who or which, for compensation, acts or aids in any manner in obtaining insurance for a person other than himself or itself. An attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney shall not be considered a broker for the purposes of this article.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Control," "controlled" and "controlling." These terms shall have the meaning ascribed in section 1401.

"Department." The Insurance Department of the Commonwealth.

"Independent casualty actuary." A casualty actuary who is a member in good standing of the American Academy of Actuaries and who is not affiliated with, nor an employe, a principal, nor the direct or indirect owner of, or in any way controlled by an insurer or broker.

"Licensed property or casualty insurer" or "insurer." Any person, firm, association or corporation duly licensed to transact a property or casualty insurance business in this Commonwealth. The following, inter alia, are not deemed to be licensed property or casualty insurers for the purposes of this article:

(1) All nonadmitted insurers.

(2) All risk retention groups as defined in the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613) and Article XV.

(3) All residual market pools and joint underwriting authorities or associations.

(4) All captive insurers, which shall include, but not be limited to, insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.

"Reinsurance intermediary." Any person, firm, association or corporation which acts as a broker in soliciting, negotiating or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer or acts as a broker in accepting any reinsurance contract or binder on behalf of an assuming insurer.

"Violation." A finding by the Insurance Department of any one or more of the following:

(1) The controlling broker did not materially comply with section 1302.

(2) The controlled insurer, with respect to business placed by the controlling broker, engaged in a pattern of charging premiums that were lower than those being charged by such insurer or other insurers for similar risks written during the same period and placed by noncontrolling brokers. When determining whether premiums were lower than those prevailing in the market, the Insurance Department shall take into consideration applicable industry or actuarial standards at the time the business was written.

(3) The controlling broker failed to maintain records sufficient:

(i) to demonstrate that such broker's dealings with its controlled insurer were fair and equitable and in compliance with the provisions of Article XIV; and

(ii) to accurately disclose the nature and details of its transactions with the controlled insurer, including such information as is necessary to support the charges or fees to the respective parties.

(4) The controlled insurer, with respect to business placed by the controlling broker, either failed to establish or deviated from its underwriting procedures.

(5) The controlled insurer's capitalization at the time the business was placed by the controlling broker and with respect to such business was not in compliance with criteria established by the Insurance Department or otherwise by the insurance laws or regulations of this Commonwealth.

(6) The controlling broker or the controlled insurer failed to substantially comply with the provisions of Article XIV and any rules and regulations relative thereto.

Section 1302. Limitation on Business Placed with Controlled Insurer.—(a) No broker which has control of a licensed property or casualty insurer may directly or indirectly place business with such insurer in any transaction in which such broker, at the time the business is placed, is acting as such on behalf of the insured for any compensation, commission or other thing of value, unless the requirements of this section are met, including all of the following:

(1) There is a written contract between the controlling broker and the insurer, which contract has been approved by the board of directors of the insurer.

(2) The broker, prior to the effective date of the policy, delivers written notice to the prospective insured disclosing the relationship between that broker and the controlled insurer. This disclosure, signed by the insured, shall be retained in the underwriting file until the filing of the report on the examination covering the period in which the coverage is in effect. If, however, the business is placed through a subbroker who is not a controlling broker, the controlling broker shall retain in its records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has or will notify the insured.

(3) All funds collected for the account of the insurer by the controlling broker are paid, net of commissions, cancellations and other adjustments, to the insurer no less often than quarterly.

(b) In addition to any other required loss reserve certification, the controlled insurer shall annually, on the first day of April of each year, file with the department an opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported, on business placed by such broker.

(c) The controlled insurer shall annually report to the department the amount of commissions paid to the broker, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling brokers for placements of the same kinds of insurance.

(d) Every controlled insurer shall have an audit committee of the board of directors composed of several directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants and an independent casualty actuary to review the adequacy of the insurer's loss reserves.

(e) No reinsurance intermediary which has control of an assuming insurer may directly or indirectly place business with such insurer in any transaction in which such reinsurance intermediary is acting as a broker on behalf of the ceding insurer. No reinsurance intermediary which has control of a ceding insurer may directly or indirectly accept business from such insurer in any transaction in which the reinsurance intermediary is acting as a broker on behalf of the assuming insurer. The prohibitions in this subsection shall not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

Section 1303. Penalties.—(a) If the department has reason to believe that a controlling broker has committed or is committing an act which could be determined to be a violation, as defined in section 1301, it shall serve upon the controlling broker a statement of the charges and notice of a hearing to be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure) at a time not less than thirty (30) days after the service of the notice and at a place fixed in the notice.

(b) At this hearing, the department must establish that the controlling broker committed the violation. The controlling broker shall have an opportunity to be heard and to present evidence rebutting the charges. The decision, determination or order of the department shall be subject to judicial review pursuant to 2 Pa.C.S.

(c) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Article V, and the liquidator or rehabilitator appointed under that order believes that the controlling broker or any other person subject to this article has not materially complied with this article or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the liquidator or rehabilitator may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

Section 1304. Other Penalties Applicable.—Nothing in this article shall affect the right of the department to impose any other penalties provided for in the insurance laws of this Commonwealth.

Section 1305. Rights of Certain Parties not Affected.—Nothing contained in this article is intended to or shall in any manner alter or affect rights of policyholders, claimants, creditors or other third parties.

ARTICLE XIV.
INSURANCE HOLDING COMPANIES.

Section 1401. Definitions.—As used in this article the following words and phrases shall have the meanings given to them in this section:

"Affiliate." A person that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, the person specified.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Control," "controlling," "controlled by" and "under common control with." The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten per centum (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. The Insurance Department may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Department." The Insurance Department of the Commonwealth.

"Insurance holding company system." Two or more affiliated persons, one or more of which is an insurer.

"Insurer." Any company, association or exchange authorized by the Insurance Commissioner to transact the business of insurance in this Commonwealth except that the term shall not include:

(1) the Commonwealth or any agency or instrumentality thereof;

(2) agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision;

(3) fraternal benefit societies; or

(4) nonprofit medical and hospital service associations.

"NAIC." The National Association of Insurance Commissioners.

"Person." An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert. The term shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

"Security holder." One who owns any security of a specified person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

"Subsidiary." An affiliate of a specified person controlled by another person directly or indirectly through one or more intermediaries.

"Voting security." Includes any security convertible into or evidencing a right to acquire a voting security.

Section 1402. Acquisition of Control of or Merger with Domestic Insurer.—(a) (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would directly or indirectly or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the department and has sent to such insurer a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the department in the manner hereinafter prescribed.

(2) For purposes of this section, a "domestic insurer" shall include any person controlling a domestic insurer unless such person as determined by the department is either directly or through its affiliates primarily engaged in business other than the business of insurance. Such person shall, however, file a preacquisition notification with the department containing the information set forth in section 1403(c)(2) thirty (30) days prior to the proposed effective date of the acquisition. Failure to file is subject to section 1403(e)(3). For purposes of this section, "person" shall not include any securities broker holding, in the usual and customary manner, less than twenty per centum (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(b) The statement to be filed with the department under this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected, hereinafter called "acquiring party," and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or

(ii) if such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by the person and the

person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions. This list shall include for each individual the information required by subparagraph (i).

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) and, if distributed, of additional soliciting material relating thereto.

(11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the department may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(c) If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the department may require that the information called for by subsection (b)(1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the department may require that the information called for by subsection (b)(1) through (12) shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten per centum (10%) of the outstanding voting securities of such corporation.

(d) If any material change occurs in the facts set forth in the statement filed with the department and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the department and sent to such insurer within two (2) business days after the person learns of such change.

(e) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.), or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(f) (1) The department shall approve any merger or other acquisition of control referred to in subsection (a) unless it finds any of the following:

(i) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be to substantially lessen competition in insurance in this Commonwealth or tend to create a monopoly therein. In applying the competitive standard in this subparagraph:

(A) the informational requirements of section 1403(c)(2) and the standards of section 1403(d)(2) shall apply;

(B) the merger or other acquisition shall not be disapproved if the department finds that any of the situations meeting the criteria provided by section 1403(d)(3) exist; and

(C) the department may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders.

(iv) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(v) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) If the merger or other acquisition of control is approved, the department shall so notify the person filing the statement and the insurer whose stock is proposed to be acquired, and such a determination is hereafter referred to as an approving determination. Notice shall also be given by the department of any determination which is not an approving determination. If an approving determination is made by the department and not otherwise, the proposed offer and acquisition may thereafter be made and consummated on the terms and conditions and in the manner described in the statement and subject to such conditions as may be prescribed by the department as hereinafter provided. An approving determination by the department shall be deemed to extend to offers or acquisitions made pursuant thereto within one year following the date of determination. The department may, as a condition of its approving determination, require the inclusion in any offer of provisions requiring the offer to remain open a specified minimum length of time, permitting withdrawal of shares deposited prior to the time the offeror becomes bound to consummate the acquisition and requiring pro rata acceptance of any shares deposited pursuant to the offer. The department shall hold a hearing before making the determination required by this subsection if, within ten (10) days following the filing with the department of the statement, written request for the holding of such hearing is made either by the person proposing to make the acquisition, by the insurer whose stock is proposed to be acquired or, if such issuer is not an insurer, by the insurance company controlled by such issuer. Otherwise, the department shall determine in its discretion whether such a hearing shall be held. Thirty (30) days' notice of any such hearing shall be given to the person proposing to

make the acquisition, to the issuer whose stock is proposed to be acquired and, if such issuer is not an insurer, to the insurance company controlled by such issuer. Notice of any such hearing shall also be given to such other persons, if any, as the department may determine.

(3) The department may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the department's staff as may be reasonably necessary to assist the department in reviewing the proposed acquisition of control.

(g) The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the department by order shall exempt therefrom as:

(1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(2) as otherwise not comprehended within the purposes of this section.

