No. 1995-79

AN ACT

HB 602

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 financial requirements, for agents, for prohibition of commissions and other considerations, for rate filing, for making of rates and for penalties; further providing for the operation of the Pennsylvania Property and Casualty Insurance Guaranty Association, for covered claims and for loans to companies; providing for conditions with respect to escrow, closing and settlement services and title indemnification accounts and for division of fees; providing for mutual to stock conversion and for contributions to surplus; further providing for investment; providing for additional investment authority for subsidiaries; and making repeals.

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

Section 1. Sections 322.1 and 404.2(10) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, amended or added December 18, 1992 (P.L.1519, No.178), are amended 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[.] ***except for such commissions and fees customarily incurred within the context of public or private placement offerings underwritten by an investment banking entity.***

(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 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. ***The limitations set forth in this clause shall not apply to investments in any corporation or entity which is an insurance company or a health maintenance organization holding a certificate of authority under the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."***

(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.

* * *

Section 2. Section 405.2(c) of the act, added June 11, 1986 (P.L.226, No.64), is amended to read:

Section 405.2. Additional Investment Authority for Subsidiaries.—* * *

(c) (1) At no time shall a domestic life 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 ten per centum (10%) of its total admitted assets as of the immediately preceding thirty-first day of December. In determining the amount of investments of any domestic life 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[.] ***or a health maintenance organization holding a certificate of authority under the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."***

(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 404.1 and 406.

(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 life insurance company's assets provided for under any other provision of this act and which might otherwise be applicable: Provided, however, That such life insurance company's investments, to the extent that such life 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 life insurance company. Investments made pursuant to subclause (iii), or, to the extent applicable, this clause, shall be counted in determining the limitations contained in applicable subsections of sections 404.2 and 406: 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 life 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 406 shall be deemed investments made by the insurance company only to the extent the funds for such investment were provided by such insurance company.

Section 3. Section 705 of the act, added August 14, 1963 (P.L.922, No.439), is amended to read:

Section 705. Financial Requirements.—Every title insurance company shall have a minimum capital, which shall be paid in and maintained, of not less than [**two hundred fifty thousand dollars ($250,000)**] ***five hundred thousand dollars ($500,000)*** and, in addition, paid-in initial surplus at least equal to fifty percent of its capital.

Section 4. Section 723 of the act is repealed.

Section 5. Section 724 of the act, added August 14, 1963 (P.L.922, No.439), is amended to read:

Section 724. Agents; Defined.—[**An agent is a person, firm, association, corporation, cooperative or joint-stock company, authorized in writing by a title insurance company directly or indirectly:**

(1) To solicit risks and collect premiums, and to issue or countersign policies in its behalf; or

(2) To solicit risks and collect premiums in its behalf.] ***(a) A title insurance agent means an authorized person, firm, association, corporation, partnership or other legal entity, other than a bona fide employe of the title insurer, who on behalf of the title insurer performs the following acts, in conjunction with the issuance of a title insurance report or policy:***

(1) determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search, or an abstract of title; and

(2) performs one or more of the following functions:

(i) collects or disburses premiums, escrow or security deposits or other funds;

(ii) handles escrow, settlements or closings;

(iii) solicits or negotiates title insurance business; or

(iv) records closing documents.

(b) No bank, trust company, bank and trust company or other lending institution, mortgage service, mortgage brokerage or mortgage guaranty company or any officer or employe of any of the foregoing shall be permitted to act as an agent for a title insurance company. The word "agent" shall not include approved attorneys, nor shall it include officers and salaried employes of any title insurance company authorized to do a title insurance business within this Commonwealth.

Section 6. The act is amended by adding sections to read:

Section 724.1. Additional Requirements.—A title insurance agent must hold a valid certificate of qualification issued by the Insurance Department

and must perform the acts listed in section 724(a) under a written contract with a licensed title insurance company.

Section 724.2. Financial Responsibility.—Agents shall assume financial responsibility for all of the acts which the agent was appointed to perform by the title insurance company.

Section 7. Section 726 of the act, added August 14, 1963 (P.L.922, No.439), is amended to read:

Section 726. Agents; To be [**Licensed.—Agents for a title insurance company shall be licensed in the manner provided for agents of insurance companies in section 603 of the act of May 17, 1921 (P.L.789), known as "The Insurance Department Act of 1921": Provided, however, That in the event that an applicant for an agent's license is presently an agent of a title insurer or a licensed insurance broker or an attorney at law, the applicant shall not be required to take an examination to qualify for such license. Licenses of title insurance agents shall expire annually at midnight of June 30, unless sooner terminated as the result of severance of business relations between the company and the agent, or unless revoked by the commissioner for cause.**] *Certified and Appointed.—(a) Agents shall make application for a certificate of qualification with the Insurance Department for authority to act as a title insurance agent in the manner provided for in section 603 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921." Upon certification, an agent may be appointed by a title insurer with notice of such appointment to the Insurance Department in the manner provided for in section 605 of "The Insurance Department Act of 1921."*

(b) Certificates of qualification for agents shall expire biennially based on the date of original issue. Certificates of qualification shall be renewed in accordance with procedures and schedules set forth under section 601 of "The Insurance Department Act of 1921," and any regulations promulgated thereunder.

