

No. 1994-141

AN ACT

HB 1856

Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as amended, "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," further providing for penalties for acting without certificate of authority; providing for the licensing of insurance administrators; and further providing for issuance of certificate of qualification and for certain penalties.

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

Section 1. Section 209 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, amended June 23, 1976 (P.L.414, No.95), is amended to read:

Section 209. Penalty for Acting Without Certificate of Authority.—(a) Any insurance company, association, or exchange doing an insurance business within this Commonwealth without a certificate of authority as required by this act shall be required to pay a civil penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each offense, to be recovered on behalf of the Commonwealth.

(b) Any person negotiating or soliciting any policy of insurance or suretyship in this Commonwealth, collecting or forwarding premiums or delivering policies for any company, association, or exchange to which a certificate of authority has not been granted, shall be deemed to be the agent of the company, association, or exchange, in any legal proceedings brought against it. Such person shall be required to pay a civil penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each offense to be recovered on behalf of the Commonwealth.

[Before the Insurance Commissioner shall take any action, as above set forth, he shall give written notice to the company, association or exchange or person accused of violating the law, stating the nature of such alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing of the matter shall be held. After such hearing or failure of the accused to appear at such hearing, the Insurance Commissioner shall impose such penalty as he deems advisable.]

(c) Whenever the Insurance Commissioner has articulable evidence that any person, insurance company, association or exchange has or is doing an insurance business within this Commonwealth without a certificate of authority as required by this act, or has or is violating any order or requirement of the Insurance Commissioner issued or promulgated pursuant to authority expressly granted the Insurance Commissioner by this section and that the interests of policyholders, creditors or the public may be irreparably harmed by delay, the Insurance Commissioner may issue a cease and desist order. Notice of the cease and desist order and notice of hearing shall be served by first class mail.

(d) Unless mutually agreed upon by the Insurance Department and the insurance company, association, exchange or person, the hearing shall be held not more than fifteen days after issuance of the order. Any adjudication of the Insurance Commissioner under this subsection shall be in accordance with and subject to review and appeal in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(e) Upon satisfactory evidence that any person, insurance company, association or exchange has willfully violated a cease and desist order issued under subsection (c), the Insurance Commissioner may, in his discretion, impose a civil penalty of not more than five thousand dollars (\$5,000) for each and every act in violation of the cease and desist order.

Section 2. Sections 604(a) and 639(a) of the act, amended June 11, 1992 (P.L.284, No.48), are amended to read:

Section 604. Issuance of Certificate of Qualification.—(a) When the Insurance Department is satisfied that the applicant is worthy of a certificate of qualification and has successfully passed an examination and otherwise complied with this article, it shall issue a certificate. The certificate shall state that the agent has complied with this article and has been authorized by the Insurance Department to transact business in specific lines of authority in this Commonwealth. *Once a certificate is issued, the certificate holder is presumed worthy to secure additional specific lines of authority under the certificate unless the department files an action to suspend or revoke or refuse to renew the certificate pursuant to section 639.*

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Section 639. Penalties Imposed by Insurance Department.—(a) Upon satisfactory evidence of the violation of sections 602, 605, 606, 608, 609, 622 and 631 through 638 by any agent of any insurance entity or by any insurance broker or upon satisfactory evidence of such conduct that would disqualify the agent or broker from initial issuance of a certificate of qualification under section 604 or 622, the department may pursue any one or more of the following courses of action regardless of whether the agent or broker was so authorized by the department:

(1) Suspend or revoke or refuse to [issue] *renew* the certificate of qualification or license of the offending party or parties.

(2) Impose a civil penalty of not more than one thousand dollars (\$1,000.00) for each act in violation of any of the provisions listed in this subsection.

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

**ARTICLE X.
INSURANCE ADMINISTRATOR LICENSURE.**

Section 1001. Short Title.—This article shall be known and may be cited as the “Insurance Administrator Licensure Act.”