(h) The following shall constitute a violation of this section:

(1) the failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b); or

(2) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the department has given its approval thereto.

Section 1403. Acquisitions Involving Insurers not Otherwise Covered.—(a) As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Acquisition." Any agreement, arrangement or activity the consummation of which results in a person acquiring, directly or indirectly, the control of another person and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

"Involved insurer." Includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

(b) (1) Except as exempted in paragraph (2), this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this Commonwealth.

(2) This section shall not apply to any of the following:

(i) An acquisition subject to approval or disapproval by the department pursuant to section 1402.

(ii) A purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this Commonwealth. If a purchase of securities results in a presumption of control as described in the definition of "control" in section 1301, it is not solely for investment purposes unless the insurance department of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary insurance department to the Insurance Department of the Commonwealth.

(iii) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the department in accordance with subsection (c)(2) thirty (30) days prior to the proposed effective date of the acquisition. However, such preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this paragraph.

(iv) The acquisition of already affiliated persons.

(v) An acquisition if, as an immediate result of the acquisition:

(A) in no market would the combined market share of the involved insurers exceed five per centum (5%) of the total market;

(B) there would be no increase in any market share; or

(C) in no market would:

(I) the combined market share of the involved insurers exceeds twelve per centum (12%) of the total market; and

(II) the market share increases by more than two per centum (2%) of the total market.

For the purpose of this subparagraph, a market means direct written insurance premium in this Commonwealth for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this Commonwealth.

(vi) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business.

(vii) An acquisition of an insurer whose domiciliary insurance department affirmatively finds that such insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary insurance department to the Insurance Department of the Commonwealth.

(3) Sections 1409(b) and (c) and 1411 shall not apply to acquisitions provided for in this subsection.

(c) (1) An acquisition covered by subsection (b) may be subject to an order pursuant to subsection (e) unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The department shall give confidential treatment to information submitted under this subsection in the same manner provided in section 1407.

(2) The preacquisition notification shall be in such form and contain such information as prescribed by the NAIC relating to those markets which, under subsection (b)(2)(v), cause the acquisition not to be exempted from the provisions of this section. The department may require such additional material and information as it deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this Common-

wealth accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(3) The waiting period required shall begin on the date of receipt by the department of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of such receipt or termination of the waiting period by the department. Prior to the end of the waiting period, the department on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of such additional information by the department or termination of the waiting period by the department.

(d) (1) The department may enter an order under subsection (e)(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this Commonwealth or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection (c).

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1), the department shall consider the following:

(i) Any acquisition covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards as follows:

(A) if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	*Insurer B*
4%	*4% or more*
10%	*2% or more*
15%	*1% or more; or*

(B) if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	*Insurer B*
5%	*5% or more*
10%	*4% or more*
15%	*3% or more*
19%	*1% or more.*

A highly concentrated market is one in which the share of the four largest insurers is seventy-five per centum (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1). For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be insurer A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven per centum (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the

acquisition. Any acquisition or merger covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) if:

(A) there is a significant trend toward increased concentration in the market;

(B) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(C) another involved insurer's market is two per centum (2%) or more.

(iii) For the purposes of this paragraph:

(A) The term "insurer" includes any company or group of companies under common management, ownership or control.

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the department shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this Commonwealth and the relevant geographical market is assumed to be this Commonwealth.

(C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (i) and (ii), the department may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (i) and (ii), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) if:

(i) the acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(ii) the acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

(e) (1) (i) If an acquisition violates the standards of this section, the department may enter an order:

(A) requiring an involved insurer to cease and desist from doing business in this Commonwealth with respect to the line or lines of insurance involved in the violation; or

(B) denying the application of an acquired or acquiring insurer for a license to do business in this Commonwealth.

(ii) Such an order shall be issued in compliance with 2 Pa.C.S. (relating to administrative law and procedure).

(iii) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the department under paragraph (1) and while such order is in effect, may, after notice and hearing and upon order of the department, be subject at the discretion of the department to either or both of the following:

(i) A civil penalty of not more than ten thousand dollars ($10,000) for every day of violation.

(ii) Suspension or revocation of such person's license.

(3) Any insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with any such filing requirement shall be subject to a civil penalty not to exceed fifty thousand dollars ($50,000).

Section 1404. Registration of Insurers.—(a) (1) Every insurer which is authorized to do business in this Commonwealth and which is a member of an insurance holding company system shall register with the department, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section and section 1405(a)(1) and (2), (b) and (d). Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each such change or addition.

(2) Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by the thirty-first day of March of each year for the previous calendar year, unless the department for good cause shown extends the time for registration, and then within such extended time. The department may require any insurer authorized to do business in this Commonwealth which is a member of a holding company system and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (c) or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement on a form prescribed by the NAIC, which shall contain all of the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(2) The identity and relationship of every member of the insurance holding company system.

(3) All of the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans and other investments and the purchase, sale or exchange of securities of an affiliate by the insurer or of the insurer by an affiliate.

(ii) Purchases, sales or exchange of assets.

(iii) Transactions not in the ordinary course of business.

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(v) All management agreements, service contracts and all cost-sharing arrangements.

(vi) Reinsurance agreements.

(vii) Dividends and other distributions to shareholders.

(viii) Consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(5) Any other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the department.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the department by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one per centum (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(e) Subject to section 1405(b), each registered insurer shall report to the department all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(g) The department shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) The department may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

(i) The department may allow an insurer which is authorized to do business in this Commonwealth and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the department by rule, regulation or order shall exempt the same from the provisions of this section.

(k) Any person may file with the department a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the department disallows such a disclaimer. The department shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(l) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing shall be a violation of this section.

Section 1405. Standards and Management of an Insurer within a Holding Company System.—(a) (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to all of the following standards:

(i) The terms shall be fair and reasonable.

(ii) Charges or fees for services performed shall be reasonable.

(iii) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied and all cost-sharing or expense allocation arrangements must be formalized in writing and authorized by the board of directors of the domestic insurer.

(iv) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(v) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the department in writing of its intention to enter into such transaction at least thirty (30) days prior thereto or such shorter period as the department may permit and the department has not disapproved it within such period:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, including assets to be received by the domestic insurer as contributions to its surplus, provided that, as of the thirty-first day of December next preceding, such transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of five per centum (5%) of the insurer's admitted assets or thirty-five per centum (35%) of surplus as regards policyholders;

(B) with respect to life insurers, three per centum (3%) of the insurer's admitted assets.

(ii) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of or to make investments in any affiliate of the insurer making such loans or extensions of credit provided that, as of the thirty-first day of December next preceding, such transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of five per centum (5%) of the insurer's admitted assets or thirty-five per centum (35%) of surplus as regards policyholders;

(B) with respect to life insurers, three per centum (3%) of the insurer's admitted assets.

(iii) For domestic insurers which have experienced a decline in policyholder surplus in an amount of ten per centum (10%) or more for two (2) consecutive years and net loss from operations in both those years, reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per centum (5%) of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer. Nothing in this paragraph shall affect or limit the requirements and applicability of section 3 of the act of July 31, 1968 (P.L.941, No.288), entitled "An act providing for reporting to the Insurance Commissioner by domestic insurance companies, associations, or exchanges, of certain conveyances of interests in the assets of such companies, associations, or exchanges."

(iv) Any material transactions, specified by regulation, which the department determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the department determines that such separate transactions were entered into over any twelve-month period for such purpose, it may exercise its authority under section 1410.

(4) The department, in reviewing transactions pursuant to paragraph (2), shall consider whether the transactions comply with the standards set forth in paragraph (1) and whether they may adversely affect the interests of policyholders. The department may retain at the insurer's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the department's staff as may be reasonably necessary to assist the department in reviewing the transaction.

(5) The department shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten per centum (10%) of such corporations' voting securities.

(b) (1) No domestic insurer shall pay any extraordinary dividend to its stockholders until:

(i) thirty (30) days after the commissioner has received written notice from the insurer of the declaration of the dividend and has not within such period disapproved the payment; or

(ii) the commissioner shall have approved the payment within such thirty-day period.

(2) For purposes of this subsection, an extraordinary dividend is any dividend or other distribution which, together with other dividends and distributions made within the preceding twelve (12) months, exceeds the greater of:

(i) ten per centum (10%) of such insurer's surplus as regards policyholders as shown on its last annual statement on file with the commissioner; or

(ii) the net gain from operations after dividends to policyholders and Federal income taxes and before realized gains or losses of such insurer, if such insurer is a life insurer, or the net investment income earned, excluding net realized capital gains or losses, if such insurer is not a life insurer, for the period covered by such statement, but shall not include pro rata distributions of any class of the insurer's own securities.

(c) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this article.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of subsection (a)(1).

(3) Not less than one-third of the directors of a domestic insurer and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employes of such insurer or of any entity controlling, controlled by or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employes of the insurer or of any entity controlling, controlled by or under common control with the insurer and who are not beneficial ~~owners of a controlling~~ interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the ~~board of directors~~ the selection and compensation of the principal officers.

(5) The provisions of paragraphs (3) and (4) shall not apply to a ~~domestic~~ insurer if the person controlling such insurer is an insurer or a publicly held corporation having a board of directors and committees thereof which already meet the requirements of paragraphs (3) and (4).

(d) For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to ~~the insurer's~~ outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's investment portfolio.

(8) The surplus as regards policyholders maintained by other ~~comparable~~ insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in affiliates. The department may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders ~~whenever in its~~ judgment such investment so warrants.

Section 1406. Examination.—(a) Subject to the limitation contained in this section and in addition to the powers which the department has under law relating to the examination of insurers, the department shall also have the power to order any insurer registered under section 1404 to produce such records, books or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of such insurer or to determine compliance with this article. ~~In the event~~

an insurer fails to comply with such order, the department shall have the power to examine affiliates to obtain this information.