(c) In addition to the requirements set forth in subsection (a), all agents for a title insurance company shall:

(1) pass an examination required by the Insurance Department demonstrating reasonable familiarity with applicable insurance laws and the business of title insurance in general; and

(2) satisfy the continuing education requirements for agents and brokers under 31 Pa. Code Ch. 39 (relating to continuing education for insurance agents and brokers), with the following exceptions:

(i) Title insurance agents will not be subject to the forty-eight credit-hour requirement under 31 Pa. Code § 39.8(b)(2) (relating to credit hours), but in lieu of forty-eight credit hours, will be required to complete twenty-four credit hours for each licensing period.

(ii) Title insurance agents who are attorneys and by virtue of satisfying their continuing legal education (CLE) requirement need only to complete

at least three credit hours of courses of title insurance content approved by the Insurance Department.

Section 8. The act is amended by adding a section to read:

Section 726.1. Other Requirements.—Agents for a title insurance company shall be required to:

(1) Obtain errors and omissions insurance in an amount acceptable to the insurer appointing the agent, but in no event in an amount less than two hundred fifty thousand dollars ($250,000) per claim and an aggregate limit of five hundred thousand dollars ($500,000) with a deductible no greater than twenty-five thousand dollars ($25,000). A title insurer shall not provide the insurance directly or indirectly on behalf of a title insurance agent. In the event errors and omissions insurance is unavailable generally, the Insurance Department shall promulgate rules for alternative methods to comply with this paragraph.

(2) Obtain a blanket fidelity bond covering all agency employes in an amount acceptable to the title insurance company appointing the agent, but in no event in an amount less than one hundred fifty thousand dollars ($150,000) and with a deductible not larger than fifteen percent of the bond penalty. The bond shall be executed by an insurance company authorized to do business in this Commonwealth. When the agency has no employes except the owners, partners or stockholders, the agency, with sufficient documentation, may apply to the Insurance Department for a waiver of this fidelity bond requirement. The required bond premium shall be paid by the title insurance agent, and a title insurer shall not provide the bond directly or indirectly on behalf of a title insurance agent. Except for the inception of this requirement, the bond term must conform to the term of the agent's certification, and documentation of coverage must be furnished to the Insurance Department at the time of certification renewal. In the event of cancellation by the insurance company, the insurer must give the Commonwealth thirty (30) days' written notice before the cancellation will be deemed effective.

(3) Post a surety bond in the form prescribed by the Insurance Department of not less than one hundred thousand dollars ($100,000). The bond shall be executed by an insurance company authorized to do business in this Commonwealth. For purposes of this section, an agency is defined as an individual person, partnership, corporation or other legal entity that conducts the business of title insurance on behalf of a title insurer. The bond shall secure performance by the agent of his fiduciary duties and responsibilities. The bond will remain in full force and effect until cancelled. In the event of cancellations by the surety, thirty (30) days' notice must be given to the Insurance Department before the cancellation will be deemed effective. The premium required for the bond shall be paid by the title insurance agent, and a title insurance company shall not provide the bond directly or indirectly on behalf of a title insurance agent. The aggregate liability of the surety for any and all breaches of the

conditions of the bond shall in no event exceed the penal sum of the bond. Title insurers are exempt from the requirement of obtaining a surety bond.

(4) Render accounts to the title insurer detailing all transactions and remit all funds and policies due under the contract to the title insurer on a specified basis.

(5) Collect and hold in a fiduciary capacity for the account of a title insurer all funds due the title insurer in a bank or other financial institution insured by an agency of the Federal Government. Each account shall be used for all payments on behalf of the title insurer with whom a title agency contract exists.

(6) Keep separate records of business written for each title insurer. The title insurer shall have access and a right to copy all files, accounts and records related to its business in a form acceptable to the title insurer, and the Insurance Commissioner shall have access to all files, books, bank accounts and records of the title insurance agent in a form usable to the Insurance Commissioner.

Section 9. Section 730 of the act is repealed.