Section 1002. Definitions.—The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Administrator” means any person who collects charges or premiums from or who adjusts or settles claims for residents of this Commonwealth in connection with life or health coverage or annuities. The term shall specifically include any person who collects charges or premiums from or who adjusts or settles claims for residents of this Commonwealth in connection with life or health coverages or annuities provided by or through an employe benefit plan, including, but not limited to, multiple employer welfare arrangements and self-insured municipalities or other political subdivisions. The term shall not include any of the following:

(1) An employer on behalf of its employes or the employes of one or more subsidiary or affiliated corporations of such employer.

(2) A union on behalf of its members.

(3) An insurance company which is either licensed in this Commonwealth or acting as an insurer with respect to a policy lawfully issued and delivered by it and pursuant to the laws of a state in which the insurer was authorized to do an insurance business.

(4) Professional health services plan corporations organized under 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations) or hospital plan corporations organized under 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations), subject to any limitations imposed by 40 Pa.C.S. Chs. 61 and 63.

(5) A life or health agent or broker licensed in this Commonwealth, whose activities are limited exclusively to the sale of insurance.

(6) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

(7) A trust, its trustees and employes acting thereunder established in conformity with section 302 of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C. § 186).

(8) A trust exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(a)), its trustees,

and employes acting thereunder, or a custodian, its agents and employes acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(f)).

(9) *A bank, credit union or other financial institution which is subject to supervision or examination by Federal or State banking authorities.*

(10) *A credit card issuing company which advances for its credit cardholders and collects premiums or charges from its credit cardholders who have authorized it to do so, provided such company does not adjust or settle claims.*

(11) *A person who adjusts or settles claims in the normal course of his practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with life and health insurance coverage or annuities.*

(12) *A person licensed as an insurance agent and who has been appointed by an insurer to act as a managing general agent in this Commonwealth, whose activities are limited exclusively to the scope of activities conveyed under that license.*

“Benefit plan” means an insured or wholly or partially self-funded coverage plan which, by means of direct payment, reimbursement or other arrangement, provides partial or complete coverage for services, including, but not limited to, medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital or vision care or for drugs or other items reasonably related thereto.

“Commissioner” means the Insurance Commissioner of the Commonwealth.

“Department” means the Insurance Department of the Commonwealth.

Section 1003. License Required; Application; Unlicensed Activity.—On and after the effective date of this act, no person shall act as or hold himself out to be an administrator in this Commonwealth, other than an adjuster licensed in this Commonwealth for the kinds of business for which he is acting as an administrator, unless he shall hold a license as an administrator issued by the department. The license shall be renewable biennially. The license shall be issued by the department to an administrator unless the department determines that the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation or has had a previous application for an insurance license denied for cause within five years. All applications shall be accompanied by a filing fee of one hundred dollars (\$100). An applicant whose license is denied may request a hearing pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

Section 1004. Financial Responsibility and Security Requirements.—All administrators shall be required to maintain an errors and omissions insurance policy and also to maintain financial responsibility in the form of a fidelity bond or a clean irrevocable and unconditional and ever-green

letter of credit or, as established by regulation, other form of security acceptable to the department. Financial responsibility shall be established and maintained each year in an amount equal to fifty per centum of the average amount of funds entrusted to the administrator by benefit plans for the preceding twelve months, but not to exceed five hundred thousand dollars (\$500,000) for any plans other than multiple employer welfare arrangements.

Section 1005. Written Agreement Necessary.—An administrator must have a written agreement between the administrator and the entity providing the benefit plan. The written agreement shall be retained as part of the official records of the administrator for the duration of the agreement and five years thereafter. The written agreement shall comply with the requirements of this act. Where an insurance policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the benefit plan and the administrator for the duration of the contract and five years thereafter.

Section 1006. Payment to Administrator.—The payment to the administrator of any premiums or charges for benefit coverage by or on behalf of those persons covered by the benefit plan shall be deemed to have been received by the benefit plan, and the payment of return premiums, charges or claims by the benefit plan to the administrator shall not be deemed payment to the person or claimant until the payments are received by the person or claimant. Nothing in this section shall limit any right of a benefit plan against the administrator resulting from its failure to make payments to the benefit plan, those persons covered by the benefit plan or claimants.