(b) The department may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the department's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(c) Each registered insurer producing for examination records, books and papers pursuant to subsection (a) shall be liable for and shall pay the expense of such examination as provided for in Article IX of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one."

Section 1407. Confidential Treatment.—All information, documents and copies thereof obtained by or disclosed to the department or any other person in the course of an examination or investigation made pursuant to section 1406 and all information reported pursuant to sections 1404 and 1405 shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the department or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the department, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event it may publish all or any part thereof in such manner as he may deem appropriate.

Section 1408. Rules and Regulations.—The department may, in the manner provided by law, promulgate the rules and regulations and may issue such orders as are necessary to carry out this article.

Section 1409. Injunctions and Certain Prohibitions.—(a) Whenever it appears to the department that any insurer or any director, officer, employe or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation or order issued by the department hereunder, the department may apply to the Commonwealth Court for an order enjoining such insurer or such director, officer, employe or agent thereof from violating or continuing to violate this article or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the department hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding, but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of

this Commonwealth have so ordered. If an insurer or the department has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the department hereunder, the insurer or the department may apply to the Commonwealth Court to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 1402, or any rule, regulation or order issued by the department thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

(c) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the department hereunder, the Commonwealth Court may, on such notice as the court deems appropriate, upon the application of the insurer or the department seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such order with respect thereto as may be appropriate to effectuate the provisions of this article.

(d) Notwithstanding any other provisions of law, for the purposes of this article, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this Commonwealth.

Section 1410. Sanctions.—(a) Any insurer failing, without just cause, to file any registration statement as required in this article shall be required, after notice and hearing, to pay a penalty not to exceed five hundred ($500) dollars for each day's delay. The maximum penalty under this section is twenty-five thousand ($25,000) dollars. The department may reduce the penalty if the insurer demonstrates to the department that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in or assents to or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 1404(a) or 1405(a)(2) and (b) or which violate this article shall pay, in their individual capacity, a civil forfeiture of not more than twenty-five thousand ($25,000) dollars per violation, after notice and hearing before the department. In determining the amount of the civil forfeiture, the department shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations and such other matters as justice may require.

(c) Whenever it appears to the department that any insurer subject to this article or any director, officer, employe or agent thereof has engaged in any transaction or entered into a contract which is subject to section 1405 and which would not have been approved had such approval been requested, the department may order the insurer to cease and desist immediately any further activity under the transaction or contract. After notice and hearing, the department may also order the insurer to void any such contracts and

restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the department that any insurer or any director, officer, employe or agent thereof has committed a wilful violation of this article, the department may cause criminal proceedings to be instituted in the common pleas court for the county in which the principal office of the insurer is located or, if such insurer has no such office in this State, then in any other court having jurisdiction against such insurer or the responsible director, officer, employe or agent thereof. Any insurer which wilfully violates this article may be fined not more than one hundred thousand ($100,000) dollars. Any individual who wilfully violates this article may be fined in his individual capacity not more than fifty thousand ($50,000) dollars or be imprisoned for not more than one (1) to three (3) years, or both.

(e) Any officer, director or employe of an insurance holding company system who wilfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the department in the performance of its duties under this article shall, upon conviction, be sentenced to pay a fine of one hundred thousand ($100,000) dollars or to imprisonment for not more than three (3) years, or both. Any fines imposed shall be paid by the officer, director or employe in his individual capacity.

Section 1411. Receivership.—Whenever it appears to the department that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, the department may proceed, in the manner provided by law, to take possession of the property of such domestic insurer and to conduct the business thereof.

Section 1412. Recovery.—(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the statutory liquidator appointed under such order shall have a right to recover on behalf of the insurer:

(i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than the distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiaries to a director, officer or employe, where the distribution or payment pursuant to this subsection is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c) and (d).

(b) No such distribution shall be recoverable if the parent or affiliate shows that when paid such distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under subsection (a) such person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) of this section is insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

Section 1413. Revocation, Suspension or Nonrenewal of Insurer's License.—Whenever it appears to the department that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the department may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this Commonwealth for such period as it finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

ARTICLE XV.
RISK RETENTION.

Section 1501. Statement of Purpose.—The purpose of this article is to regulate the formation and operation of risk retention groups and purchasing groups in this Commonwealth formed pursuant to the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170) to the extent permitted by such law.

Section 1502. Definitions.—As used in this article the following words and phrases shall have the meanings given to them in this section:

"Admitted insurer." An insurer with a valid certificate of authority to do insurance business in this Commonwealth.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Completed operations liability." Liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by:

(1) any person who performs that work; or

(2) any person who hires an independent contractor to perform that work;

but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

"Department." The Insurance Department of the Commonwealth.

"Doing business." Those acts which constitute the doing of insurance business in this Commonwealth as set forth in section 208(b) of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," except that risk retention groups and purchasing groups are not doing business when responding to a request for coverage received directly from a Pennsylvania resident and not as a result of solicitation.

"Domicile." For purposes of determining the state in which a purchasing group is domiciled, the term means the following:

(1) For a corporation, the state in which the purchasing group is incorporated.

(2) For an unincorporated entity, the state of its principal place of business.

"Eligible surplus lines insurer." A nonadmitted insurer doing business in this Commonwealth in conformance with Article XVI.

"Hazardous financial condition." A condition in which, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

(1) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(2) to pay other obligations in the normal course of business.

"Insurance." Primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this Commonwealth.

"Liability."

(1) The term means legal liability for damages (including costs of defense, legal costs and fees and other claims expenses) because of injuries to other persons, damage to their property or other damage or loss to such other persons resulting from or arising out of:

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations; or

(ii) any activity of any state or local government, or any agency or political subdivision thereof.

(2) The term does not include personal risk liability and an employer's liability with respect to its employes other than legal liability under the Employers' Liability Act (34 Stat. 232, 45 U.S.C. § 51 et seq.).

"Nonadmitted insurer." An insurer that does not have a certificate of authority to do insurance business in this Commonwealth. The term includes insurance exchanges authorized under laws of various states.

"Personal risk liability." A liability for damages because of injury to any person, damage to property or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities referred to in the definition of "liability."

"Plan of operation or a feasibility study." An analysis which presents the expected activities and results of a risk retention group, including, at a minimum, all of the following:

(1) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations.

(2) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates and rating classification systems for each kind of liability insurance the group intends to offer.

(3) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available.

(4) Pro forma financial statements and projections.

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

(6) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements.

(7) The states in which the risk retention group intends to operate or is currently operating.

(8) Such other matters as may be prescribed by the department for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

"Product liability." Liability for damages because of any personal injury, death, emotional harm, consequential economic damage or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product. The term does not include the liability of any person for these damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

"Purchasing group." Any group which:

(1) has as one of its purposes the purchase of liability insurance on a group basis;

(2) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (3);

(3) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and

(4) is domiciled in any state.

"Risk retention group." Any corporation or other limited liability association:

(1) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) which is organized for the primary purpose of conducting the activity described under paragraph (1);

(3) which:

(i) is chartered and licensed as an insurance company to write liability insurance and authorized to engage in the business of insurance under the laws of any state; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance department of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the Product Liability Risk Retention Act of 1981 (Public Law 97-45, 95 Stat. 949), before the date of the enactment of the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170);

(4) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(5) which:

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and which organization has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the risk retention group;

(6) whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

(7) whose activities do not include the provision of insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group (or any members of such other risk retention group) which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph (6) for membership in the risk retention group which provides such reinsurance; and

(8) the name of which includes the phrase "Risk Retention Group."

"State." Any state of the United States or the District of Columbia.

Section 1503. Risk Retention Groups Chartered in this Commonwealth.—(a) A domestic risk retention group shall, pursuant to this act and the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," be chartered and licensed as a domestic fire or casualty insurance company to write

only liability insurance pursuant to this article and, except as provided elsewhere in this article, shall comply with all the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this Commonwealth and with section 1504 to the extent that such requirements are not a limitation of laws, rules, regulations or requirements of this Commonwealth.

(b) Before it may offer insurance in any state, each domestic risk retention group shall also submit for approval to the department a plan of operation or a feasibility study. In the event of any subsequent material change in any item of the plan of operation or feasibility study, the risk retention group shall submit an appropriate revision within ten (10) days of any such change. The group shall not offer any additional kinds of liability insurance in this Commonwealth or in any other state until a revision of such plan or study is approved by the department.

(c) The provisions of subsection (b), relating to the submission of a plan of operation or feasibility study, shall not apply with respect to any kind or classification of liability insurance which:

(1) was defined in the Product Liability Risk Retention Act of 1981 (Public Law 97-45, 95 Stat. 949), before October 27, 1986; and

(2) was offered before such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date.

(d) At the time of filing its application for charter, the risk retention group shall provide to the department in summary form the following information:

(1) The identity of the initial members of the group.

(2) The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group.

(3) The amount and nature of initial capitalization.

(4) The coverages to be afforded.

(5) The states in which the group intends to operate.

Section 1504. Risk Retention Groups not Chartered in this Commonwealth.—(a) A risk retention group chartered and licensed in a state other than this Commonwealth and seeking to do business as a risk retention group in this Commonwealth shall comply with the laws of this Commonwealth, as provided in this section.

(b) Before doing business in this Commonwealth, a risk retention group shall submit to the department all of the following:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as an insurance company to write liability insurance, the charter date, its principal place of business and such other information, including information on its membership, as the department may require to verify that the risk retention group is qualified under the definition of "risk retention group" in section 1502.

(2) A copy of its plan of operations or a feasibility study and copies of all revisions of such plan or study submitted to the state in which the risk reten-

tion group is chartered and licensed, provided that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any kind or classification of liability insurance which:

(i) was defined in the Product Liability Risk Retention Act of 1981 (Public Law 97-45, 95 Stat. 949 et seq.) before October 27, 1986; and

(ii) was offered before such date by any risk retention group which had been chartered and was operating for not less than three (3) years before such date.