Section 10. Sections 731, 737(a) and 739(a) of the act, added August 14, 1963 (P.L.922, No.439), are amended to read:

Section 731. Commissions; Other Considerations Prohibited.—*(a)* No title insurance company or agent or approved attorney of a title insurance company shall pay, give or award to an applicant for title insurance any compensation, consideration, benefit or remuneration, directly or indirectly[, **except as provided in section 730**].

(b) The following activities, whether performed directly or indirectly, are deemed per se inducements for the placement or referral of title insurance business by any person and are unlawful:

(1) Paying or offering to pay, furnishing or offering to furnish, or providing or offering to provide assistance with the business expenses of any person, including, but not limited to, rent, employe salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment or computers.

(2) Providing or offering to provide any form of consideration intended for the benefit of any person, including cash, below market rate loans, automobile charges, merchandise or merchandise credits.

(3) Placing or offering to place compensating balances on behalf of any person.

(4) Advancing or paying or offering to advance or pay money on behalf of any person into escrow to facilitate a closing, except a sum which represents the proceeds of a loan made in the ordinary course of business.

(5) Disbursing or offering to disburse on behalf of any person escrow funds held by a title insurance company or title insurance agent before the conditions of the escrow applicable to the disbursement have been met.

(6) Furnishing or offering to furnish all or any part of the time or productive effort of any employe of the title insurance company or title

insurance agent to any person for any service unrelated to the title business.

(c) Reasonable expenditures for food, beverages, entertainment, educational programs and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the placement or referral of title business if the expenditures are correctly reported and properly substantiated as an ordinary and necessary business expense under provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and regulations issued thereunder and the expenditures do not violate any other law.

(d) The provision or payment of any form of consideration as an inducement for the placement or referral of title business not specifically set forth in this section shall not be presumed lawful merely because it is not specifically prohibited.

(e) The Insurance Commissioner may determine compliance and enforce the provisions of this section by written order, regulation or written consent.

Section 737. Rate Filing.—(a) Every title insurance company shall file with the commissioner every manual of classifications, rules, plans, *and* schedules of fees[, **commissions payable to applicants for title insurance**] and every modification of any of the foregoing relating to the rates which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

* * *

Section 739. Making of Rates.—(a) In making rates, due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting practice and judgment, to the extent appropriate, to past and prospective expenses, including commissions paid to agents [**and applicants for title insurance**], the expenses incurred by title insurance companies, to a reasonable margin for profit and contingencies, and to all other relevant factors both within and outside of this Commonwealth.

* * *

Section 11. The act is amended by adding sections to read:

Section 739.1. Conditions.—A title insurer or title agent may engage in the escrow, settlement or closing business or any combination of such businesses and operate as an escrow, settlement or closing agent, in connection with the issuance of a title insurance policy, provided that:

(1) Funds deposited in connection with any escrow, settlement, closing or title indemnification shall be deposited in a separate fiduciary trust account or accounts in a bank or other financial institution insured by an agency of the Federal Government. Such funds shall be the property of the person or persons entitled thereto in accordance with the provision of the escrow, settlement, closing or title indemnification and shall be segregated by escrow, settlement, closing or title indemnification in the records of the

title insurer or title agent. Such funds shall not be subject to any debts of the title insurer or title agent and shall be used only in accordance with the terms of the individual escrow, settlement, closing or title indemnification under which the funds were accepted.

(2) The title insurer or title agent shall maintain separate records of all receipts and disbursements of escrow, settlement, closing or title indemnification funds.

(3) The title insurer or title agent shall comply with any rules or regulations promulgated by the Insurance Commissioner pertaining to escrow, settlement, closing or title indemnification transactions.

Section 739.2. Division of Fees.— Nothing in this act shall be construed as prohibiting the division of fees between or among a title insurer and its title agent, two or more title insurers and their title agent, two or more title insurers, one or more title insurers and one or more title agents, or two or more title agents, provided such division of fees does not constitute an unlawful rebate or inducement under the provisions of this act.

Section 12. Section 748(a) of the act, added August 14, 1963 (P.L.922, No.439), is amended to read:

Section 748. Penalties.—(a) The commissioner may, if he finds that any person or organization has violated any provision of this article, impose a penalty of not more than **[fifty dollars ($50)]** *five hundred dollars ($500)* for each such violation, but if he finds such violation to be wilful, he may impose a penalty of not more than **[five hundred dollars ($500)]** *five thousand dollars ($5,000)* for each such violation. Such penalties may be in addition to any other penalty provided by law.