Section 1007. Maintenance of Information; Examination.—Every administrator shall maintain, at its principal administrative office for the duration of the written agreement referred to in section 1005 and five years thereafter, adequate books of all transactions and records of all transactions between it, the benefit plan and persons covered under the benefit plan. The commissioner shall have access to all books and records which are the property of administrators required to be maintained by this act for the purpose of examination, audit, inspection and investigation. Books and records, the property of bona fide employe benefit plans established by an employer or employe organization, or both, may be available to the department for audit, inspection, examination or investigation at the option of the employer or employe organization. Nothing in this subsection is intended to abridge or interfere with the department's authority to review all records necessary to determine jurisdiction over any entity that may be subject to this or other insurance laws generally. Expenses incurred by the department in examination of administrators shall be paid by the administrator in the same manner, and in the same amounts, pursuant to the examination provisions of this act

and applicable regulations. Trade secrets, including the identity and addresses of policyholders and certificate holders, will be treated as confidential by the department, except the department may use that information in proceedings instituted against the administrator. The entity providing the benefit plan shall retain the right to continuing access to the books and records of the administrator sufficient to permit the benefit plan to fulfill all of its contractual obligations to the persons covered under the benefit plan, subject to any restrictions in the written agreement between the entity providing the benefit plan and the administrator on the proprietary rights of the parties in the books and records.

Section 1008. Approval of Advertising.—The administrator may use only advertising or solicitation materials of persons covered by a benefit plan as has been approved in advance by the entity providing the benefit plan.

Section 1009. Premium Collection.—All charges or premiums collected by an administrator on behalf of or for a benefit plan and return charges or premiums received from a benefit plan shall be held by the administrator in a fiduciary capacity. The funds shall be immediately remitted to the person or persons entitled thereto or shall be deposited promptly in one or more appropriately identified bank accounts in banks or other financial institutions which are subject to supervision or examination by Federal or State banking regulatory authorities. If charges or premiums so deposited have been collected on behalf of or for more than one benefit plan, the administrator shall maintain the accounts to clearly record the deposits in and withdrawals from the account on behalf of each benefit plan. The administrator shall promptly obtain and keep copies of all such records and, upon request of an entity providing a benefit plan, shall furnish the entity providing a benefit plan with copies of records pertaining to deposits and withdrawals on behalf of or for the benefit plan. The administrator shall not pay any claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the entity providing a benefit plan, for:

- (1) Remittance to a benefit plan entitled thereto.*
- (2) Deposit in an account maintained in the name of the benefit plan.*
- (3) Transfer to and deposit in a claims-paying account.*
- (4) Payment to a benefit plan for remittance to an insurer entitled thereto.*
- (5) Payment to the administrator of its commission, fees or charges.*
- (6) Remittance of return premiums or charges to the person or persons entitled thereto.*

Section 1010. Claim Adjustment and Settlement.—With respect to any contracts where an administrator adjusts or settles claims, the compensation to the administrator with regard to the contracts shall in no way be contingent upon claim experience. This section shall not prevent the

compensation of an administrator from being based upon premiums or charges collected or number of claims paid or processed.

Section 1011. Notification Required.—Where services of an administrator are utilized, the administrator shall provide a written notice approved by the entity providing the benefit plan to persons covered by the benefit plan advising them of the identity of and relationship among the administrator, the entity providing the benefit plan and the insurer, if any. Where an administrator collects funds, it must identify and state separately in writing to the person paying any charge or premium to the administrator for coverage the amount of any such charge or premium specified by the benefit plan for the coverage.

Section 1012. Regulations; Applicability of Laws.—The commissioner may promulgate rules and regulations to implement and enforce the provisions of this article. The provisions of the act of July 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance Practices Act," shall apply to administrators subject to this article.

Section 1013. Penalties; Suspension and Revocation.—(a) Failure to hold a license shall subject the administrator to a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each instance of unlicensed activity.

(b) After notice and hearing, the commissioner may do any one or more of the following:

(1) Suspend, revoke or refuse to renew the license of an administrator.

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

(3) Order restitution upon finding that the administrator violated any of the requirements of this act or regulations or the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation. All proceedings shall be pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

Section 4. This act shall take effect in 60 days.

APPROVED—The 12th day of December, A.D. 1994.

ROBERT P. CASEY