(3) A copy of the most recent annual statement as described in subsection (d)(1).

(4) (i) A statement of registration for which a filing fee shall be imposed, which statement appoints the department as its agent for the purpose of receiving service of legal documents or process.

(ii) The appointment of the department shall be accompanied by written designation of the name and address of the officer, agent or other person to whom such process shall be forwarded by the department or its deputy on behalf of such risk retention group. In the event such designation is changed, a new certificate of designation shall be filed with the department within ten (10) days of such change.

(iii) Service of process upon a risk retention group pursuant to this paragraph shall be made by serving the department, or any deputy thereof or any salaried employe of the department whom the department designates for such purpose, with two copies thereof and the payment of a fee to be published by notice in the Pennsylvania Bulletin. The department shall forward a copy of such process by registered or certified mail to the risk retention group at the address given in its written certificate of designation and shall keep a record of all process so served upon it. Service of process so made shall be deemed made within the territorial jurisdiction of any court in this Commonwealth.

(c) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 1503(b) at the same time that such revision is submitted to the department of its chartering state.

(d) Any risk retention group doing business in this Commonwealth shall submit annually to the department on or before March 1 all of the following:

(1) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

(2) A copy of the most recent examination of the risk retention group as certified by the department or public official conducting the examination.

(3) Upon request by the department, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group.

(4) Such information as may be required to verify its continuing qualification as a risk retention group, as defined in section 1502.

(e) If a risk retention group is found to be in a hazardous financial condition by any court of competent jurisdiction, the risk retention group shall submit a copy of the court order to the department within ten (10) days of the date of the order.

(f) A risk retention group shall be liable for a fine of two hundred ($200) dollars per day of delinquency for either of the following:

(1) Failure to file the annual statement as provided by law on the first day of March, except that, for good cause shown, the department may grant, after written request, a reasonable extension of time within which such statement may be filed.

(2) Failure to submit to the department a copy of the order of a court of competent jurisdiction finding the risk retention group to be in a hazardous financial condition or financially impaired within ten (10) days of the date of such order.

(g) (1) Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this Commonwealth and shall report to the department the gross direct premiums, less returns thereon, written for risks resident or located within this Commonwealth. Such risk retention group shall be subject to taxation and any applicable fines and penalties related thereto on the same basis as a foreign admitted insurer, pursuant to section 902 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

(2) To the extent that licensed agents, brokers or surplus lines agents with Pennsylvania licenses are utilized pursuant to section 1514, they shall report to the department the premiums for direct business for risks resident or located within this Commonwealth which such licensees have placed with or on behalf of a risk retention group not chartered and licensed in this Commonwealth.

(h) Any risk retention group and its agents and representatives shall comply with the act of July 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance Practices Act," insofar as its provisions apply to unfair claims practices and deceptive, false or fraudulent practices. However, if the department seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(i) Any risk retention group shall submit to an examination by the Insurance Department of the Commonwealth to determine its financial condition if the department of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the Insurance Commissioner of the Commonwealth. Any such examination shall be coordinated with other jurisdictions to the extent feasible in order to avoid unjustified repetition and shall be conducted in an expeditious manner and in accordance with The National Association of Insurance Commissioners' Examination Handbook.

(j) The terms of any insurance policy issued by such risk retention group shall not provide or be construed to provide insurance policy coverage prohibited generally by state statute or declared unlawful by the highest court of the state whose law applies to such policy.

(k) A risk retention group doing business in this Commonwealth shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance department if there has been a finding of hazardous financial condition or financial impairment after an examination under subsection (i).

(l) Any risk retention groups doing business in this Commonwealth prior to the enactment of this article shall, within thirty (30) days after the effective date of this article, comply with the provisions of this section.

(m) A risk retention group which violates any provision of this article shall be subject to fines and penalties applicable to admitted insurers generally, including revocation of its right to do business in this Commonwealth.

Section 1505. Notice and Prohibited Acts.—(a) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain, in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(b) The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group.

(2) The solicitation or sale of insurance by or operation of a risk retention group that has been found by a court of competent jurisdiction to be in a hazardous financial condition or financially impaired.

(c) No risk retention groups shall be allowed to do business in this Commonwealth if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

Section 1506. Guaranty Funds and Compulsory Associations.—(a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this Commonwealth, nor shall any risk retention group or its insureds or claimants against its insureds receive any benefit from any such fund for claims arising under the insurance policies issued by such risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not admitted in this Commonwealth or from a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this Commonwealth.

(c) When a purchasing group obtains insurance covering its members' risks from an admitted insurer, only covered claims as defined in the act of November 25, 1970 (P.L.716, No.232), known as "The Pennsylvania Insurance Guaranty Association Act," shall be covered by the State guaranty fund.

(d) The department may require risk retention groups not chartered in this Commonwealth to participate and may exempt domestic risk retention groups from participation in any mechanism established or authorized under the laws of this Commonwealth for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism, and such risk retention groups shall submit sufficient information to the department to enable the department to apportion on a nondiscriminatory basis the risk retention group's proportionate share of such losses and expenses.

Section 1507. Countersignatures Not Required.—A policy of insurance issued by a risk retention group to any member of that group or by an insurer to a purchasing group or any member of a purchasing group shall not be required to be countersigned by an insurance agent or broker residing in this Commonwealth.

Section 1508. Exemption.—(a) A purchasing group and its insurer or insurers shall be subject to all applicable laws of this Commonwealth, except that the purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would do any of the following:

(1) Prohibit the establishment of a purchasing group.

(2) Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages or other matters.

(3) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in paragraph (2).

(4) Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) Require that a purchasing group must have a minimum number of members, common ownership or affiliation or a certain legal form.

(6) Require that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) Otherwise discriminate against a purchasing group or any of its members.

(b) An insurer shall be exempt from any laws of this Commonwealth which prohibits providing or offering to provide, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages or other matters.

Section 1509. Notice and Registration Requirements.—(a) A purchasing group which intends to do business in this Commonwealth shall, prior to doing such business, furnish notice to the department which notice shall do all of the following:

(1) Identify the state in which the group is domiciled.

(2) Identify the principal place of business of the group.

(3) Identify all other states in which the group intends to do business or is doing business.

(4) Specify the kinds and classifications of liability insurance which the purchasing group intends to purchase.

(5) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this Commonwealth.

(6) Identify the names and chartering jurisdictions of the insurance company or companies from which the group intends to purchase its insurance.

(7) Confirm that the insurer from which the purchasing group intends to purchase insurance has filed with the department, pursuant to section 354 and all other provisions of insurance laws, rules and regulations governing policy form and rate standards, the rates and forms it intends to use to provide coverage for the risks resident in this Commonwealth.

(8) Provide such other information as may be required by the department to verify that the purchasing group is qualified under the definition of "purchasing group" in section 1502.

(b) A purchasing group shall notify the department within ten (10) days as to any subsequent changes in any of the items set forth in subsection (a).

(c) Each purchasing group which is required to give notice pursuant to subsection (a) shall also furnish such information as may be required by the department to do any of the following:

(1) Verify that the entity qualifies as a purchasing group.

(2) Determine the location of the purchasing group.

(3) Determine appropriate tax treatment.

(d) (1) The purchasing group shall submit a statement of registration, for which a filing fee shall be imposed, which designates the department as its agent solely for the purpose of receiving service of legal documents or process.

(2) The designation of the department shall be accompanied by written designation of the name and address of the officer, agent or other person to whom such process shall be forwarded by the department or its deputy on behalf of such purchasing group. In the event such designation is changed, a new certificate of designation shall be filed with the department within ten (10) days of such change.

(3) Service of process upon a purchasing group pursuant to this subsection shall be made by serving the department, any deputy thereof or any salaried employe of the department whom the department designates for such purpose with two copies thereof and the payment of a fee to be published by notice in the Pennsylvania Bulletin. The department shall forward a copy of such process by registered or certified mail to the purchasing group at the address given in its written certificate of designation and shall keep a record of all process so served upon it. Service of process so made shall be deemed made within the territorial jurisdiction of any court in this Commonwealth.

(4) Such requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the Products Liability Risk Retention Act of 1981 (Public Law 97-45, 95 Stat. 949); and

(i) which in any state of the United States:

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after October 27, 1986; and

(ii) which:

(A) before October 27, 1986, purchased insurance from an insurance company licensed in any state;

(B) since October 27, 1986, purchased its insurance from an insurance company licensed in any state;

(C) was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(D) does not purchase insurance that was not authorized for purposes of an exemption under that article, as in effect before October 27, 1986.

(e) Any purchasing group which was doing business in this Commonwealth prior to the enactment of this act shall, within thirty (30) days after the effective date of this article, furnish notice to the department pursuant to the provisions of subsection (a) and furnish such information as may be required pursuant to subsections (b), (c) and (d).

Section 1510. Restrictions on Insurance Purchased by Purchasing Groups.—(a) A purchasing group may purchase liability insurance for its members who are residents of this Commonwealth only from:

(1) a risk retention group chartered and licensed in this Commonwealth;

(2) an admitted insurer;

(3) a risk retention group not chartered and licensed in this Commonwealth which has complied with section 1503; or

(4) an eligible surplus lines insurer if the liability insurance is obtained through surplus lines agents acting pursuant to Article XVI.

(b) The terms of any liability insurance policy obtained by a purchasing group shall not provide or be construed to provide insurance coverage prohibited generally by state statute or declared unlawful by the highest court of the state whose law applies to such policy. If the laws of this Commonwealth apply to an insurance policy obtained by a purchasing group, the terms of that policy shall not provide or be construed to provide insurance coverage prohibited generally by state statute or declared unlawful by the highest court of this Commonwealth which has construed such coverage.