* * *

Section 13. Section 809 of the act, amended April 17, 1968 (P.L.94, No.44), is amended to read:

Section 809. Loans to Companies.—Any director, officer, or member of any mutual insurance company, other than a mutual life company, or any other person, may advance to such company 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 the law. Such moneys, and such interest thereon as may have been agreed upon, not exceeding ten per centum (10%) per annum, shall not be a liability or claim against the company or any of its assets, and shall be repaid only out of the surplus earnings of such company. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, **[and the]** *except for such commissions and fees customarily incurred within the context of public or private placement offerings underwritten by an investment banking entity. The* amount of such advance shall be reported in each annual statement.

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

Section 14. The act is amended by adding an article to read:

ARTICLE VIII-A.
MUTUAL-TO-STOCK CONVERSION.

Section 801-A. Short Title of Article.—This article shall be known and may be cited as the Insurance Company Mutual-to-Stock Conversion Act.

Section 802-A. Definitions.—As used in this article, the following words and phrases shall have the meanings given to them in this section:

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Converted stock company." A Pennsylvania-domiciled stock insurance company that converted from a Pennsylvania-domiciled mutual insurance company under this article.

"Department." The Insurance Department of the Commonwealth.

"Eligible member." A member of a mutual company whose policy is in force on the date the mutual company's board of directors adopts a plan of conversion. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the board of directors adopts the plan but before the plan's effective date is not an eligible member but shall have those rights established under section 809-A.

"Mutual company." A Pennsylvania domestic mutual insurance company that is seeking to convert to a stock insurance company under this article.

"Participating policy." A policy that grants a holder the right to receive dividends if, as and when declared by the mutual company.

"Plan of conversion" or "plan." A plan adopted by a mutual company's board of directors under this article to convert the mutual company into a stock company.

"Policy." An insurance policy, including an annuity contract.

"Stock company." A stock insurance company that meets all of the current requirements for admission to do business as a domestic Pennsylvania insurer.

Section 803-A. Adoption of Plan of Conversion.—(a) No plan of conversion shall become effective unless the mutual company seeking to convert to a stock company shall have adopted, by the affirmative vote of not less than two-thirds of its board of directors, a plan of conversion consistent with the requirements of sections 804-A, 805-A and 806-A. At any time before approval of a plan by the commissioner, the mutual company, by the affirmative vote of not less than two-thirds of its board of directors, may amend or withdraw the plan.

(b) Before a mutual company's eligible members may vote on approval of a plan, a mutual company whose board of directors has adopted a plan shall file all of the following documents with the commissioner within ninety (90) days after adoption of the plan:

(1) The plan of conversion, including the independent evaluation of pro forma market value required by section 804-A(d).

(2) The form of notice required by subsection (f).

(3) The form of proxy to be solicited from eligible members pursuant to subsection (g).

(4) The form of notice required by section 809-A to persons whose policies are issued after adoption of the plan but before its effective date.

(5) The proposed amended articles of incorporation and bylaws of the converted stock company.

(6) The acquisition of control statement, as required by section 1402.

(7) Such other information as the commissioner may request.

Upon filing of the foregoing documents with the commissioner, the mutual company shall send to eligible members a notice advising eligible members of the adoption and filing of the plan, their ability to provide the commissioner and the mutual company with comments on the plan within thirty (30) days of the date of such notice and procedure therefor.

(c) The commissioner shall approve or disapprove the plan by not later than sixty (60) days after the filing of the documents under subsection (b). The commissioner may extend the time for approval or disapproval by an additional sixty (60) days upon written notice to the mutual company. The commissioner shall immediately give written notice to the mutual company of any decision and, in the event of disapproval, a statement in detail of the reasons for the decision. The commissioner shall approve the plan if the commissioner finds each of the following:

(1) The plan complies with this article.

(2) The plan will not prejudice the interests of the members.

(3) The plan's method of allocating subscription rights is fair and equitable.

(d) The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing the plan and the independent evaluation of the pro forma market value required under section 804-A(d).

(e) The commissioner may order a hearing on whether the terms of the plan comply with this article after giving written notice to the mutual company and other interested persons, all of whom have the right to appear at the hearing.

(f) All eligible members shall be sent notice of the members' meeting to vote upon the plan. The notice shall briefly but fairly describe the proposed conversion plan, shall inform the member of his right to vote upon the plan and shall be sent to each member's last known address, as shown on the mutual company's records, at least thirty (30) days before the time fixed for the meeting. If the meeting to vote upon the plan is held during the mutual company's annual meeting of policyholders, only a combined notice of meeting is required.

(g) The plan shall be voted upon by eligible members and shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes cast by eligible members. Members entitled to vote upon the proposed plan may vote in person or by proxy. The number of votes each eligible member may cast shall be determined by the mutual company's bylaws. If the bylaws are silent, each eligible member may cast one vote.

(h) The amended articles shall be considered at the meeting of the policyholders called for the purpose of adopting the plan of conversion and shall require for adoption the affirmative vote of at least two-thirds of the votes cast by eligible members.

(i) Documents to be filed following approval.—Within thirty (30) days after the eligible members have approved the plan, the converted stock company shall file both of the following documents with the commissioner:

(1) The minutes of the meeting of the eligible members at which the plan was approved.

(2) The amended articles of incorporation and bylaws of the converted stock company.

Section 804-A. Required Provisions of Plan of Conversion.—(a) The following provisions shall be included in the plan:

(1) The reasons for proposed conversion.

(2) The effect of conversion on existing policies, including all of the following:

(i) A provision that all policies in force on the effective date of conversion continue to remain in force under the terms of the policies, except that the following rights, to the extent they existed in the mutual company, shall be extinguished on the effective date of the conversion:

(A) Any voting rights of the policyholders provided under the policies.

(B) Except as provided under subparagraph (ii), any right to share in the surplus of the mutual company provided for under the policies.

(C) Any assessment provisions provided for under the policies of the type described in section 808.

(ii) Except as provided in subparagraph (iii), a provision that holders of participating policies in effect on the date of conversion continue to have a right to receive dividends as provided in the participating policies, if any.

(iii) A provision that, except for the mutual company's life policies, guaranteed renewable accident and health policies and guaranteed renewable, noncancelable accident and health policies, upon the renewal date of a participating policy, the converted stock company may issue the insured a nonparticipating policy as a substitute for the participating policy.

(3) The subscription rights to eligible members, including both of the following:

(i) A provision that each eligible member is to receive without payment nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company and that, in the aggregate, all eligible members shall have the right, prior to the right of any other party, to

purchase one hundred per centum (100%) of the capital stock of the converted company, exclusive of any shares of capital stock required to be sold or distributed to the holders of surplus notes, if any, and capital stock purchased by the company's tax-qualified employe stock benefit plan that is in excess of the total price of the capital stock established under subsection (d), as permitted by section 806-A(c). As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive without payment nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

(A) a corporation organized for the purpose of purchasing and holding all the stock of the converted stock company;

(B) a stock insurance company owned by the mutual company into which the mutual company will be merged; or

(C) an unaffiliated stock insurance company or other corporation that will purchase all the stock of the converted stock company.

(ii) A provision that the subscription rights shall be allocated in whole shares among the eligible members using a fair and equitable formula. This formula may, but need not, take into account how the different classes of policies of the eligible members contributed to the surplus of the mutual company or any other factors that may be fair or equitable.

(b) The plan shall provide a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights received under subsection (a)(3).

(c) The plan shall provide that any shares of capital stock not subscribed to by eligible members exercising subscription rights received under subsection (a)(3) shall be sold in a public offering through an underwriter. If the number of shares of capital stock not subscribed by eligible members is so small in number or other factors exist that do not warrant the time or expense of a public offering, the plan of conversion may provide for sale of the unsubscribed shares through a private placement or other alternative method approved by the commissioner that is fair and equitable to eligible members.

(d) The plan shall set the total price of the capital stock equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by a qualified expert. This pro forma market value may be that value that is estimated to be necessary to attract full subscription for the shares, as indicated by the independent evaluation and may be stated as a range of pro forma market value.

(e) The plan shall set the purchase price per share of capital stock equal to any reasonable amount. However, the minimum subscription amount required of any eligible member cannot exceed five hundred ($500) dollars, but the plan may provide that the minimum number of shares any person may purchase pursuant to the plan is twenty-five (25) shares.

(f) The plan shall provide that any person or group of persons acting in concert shall not acquire, in the public offering or pursuant to the exercise of subscription rights, more than five per centum (5%) of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (a)(3)(i), except with the approval of the commissioner. This limitation does not apply to any entity that is to purchase one hundred per centum (100%) of the capital stock of the converted company as part of the plan of conversion approved by the commissioner.

(g) The plan shall provide that no director or officer or person acting in concert with a director or officer of the mutual company shall acquire any capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (a)(3)(i), for three (3) years after the effective date of the plan, except through a broker-dealer, without the permission of the commissioner. This provision does not prohibit the directors and officers from making block purchases of one per centum (1%) or more of the outstanding common stock:

(1) other than through a broker-dealer if approved in writing by the department;

(2) through the exercise of subscription rights received under the plan; or

(3) from participating in a stock benefit plan permitted by section 806-A(c) or approved by shareholders pursuant to section 811-A(b).

(h) The plan shall provide that no director or officer may sell stock purchased pursuant to this section or section 806-A(a) within one (1) year after the effective date of the conversion.

(i) The plan shall provide that the rights of a holder of a surplus note to participate in the conversion, if any, shall be governed by the terms of the surplus note.