(c) A purchasing group which obtains liability insurance from a nonadmitted insurer that is an eligible surplus lines insurer in this Commonwealth or from a risk retention group shall inform each of the members of such purchasing group which has a risk resident or located in this Commonwealth that such risk is not protected by an insurance insolvency guaranty fund in this Commonwealth and that such risk retention group or such nonadmitted insurer may not be subject to all insurance laws and regulations of this Commonwealth.

(d) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however,

coverage may provide for a deductible or self-insured retention applicable to individual members.

(e) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

Section 1511. Insurance Company Interest in Purchasing Groups Doing Business in this Commonwealth Prohibited.—No insurer or director, officer or employe of an insurer may have any interest in a purchasing group doing business in this Commonwealth. Prohibited interest includes, but is not limited to, soliciting members for the purchasing group and belonging to the purchasing group as a member, provided that nothing in this section will prohibit a purchasing group composed entirely of insurers or directors, officers or employes of insurers if coverage is obtained from a company not related to the group members.

Section 1512. Taxation of Premiums Paid by Purchasing Groups.—(a) (1) Premiums paid for coverage obtained from admitted insurers and risk retention groups doing business in this Commonwealth shall be taxed on the same basis as premiums paid to admitted insurers under section 902 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

(2) Premiums paid for coverage obtained from a nonadmitted insurer in compliance with this article shall be taxed at the rate applicable to premiums paid to surplus lines insurers pursuant to section 1621(a).

(b) (1) To the extent that the purchasing group or its members pay premiums for coverage of risks resident or located within this Commonwealth to admitted insurers or risk retention groups doing business in this Commonwealth, the insurer or risk retention group receiving those premiums is responsible for remitting the tax to the Department of Revenue.

(2) To the extent that the purchasing group or its members pay premiums for coverage of risks resident or located within this Commonwealth to a nonadmitted insurer, the surplus lines agent who places the business shall collect and remit the taxes for premiums.

(3) To the extent a surplus lines agent does not effect coverage, the purchasing group shall collect and remit the tax for coverage of risks resident or located in this Commonwealth. To the extent the purchasing group does not remit the tax, the purchasing group shall inform each member of the responsibility for individual remittance of the tax.

Section 1513. Administrative and Procedural Authority Regarding Risk Retention Groups and Purchasing Groups.—The department is authorized to make use of any of the powers established under the insurance laws of this Commonwealth to enforce the laws of this Commonwealth not specifically preempted by the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170), including the department's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings or litigation, the department may rely on the procedural laws of this Commonwealth. The injunctive authority of the depart-

ment in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

Section 1514. Duty of Agent or Broker to Obtain License.—(a) (1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this Commonwealth for a risk retention group unless such person, firm, association or corporation is licensed either as an insurance agent in accordance with section 603 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of one thousand nine hundred and twenty-one," or as an insurance broker in accordance with section 622 of "The Insurance Department Act of one thousand nine hundred and twenty-one."

(2) No person, firm, association or corporation shall act or aid in any manner in negotiating or procuring liability insurance in this Commonwealth for a purchasing group or for any of its members from an admitted insurer or a risk retention group unless such person, firm, association or corporation is licensed either as an insurance agent in accordance with section 603 of "The Insurance Department Act of one thousand nine hundred and twenty-one" or as an insurance broker in accordance with section 622 of "The Insurance Department Act of one thousand nine hundred and twenty-one."

(b) (1) No person, firm, association or corporation shall act or aid in any manner in negotiating or procuring liability insurance from a nonadmitted insurer on behalf of a purchasing group unless such person, firm, association or corporation is licensed as a surplus lines agent in accordance with section 1615.

(2) Notwithstanding the provisions of section 1615, a nonresident of this Commonwealth who acts in this Commonwealth solely on behalf of a purchasing group in obtaining liability insurance with a nonadmitted insurer is exempt from the requirements of maintaining an office in this Commonwealth in order to obtain a surplus lines agent's license for the limited purpose of effecting coverage for such purchasing group.

(c) Every person, firm, association or corporation licensed pursuant to the provisions of this section shall inform each prospective insured of the provisions of the notice required by section 1505(a) in the case of a risk retention group and by section 1510(c) in the case of a purchasing group.

(d) This section shall not apply to officers or salaried employes of any risk retention group or purchasing group who do not solicit, negotiate or place risks.

Section 1515. Financial Responsibility.—(a) Whenever, pursuant to the laws of this Commonwealth or any local law, a demonstration of financial responsibility is required as a condition for obtaining a license or permit to undertake specified activities, if any such requirement may be satisfied only by obtaining insurance coverage from an admitted insurer or nonadmitted insurer that qualifies as an eligible surplus lines insurer, such requirement may not be satisfied by purchasing insurance from a risk retention group not chartered and licensed in this Commonwealth or through a purchasing group which has purchased coverage from a risk retention group not chartered and licensed in this Commonwealth.

(b) Any risk retention group and any insurer who transacts the business of insurance in this Commonwealth with a purchasing group or its members shall not be exempt from the policy form or coverage requirements of 75 Pa.C.S. Ch. 17 (relating to financial responsibility).

Section 1516. Order of United States District Court.—An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state or in all states or in any territory or possession of the United States, upon a finding that such a group is in a hazardous financial or financially impaired condition, shall be enforceable in the courts of this Commonwealth.

ARTICLE XVI.
SURPLUS LINES.

Section 1601. Purpose.—The purpose of this article is to protect the public interest by:

(1) Protecting persons seeking insurance in this Commonwealth.

(2) Permitting surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers and exported from this Commonwealth pursuant to this article.

(3) Establishing a system of regulation which will permit orderly access to surplus lines insurance in this Commonwealth and encouraging insurers to make new and innovative types of insurance available to consumers in this Commonwealth.

(4) Protecting revenues of this Commonwealth.

Section 1602. Definitions.—As used in this article the following words and phrases shall have the meanings given to them in this section:

"Admitted insurer." An insurer licensed to do an insurance business in this Commonwealth.

"Capital." The term, as used in the financial requirements of section 1605, means funds paid for stock or other evidence of ownership.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Eligible surplus lines insurer." A nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under section 1604.

"Export." To place surplus lines insurance with either a nonadmitted insurer or an eligible surplus lines insurer in accordance with this article.

"Independently procured insurance." Any insurance which a resident of this Commonwealth directly negotiates with and purchases, continues or renews from a nonadmitted insurer without securing the services of an insurance agent, broker or surplus lines licensee, whether the agent or broker holds a resident or nonresident license issued by the department.

"Kind of insurance." One of the types of insurance required to be reported in the annual statement which must be filed with the department by admitted insurers.

"Nonadmitted insurer." An insurer not authorized and not licensed to do an insurance business in this Commonwealth. The term includes insurance exchanges as authorized under the laws of various states.

"Producing broker." The broker dealing directly with the party seeking insurance.

"Purchasing group." An entity formed to purchase liability insurance under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170).

"Risk retention group." An insurer organized to do business under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170).

"Surplus." The term, as used in the financial requirements of section 1605, means funds over and above liabilities and capital of the company for the protection of its policyholders.

"Surplus lines insurance." Any insurance of risks resident, located or to be performed in this Commonwealth, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, independently procured insurance, life and health insurance and annuities and coverage obtained from risk retention groups under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170).

"Surplus lines licensee." An individual, partnership or corporation licensed under section 1615 to place surplus lines insurance with nonadmitted insurers eligible to accept such insurance.

"Wet marine and transportation insurance." Any of the following:

(1) Insurance upon vessels, crafts or hulls and of interests therein or with relation thereto.

(2) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance.

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition.

(4) Insurance of personal property and interest therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment or reshipment incident thereto.

Section 1603. Acting for or Aiding Nonadmitted Insurers.—(a) No person in this Commonwealth shall directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any nonadmitted insurer in the solicitation, negotiation, procurement or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such insurer in the transaction of insurance.

(b) If the nonadmitted insurer is not an eligible surplus lines insurer and fails to pay a claim or loss within the provisions of the insurance contract, a person who assisted or in any manner aided, directly or indirectly, in the procurement of the insurance contract shall be liable to the insured for the full amount payable under the provisions of the insurance contract.

(c) This section does not apply to any of the following:

(1) Surplus lines insurance if it is effected and written pursuant to this article.

(2) Insurance effected with a nonadmitted insurer pursuant to sections 1606 and 1610.

(3) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this Commonwealth.

(4) Reinsurance.

(5) Wet marine and transportation insurance.

(6) Transactions subsequent to issuance of a policy not covering domestic risks at time of issuance and lawfully solicited, written or delivered outside of this Commonwealth.

(7) Transactions involving risk retention groups chartered and licensed outside of this Commonwealth.

Section 1604. Placement of Surplus Lines Insurance.—Insurance may be procured through a surplus lines licensee from nonadmitted insurers if the following requirements are met:

(1) Each insurer is an eligible surplus lines insurer.

(2) The placement satisfies the criteria set forth in at least one of the following subparagraphs:

(i) The full amount or kind of insurance cannot be obtained from admitted insurers. Such full amount or kind of insurance or any portion thereof may be procured from eligible surplus lines insurers, provided that a diligent search is made among the admitted insurers who are writing, in this Commonwealth, coverage comparable to the coverage being sought.

(ii) The full amount or kind of insurance cannot be obtained from any admitted insurers because no such insurers are writing coverage comparable to the coverage being sought.

(iii) The kind of insurance sought to be obtained from admitted insurers requires a unique form of coverage not available in the admitted market.

(3) The policy or contract form used by the insurer does not differ materially from policies or contracts customarily used by admitted insurers for the kind of insurance involved. Coverage may be placed in an eligible surplus lines insurer using a unique form or policy designed for the kind of insurance if a copy of such form is filed with the department by the surplus lines licensee desiring to use it simultaneously with the affidavit required by section 1609.