(j) The plan shall provide that, without the prior approval of the commissioner, no converted stock company, or any corporation participating in the conversion plan pursuant to subsection (a)(3)(i)(A) or (B), shall for a period of three (3) years from the date of the completion of the conversion repurchase any of its capital stock from any person, except that this restriction shall not apply to either:

(1) A repurchase on a pro rata basis pursuant to an offer made to all shareholders of the converted stock company or any corporation participating in the conversion plan pursuant to subsection (a)(3)(i)(A) or (B); or

(2) a purchase in the open market by a tax-qualified or non-tax-qualified employe stock benefit plan in an amount reasonable and appropriate to fund the plan.

Section 805-A. Closed Block of Business for Participating Life Policies.—(a) The plan shall provide that a mutual life insurance

company's participating life policies in force on the effective date of the conversion shall be operated by the converted stock company for dividend purposes as a closed block of participating business, except that any and all classes of group participating policies may be excluded from the closed block.

(b) The plan shall provide that sufficient assets of the mutual company shall be allocated for the benefit of the closed block of business so that the assets, together with the revenue from the closed block of business, are sufficient to support the closed block, including, but not limited to, the payment of claims, expenses, taxes and any dividends that are provided for under the terms of the participating policies, with appropriate adjustments in the dividends for experience changes. The plan shall be accompanied by an opinion of a qualified actuary or an appointed actuary who meets the standards set forth in the insurance laws or regulations of this Commonwealth for the submission of actuarial opinions as to the adequacy of reserves or assets. The opinion shall relate to the adequacy of the assets allocated in support of the closed block of business. The actuarial opinion shall be based on methods of analysis deemed appropriate for those purposes by the Actuarial Standards Board.

(c) The amount of assets allocated for the benefit of the closed block shall be based upon the mutual life insurance company's last annual statement, updated to the last day of the quarter immediately preceding the effective date of the conversion.

(d) The converted stock company shall keep a separate accounting for the closed block and shall make and include in the annual statement to be filed with the commissioner each year a separate statement showing the gains, losses and expenses properly attributable to the closed block.

(e) Periodically, upon the commissioner's approval, those assets allocated to the closed block that are in excess of the amount of assets necessary to support the remaining policies in the closed block shall revert to the benefit of the converted stock company.

(f) The commissioner may waive the requirement for establishing a closed block of business if it is in the best interests of policyholders to do so. The commissioner may waive from inclusion in the closed block of participating policies those participating policies for which there is no expectation of dividends being paid if it is fair and equitable to do so.

(g) This section applies only to mutual life insurance companies.

Section 806-A. Optional Provisions of Plan of Conversion.—(a) The plan may provide that the directors and officers of the mutual company shall receive without payment nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 804-A(a)(3)(i). These subscription rights shall be allocated among the directors and officers by a fair and equitable formula and shall be subordinate to the subscription rights of eligible members. Nothing

contained in this article shall require the subordination of subscription rights received by directors and officers in their capacity as eligible members, if any.

(b) The aggregate total number of shares that may be purchased by directors and officers of the mutual company in their capacity under subsection (a) and in their capacity as eligible members under section 804-A(a)(3)(i) shall not exceed thirty-five per centum (35%) of the total number of shares to be issued for a mutual company if total assets of the mutual company are less than fifty million ($50,000,000) dollars or twenty-five per centum (25%) of the total number of shares to be issued for a mutual company if total assets of the mutual company are more than five hundred million ($500,000,000) dollars. For mutual companies with total assets of or between fifty million ($50,000,000) dollars and five hundred million ($500,000,000) dollars, the percentage of the total number of shares that may be purchased shall be interpolated.

(c) The plan may allocate to a tax-qualified employe benefit plan nontransferable subscription rights to purchase up to ten per centum (10%) of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 804-A(a)(3)(i). A tax-qualified employe benefit plan is entitled to exercise subscription rights granted under this subsection regardless of the total number of shares purchased by other persons.

(d) The plan may provide for the creation of a liquidation account for the benefit of members in the event of voluntary liquidation subsequent to conversion in an amount equal to the surplus of the mutual company, exclusive of the principal amount of any surplus note, on the last day of the quarter immediately preceding the date of adoption of the plan.

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

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

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

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

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

No alternative plan of conversion providing for the formation of a mutual holding company shall be approved by the commissioner before regulations permitting partial conversion and formation of a mutual holding company

are adopted by the commissioner. The commissioner may retain, at the mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the plan may be approved by the commissioner.

Section 808-A. Effective Date of Plan.—A plan is effective when the commissioner has approved the plan, the eligible members have approved the plan and adopted the amended articles of incorporation and the mutual company files the amended articles of incorporation in the office of the Secretary of the Commonwealth.

Section 809-A. Rights of Members Whose Policies are Issued After Adoption of Plan and Before Effective Date.—(a) All members whose policies are issued after the proposed plan has been adopted by the board of directors and before the effective date of the plan shall be sent a written notice regarding the plan upon issuance of such policy.

(b) A member of a life or health insurance company entitled to be sent the notice described in subsection (a) is entitled to rescind the member's policy and receive a full refund of any amounts paid for the policy or contract within ten (10) days after he has received the notice. Except as provided in subsection (c) each member of a property or casualty insurance company entitled to receive the notice provided for in subsection (a) shall be advised of the member's right of cancellation and to a pro rata refund of unearned premiums.

(c) No member of a life or health insurance company or property or casualty insurance company who has made or filed a claim under his insurance policy shall be entitled to any right to receive any refund under subsection (b). No person who has exercised the rights provided by subsection (b) shall be entitled to make or file any claim under his insurance policy.

Section 810-A. Corporate Existence.—(a) On the effective date of the conversion, the corporate existence of the mutual company continues in the converted stock company. On the effective date of the conversion, all the assets, rights, franchises and interests of the mutual company in and to every species of property, real, personal and mixed, and any accompanying things in action, are vested in the converted stock company, without any deed or transfer and the converted stock company assumes all the obligations and liabilities of the mutual company.

(b) Unless otherwise specified in the plan of conversion, the persons who are directors and officers of the mutual company on the effective date of the conversion shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are elected pursuant to the articles of incorporation and bylaws of the converted stock company.

Section 811-A. Conflict of Interest.—(a) A director, officer, agent or employe of the mutual company shall not receive any fee, commission or other valuable consideration, other than his usual regular salary or

compensation, for aiding, promoting or assisting in a conversion under this article except as provided for in the plan approved by the commissioner. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants and actuaries for services performed in the independent practice of their professions, even if the attorney, accountant or actuary is also a director or officer of the mutual company.

(b) For a period of two (2) years after the effective date of the conversion, no converted stock company shall implement any non-tax-qualified stock benefit plan unless the plan is approved by a majority of votes eligible to be cast at a meeting of shareholders held not less than six (6) months after the effective date of the conversion.

(c) All the costs and expenses connected with a plan of conversion shall be paid for or reimbursed by the mutual company or the converted stock company. However, if the plan provides for participation by another corporation or stock company in the plan pursuant to section 804-A(a)(3)(i), the corporation or stock company may pay for or reimburse all or a portion of the costs and expenses connected with the plan.

Section 812-A. Failure to Give Notice.—If the mutual company complies substantially and in good faith with the notice requirements of this article, the mutual company's failure to send a member the required notice does not impair the validity of any action taken under this article.

Section 813-A. Limitation on Actions.—Any action challenging the validity of or arising out of acts taken or proposed to be taken under this article shall be commenced no later than thirty (30) days after the effective date of the plan.

Section 814-A. Insolvent Mutual Company.—(a) If a mutual company is insolvent or, in the judgment of the commissioner, is in hazardous financial condition, its board of directors, by a majority vote, may request in its petition that the commissioner waive the requirements imposing notice to and policyholder approval of the planned conversion. The petition shall specify both of the following:

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

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

(b) If the commissioner, upon review of the plan of conversion and after a financial examination, finds that the mutual company no longer meets statutory requirements with respect to capital, surplus, deposits or assets, the commissioner may waive, by a written order, the requirements of section 803-A(f).

Section 815-A. Rules and Regulations.—The commissioner may promulgate rules and regulations to administer and enforce this article.

Section 816-A. Laws Applicable to Converted Stock Company.—(a) No mutual company shall be permitted to convert under this article if as a direct result of the conversion any person or any affiliate thereof acquires control of the converted stock company, unless that person and his affiliates comply with the provisions of section 1402. For purposes of this subsection, "control" shall have the meaning given to such term in section 1401.

(b) Except as otherwise specified in this article, a stock company converted under this article shall have and may exercise all the rights and privileges and shall be subject to all of the requirements and regulations imposed upon stock insurance companies formed under this act and any other laws of this Commonwealth relating to the regulation and supervision of insurance companies, but it shall exercise no rights or privileges which other stock insurance companies may not exercise.

Section 817-A. Commencement of Business as a Stock Insurance Company.—No mutual company shall have the power to engage in the business of insurance as a stock company until it complies with all provisions of this article.