(4) All other requirements of this article are met.

Section 1605. Requirements for Eligible Surplus Lines Insurers.—(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer unless, at the time of placement, such nonadmitted insurer:

(1) Is of good repute and financial integrity.

(2) Qualifies under any of the following subparagraphs:

(i) Has policyholder surplus equal to or greater than two times the minimum capital and surplus required to be fully licensed in this Commonwealth. Two (2) years from the effective date of this article is granted to allow those nonadmitted insurers which are eligible surplus lines insurers on

the effective date of this article to achieve this capital and surplus requirement. If an alien insurer, as defined by the act of December 10, 1974 (P.L.804, No.266), referred to as the Alien Insurer Domestication Law, it shall maintain in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than that currently required by the National Association of Insurance Commissioners' Nonadmitted Insurers Information Office for the protection of all of its policyholders in the United States, and such trust fund consists of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for admitted insurers authorized to write like kinds of insurance in this Commonwealth. Such trust fund will be in addition to the capital and surplus required in this subparagraph and shall have an expiration date which at no time shall be less than five (5) years.

(ii) Is any Lloyd's or other similar unincorporated group of alien individual insurers that maintains a trust fund of not less than fifty million ($50,000,000) dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. Such trust funds shall likewise comply with the terms and conditions established in subparagraph (i) for alien insurers.

(iii) Is an insurance exchange created by the laws of individual states that maintains capital and surplus or the substantial equivalent thereof of not less than fifteen million ($15,000,000) dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus or the substantial equivalent thereof of not less than one million five hundred thousand ($1,500,000) dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subparagraph (i).

(3) Has provided to the department a copy of its current annual financial statement certified by such insurer, such statement to be provided no more than thirty (30) days after the date required for filing an annual financial statement in its domiciliary jurisdiction and which is either:

(i) certified by the regulatory authority in the domicile of the insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile.

In the case of an insurance exchange, the statement may be an aggregate statement of all underwriting syndicates operating during the period reported.

(b) In addition to meeting the requirements in subsection (a), a nonadmitted insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the department from time to time but at least semiannually. Nothing in this section shall require the department to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers.

Section 1606. Other Nonadmitted Insurers.—Only that portion, not to exceed twenty-five per centum (25%), of any risk eligible for export for which the full amount of coverage is not procurable from either admitted insurers or eligible surplus lines insurers may be placed with any other nonadmitted insurer which does not appear on the list of eligible surplus lines insurers published by the department pursuant to section 1605(b) but nonetheless meets the requirements set forth in section 1605(a) and any regulations of the department. The surplus lines licensee seeking to provide coverage through a nonadmitted insurer which is not an eligible surplus lines insurer shall make a filing specifying the amount and percentage of each risk along with a full explanation of why the risk could not be placed with admitted or eligible surplus lines insurers and naming the nonadmitted insurer with which placement is intended. At the time of presenting a quotation to the insured, the surplus lines licensee shall present to the insured or to the producing broker written notice that a portion of the insurance will be placed with such nonadmitted insurer.

Section 1607. Withdrawal of Eligibility from a Surplus Lines Insurer.—If at any time the department has reason to believe that an eligible surplus lines insurer:

(1) is in unsound financial condition;

(2) is no longer eligible under section 1605;

(3) has wilfully violated the laws of this Commonwealth; or

(4) does not make reasonably prompt payment of just losses and claims in this Commonwealth or elsewhere;

the department may declare it ineligible. The department shall promptly mail notice of all such declarations to each surplus lines licensee and, in the event the department's action is based upon paragraph (4), the notice shall be issued at least thirty (30) days prior to the effective date of the withdrawal of eligibility.

Section 1608. Surplus Lines Licensee's Duty to Notify Insured.—At the time of presenting a quotation to the insured, the surplus lines licensee shall present to the insured or to the producing broker written notice that the insurance or a portion thereof involves placement with nonadmitted insurers. The licensee shall, either directly or through the producing broker, give notice to the insured that:

(1) the insurer with which the licensee places the insurance is not licensed by the Pennsylvania Insurance Department and is subject to its limited regulation; and

(2) in the event of the insolvency of an eligible surplus lines insurer, losses will not be paid by the Pennsylvania Insurance Guaranty Association.

Section 1609. Declarations.—(a) In the case of each placement of insurance in accordance with this article:

(1) Within thirty (30) days after the surplus lines licensee has placed insurance with an eligible surplus lines insurer, the producing broker must execute and forward to the surplus lines licensee a written statement, in a form prescribed by the department, declaring that:

(i) A diligent effort to procure the desired coverage from admitted insurers was made.

(ii) The insured was expressly advised in writing prior to placement of the insurance that:

(A) the insurer with whom the insurance is to be placed is not admitted to transact business in this Commonwealth and is subject to limited regulation by the department; and

(B) in the event of the insolvency of the insurer, losses will not be paid by the Pennsylvania Insurance Guaranty Association.

This written declaration shall be open to public inspection.

(2) Within forty-five (45) days after insurance has been placed in an eligible surplus lines insurer, the surplus lines licensee shall file with the department a written declaration of his lack of knowledge of how the coverage could have been procured from admitted insurers. The surplus lines licensee shall simultaneously file the written declaration of the producing broker, as set forth in paragraph (1).

(3) In a particular transaction where the producing broker and surplus lines licensee are one in the same entity, he shall execute both declarations.

(b) Subsection (a) shall not apply to any insurance which has been placed continuously with an eligible surplus lines insurer for a period of at least three (3) consecutive years immediately preceding the current placement. However, within forty-five (45) days after insurance has been placed with an eligible surplus lines insurer, the surplus lines licensee shall file with the department his written declaration on a form prescribed by the department.

Section 1610. Exempt Risks.—(a) The diligent search requirements of section 1604(2), the reporting requirements of section 1609(a) and the twenty-five per centum (25%) limitation of section 1606 are not applicable to placements of insurance with nonadmitted insurers for risks of an insured which meets at least three of the following requirements:

(1) The insured employs a full-time risk manager or contracts for services from a qualified risk management service.

(2) The insured has gross sales in excess of one hundred million ($100,000,000) dollars.

(3) The insured regularly employs in excess of two hundred fifty (250) full-time employes.

(4) The insured has assets in excess of one hundred million ($100,000,000) dollars.

(5) The insured has insurance premiums for property and casualty insurance, excluding employe benefits, in excess of two hundred fifty thousand ($250,000) dollars.

(6) The insured is seeking insurance for risks resident, located or to be performed in one or more states other than this Commonwealth and the portion of the total risk ascribable to states other than this Commonwealth exceeds fifty per centum (50%).

(b) (1) The diligent search requirement of section 1604(2) and the reporting requirements of section 1609(a) are not applicable to placements of insurance with eligible surplus lines insurers for:

(i) Risks of members of a purchasing group established under the Risk Retention Amendments of 1986 (Public Law 99-563, 100 Stat. 3170) if all of the insured members of the purchasing group are covered under its group policy or if the members are additional named insureds under the group's policy.

(ii) Risks of members of a risk retention group established under the Risk Retention Amendments of 1986.

(2) Within forty-five (45) days after insurance has been placed with an eligible surplus lines insurer for members of a purchasing group or risk retention groups by a surplus lines licensee, the licensee shall file with the department his written declaration, reporting the transaction on a form prescribed by the department.

Section 1611. Surplus Lines Advisory Organizations.—(a) A surplus lines advisory organization of surplus lines licensees may be formed to:

(1) Facilitate and encourage compliance by its members with the laws of this Commonwealth and the rules and regulations of the department relative to surplus lines insurance.

(2) Provide means for the examination, which shall remain confidential, of all surplus lines coverages written by its members to determine whether such coverages comply with such laws and regulations.

(3) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market.

(4) Receive and disseminate to its members information relative to surplus lines insurance.

(b) The functions of the organization shall in no way supplant or delegate current regulatory authority of the department to administer the provisions of this article.

(c) Each such advisory organization shall file with the department for approval:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation.

(2) A copy of its bylaws, rules and regulations governing its activities.

(3) A current list of its members.

(4) The name and address of a resident of this Commonwealth upon whom notices or orders of the department or processes issued at its direction may be served.

(5) An agreement that the department may examine such advisory organization in accordance with the provisions of this section.

(d) The department shall, at least once every four (4) years, make or cause to be made an examination of each such advisory organization. The reasonable cost of any such examination shall be paid by the advisory organization upon presentation to it by the department of a detailed account of each cost. The officers, managers, agents and employes of such advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The department shall furnish two copies of the examination report to the advisory organization examined and shall notify such organiza-

tion that it may, within twenty (20) days thereof, request a hearing on the report or on any facts or recommendations therein. If the department finds such advisory organization or any member thereof to be in violation of this article, it may issue a cease and desist order requiring the discontinuance of such violation and may impose any other penalties as set forth in this article.

(e) The department may contract with a surplus lines advisory organization to render advice and assistance in carrying out the purposes of this article. The services performed by the advisory organization pursuant to such contract may be funded by a stamping fee assessed on each surplus lines policyholder whose policy is submitted to the advisory organization. The stamping fee shall be established by the board of governors of the advisory organization, from time to time, and shall be subject to approval by the department.

(f) The advisory organization may submit reports and make recommendations to the department regarding the financial condition of any eligible surplus lines insurer. These reports and recommendations shall not be considered to be public information or subject to any Federal or State freedom of information law. There shall be no liability on the part of nor shall any cause of action of any nature be sustained against eligible surplus lines insurers, the advisory organization or its members, agents, employes or directors or the department or authorized representatives of the department for statements and any reports or recommendations made by them in good faith under this section.

(g) By order of the department, a surplus lines licensee may be compelled to join an advisory organization as a condition of continued licensure under this article.