Section 818-A. Amendment of Policies.—A mutual company, by endorsement or rider approved by the commissioner and sent to the policyholder, may simultaneously with or at any time after the adoption of a plan of conversion amend any outstanding insurance policy for the purpose of extinguishing the right of the holder of any such policy to share in the surplus of the mutual company. However, this amendment shall be null and void if the plan of conversion is not submitted to the commissioner or, if submitted, is disapproved by the commissioner or, if approved by the commissioner, is not approved by the eligible members on or before the first anniversary of its approval by the commissioner.

Section 15. Sections 1802 and 1803(b) of the act, added December 12, 1994 (P.L.1005, No.137), are amended to read:

Section 1802. Definitions.—As used in this article, the following words and phrases shall have the meanings given to them in this section:

"Account." Either of the two accounts provided for under section 1808(a).

"Association." The Pennsylvania Property and Casualty Insurance Guaranty Association.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Covered claim."

(1) An unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this article applies issued by an insurer if such insurer becomes an insolvent insurer after the effective date of this article and:

(i) the claimant or insured is a resident of this Commonwealth at the time of the insured event: Provided, That for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this Commonwealth.

(2) The term shall not include any amount awarded as punitive or exemplary damages; sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise.

(3) The term shall not include any first-party claim by an insured whose net worth exceeds twenty-five million ($25,000,000) dollars on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer: Provided, That an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis.

"Department." The Insurance Department of the Commonwealth.

"Exhaust." The term, with respect to other insurance, means obtaining the maximum limit under the policy. The term, with respect to another insurance guaranty association or its equivalent, means obtaining the statutory limit of recovery or a final judgment from a court of competent jurisdiction determining the amount of the claim payable by the other insurance guaranty association or its equivalent.

"Insolvent insurer." An insurer licensed to transact insurance in this Commonwealth, either at the time the policy was issued or when the insured event occurred, and against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this article by a court of competent jurisdiction in the insurer's state of domicile or of this Commonwealth and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

"Insurer" or "member insurer." Any insurance company, association or exchange which is licensed to write and is engaged in writing within this Commonwealth, on a direct basis, property and casualty insurance policies.

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

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

"Property and casualty insurance policy." Any contract, including any endorsement, rider, binder (written or oral), cover note, certificate or other instrument of insurance attached or relating thereto, without regard to the

nature of the form of the same, which provides any of the coverages enumerated in section 202, except:

(1) Life, annuity, health or disability insurance.

(2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks.

(3) Fidelity or surety bonds or any other bonding obligations.

(4) Credit insurance, vendors' single interest insurance or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.

(5) Insurance of warranties or service contracts.

(6) Title insurance.

(7) Ocean marine insurance.

(8) Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.

(9) Any insurance provided by or guaranteed by government.

(10) Workmen's compensation and employer's liability insurance.

Section 1803. Pennsylvania Property and Casualty Insurance Guaranty Association.—* * *

(b) The association shall have the following powers and duties:

(1) (i) To be obligated to pay covered claims existing prior to the determination of the insolvency, arising within thirty (30) days after the determination of insolvency or before the policy expiration date if less than thirty (30) days after the determination of insolvency or before the insured replaces the policy or causes its cancellation if he does so within thirty (30) days of the determination. ***Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limit.*** Such obligation shall be satisfied by paying to the claimant an amount as follows:

(A) An amount not exceeding ten thousand ($10,000) dollars per policy for a covered claim for the return of unearned premium.

(B) An amount not exceeding three hundred thousand ($300,000) dollars per claimant for all other covered claims.

(ii) In no event shall the association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this article, a covered claim shall not include any claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. **[The association shall pay only that amount of each unearned premium which is in excess of one hundred ($100) dollars.]**

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

(3) To assess member insurers in accordance with sections 1808 through 1811 the amounts necessary to pay the obligations of the association under paragraph (1), the expenses of handling covered claims, the cost of examinations under sections 1805 and 1812(a)(3) and other expenses authorized by this article.

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

(5) To give such notice as the commissioner may direct under section 1812(b)(1).

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

(7) To reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and pay such other expenses of the association as are authorized by this article.

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

(9) Within ninety (90) days of the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, to prepare a report on the history and causes of such insolvency based on the information available to the association and submit such report to the commissioner.

* * *

Section 16. (a) The following acts and parts of acts are repealed:

Act of December 10, 1970 (P.L.884, No.279), referred to as the Mutual Insurance Company Conversion Law.

Act of May 13, 1992 (P.L.214, No.33), known as the Mutual Life Insurance Company Reorganization Act.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 17. The amendment of sections 1802 and 1803(b) of the act shall apply only to insurers that become insolvent insurers on or after the effective date of this section.

Section 18. This act shall take effect in 60 days.

APPROVED—The 21st day of December, A.D. 1995.

THOMAS J. RIDGE