Section 1612. Evidence of Insurance.—(a) Upon placing surplus lines insurance, the surplus lines licensee shall deliver to the insured or the producing broker the contract of insurance. If the contract of insurance is not immediately available, a cover note, binder or other evidence of insurance shall be delivered by the surplus lines licensee to the insured or the producing broker and shall, at a minimum, show the description and location of the subject of insurance, coverages, including any material limitations other than those in standard forms, the premium and rate charged and taxes to be collected from the insured, the name and address of the insured and the eligible surplus lines insurer and other nonadmitted insurer involved under section 1606 and proportion of the risk assumed by each, and the name of the surplus lines licensee.

(b) No surplus lines licensee shall bind or provide evidence of insurance unless he has authority from the eligible surplus lines insurer or other nonadmitted insurer to bind the risk or has received information from the insurer in the regular course of business that it has assumed the risk.

(c) If, after delivery of any such evidence of insurance, there is any change in the identity of the eligible surplus lines insurer, or the proportion of the risk assumed by any nonadmitted insurer, or any other material change in coverage as stated in the surplus lines licensee's original evidence of insurance, or any other material change as to the insurance coverage so

evidenced, the surplus lines licensee shall promptly issue and deliver to the insured or to the original producing broker an appropriate substitute for or endorsement of the original document accurately showing the current status of the coverage and the insurer responsible thereunder.

(d) Every evidence of insurance negotiated, placed or procured under the provisions of this article issued by the surplus lines licensee shall bear the name of the licensee and the following legend in 10-point type: "The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association."

Section 1613. Valid Surplus Lines Insurance.—Contracts of insurance procured under this article shall be valid and enforceable as to all parties. Nothing in this article shall be interpreted to prevent an insured from enforcing his rights under the terms and conditions of a contract of insurance entered into in violation of this article.

Section 1614. Effect of Payment to Surplus Lines Licensee.—A payment of premium to the producing broker or to a surplus lines licensee acting for a person other than himself in negotiating, continuing or reviewing any contract of insurance under this article shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the contract notwithstanding.

Section 1615. Licensing of Surplus Lines Licensee.—(a) No agent or broker licensed by the department shall transact surplus lines insurance with any nonadmitted insurer unless such agent or broker possesses a valid surplus lines agent's license issued by the department.

(b) The department shall issue a surplus lines agent's license to any resident of this Commonwealth who is a qualified holder of a current property and casualty broker's license, but only when the broker has complied with the following:

(1) Remitted the license fee to the department.

(2) Submitted a properly completed license application on a form supplied by the department.

(3) Passed a qualifying examination approved by the department, except that all holders of a license prior to the effective date of this article shall be deemed to have passed such an examination.

(4) Filed with the department and maintained concurrent with the term of the license, in force and unimpaired, a bond in favor of the Commonwealth of Pennsylvania in the penal sum of at least fifty thousand ($50,000) dollars, aggregate liability, with corporate sureties approved by the department. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this article and will promptly remit the taxes as provided by law. No bond shall be terminated except for nonpayment of premiums. Termination notice shall be given to the surplus lines licensee and to the department at least thirty (30) days prior to the termination date.

(c) Corporations and partnerships shall be eligible to be resident surplus lines licensees, upon the following conditions:

(1) The corporation or partnership licensee shall list all employes, including at least one active officer or partner, who have satisfied the requirements of this article to become surplus lines licensees.

(2) Only those employes resident in this Commonwealth holding a certificate of eligibility may transact surplus lines insurance.

(d) Each surplus lines license shall expire on the last day of February of each year and shall be renewed before March 1 of each year upon payment of the annual fee, in compliance with other provisions of this section. Any surplus lines licensee who fails to apply for renewal of a license before expiration of the current license shall pay a penalty of two times the license fee and be subject to other penalties as provided by law before his license will be renewed.

Section 1616. Surplus Lines Licensees May Accept Business from Brokers.—A surplus lines licensee may originate surplus lines insurance or accept such insurance from any broker duly licensed as to the kind or kinds of insurance involved, and the surplus lines licensee may compensate such broker therefor.

Section 1617. Compliance with Law by Two or More Surplus Lines Licensees.—(a) When two or more surplus lines licensees are involved in a transaction subject to this article, the surplus lines licensee dealing directly with or closest to the insured is responsible for compliance with sections 1604, 1608, 1609, 1612, 1619 and 1621.

(b) This provision shall not serve to relieve any surplus lines licensee involved in any transaction subject to this article from compliance with any other section of this article.

Section 1618. Surplus Lines Licensee with Binding Authority.—Any surplus lines licensee who is granted binding or underwriting authority by an eligible surplus lines insurer shall be subject to regulations and rules promulgated, from time to time, by the department.

Section 1619. Records of Surplus Lines Licensee.—(a) Each surplus lines licensee shall keep in its office in this Commonwealth a full and true record of each surplus lines insurance contract placed by or through it, including a copy of the policy, certificate, cover note or other evidence of insurance, showing such of the following items as may be applicable:

(1) Amount of the insurance and perils insured.

(2) Brief description of the risk insured and its location.

(3) Gross premium charged.

(4) Any return premium paid.

(5) Rate of premium charged for each risk insured.

(6) Effective date and terms of the contract.

(7) Name and address of the insured.

(8) Name and address of the eligible surplus lines insurer and any nonadmitted insured involved pursuant to section 1606.

(9) Amount of tax and other sums to be collected from the insured.

(10) Identity of the producing broker, any confirming correspondence from the insurer or its representative and the application.

(11) A copy of the written notice required by section 1408.

(b) The record of each contract shall be kept open at all reasonable times to examination by the department without notice for a period of not less than five (5) years following termination of the contract.

Section 1620. Monthly Reports.—Within thirty (30) days following the end of each month, each surplus lines licensee shall file with the department, on forms prescribed by the department, a verified report in duplicate of all surplus lines insurance transacted during the preceding month.

Section 1621. Surplus Lines Tax.—(a) There is hereby levied a tax of three per centum (3%) on all premiums charged for insurance which is placed with either an eligible surplus lines insurer, other than a risk retention group, or other nonadmitted insurer in accordance with this article, such taxes to be based on the gross premiums charged less any return premiums. This tax shall be in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any unearned portion of the premium shall be returned to the insured.

(b) Neither the surplus lines licensee nor the producing broker shall pay directly or indirectly such tax or any portion thereof, either as an inducement to the insured to purchase the insurance or for any other reason.

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

(d) In the event that a placement of insurance involves subjects of insurance resident, located or to be performed in one or more states other than this Commonwealth, then the premium taxes provided for in this section shall be levied only on that portion of the premium reasonably ascribable to that portion of the risk situated in this Commonwealth.

(e) With respect to insurance placed with or issued by a risk retention group which is an eligible surplus lines insurer, there is hereby levied a tax of two per centum (2%) on all premiums charged for risks resident, located or to be performed in this Commonwealth. The risk retention group shall be responsible for the payment of the taxes levied in this article in accordance with procedures set forth in Article XV.

(f) The settlement and resettlement of taxes imposed by this article, including the granting of extensions of time to file reports and the rights of the taxpayers to present and prosecute a petition for resettlement, a petition

for review or an appeal to court or to file a petition for refund and the imposition of interest and penalties, shall be governed by the provisions of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," as approved in the case of capital stock and franchise taxes.

Section 1622. Tax on Independently Procured Insurance.—The tax provided by section 1621(a) is imposed upon an insured who independently procures insurance on a subject of insurance resident, located or to be performed in this Commonwealth from a nonadmitted insurer or continues or renews such independently procured insurance. The insured shall, within thirty (30) days after the date when such insurance was independently procured, continued or renewed, report such transaction on forms prescribed by the Department of Revenue. This report shall set forth the information required of surplus lines licensees as required in section 1621(c). The tax of three per centum (3%) shall be paid on the date the report is due as provided in this section. If the independently procured insurance covers risks resident, located or to be performed in one or more states other than this Commonwealth, the premium taxes shall be prorated in accordance with provisions in section 1621(d). A copy of such report shall be filed with the commissioner by the insured.

Section 1623. Suspension, Revocation or Nonrenewal of Surplus Lines Licensee's License.—The department may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and a hearing, as provided under the applicable provision of the laws of this Commonwealth, upon any one or more of the following grounds:

(1) Removal of the resident surplus lines licensee's office from this Commonwealth.

(2) Removal of the resident surplus lines licensee's accounts and records from this Commonwealth during the period during which such accounts and records are required to be maintained under section 1619.

(3) Closing of the surplus lines licensee's office for a period of more than thirty (30) business days, unless permission is granted by the department.

(4) Failure to make and file required reports.

(5) Failure to transmit required tax on surplus lines premiums.

(6) Failure to maintain required bonds.

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

(8) Violation of any provision of this article.

(9) For any other cause for which an insurance agent's or broker's license could be denied, revoked or suspended or refused upon renewal.

Section 1624. Service of Process in Actions Against Surplus Lines Insurer.—(a) An eligible surplus lines insurer may be sued upon any cause of action arising in this Commonwealth under any surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee. Service of process shall be made pursuant to the procedures provided by 42 Pa.C.S. Ch. 53 Subch. B (relating to interstate and international procedure). Any such policy delivered by the surplus lines licensee shall contain a provision stating the substance of this section and designating the person to whom process shall be mailed.

(b) Each nonadmitted insurer accepting surplus lines insurance shall be deemed thereby to have subjected itself to accepting service of process under 42 Pa.C.S. Ch. 53 Subch. B.

(c) The service of process procedures provided in this section are in addition to any other methods provided by law for service of process upon insurers.

Section 1625. Penalties.—(a) Any surplus lines licensee who, in this Commonwealth, represents or aids a nonadmitted insurer in violation of this article commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand ($1,000) dollars.

(b) In addition to any other penalty provided for in subsection (a) or otherwise provided by law, including any suspension, revocation or refusal to renew a license, any person, firm, association or corporation violating any provision of this article shall be liable to a civil penalty not exceeding one thousand ($1,000) dollars for the first offense and not exceeding two thousand ($2,000) dollars for each succeeding offense.

(c) The penalties in this section are not exclusive remedies. Penalties may also be assessed under the act of July 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance Practices Act," and any other applicable statute.

ARTICLE XVII.
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

Section 1701. Purpose.—The purpose of this article is to protect, subject to certain limitations, the persons specified in section 1703(a) against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in section 1703(b), because of the impairment or insolvency of the member insurer that issued the policies or contracts. To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this article.

Section 1702. Definitions.—As used in this article the following words and phrases shall have the meanings given to them in this section:

"Account." Any of the two accounts created under section 1704.

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

"Commissioner." The Insurance Commissioner of the Commonwealth.

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

"Covered policy." Any policy or contract within the scope of this article under section 1703.

"Department." The Insurance Department of the Commonwealth.

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

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

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

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

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

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

"Member insurer." Any insurer licensed or which holds a certificate of authority to transact in this Commonwealth any kind of insurance for which coverage is provided under section 1703 and includes any insurer whose license or certificate of authority in this Commonwealth may have been suspended, revoked, not renewed or voluntarily withdrawn. The term does not include any of the following:

(1) A nonprofit hospital or medical service organization.

(2) A health maintenance organization.

(3) A fraternal benefit society.

(4) A mandatory State pooling plan.

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

(6) An insurance exchange.

(7) Any entity similar to any of the above.

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

"Person." Any individual, corporation, partnership, association or voluntary organization.

"Premiums." The amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon and less dividends and experience credits thereon. The term does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 1703(b) except that assessable premium shall not be reduced on account of sections 1703(b)(2)(iii) relating to interest limitations and 1703(c)(1)(ii) relating to limitations with respect to any one individual, any one participant and any one contract holder. The term does not include any premiums in excess of five million ($5,000,000) dollars on any unallocated annuity contract not issued under a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Resident." Any person who resides in this Commonwealth at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which, in the case of a person other than a natural person, shall be its principal place of business.

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

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

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

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

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

(i) are residents; or

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

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

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

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

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

(b) (1) This article shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts and for unallocated annuity contracts issued by member insurers, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts and any immediate or deferred annuity contracts.

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

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

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

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

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

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

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

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

(B) a minimum premium group insurance plan;

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

(D) an administrative services only contract.

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

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

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

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

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

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

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

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

(II) One hundred thousand ($100,000) dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values.

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

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

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

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

Section 1704. Creation of Association.—(a) There is hereby created a nonprofit, unincorporated association to be known as the Pennsylvania Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this Commonwealth. The association shall perform its functions under the plan of operation established and approved under section 1708 and shall exercise its powers through a board of directors established under section 1705. For purposes of administration and assessment the association shall maintain two accounts:

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

(i) Life insurance account.

(ii) Annuity account.

(iii) Unallocated annuity account which shall include contracts qualified under section 403(b) of the Internal Revenue Code of 1986.

(2) The health insurance account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this Commonwealth. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

Section 1705. Board of Directors.—(a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

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

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

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

(3) loan money to the impaired insurer.

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

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

(ii) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

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

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

(A) the delinquency proceeding shall not be dismissed;

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

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

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

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

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(1) guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured the policies or contracts of the insolvent insurer;

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

(3) with respect only to life and health insurance policies, provide benefits and coverages in accordance with subsection (d).

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

(i) Assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred as follows:

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

(B) With respect to individual policies, not later than the earlier of the next renewal date (if any) under such policies or one year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to such policies.

(ii) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty (30) days notice of the termination of the benefits provided.

(iii) With respect to individual policies, make available to each known insured or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (2), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(2) (i) In providing the substitute coverage required under paragraph (1)(iii), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Alternative or reissued policies shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any alternative or reissued policy.

(3) (i) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

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

(iii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(4) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(5) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

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

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

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

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

(i) In carrying out its duties under subsections (b) and (c) and subject to approval by the court, the association may do the following:

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

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

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

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

(l) The association shall have standing to appear before any court in this Commonwealth with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

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

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

(3) In addition to paragraphs (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(n) The association may do the following:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article.

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

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

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

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

(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this article.

(o) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

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

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

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 1710(e). Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 1706 with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A non-pro rata assessment shall not exceed two hundred ($200) dollars per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this Commonwealth by each assessed member insurer for policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this Commonwealth for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) (1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one (1) calendar year exceed two per centum (2%) and for the health account shall not in any one (1) calendar year exceed two per centum (2%) of such insurer's average premiums received in this Commonwealth on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

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

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

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

(g) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this article, to consider the amount reasonably necessary to meet its assess-

ment obligations under this article, provided that such insurer has not elected to take tax credits as provided in section 1711(a).

(h) The association shall issue to each insurer paying an assessment under this article, other than class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

Section 1708. Plan of Operation.—(a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he has not disapproved it within thirty (30) days.

(2) If the association fails to submit a suitable plan of operation within one hundred twenty (120) days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

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

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under section 1705.

(3) Establish regular places and times for meetings, including telephone conference calls of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under section 1707.

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

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

under this subsection shall take effect only with 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 article.

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

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

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

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

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this Commonwealth of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five per centum (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred ($100) dollars per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty (60) days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

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

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

(1) To notify the commissioners of all the other states, territories of the United States and the District of Columbia when he takes any of the following actions against a member insurer:

(i) revocation of license;

(ii) suspension of license; or

(iii) makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the Com-

monwealth, reinsure all or any part of its business or increase capital, surplus or any other account for the security of policyholders or creditors.
This notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs.

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

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

(4) To furnish to the board of directors the National Association of Insurance Commissioners' (NAIC) Insurance Regulatory Information System (IRIS) ratios and listing of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this Commonwealth.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this Commonwealth. Such reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(e) (1) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (a).

(2) The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by

the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

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

Section 1711. Credits for Assessments Paid.—(a) A member insurer may offset against its premium tax liability to this Commonwealth a proportionate part of the assessments described in section 1707 to the extent of twenty per centum (20%) of the amount of such assessment for each of the five (5) calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(b) The proportionate part of an assessment which may be offset against a member company's premium tax liability to the Commonwealth shall be determined according to a fraction of which the denominator is the total premiums received by the company during the calendar year immediately preceding the year in which the assessment is paid and the numerator is that portion of the premiums received during such year on account of policies of life or health and accident insurance in which the premium rates are guaranteed during the continuance of the respective policies without a right exercisable by the company to increase said premium rates.

(c) Any sums which are acquired by refund, pursuant to section 1707(f), from the association by member insurers, and which have theretofore been offset against premium taxes as provided in this section and are not then needed for the purposes of this act, shall be paid by such insurers to this Commonwealth in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

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

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

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 1706. Records of such negotiations or meetings shall be made public only upon the termina-

tion of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 1713.

(c) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 1706. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this article. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

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

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

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

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

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

(5) If any person liable under paragraph (3) is insolvent, all its affiliates that controlled it at the time distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Section 1713. Examination of the Association and Annual Report.—The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred twenty (120) days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

Section 1714. Tax Exemptions.—The association shall be exempt from payment of all fees and all taxes levied by this Commonwealth or any of its subdivisions, except taxes levied on real property.

Section 1715. Immunity.—There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employes, the association or its agents or employes, members of the board of directors or the commissioner or his representatives for any action or omission by them in the performance of their powers and duties under this article. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employes.

Section 1716. Stay of Proceedings and Reopening Default Judgments.—All proceedings in which the insolvent insurer is a party in any court in this Commonwealth shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

Section 1717. Prohibited Advertisement or Insurance Guaranty Association Act in Insurance Sales.—(a) No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the association for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by this article, provided, however, that this section shall not apply to the association or any other entity which does not sell or solicit insurance.

(b) Within one hundred eighty (180) days of the effective date of this article, the association shall prepare a summary document describing the

general purposes and current limitations of the article and complying with subsection (c). This document should be submitted to the commissioner for approval. Sixty (60) days after receiving such approval, no insurer may deliver a policy or contract described in section 1703(b)(1) to a policyholder or contract holder, unless the document is delivered to the policyholder or contract holder prior to or at the time of delivery of the policy or contract except if subsection (d) applies. The document should also be available upon request by a policyholder. The distribution, delivery or contents or interpretation of this document shall not mean that either the policy or the contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the article may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder or insured any greater rights than those stated in this article.

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

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

(2) Prominently warn the policyholder or contract holder that the association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this Commonwealth.

(3) State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation or inducement to purchase any form of insurance.

(4) Emphasize that the policyholder or contract holder should not rely on coverage under the association when selecting an insurer.

(5) Provide other information as directed by the commissioner.

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

Section 1718. Prospective Application.—This article shall not apply to any insurer which was declared insolvent before the effective date of this article.

Section 20. The following acts and parts of acts are repealed:

Act of January 24, 1966 (1965 P.L.1509, No.531), referred to as the Surplus Lines Insurance Law.

Act of November 26, 1978 (P.L.1188, No.280), known as the Life and Health Insurance Guaranty Association Act.

Section 21. Notwithstanding the repeal in section 20, any insurer declared insolvent by a court of competent jurisdiction prior to the effective date of this act shall be governed by the act of November 26, 1978 (P.L.1188,

No.280), known as the Life and Health Insurance Guaranty Association Act.

Section 22. This act shall take effect as follows:

(1) The addition of Article XVII of the act shall take effect immediately.

(2) The remainder of this act shall take effect in 120 days.

APPROVED—The 18th day of December, A. D. 1992.

ROBERT P. CASEY